



GENERAL SERVICES ADMINISTRATION FEDERAL SUPPLY SERVICE

AUTHORIZED FEDERAL SUPPLY SCHEDULE PRICE LIST

MULTIPLE AWARD SCHEDULE (MAS)

**FSC GROUP: MAS
FSC Code 3611, R617, R616**

**3D Printing and Additive Manufacturing Solutions SIN 333249
Electronic Records Management Solutions SIN 518210ERM
Physical Records Management Solutions SIN 493110RM
Order Level Materials SIN OLM**

**Contract Number:
47QSWA18D008F**

**Contract Period:
August 22, 2018 through August 21, 2023
Modification PS-A812: February 21, 2020**

**Carahsoft Technology Corp.
11493 Sunset Hills Rd
Reston, VA 20190**

**Business Size: Other than Small Business
DUNS Number: 088365767**

Contact: sales@carahsoft.com



Terms and Conditions – Multiple Award Schedule - Contract Number: 47QSWA18D008F

create an electronic delivery order are available through GSA Advantage!, a menu- driven database system.
The Internet address for GSA Advantage! is: <https://www.gsaadvantage.gov/>.

Ordering Instructions/Terms and Conditions

1a. Authorized Special Item Numbers (SINs)

333249 3D Printing and Additive Manufacturing Solutions
518210ERM Electronic Records Management Solutions
493110ERM Physical Records Management Solutions
OLM Order Level Materials

1b. Lowest priced model number and lowest unit price for that model for each SIN awarded in the contract.

See attached authorized price list – Appendix D.

2. Maximum order

\$1,000,000.00 unless otherwise authorized by GSA and the ordering agency

3. Minimum order

\$100.00

4. Geographic coverage (Delivery Area)

Contractor will provide worldwide delivery of software and services.

5. Point(s) of production

See attached authorized price list – Appendix D.

6. Discount from list prices or statement of net price

Government prices are net (any discounts have already been taken from the published price list). Additional discounts may be offered at the task order level based on quantity, location, and/or scope of work.

7. Quantity discounts

None offered.

8. Prompt payment terms

None. Payment terms are Net 30. Information for Ordering Offices: Prompt payment terms cannot be negotiated out of the contractual agreement in exchange for other concessions.

9a. Annotate if Government commercial credit card is accepted

YES NO

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

9b. Discount for payment by Government commercial credit card

None

10. Foreign items (list items by country of origin)

See attached authorized price list – Appendix D.

11a. Time of delivery

Carahsoft Technology will adhere to the delivery schedule as specified in each order.

11b. Expedited Delivery

Contact Contractor to arrange expedited delivery of software and services.

11c. Overnight and 2-day delivery

Contact Contractor to arrange overnight delivery of software.

11d. Urgent Requirements

Contact Contractor with accelerated delivery requirements.

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

Destination

13. Ordering addresses:

Carahsoft Technology Corp.
11493 Sunset Hills Rd
Reston, VA 20190
Phone: (703) 871-8500
Fax: (703) 871- 8505
Email: sales@carahsoft.com

Payment address

Jillian Szczepanek
Accounts Receivable
Carahsoft Technology Corp.
11493 Sunset Hills Rd
Reston, VA 20190
703-871-8614 (telephone)
703-871-8505(facsimile)
gsapayments@carahsoft.com

14. Warranty provision

See attached authorized price list – Appendix D.

15. Export packing charges, if applicable N/A
16. Terms and conditions of Government purchase card acceptance (if applicable) N/A
17. Terms and conditions of rental, maintenance, and repair (if applicable) N/A
18. Terms and conditions of installation N/A
19. Terms and conditions of repair parts indicating date of parts price lists and any discounts from list prices N/A
20. List of service and distribution points N/A
21. List of participating dealers
See Appendix C.
22. Preventive maintenance (if applicable) N/A
23. Year 2000 (Y2K) Compliant Yes
24. (a) Environmental attributes, e.g., recycled content, energy efficiency, and or reduced pollutants N/A
24. (b) Section 508 compliance
See <http://www.carahsoft.com/buy/section-508-and-vpat>
25. Data Universal Number System (DUNS) Number
088365767; Other than Small Business
26. Notification regarding registration in Central Contractor Registration (CCR/SAM) database
Carahsoft maintains an active registration in the System for Award Management (SAM).

Software Terms and Conditions

The following terms and conditions apply to all vendors proposing software and related services under MAS, Solicitation 47QSMD20R0001, Office Management Category. Once approved by the MAS Contracting Officer, the negotiated terms should be incorporated into the contractor's published GSA catalog. Note that these terms and conditions may be further negotiated at the order level by the ordering agency Contracting Officer.

1. INSPECTION/ACCEPTANCE

The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The ordering activity reserves the right to inspect or test any software that has been tendered for acceptance. 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 a reasonable time after the defect was discovered or should have been discovered; and (2) before any substantial change occurs in the condition of the software, unless the change is due to the defect in the software.

2. ENTERPRISE USER LICENSE AGREEMENTS REQUIREMENTS (EULA)

The Contractor shall provide all Enterprise User License Agreements in an editable Microsoft Office (Word) format.

3. GUARANTEE/WARRANTY

- a. Unless specified otherwise in this contract, the Contractor's standard commercial guarantee/warranty as stated in the contract's commercial pricelist will apply to this contract.

Please Refer to GSAADVANTAGE! For Specific Information Regarding Warranty

- b. The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract. If no implied warranties are given, an express warranty of at least 60 days must be given in accordance with FAR 12.404(b)(2)
- c. Limitation of Liability. Except as otherwise provided by an express or implied warranty, the Contractor will not be liable to the ordering activity for consequential damages resulting from any defect or deficiencies in accepted items.

4. TECHNICAL SERVICES

The Contractor, without additional charge to the ordering activity, shall provide a hot line technical support number 888-662-2724 for the purpose of providing user assistance and guidance in the implementation of the software. The technical support number is available from 8 AM Eastern Time to 5 PM Eastern Time.

5. SOFTWARE MAINTENANCE

a. Software maintenance as it is defined:

Software Maintenance as a Product

Software maintenance as a product includes the publishing of bug/defect fixes via patches and updates/upgrades in function and technology to maintain the operability and usability of the software 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.

Software Maintenance as a service



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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. Invoices for maintenance service should be submitted to the ordering agency on a quarterly or monthly basis (or as otherwise specified by the ordering activity), 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.

6. PERIODS OF TERM LICENSES AND SOFTWARE MAINTENANCE

- 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 days 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.

Note: The phrase, "Term Licenses and/or Maintenance" in the preceding paragraphs may need to be revised in order to be consistent with the Offeror's proposal; e.g., if only software maintenance is offered, all references to "term licenses" should be



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deleted from the preceding paragraphs.

7. CONVERSION FROM TERM LICENSE TO PERPETUAL LICENSE

- a. The ordering activity may convert term licenses to perpetual licenses for any or all software at any time following acceptance of software. At the request of the ordering activity the Contractor shall furnish, within ten (10) calendar days (or as otherwise specified by the ordering activity), for each software product that is contemplated for conversion, the total amount of conversion credits which have accrued while the software was on a term license and the date of the last update or enhancement.
- b. Conversion credits which are provided shall, within the limits specified, continue to accrue from one contract period to the next, provided the software remains on a term license within the ordering activity.
- c. The term license for each software product shall be discontinued on the day immediately preceding the effective date of conversion from a term license to a perpetual license.
- d. The price the ordering activity shall pay will be the perpetual license price that prevailed at the time such software was initially ordered under a term license, or the perpetual license price prevailing at the time of conversion from a term license to a perpetual license, whichever is the less, minus an amount equal to N/A % of all term license payments during the period that the software was under a term license within the ordering activity.

8. TERM LICENSE CESSATION

- a. After a software product has been on a continuous term license for a period of N/A months, a fully paid-up, non-exclusive, perpetual license for the software product shall automatically accrue to the ordering activity. The period of continuous term license for automatic accrual of a fully paid-up perpetual license does not have to be achieved during a particular fiscal year; it is a written Contractor commitment which continues to be available for software that is initially ordered under this contract, until a fully paid-up perpetual license accrues to the ordering activity. However, should the term license of the software be discontinued before the specified period of the continuous term license has been satisfied, the perpetual license accrual shall be forfeited.

Note: Each separately priced software product shall be individually enumerated, if different accrual periods apply for the purpose of perpetual license attainment.

- b. The Contractor agrees to provide updates and maintenance service for the software after a perpetual license has accrued, at the MAS-awarded terms and conditions, if the licensee elects to order such services. Title to the software shall remain with the Contractor.



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9. 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 so legend shall be subject to the following:
 - (1) Title to and ownership of the software and documentation shall remain with the Contractor, unless otherwise specified.
 - (2) Software licenses are by site and by ordering activity. An ordering activity is defined as a cabinet level or independent ordering activity. The software may be used by any subdivision of the ordering activity (service, bureau, division, command, etc.) that has access to the site the software is placed at, even if the subdivision did not participate in the acquisition of the software. Further, the software may be used on a sharing basis where multiple agencies have joint projects that can be satisfied by the use of the software placed at one ordering activity's site. This would allow other agencies access to one ordering activity's database. For ordering activity public domain databases, user agencies and third parties may use the computer program to enter, retrieve, analyze and present data. The user ordering activity will take appropriate action by instruction, agreement, or otherwise, to protect the Contractor's proprietary property with any third parties that are permitted access to the computer programs and documentation in connection with the user ordering activity's permitted use of the computer programs and documentation. For purposes of this section, all such permitted third parties shall be deemed agents of the user ordering activity.
 - (3) Except as is provided in paragraph 9.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; to copy computer



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programs for safekeeping (archives) or backup purposes; to transfer a copy of the software to another site for purposes of benchmarking new hardware and/or software; and 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.

10. SOFTWARE CONVERSIONS:

Full monetary credit will be allowed to the ordering activity when conversion from one version of the software to another is made as the result of a change in operating system, or from one computer system to another. Under a perpetual license, the purchase price of the new software shall be reduced by the amount that was paid to purchase the earlier version. Under a term license, conversion credits which accrued while the earlier version was under a term license shall carry forward and remain available as conversion credits which may be applied towards the perpetual license price of the new version.

11. DESCRIPTIONS AND EQUIPMENT COMPATIBILITY

The Contractor shall include, in the schedule pricelist, a complete description of each software product and a list of equipment on which the software can be used. Also, included shall be a brief, introductory explanation of the modules and documentation which are offered.

12. RIGHT-TO-COPY PRICING

The Contractor shall propose pricing for right-to-copy licenses.

Appendix A - Vendor Certification for SIN 518210ERM --- Electronic Records Management Solutions



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For the purposes of the Schedule 36 Solicitation (3FNJ-C1-000001-B), eleven (11) specific elements of Electronic Records Management (ERM) Services have been identified. These 11 elements are fully defined and the corresponding requirements are identified in the Universal Electronic Records Management Requirements attachment to the solicitation. These requirements have been established and are administered by the National Archives & Records Administration (NARA).

Vendors may provide any combination of the 11 elements of ERM Services; however, vendors must certify that they are capable of meeting all standards associated with the elements they propose by completing this certification. **Vendors should include a completed copy of this certification in their published GSA catalog to illustrate their ERM capabilities.**

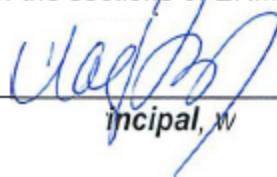
Carahsoft Technology Corp. 1860
Michael Faraday Drive Suite 100
Reston, VA 20190

Proposed Elements of Electronic Records Management Services:

[Select all that apply]

- Element 1 - Desktop Applications
- Element 2 - Electronic Messages
- Element 3 - Social Media
- Element 4 - Cloud Services
- Element 5 - Websites
- Element 6 - Digital Media (Photo)
- Element 7 - Digital Media (Audio)
- Element 8 - Digital Media (Video)
- Element 9 - Databases
- Element 10 - Shared Drives
- Element 11 - Engineering Drawings

Carahsoft Technology Corp. hereby certifies that we are capable of meeting all standards described in Solicitation -3FNJ-C1-000001-B and the Universal Electronic Records Management Requirements attachment for each of the sections of ERM Services we have proposed, as indicated above.



Principal, w



Appendix B-1

Commercial Supplier Agreement - Gimmel

NOTE: In accordance with Clause 552.212-4(s), the Unenforceable Clauses provision of clause 552.212-4 takes precedence over any Commercial Supplier Agreement (CSA) incorporated into contract # 47QSWA18D008F. The language of Clause 552.212-4(w) *Commercial Supplier Agreements – Unenforceable Clauses* shall be deemed incorporated into all commercial supplier agreements associated with contract # 47QSWA18D008F.

Carahsoft Rider to Manufacturer Commercial Supplier Agreements (for U.S. Government End Users)

Revised 20161213

1. Scope. This Carahsoft Rider and the Manufacturer's Commercial Supplier Agreement (CSA) establish the terms and conditions enabling Carahsoft to provide Software and Services to U.S. Government agencies (the "Client" or "Licensee").

2. Applicability. The terms and conditions in the attached Manufacturer's CSA are hereby incorporated by reference to the extent that they are consistent with Federal Law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341(a) (1) (B)), the Contracts Disputes Act of 1978 (41 U.S.C. § 601-613), the Prompt Payment Act, the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 § U.S.C. 15), 28 U.S.C. § 516 (Conduct of Litigation Reserved to Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent the terms and conditions in the Manufacturer's CSA is inconsistent with the Federal Law (*See FAR 12.212(a)*), they shall be deemed deleted and unenforceable under any resultant orders under Carahsoft's Multiple Award Schedule Contract, GS-35F-0119Y, including, but not limited to the following:

(a) Contracting Parties. The Government customer (Licensee) is the "Ordering Activity", defined as an entity authorized to order under Government contracts as set forth in General Services Administration Order OGP 4800.2I, as may be revised from time to time. The Licensee cannot be an individual because any implication of individual licensing triggers the requirements for legal review by Federal Employee unions. Conversely, because of competition rules, the contractor must be defined as a single entity even if the contractor is part of a corporate group. The Government cannot contract with the group, or in the alternative with a set of contracting parties.

(b) Changes to Work and Delays. Subject to General Services Administration Acquisition Regulation (GSAR) 552.238-81 Modifications (Federal Supply Schedule) (APR 2014) (Alternate I – APR 2014) and GSAR 552.212 -4 (f) Contract Terms and Conditions – Commercial Items, Excusable Delays (MAY 2015) (Alternate II – JUL 2009) (FAR Deviation – JUL 2015) (Tailored) regarding which of the GSAR and the FAR provisions shall take precedence.

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



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(d) Audit. During the term of this CSA: (a) If Ordering Activity's security requirements included in the Order are met, Manufacturer or its designated agent may audit Ordering Activity's facilities and records to verify Ordering Activity's compliance with this CSA. Any such audit will take place only during Ordering Activity's normal business hours contingent upon prior written notice and adherence to any security measures the Ordering Activity deems appropriate, including any requirements for personnel to be cleared prior to accessing sensitive facilities. Carahsoft on behalf of the Manufacturer will give Ordering Activity written notice of any non-compliance, including the number of underreported Units of Software or Services ("Notice"); or (b) If Ordering Activity's security requirements are not met and upon Manufacturer's request, Ordering Activity will run a self-assessment with tools provided by and at the direction of Manufacturer ("Self-Assessment") to verify Ordering Activity's compliance with this CSA.

(e) Termination. Clauses in the Manufacturer's CSA referencing suspension, termination or cancellation of the Manufacturer's CSA, the License, or the Customer's Account are hereby deemed to be deleted. Termination, suspension or cancellation shall be governed by the GSAR 552.212-4 and the Contract Disputes Act, 41 U.S.C. §§ 601-613, subject to the following exceptions:

Carahsoft may request cancellation or termination of the CSA on behalf of the Manufacturer if such remedy is granted to it after conclusion of the Contracts Disputes Act dispute resolutions process referenced in Section (q) below or if such remedy is otherwise ordered by a United States Federal Court.

(f) Consent to Government Law / Consent to Jurisdiction. Subject to the Contracts Disputes Act of 1978 (41 U.S.C §§ 7101-7109) and Federal Tort Claims Act (28 U.S.C. §1346(b)). The validity, interpretation and enforcement of this Rider and the CSA will be governed by and construed in accordance with the laws of the United States. All clauses in the Manufacturer's CSA referencing equitable remedies are deemed not applicable to the Government order and are therefore deemed to be deleted.

(g) Force Majeure. Subject to GSAR 552.212 -4 (f) Contract Terms and Conditions – Commercial Items, Excusable Delays (MAY 2015) (Alternate II – JUL 2009) (FAR Deviation – JUL 2015) (Tailored). Unilateral Termination by the Contractor does not apply to a Government order and all clauses in the Manufacturer's CSA referencing unilateral termination rights of the Manufacturer's CSA are hereby deemed to be deleted.

(h) Assignment. All clauses regarding Assignment are subject to FAR Clause 52.232-23, Assignment of Claims (MAY 2014) and FAR 42.12 Novation and Change-of-Name Agreements, and all clauses governing Assignment in the Manufacturer's CSA are hereby deemed to be deleted.

(i) Waiver of Jury Trial. All clauses referencing waiver of Jury Trial are subject to FAR Clause 52.233-1, Disputes (MAY 2014), and all clauses governing waiver of jury trial in the Manufacturer's CSA are hereby deemed to be deleted.



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(j) Customer Indemnities. All of the Manufacturer's CSA clauses referencing Customer Indemnities are hereby deemed to be deleted.

(k) Contractor Indemnities. All of the Manufacturer's CSA clauses that (1) violate DOJ's right (28 U.S.C. 516) to represent the Government in any case and/or (2) require that the Government give sole control over the litigation and/or settlement, are hereby deemed to be deleted.

(l) Renewals. All of the Manufacturer's CSA clauses that violate the Anti-Deficiency Act (31 U.S.C. 1341, 41 U.S.C. 11) ban on automatic renewal are hereby deemed to be deleted.

(m) Future Fees or Penalties. All of the Manufacturer's CSA clauses that violate the Anti-Deficiency Act (31 U.S.C. 1341, 41 U.S.C. 11), which prohibits the Government from paying any fees or penalties beyond the Contract amount, unless specifically authorized by existing statutes, such as the Prompt Payment Act, or Equal Access To Justice Act 31 U.S.C. 3901, 5 U.S.C. 504 are hereby deemed to be deleted.

(n) Taxes. Taxes are subject to GSAR 552.212-4(k) Contract Terms and Conditions – Commercial Items, Taxes (MAY 2015) (Alternate II – JUL 2009) (FAR Deviation – JUL 2015) (Tailored) and GSAR 552.212-4 (w) (1) (x) Contract Terms and Conditions – Commercial Items, Taxes (MAY 2015) (Alternate II – JUL 2009) (FAR Deviation – JUL 2015) (Tailored).

(o) Third Party Terms. Subject to the actual language agreed to in the Order by the Contracting Officer. Any third party manufacturer will be brought into the negotiation, or the components acquired separately under Federally-compatible agreements, if any. Contractor indemnities do not constitute effective migration.

(p) Installation and Use of the Software. Installation and use of the software shall be in accordance with the Rider and Manufacturer's CSA, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid task order placed pursuant to the Government contract.

(q) Dispute Resolution and Venue. Any disputes relating to the Manufacturer's CSA and to this Rider shall be resolved in accordance with the FAR, the GSAR and the Contract Disputes Act, 41 U.S.C. §§ 7101-7109. See GSAR 552.212-4 (w) (1) (iii) Contract Terms and Conditions – Commercial Items, Law and Disputes (MAY 2015) (Alternate II – JUL 2009) (FAR Deviation – JUL 2015) (Tailored). The Ordering Activity expressly acknowledges that Carahsoft, as the vendor selling the Manufacturer's licensed software, shall have standing under the Contract Disputes Act to bring such claims that arise out of licensing terms incorporated into Multiple Award Schedule Contract GS-35F-0119Y.



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(r) Limitation of Liability: Subject to the following:

Carahsoft, Manufacturer and Ordering Activity shall not be liable for any indirect, incidental, special, or consequential damages, or any loss of profits, revenue, data, or data use. Further, Carahsoft, Manufacturer and Ordering Activity shall not 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 Government Contract under any federal fraud statute, including the False Claims Act, 31 U.S.C. §§ 3729-3733.

(s) Advertisements and Endorsements. Unless specifically authorized by an Ordering Activity in writing, such use of the name or logo of any U.S. Government entity is prohibited.

(t) Public Access to Information. Manufacturer agrees that the CSA and this Rider contain no confidential or proprietary information and acknowledges the CSA and this Rider will be available to the public.

(u) Confidentiality. Any provisions that require the Licensee 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. The Licensee may provide information to other components of the United States Government pursuant to proper requests for such information as permitted by law, regulation or policy (e.g., disclosures to Congress, auditors, Inspectors General, etc.).



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Gimmel Software License Agreement- Public Sector Version

Your use of the Software is subject to the terms and conditions of the Gimmel Software License Agreement- Public Sector Version, but only to the extent that all terms and conditions in the Gimmel Software License Agreement- Public Sector Version are consistent with Federal Law (e.g., the Anti- Deficiency Act (31 U.S.C. § 1341 and 41 U.S.C. §6301), the Contracts Disputes Act of 1978 (41. U.S.C. § 601-613), the Prompt Payment Act, the Anti-Assignment statutes (41 § U.S.C.6405), 28 U.S.C. § 516 (Conduct of Litigation Reserved to Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent the terms and conditions in the Gimmel Software License Agreement- Public Sector Version or these Service Specific Terms are inconsistent with Federal Law (See FAR 12.212(a)), they shall be deemed deleted and unenforceable as applied to any Orders under these Service Specific Terms.

NOTICE: Use of the Software that is the subject of this Agreement requires a valid Client Access License for Microsoft SharePoint Server 2010 or later (Standard License).

This Gimmel Software License Agreement- Public Sector Version (this “Agreement”), effective as of the Effective Date identified on the Cover Sheet which is specifically incorporated into this Agreement, is between Gimmel LLC (“Gimmel LLC”), a Texas limited liability company, and the Licensee identified on the Cover Sheet. The parties agree as follows.

1. Definitions

Licensed Users: “Licensed Users” means employees and contractors of Licensee who are authorized by Licensee to use the Software installed on Permitted Computers owned or leased by Licensee. Contractors of Licensee: (1) are only authorized to utilize the Software for specific governmental purposes; and (2) are not authorized to use and may not use the Software for any other purpose.

Maximum Number of Client Access Licensed Users: The “Maximum Number of Client Access Users” identified on the Cover Sheet of this Agreement is the maximum number of Licensed Users, using any Permitted Computer to access the Software, at any one time.

Permitted Computers: “Permitted Computers” means (1) computers owned or leased by Licensee located at the Site, (2) laptop or portable computers owned or leased by Licensee, and (3) portable or home computers for secondary use by a Licensed User who is a principal user of the Software on a primary computer owned or leased by Licensee located at the Site.

Site: “Site” means offices owned or controlled by Licensee.



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Software: The “Software” is identified on the Cover Sheet of this Agreement. The term “Software” means (a) the object code and executable code versions of the computer program(s) identified on the Cover Sheet, and (b) any Updates of such computer program(s), add-on components, web services and/or supplements provided by Gimmel LLC from time to time in its sole discretion. The term “Software” for purposes of this Agreement does not include software licensed by Microsoft Corporation.

Software Documentation: The term "Software Documentation" means printed and electronic user manuals and documentation accompanying or published for the Software that may be provided to Licensee by Gimmel LLC in its sole discretion.

Warranty Period: The “Warranty Period” means the sixty (60) day period after delivery of the Software to an authorized representative of the Licensee.

2. License

Subject to the terms and conditions of this Agreement, Gimmel LLC grants to Licensee a non-exclusive, non-transferable, license for the Maximum Number of Client Access Licensed Users to use the Software during the Term on Permitted Computers. The license granted is a Client Access License ("CAL") and is specific to each person or device accessing a Microsoft SharePoint Server.

3. License Conditions and Restrictions

- 3.1 Conditions and Restrictions: Each of the provisions of this Section 3 is a material term.
- 3.2 Licensee’s Internal Use: Licensee shall not use or permit others to use the Software for any purpose other than Licensee’s own internal governmental purposes.
- 3.3 Licensed Users: Licensee shall not permit use of the Software by any person other than Licensed Users.
- 3.4 Permitted Computers: Licensee shall not install or use the Software or permit installation or use of the Software on any devices other than Permitted Computers.
- 3.5 Copies and Derivative Works: Licensee shall not copy, modify, or create any derivative works of the Software and shall not permit others to do so, except that Licensee may make a reasonable number of back-up copies of the Software.
- 3.6 Reverse Engineering: Licensee shall not decompile, disassemble, reverse engineer, or attempt to derive the source code for the Software, and shall not permit others to do so.
- 3.7 Transfer: Licensee shall not distribute, sell, rent, lease, sublicense, or otherwise transfer rights to the Software, and shall not permit others to do so.
- 3.8 Marks and Notices: Licensee shall not remove or alter any trademark, logo, copyright or other proprietary notices, legends, symbols, or labels on the Software, and shall not permit others to do so.

3.9 Compliance with Laws: Licensee shall comply with all export laws and regulations of the Country in which the software is deployed.

3.10 Licensed Use of Microsoft SharePoint: Prior to using the Software, (1) Licensee must possess a standard license to use Microsoft SharePoint 2010 or greater products, and (2) Licensee shall not use the Software except with authorized copies and uses of Microsoft SharePoint Server 2010 (Standard License) or greater.

4. Fees

License Fee: Fees, expenses and charges shall be paid in accordance with the Prompt Payment Act and the terms of the government contract associated with this Agreement. The fees shall include a minimum of one year of Software Maintenance as a Product.

5. WARRANTIES, REMEDIES, LIMITATIONS, INDEMNITIES

5.1 LIMITED WARRANTY: Gimmel LLC warrants that, during the Warranty Period, if used in accordance with this Agreement, operated as directed, and used in the environment described in the Software Documentation accompanying the Software, the Software will substantially achieve the functionality described in the Software Documentation. This limited warranty shall not apply if Licensee alters, modifies, or misuses the Software or is in breach of this Agreement.

5.2 EXCLUSION OF WARRANTIES: EXCEPT AS EXPRESSLY PROVIDED IN SECTION 5.1, GIMMAL LLC AND ITS AFFILIATES AND AGENTS MAKE NO WARRANTY OF ANY KIND AS TO THE INSTALLATION, USE, OR PERFORMANCE OF THE SOFTWARE OR THE RESULTS OBTAINED FROM USE OF THE SOFTWARE. EXCEPT AS EXPRESSLY PROVIDED, GIMMAL LLC AND ITS AFFILIATES AND AGENTS DO NOT WARRANT THAT THE SOFTWARE IS FREE OF DEFECTS, MERCHANTABILITY, OR FIT FOR A PARTICULAR PURPOSE AND DISCLAIM AND EXCLUDE ALL WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, WITH RESPECT TO THE SOFTWARE, ITS USE, PERFORMANCE, RESULTS, OR APPLICATION; THE DISKETTE OR OTHER TANGIBLE MEDIA ON WHICH THE SOFTWARE IS DELIVERED; OR ANY INFORMATION PROVIDED REGARDING THE SOFTWARE.

5.3 Sole and Exclusive Remedy. This section provides Licensee's sole and exclusive remedy for any breach of the limited warranty set forth in Section 5.1 or for any other failure of or defect or nonconformity in the Software. Licensee must provide to Gimmel LLC written notice of any claim of breach of warranty no later than the end of the Warranty Period. Licensee shall have no remedy if

Licensee fails to provide timely notice or if Licensee fails to describe the breach of warranty in a timely notice. Upon receipt of a timely and proper notice, then, at Gimmel LLC's sole discretion, Gimmel LLC shall:

1. provide repaired or corrected Software or Software Documentation; or
2. provide instructions as to how Licensee may achieve substantially the same functionality with the Software as described in the Software Documentation accompanying the Software; or

3. terminate this Agreement and provide a refund of the License Fee paid by Licensee.

Licensee shall have no other rights or remedies against Gimmel LLC for any breach of the limited warranty set forth in Section 5.1 or for any other failure of or defect or nonconformity in the Software.

5.4 **LIMITATION OF LIABILITY: GIMMAL LLC AND ITS AFFILIATES AND AGENTS WILL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE POSSESSION OF, USE OF, FAILURE OF, OR INABILITY TO USE THE SOFTWARE, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOSS OF GOODWILL, WORK STOPPAGE, DATA LOSS, OR COMPUTER FAILURE OR MALFUNCTION, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND REGARDLESS WHETHER THE CLAIM OR LIABILITY IS BASED UPON ANY CONTRACT, TORT, BREACH OF WARRANTY, OR OTHER LEGAL OR EQUITABLE THEORY, AND NOTWITHSTANDING THAT ANY REMEDY HEREIN FAILS OF ITS ESSENTIAL PURPOSE. THE MAXIMUM LIABILITY OF GIMMAL LLC AND ITS AFFILIATES AND AGENTS TO LICENSEE SHALL IN ANY EVENT NOT EXCEED THE SUM OF THE LICENSE FEE PAID BY LICENSEE FOR THE SOFTWARE (REGARDLESS WHETHER LIABILITY ARISES FROM BREACH OF THE LIMITED WARRANTY OR BREACH OF THIS AGREEMENT, OR BASED ON CONTRACT, TORT, BREACH OF WARRANTY, OR OTHER LEGAL OR EQUITABLE THEORIES).**

5.5 **Intellectual Property Indemnification: Subject to the limitations in Section 5.4 (including the maximum liability of Gimmel LLC to Licensee), Gimmel LLC shall defend, indemnify, and hold Licensee harmless from all damages, costs, and expenses (including reasonable attorneys' fees and costs) relating to any third party claims against Licensee alleging that the Software infringes the third party's intellectual property rights. Licensee shall provide written notice to Gimmel LLC of any claim for which indemnity is sought, promptly upon becoming aware of such claim or lawsuit and in any event within ten (10) days after receiving written notice of the claim.**

6. Records; Audit; Certification of Compliance

6.1 Licensee must keep records relating to the Software. Gimmel LLC has the right to verify compliance with this Agreement, at Gimmel LLC expense, during the term of the Agreement and for a period of one year thereafter.

6.2 To verify compliance, Gimmel LLC will engage an independent accountant from an internationally recognized public accounting firm, which will be subject to a confidentiality obligation.

Verification will take place upon not fewer than 30 days' notice, during normal business hours and in a manner that does not interfere unreasonably with Licensee operations. Licensee must promptly provide the accountant with any information it reasonably requests in furtherance of the verification. As an alternative, Gimmel LLC can require Licensee to complete Gimmel LLC's self-audit questionnaire relating to the use of the Software, but reserve the right to use a verification process as set out above.



If Gimmel LLC undertakes a verification and does not find material unlicensed use (license shortage of 5% or more), Gimmel LLC will not undertake another verification of the Licensee for at least one year. Gimmel LLC and our auditors will use the information obtained in compliance verification only to enforce Gimmel LLC rights and to determine whether the Licensee is in compliance with the terms of the Agreement. By invoking the rights and procedures described above, Gimmel LLC does not waive its rights to enforce this Agreement or to protect Gimmel LLC's intellectual property by any other means permitted by law.

7. Ownership and Confidentiality

Except for the license rights granted to Licensee hereunder, Gimmel LLC retains all right, title, and interest in the Software, including any rights under patent, trademark, copyright, trade secrets, and other intellectual property laws, and this Agreement does not grant to Licensee any intellectual property rights in the Software. The structure, organization, and code underlying the Software are the valuable trade secrets of Gimmel LLC. Licensee shall not take any action to jeopardize, limit, or interfere in any manner with Gimmel LLC's rights, shall not disclose or permit others to disclose any of Gimmel LLC's trade secrets, and shall take all reasonable precautions necessary to protect the confidentiality of Gimmel LLC's trade secrets.

8. Term and Termination

8.1 Effective Date: This Agreement is effective as of date of contract award for a period identified in the Purchase Order, Statement of Work, or similar document.

8.2 Surviving Terms: Sections 5 and 7 shall survive termination of this Agreement.

9. General

9.1 Modifications: No modification, amendment, or waiver of any provision of this Agreement shall be effective unless signed by authorized representatives of Carahsoft Technology Corporation and the General Services Administration (GSA).

9.2 Public Sector End-Users: The Software is a "commercial item," consisting of "commercial computer software" and "commercial computer software documentation," all public sector end-users acquire the Software only as a "commercial item" and only



with those rights that are granted to all other end-users pursuant to the terms and conditions of this Agreement.

9.3 Severability: If any provision in this Agreement should be held invalid or unenforceable, the other provisions of this Agreement shall remain in full force and effect.

9.4 No Assignment by Licensee: Licensee may not assign its rights or delegate its obligations under this Agreement without the prior written consent of Gimmal LLC, which consent may be withheld in the sole discretion of Gimmal LLC. This Agreement shall be binding on and inure to the benefit of the parties and their successors and assigns.



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This Gimmel LLC Software Maintenance as A Product Agreement-Public Sector Version ("Maintenance Agreement"), effective as of the date of execution of the applicable government contract or Task/Delivery Order, whichever is later (the "Effective Date"), is between Gimmel LLC ("Gimmel LLC"), a Texas limited liability company, and the Government Ordering Activity.

Carahsoft Technology Corporation is a "Reseller" for provisioning of Software maintenance and Support to a Licensee of the Software. The parties agree as follows.

1. Definitions

The definitions contained in the Gimmel Software License Agreement-Government Version are hereby incorporated by reference.

Annual Maintenance Fee: The "Annual Maintenance Fee" is 20% of the Software license fee.

Contract Year: A "Contract Year" means any twelve-month period beginning on the Effective Date or an anniversary of the Effective Date during the Term.

Initial Term: The "Initial Term" is in accordance with the Task Order.

Standard Business Hours: "Standard Business Hours" means 8:00 am to 5:00 pm, Central Time, Monday through Friday, excluding federal holidays.

Term: The "Term" means the Initial Term and any renewal term.

2. Maintenance

2.1 Maintenance: For Licensees with a valid license for the Software, will provide Licensee with the following maintenance ("Maintenance") during Standard Business Hours:

- (1) User support by telephone, email, and through an Internet support portal;
- (2) Updates as defined in Section 2.2; and
- (3) Technical support as described in Section 2.3. "Maintenance" does not include:
 - A. on-site support, training, custom programming services, the creation, design, implementation, integration, etc. of the software and hardware and related supplies; or
 - B. any services for computers that are not Permitted Computers at a location other than at the Site or for computers not owned or leased by Customer; or
 - C. any services for any person who is not a Licensed User under a valid license for the Software.

2.2 Updates: This Section 2.2 shall apply only as provided in Section 2.1. Gimmel LLC may from time to time and at its sole discretion develop updates to the Software within the version licensed by Licensee ("Updates"). Gimmel LLC will supply Licensee with such Updates as they become available, at no additional cost to Licensee. All Updates shall become part of the Software and shall be subject to the Gimmel License Agreement-Government Version. Gimmel



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LLC will not be obligated to support any prior version of the Software more than two [2] years after a new or Updated version is made available to Licensee. Upgrades, which are new version releases of the Software and generally identified by a new sequential whole number, are not included in Maintenance. Licensee may acquire Upgraded Software by payment of the applicable license fee or Upgrade fee.

2.3 Technical Support: This Section 2.3 shall apply only as provided in Section 2.1.

Upon receipt of a request for technical support for a problem or error that produces an emergency situation in which Licensee is unable to use the Software on its internal system which has a critical effect on Licensee's governmental operations, Gimmel LLC will begin working on an acceptable work-around, remedy or cure for the problem or error consistent with the standards in the industry within six (6) business hours after Licensee's notification during Standard Business Hours. If an acceptable work-around or cure for the Software error is not found within eight (8) business hours after Licensee's notification, the parties will refer the problem or error to senior executives of Gimmel LLC and Licensee for resolution.

Gimmel LLC shall assist Licensee with understanding when there are problems or errors relating to SharePoint, but such problems or errors shall not be included in the Technical Support described above and in the case of a known deficiency may have dependencies on Microsoft Corporation for correction. Gimmel LLC shall, consistent with the standards in the software industry, assist Licensee to obtain support from Microsoft Corporation in connection with any such SharePoint problem or error.

2.4 On-Site Support: On-site support is not included in Maintenance or in the Annual Maintenance Fee. On-site support is available from Gimmel LLC through its Reseller at the fixed hourly rates listed in the Reseller's contract. Approved travel and per diem is to be reimbursed pursuant to Federal Travel Regulations.

Licensee Responsibility: Licensee shall be responsible for:

1. properly using and controlling access to the Permitted Computers running the Software;
2. permitting Gimmel LLC with the necessary access to the Software (including remote access); For problems or errors requiring Gimmel LLC access to the Software, when access is not provided by Licensee, Gimmel LLC shall have no liability for resolving the problem or error;
3. complying with all applicable laws and regulations;
4. providing detailed and accurate descriptions of maintenance related issues to allow Gimmel LLC to fulfill its maintenance obligations;
5. problems resulting from Licensee not operating the Software on the computer hardware specified by Gimmel LLC in the Software Documentation at the time the License Agreement was executed or specified in Software Documentation provided with Updates;

6. any third party products (including, without limitation, Microsoft SharePoint) whether or not such products are running with the Software;

7. service related to reconstruction of data or restoration of data integrity;



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8. service required as a result of hardware failure, software other than the Software, catastrophe, fault or negligence of Licensee or its Licensed Users, operator error, improper use of hardware or misuse of the Software;
9. repair or restoration of Licensee's data; and
10. installation, setup and configuration of the Software unless separately contracted for pursuant to Section 2.4.

Licensee must use and maintain the recommended hardware and other equipment specified by Gimmel LLC at the time the Software was licensed or Updates provided. The list of recommended hardware and other equipment for the current version of the Software is listed at Attachment A. If an Update requires additional hardware or other equipment as identified by Gimmel LLC at the time of the release of the Update, it is Licensee's responsibility to purchase and install such hardware or equipment.

2.5 Requests for Maintenance: Licensee shall designate no more than three (3) contact persons for all communications relating to Maintenance. All requests for Maintenance must be by Licensee's contact persons.

3. Payments

3.1 Annual Maintenance Fee: The Annual Maintenance Fee for the Software shall be paid in accordance with the Prompt Payment Act and the terms of the government contract associated with this Agreement.

3.2 Payment: The first Annual Maintenance Fee is due on the Effective Date and shall be paid in accordance with the Prompt Payment Act and the terms of the government contract associated with this Agreement.

4. Warranties, Remedies, Limitations, Indemnities

4.1 Limited Warranty: Gimmel LLC shall perform all services under this Agreement in a good and workmanlike manner.

Exclusion of Other Warranties: Except as provided in Section 4.1, GIMMAL LLC AND ITS AFFILIATES MAKE NO WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO CORRECTIONS OR MODIFICATIONS TO THE LICENSED SOFTWARE, OR THE PERFORMANCE OF ANY OTHER OBLIGATIONS UNDER THIS AGREEMENT. EXCEPT AS EXPRESSLY PROVIDED, GIMMAL LLC AND ITS AFFILIATES MAKE NO WARRANTY OF ANY KIND AS TO THE INSTALLATION, USE, OR PERFORMANCE OF THE SOFTWARE OR THE RESULTS OBTAINED FROM USE OF THE SOFTWARE. EXCEPT AS EXPRESSLY PROVIDED, GIMMAL LLC AND ITS AFFILIATES, SUPPLIERS, AND RESELLERS DO NOT WARRANT THAT THE SOFTWARE IS FREE OF DEFECTS, MERCHANTABILITY, OR FIT FOR A PARTICULAR PURPOSE, AND DISCLAIM AND EXCLUDE ALL WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, WITH RESPECT TO THE SOFTWARE, ITS USE, PERFORMANCE, RESULTS, OR APPLICATION; THE DISKETTE OR OTHER TANGIBLE MEDIA ON WHICH THE



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SOFTWARE IS DELIVERED; OR ANY INFORMATION PROVIDED REGARDING THE SOFTWARE.

4.2 LIMITATION OF LIABILITY: GIMMAL LLC AND ITS AFFILIATES AND AGENTS WILL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE POSSESSION OF, USE OF, FAILURE OF, OR INABILITY TO USE THE SOFTWARE, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOSS OF GOODWILL, WORK STOPPAGE, DATA LOSS, OR COMPUTER FAILURE OR MALFUNCTION, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND REGARDLESS OF WHETHER THE CLAIM OR LIABILITY IS BASED UPON ANY CONTRACT, TORT, BREACH OF WARRANTY, OR OTHER LEGAL OR EQUITABLE THEORY, AND NOTWITHSTANDING THAT ANY REMEDY HEREIN FAILS OF ITS ESSENTIAL PURPOSE. THE MAXIMUM LIABILITY OF GIMMAL LLC AND ITS AFFILIATES, SUPPLIERS, AND RESELLERS TO CUSTOMER SHALL IN ANY EVENT NOT EXCEED THE LAST ANNUAL MAINTENANCE FEE PAID BY CUSTOMER.

5. Termination:

5.1 Nonrenewal: Unless terminated earlier as expressly permitted, this Maintenance Agreement shall remain in full force and effect for the Initial Term.

5.2 Breach: Either party may cancel this Maintenance Agreement by written notice to the other party if the other party fails to cure a breach of this Maintenance Agreement within thirty days after receipt of written notice describing the breach. Such cancellation shall not affect the other legal rights of either party with regard to the breach and any resulting damages.

5.3 Cancellation of the Software License: This Maintenance Agreement shall end 30 days after written notification by one party to the other.

5.4 Termination of Support: Gimmel LLC may terminate Maintenance by providing at least one hundred twenty (120) days prior written notice of termination to Licensee. Upon such termination of Maintenance, Gimmel LLC will refund any unused pro rata portion of the Annual Maintenance Fee paid by Licensee.

5.5 Surviving Terms: Section 4 shall survive termination of this Agreement.

5.6 Notwithstanding the foregoing, termination of this Maintenance Agreement shall be in accordance with General Services Administration Acquisition Regulation (GSAR) 552.212-4 (l) Termination for the Ordering Activity's Convenience, GSAR 552.212-4(m) Termination for Cause, GSAR 552.212-4(d) Disputes, and the Contract Disputes Act.



6. General

6.1 Modifications: No modification, amendment, or waiver of any provision of this Maintenance Agreement shall be effective unless signed by authorized representatives of Carahsoft Technology Corporation and the GSA.

6.2 Severability: If any provision in this Maintenance Agreement should be held invalid or unenforceable, the other provisions of this Maintenance Agreement shall remain in full force and effect.

6.3 No Assignment by Licensee: Licensee may not assign its rights or delegate its obligations under this Maintenance Agreement without the prior written consent of Gimmel LLC, which consent may be withheld in the sole discretion of Gimmel LLC. This Maintenance Agreement shall be binding on and inure to the benefit of the parties and their successors and assigns.



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Appendix B-2

Commercial Supplier Agreement - Proofpoint



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END USER LICENSE TERMS

The following terms apply to each GSA Customer ("Customer") license of Proofpoint Products from the GSA Multiple Award Schedule Contractor ("Reseller" or "MAS Contractor") under the GSA Schedule Contract:

"Proofpoint Products" means the appliance, service or software listed in the GSA Contractor's Schedule Price List by and licensed by Customer from Proofpoint Inc. ("Proofpoint") pursuant to a GSA Customer Purchase Order ("Order").

"Documentation" means the description of the Proofpoint Product(s) contained in the then current Proofpoint Product descriptions provided by Proofpoint to Customer upon purchase or License of the Proofpoint Product(s), and the user manuals relating to the use of the Proofpoint Products that are either provided on-line at the time of Customer's purchase of the Proofpoint Product, embedded in the Proofpoint Product(s) or delivered with the Proofpoint Product. The Documentation does not contain additional legal terms and conditions, but serves to provide the Customer with user manuals and specifications applicable to the Proofpoint Product.

"Mailbox" means a separate account on Customer's e-mail server for sending or receiving messages or data within Customer's e-mail system or network. Aliases and distribution lists shall not be counted as separate mailboxes provided each person who has access to such aliases and distribution lists has a separate account on Customer's email server for the receipt of messages or data within Customer's e-mail system or network. For Proofpoint Product Social Archive and/or Governance, "Mailbox" hereunder shall be deleted and replaced with "Named User".

License. Customer is granted a limited term, non-sublicensable, non-transferable, and non-exclusive license to access or use the Proofpoint Products licensed by Customer from Reseller during the applicable subscription term, for its intended purposes, solely for Customer's internal business purposes and not for further use by or disclosure to third parties and in accordance with the Proofpoint Products Documentation and any applicable federal laws or regulations. Customer's right to access or use Proofpoint Products is limited to those parameters set forth in the applicable Order provided to Proofpoint including, but not limited to the maximum number of Mailboxes ("Licensed Mailbox Count") (and storage if applicable) for each module and the type of deployment (i.e., SaaS or appliance).

License Restrictions.

Customer will not and will not allow any third party to:

- a) copy, modify, or create derivative works of the Proofpoint Products or Proofpoint Products Documentation;
- b) reverse engineer, decompile, translate, disassemble, or discover the source code of all or any portion of the Proofpoint Products except and only to the extent permitted by applicable federal law notwithstanding this limitation, provided however, that in any case, Customer shall notify Proofpoint in writing prior to any such action and give Proofpoint reasonable time to adequately understand and meet the requested need without such action being taken by Customer;
- c) remove, alter, cover or obscure any notice or mark that appears on the Proofpoint Products or on any copies or media;
- d) sublicense, distribute, disclose, rent, lease or transfer to any third party any Proofpoint Products;
- e) export any Proofpoint Products in violation of U.S. laws and regulations;
- f) attempt to gain unauthorized access to, or disrupt the integrity or performance of, a Proofpoint Product or the data contained therein;
- g) access a Proofpoint Product for the purpose of building a competitive product or service or copying its features or user interface;



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- h) use a Proofpoint Product, or permit it to be used, for purposes of: (a) product evaluation, benchmarking or other comparative analysis intended for publication outside the Customer's organization without Proofpoint's prior written consent; (b) infringement or misappropriation of the intellectual property rights of any third party or any rights of publicity (e.g. a person's image, identity, and likeness) or privacy; (c) violation of any federal law, statute, ordinance, or regulation (including, but not limited to, the laws and regulations governing export/import control, unfair competition, anti-discrimination, and/or false advertising); (d) propagation of any virus, worms, Trojan horses, or other programming routine intended to damage any system or data; and/or (e) filing copyright or patent applications that include the Proofpoint Product and/or Documentation or any portion thereof; or
- i) upload or download, post, publish, retrieve, transmit, or otherwise reproduce, distribute or provide access to information, software or other material which: (i) is confidential or is protected by copyright or other intellectual property rights, without prior authorization from the rights holder(s); (ii) is defamatory, obscene, contains child pornography or hate literature; or (iii) constitutes invasion of privacy, appropriation of personality (e.g. image, identity, likeness), or unauthorized linking or framing.

Proofpoint Products are for use with normal business messaging traffic only, and Customer shall not use the Proofpoint Products for the machine generated message delivery of bulk, unsolicited emails or in any other manner not prescribed by the applicable Proofpoint Products Documentation.

Customer Responsibilities. Customer is responsible for (i) all activities conducted under its user logins; (ii) obtaining and maintaining any Customer equipment and any ancillary services needed to connect to, access or otherwise use the Proofpoint Products and ensuring that the Customer equipment and any ancillary services are (a) compatible with the Proofpoint Products and (b) comply with all configuration requirements set forth in the applicable Proofpoint Product Documentation; and (iii) complying with all federal laws, rules and regulations regarding the management and administration of its electronic messaging system, including but not limited to, obtaining any required consents and/or acknowledgements from its employees, agents, consultants and/or independent contractors (collectively referred to as "personnel," hereinafter) and service providers (if applicable) in managing its electronic messaging system and/or social media systems (as applicable). Customer shall be solely responsible for any damage or loss to a third party resulting from the Customer's data, or where Customer's use of the Proofpoint Products are in violation of federal law, or of this Agreement, or infringe the intellectual property rights of, or has otherwise harmed, such third party.

Customer shall (i) take all necessary measures to ensure that its users use Proofpoint Products in accordance with the terms and conditions of this Agreement; and (ii) in the case of any purchase of Proofpoint Secure Share, users of the Proofpoint Product will need to register to use the Secure Share. For the purposes of Proofpoint's compliance with its obligations under this Agreement, Customer consents to and authorizes Proofpoint (and its authorized subcontractors, subject to approval by the Contracting Officer) to retain, store and transmit any Customer information and data, subject to Government security requirements that Customer discloses to Proofpoint and pursuant to the normal functioning of Proofpoint Products. Customer information and data includes, but is not limited to (i) all configuration, rules and policies executed at Customer's direction; (ii) any document management or retention protocols that would delete, track, transmit or route documents or other data; (iii) any requests by Customer or required hereunder for log, access, support-related or other transmissions under this Agreement.

If Customer has elected to route outbound email through the Proofpoint Product via the Software as a Service deployment, such as Proofpoint Security Services or MTA, Customer is responsible for maintaining the outbound email filtering applicable Proofpoint Product configuration settings established by Proofpoint to filter and block emails identified by Proofpoint as either containing a virus or having a spam score of ninety-five (95) or higher.

Support and Service Levels. For Customers who purchase Support Services, Proofpoint shall provide Support Services in accordance with Proofpoint's standard support terms which are currently described on Exhibit A.



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Reporting. Customer is under no obligation to increase the number of Mailboxes its uses for subscription based Proofpoint Products based on Mailbox count. However, Customer understands and agrees that if Customer adds Mailboxes to the Licensed Mailbox Count for such Proofpoint Products that exceed 10 percent of the Licensed Mailbox Count, Reseller or MAS Contractor shall invoice Customer for the additional mailboxes.

Customer shall also audit its Mailbox count on the thirtieth (30th) day preceding each anniversary of the Effective Date. Proofpoint may also itself at any time produce a count of the actual Mailbox Count for verification by Customer. If such number exceeds the Licensed Mailbox Count, Reseller or MAS Contractor shall invoice Customer for the additional mailboxes.

Warranty Disclaimer. PROOFPOINT DISCLAIMS (AND PROOFPOINT IS ALSO REQUIRED UNDER ITS CONTRACTS WITH ITS SUPPLIERS AND LICENSORS TO STATE THAT SUCH SUPPLIERS AND LICENSORS ALSO DISCLAIM) ANY AND ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, INCLUDING WITHOUT LIMITATION REGULATORY COMPLIANCE, PERFORMANCE, ACCURACY, RELIABILITY, AND NONINFRINGEMENT. PROOFPOINT DOES NOT WARRANT THAT THE ACCURACY OF THE PROOFPOINT PRODUCTS WILL MEET CUSTOMER'S REQUIREMENTS OR THAT NO EMAIL WILL BE LOST OR THAT THE PROOFPOINT PRODUCTS WILL NOT GIVE FALSE POSITIVE OR FALSE NEGATIVE RESULTS OR THAT ALL SPAM AND VIRUSES WILL BE ELIMINATED OR THAT LEGITIMATE MESSAGES WILL NOT BE OCCASIONALLY QUARANTINED AS SPAM. PROOFPOINT DOES NOT WARRANT THE OPERATION OF THE PROOFPOINT PRODUCTS WILL BE UNINTERRUPTED OR ERROR-FREE. PROOFPOINT DOES NOT WARRANT THE ACCURACY OF MANAGEMENT OF ANY DOCUMENT, OR THAT NO DOCUMENT WILL BE LOST. THIS DISCLAIMER OF WARRANTY CONSTITUTES AN ESSENTIAL PART OF THIS AGREEMENT.

Disclaimer of Liability. All direct, consequential, incidental, special, punitive, exemplary, and indirect damages (including lost profits and loss of data) are disclaimed on behalf of Proofpoint (and Proofpoint is also required under its contracts with its suppliers and licensors to state in this Agreement that such suppliers and licensors also disclaim such damages herein): the foregoing exclusions/limitations of liability shall not apply (1) to personal injury or death caused by Proofpoint's negligence; (2) for fraud; (3) for express remedies requiring the specific type of relief under the law or the contract; or (4) for any other matter for which liability cannot be excluded by law.

Proofpoint Contract Rights. Proofpoint shall have the right to monitor and reset harmful outbound email configuration settings impacting the Proofpoint platform.

Law. This Agreement shall be governed by the federal law of the United States. The Uniform Computer Information Transaction Act shall not apply to this Agreement.

Force Majeure. Pursuant to GSAR 52.212-4(f), either party shall be liable to the other for any delay or failure to perform hereunder due to circumstances beyond such party's reasonable control, including, acts of God, or the public enemy, acts of Government in its sovereign or contractual capacity, fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, unusually severe weather and delays of common carriers, and other acts beyond a party's reasonable control or possession including acts, civil unrest, acts of terror, strikes or other labor problems (excluding those involving such party's employees) or third party service disruptions involving hardware, software or power systems and denial of service attacks.

Open Source Software: Proofpoint Appliance/Software for Customer On-Site Deployment. Open Source Software may be a component of the Software provided to Customer for on-site deployment. Proofpoint is required by Open Source Software requirements to inform the end user of certain facts, including the following:



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“Open Source Software” means various open source software, including GPL software which is software licensed under the GNU General Public License as published by the Free Software Foundation, and components licensed under the terms of applicable open source license agreements included in the materials relating to such software. Open Source Software is composed of individual software components, each of which has its own copyright and its own applicable license conditions. Customer may obtain information (including, if applicable, the source code) regarding the inclusion of Open Source Software in the Software by sending a request, with Customer’s name and address to Proofpoint at the address specified in the Order. Customer may redistribute and/or modify the GPL software under the terms of the GPL. A copy of the GPL is included on the media on which Customer receives the Software or included in the files if the Software is electronically downloaded by Customer. This offer to obtain a copy of the source files for GPL software is valid for three (3) years from the date Customer acquired the Appliance Software.

Proofpoint Product - Email Archive. Proofpoint has third party technology included in the Proofpoint Product Email Archiving Service for the purpose of extracting text from email attachments. Proofpoint or its reseller or distributor will negotiate third party rights, if any, with the Customer at the time it enters into an Order for the Proofpoint Product Email Archiving Service.

Termination. When the end user is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be made as a dispute under the Contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Proofpoint and the GSA Schedule Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer or a court of competent jurisdiction. Within thirty (30) days after expiration or termination of the License to use the Proofpoint Product, Customer shall: (i) certify in writing to Proofpoint that all copies of the Software, Software Updates, and Documentation in any form, including partial copies or extracts thereof, have been destroyed or returned to Proofpoint, and (ii) retrieve or dispose of Customer data from or within the Proofpoint Products and/or systems. Upon 30 days of termination of the License to use the Proofpoint Product, Customer data in the Proofpoint Product and/or systems may be rendered illegible, deleted or written over, including any back-up Customer data.



EXHIBIT A

SUPPORT SERVICES PROGRAM FOR PROOFPOINT CUSTOMERS

Overview: The support services described herein are provided by Proofpoint to each GSA customer ("Customer") pursuant to the terms and conditions of the applicable license agreement ("Agreement") between each Customer and Proofpoint or between a Customer and an authorized Proofpoint partner. Capitalized terms not otherwise defined herein shall have the meaning set forth in the Agreement. Subject to customer paying the applicable support related fees, Proofpoint will provide the support described herein.

1. Bronze Support services consist of the following:

1.1 Error Corrections. Proofpoint shall use commercially reasonable efforts to correct and/or provide a work-around for any error reported by Customer in the current unmodified release of the Software in accordance with the priority level reasonably assigned to such error by Customer.

1.2 Software and Documentation Updates. Proofpoint shall provide to Customer one (1) electronic copy of all updated revisions to the Documentation and one (1) electronic copy of generally released bug fixes, maintenance releases and updates of the Software (collectively, "Updates"). Updates do not include products or options that are designated by Proofpoint as new products or options for which Proofpoint charges a separate fee. Software releases are supported for the current and prior release that are designated by a change to the right of the decimal (e.g. 1.1 to 1.2). Prior to discontinuing support services for any Software product line, Proofpoint shall provide at least six (6) months advance notice on its support website.

1.3 Support Requests and Named Support Contacts. Technical support is available during the technical support hours for the primary support center specified on the Product Order Form. Technical support hours for the Americas are Monday through Friday, 12:00 UTC to 03:00 UTC the following day (e.g. 07:00am to 10:00pm EST during standard time and excluding Proofpoint holidays). Technical support hours for Europe are Monday through Friday, 04:00 UTC to 19:00 UTC (e.g. 05:00am CET to 08:00pm CET during standard time and excluding Proofpoint holidays). Technical support hours for Asia Pacific are Sunday through Thursday 21:00 UTC to 12:00 UTC (e.g. Monday through Friday 06:00am JST to 09:00pm JST during standard time and excluding Proofpoint holidays). Technical support hours for the Middle East are Saturday through Thursday 03:00 UTC to 15:00 UTC (e.g. 07:00am GST to 07:00pm GST during standard time and excluding Proofpoint holidays). Customer may initiate electronic Support requests through Proofpoint's web-based call submission and tracking system ("CTS") at any time. Support request submitted via CTS will be addressed by Proofpoint during the Support hours listed above. Customer will promptly identify two internal resources who are knowledgeable about Customer's operating environment and operation of the Proofpoint Products (collectively, "Named Support Contacts"). Named Support Contacts will serve as primary contacts between Customer and Proofpoint and are the only persons authorized to interact with Proofpoint Technical Support, including accessing CTS to submit and track cases. All Support requests will be tracked in CTS and Customer can view the status of Customer's cases on CTS at any time.

1.4 Platinum Support. In addition to the Bronze support services defined above, for an additional charge, Customer shall receive (i) two additional Named Support Contacts (for a total of four) and Proofpoint shall provide assistance for Priority I errors, as reasonably determined by Proofpoint, 24x7, 365 days per year; and (ii) a dedicated phone line for submitting cases. Handling of non-Priority I errors will take place during the support hours specified in Section 1.3 above.

1.5 Premium Support. In addition to the Bronze and Platinum support services defined above, for an additional charge, (i) Customer shall receive (i) two additional Named Support Contacts (for a total of six) and (ii) Proofpoint will assign a designated Technical Account Manager to Customer's account.

1.6 Global Time Zone Add On. Any Customer that has purchased support at the Platinum level or higher, may purchase the Global Time Zone Add On. For an additional charge, Customer shall receive six additional Named Support Contacts (for a total of twelve) and Proofpoint shall provide assistance for errors of any priority, as reasonably determined by Proofpoint, 24x7, 365 days per year; and (ii) a dedicated phone line.

1.7 Named Support Contact Training. In order to receive support in accordance with the foregoing, within ninety days of the Effective Date, all Named Support Contacts must take and pass exam(s), as applicable and available, to become an "Accredited Engineer" for each Proofpoint Product licensed by Customer. If any Named Support Contact fails to pass the exam, Proofpoint may reasonably request that such Named Support Contact be replaced by Customer. Failure to pass the applicable exam(s) may result in limited access to CTS.



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2. Priority Levels of Errors and Responses

In the performance of Support services, Proofpoint will apply the following priority ratings.

2.1 Priority I Errors.

A "Priority I Error" means a Software program error which both (i) prevents some critical function or process from substantially meeting the Documentation and (ii) seriously degrades the overall performance of such function or process such that no useful work can be done and/or some primary major function of the Software or Appliance is disabled. Priority I Errors shall receive an initial response within one (1) hour (during standard Support hours referenced above), of the case being submitted to Proofpoint. In addressing a Priority I Error, Proofpoint shall use all reasonable efforts to develop suitable workaround, patch, or other temporary correction to restore operation as soon as possible. Proofpoint efforts to resolve a Priority 1 Error will include the following: (1) assigning one or more senior Proofpoint engineers on a dedicated basis to develop suitable workaround, patch, or other temporary correction; (2) notifying senior Proofpoint management that such P1 Error has been reported; (3) providing Customer with periodic reports on the status of corrections; and (4) providing a final solution to Customer as soon as it is available.

2.2 Priority II Errors.

A "Priority II Error" means a Software program error which both (i) degrades some critical function or process from substantially meeting the Documentation and (ii) degrades the overall performance of such function or process such that useful work is hindered and/or some major function of the Software or Appliance is not operating as expected but can be worked-around. Priority II Errors shall receive an initial response within four (4) hours (during standard Support hours referenced above). Proofpoint shall use all reasonable efforts to provide a workaround, patch, or other temporary correction as soon as possible.

2.3 Priority III Errors. Description: A "Priority III Error" means a Software program error which both (i) prevents some non-essential function or process from substantially meeting the Documentation and (ii) significantly degrades the overall performance of the Software or Appliance. Priority III Errors shall receive an initial response within eight (8) hours (during standard Support hours referenced above). Proofpoint shall use all reasonable efforts to provide a workaround, patch, or other temporary correction as soon as possible.

2.4 Priority IV Errors.

A "Priority IV Error" means a Software program error which prevents some function or process from substantially meeting the Documentation but does not significantly degrade the overall performance of the Software or Appliance. Priority IV Errors shall receive an initial response within sixteen (16) hours (during standard Support hours referenced above). Proofpoint shall use all reasonable efforts to include a workaround, patch, or other temporary correction in the next Software update.

3 Customer Cooperation.

Proofpoint's obligation to provide Support services is conditioned upon the following: (i) Customer's reasonable effort to resolve the problem after communication with Proofpoint; (ii) Customer's provision to Proofpoint of sufficient information and resources to correct the problem, including, without limitation, remote access as further discussed in these policies, (iii) Customer's prompt installation of all Software maintenance releases, bug fixes and/or work-around supplied by Proofpoint, and (iv) Customer's procurement and installation and maintenance of all hardware necessary to operate the Software. As related to Priority I Errors, Customer shall provide continuous access to appropriate Customer personnel and the Appliance (if applicable) during Proofpoint's response related to the Priority I Error or Proofpoint shall be permitted to change the Priority of the error. During the term of the Support services and for purposes relating to providing Support to Customer, Proofpoint may obtain information regarding Customer's e-mail communications and Customer agrees that Proofpoint may use any statistical data generated relating to Customer's e-mail. Notwithstanding the foregoing, Proofpoint shall not disclose the source and content of any such e-mail.

4. Reproducing Problems; Remote Access.

Subject to the applicable Support services fees, Support services assistance is limited to Software on platforms that are fully supported, running unaltered on the proper hardware configuration. Where applicable for a reported error, Proofpoint will use commercially reasonable efforts to reproduce the problem so that the results can be analyzed. Proofpoint's obligation to provide the Support services described herein, including without limitation meeting the response times set forth in Section 2 above, is subject to Customer providing shell or Web-based remote access to Customer's computer system(s) and network. Any such remote access by Proofpoint shall be subject to Proofpoint's compliance with Customer's security and anti-virus procedures and the confidentiality requirements set forth in the license agreement between Proofpoint and Customer. Any delay occasioned by Customer's failure to provide the foregoing remote access shall extend the response



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time periods set forth in Section 2 accordingly and resolution of the problem may be subject to payment of additional fees. Prior to proceeding with work that will be subject to additional fees, Proofpoint will notify Customer and will not start such work until Proofpoint receives authorization from Customer. If Customer fails to provide remote access to its computer system(s) and network and Proofpoint and Customer cannot agree on a mutually satisfactory alternative method of reproducing the problem, Proofpoint shall not be obligated to resolve the problem.

5. Support Services Conditions.

5.1 Support Issues Not Attributable to Proofpoint. Proofpoint is not obligated to provide Support services for problems related to: (i) unauthorized modifications and/or alterations of the Software, (ii) improper installation of the Software by non-Proofpoint personnel, use of the Software on a platform or hardware configuration other than those specified in the Documentation or in manner not specified in the Documentation, or (iii) problems caused by the Customer's negligence, hardware malfunction, or third-party software. In the event Proofpoint provides Support services for problems caused by any of the above, Customer will reimburse Proofpoint for such services at the then-current time and materials rate. Proofpoint shall be entitled to discontinue Support services in the event of Customer's non-payment of Subscription Fees when due.

5.2 Exclusions from Support services.

The following items are excluded from Support services:

- (a) In-depth training. If the Support request is deemed to be training in nature, and will require an extended amount of time, Customer will be referred to Proofpoint's training or consulting departments.
- (b). Assistance in the customization of the application. Support services do not include providing assistance in developing, debugging, testing or any other application customization
- (c). Information and assistance on third party products. Issues related to the installation, administration, and use of enabling technologies such as databases, computer networks, and communications (except an Appliance) are not provided under Proofpoint Support services.
- (d) Assistance in the identification of defects in user environment. If Proofpoint concludes that a problem being reported by a Customer is due to defects in Customer's environment, Proofpoint will notify the Customer. Additional support by Proofpoint personnel to remedy performance issues due to the user environment are categorized as consulting services, which are provided for an additional fee.
- (e). Installation. Support Services provided herein do not include the use of Proofpoint Support services resources to perform installation of updates or Customer-specific fixes.

If Customer wishes to have Proofpoint perform services related to any of the above items, such services will be performed pursuant to a mutually executed SOW.

6. Description of Appliance Support Services.

6.1 Services.

For as long as the Appliance purchased by Customer is under Proofpoint's Appliance warranty, Customer shall contact Proofpoint for any and all maintenance and support related to the Appliance. If support for the Appliance purchased by Customer includes on-site support, Proofpoint shall provide or cause to be provided 8-hour response service during the support hours specified in Section 1.3. A technician will arrive on-site, depending on Customer's location and the availability of necessary parts, as soon as practicable (within the business hours specified in Section 1.3) after problem determination. Optional 24x7 service is available subject to Section 1.4.

6.2 Customer Obligations.

Customer must also install remedial replacement parts, patches, software updates or subsequent releases as directed by Proofpoint in order to keep Customer's Appliance eligible for Support services. Customer agrees to give Proofpoint at least thirty (30) days written notice prior to relocating Appliance. It is Customer's responsibility to back up the data on Customer's system, and to provide adequate security for Customer's system. Proofpoint shall not be responsible for loss of or damage to data or loss of use of any of Customer's computer or network systems. Customer agrees to provide the personnel of Proofpoint or its designee with sufficient, free, and safe access to Customer's facilities necessary for Proofpoint to fulfill its obligations.

6.3 Exclusions.

Appliance Support services do not cover parts such as batteries, frames, and covers or service of equipment damaged by misuse, accident, modification, unsuitable physical or operating environment, improper maintenance by Customer, removal or alteration of equipment or parts identification labels, or failure caused by a product for which Proofpoint is not responsible.



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PROOFPOINT WOMBAT PRODUCT EXHIBIT AMENDMENT

Proofpoint GSA End User License Terms and Exhibit B thereto are amended to include the following products within the definition of Proofpoint Products and the following product specific terms:

PhishAlarm & PhishAlarm Analyzer. PhishAlarm & PhishAlarm Analyzer do not filter, scan, analyze or determine if any email received by any User of the PhishAlarm Software is a phishing attack. Other Proofpoint Products provide these functions. "User" means Customer's and its Affiliates' employees, agents, contractors, consultants or other individuals licensed to use the Proofpoint Product.

ThreatSim. Customer may only conduct simulated phishing emails to domains owned by the Customer as set forth in the Purchase Order. Customer may include in the simulated phishing emails logos, customer names, e-mail addresses of Users and any other identifying information ("Customer Information"). Customer represents and warrants that it has the right to distribute, reproduce, publish, upload, use the Customer Information. "User" means Customer's and its Affiliates' employees, agents, contractors, consultants or other individuals licensed to use the Proofpoint Product.

Wombat Security Training Modules. Wombat Security Training Modules enable Customer to send security awareness training to Users to teach Users secure behavior. On-premise versions of the Training Modules can also be provided. Training Modules are compatible with single SCO SCORM 1.2 and 2004 compliant Learning Management Systems, controlled by the customer.



Appendix B-3

Markforged Licensing Terms for Public Sector End Users
Appendix 1: Software License Agreement
Schedule 1: Terms & Conditions

APPENDIX 1

SOFTWARE LICENSE AGREEMENT

This Software License Agreement (“Agreement”) is between the Customer, as defined below, having its principal place of business as set forth in a Purchase Order, Annex, Statement of Work, or similar document, and Markforged, Inc. with its principal place of business at 480 Pleasant Street, Watertown, Massachusetts 02472 (“Markforged”). This Agreement governs the Customer’s use of the Markforged software (the “Licensed Software”) and the Markforged documentation made available for use with such software.

WHEREAS, Markforged provides Licensed Software (as defined below) to users of Markforged 3D Printers (as defined below); and

WHEREAS, Customer has purchased one or more Markforged 3D Printers and wishes to use the Licensed Software.

NOW THEREFORE, in consideration of the mutual covenants and promises herein contained, Markforged and Customer agree as follows:

1. DEFINITIONS

In addition to terms defined elsewhere in this Agreement, the following terms have the following meanings for purposes of this Agreement.

“**3D Printer**” means a computer-aided manufacturing device that creates three-dimensional objects through a process in which such object is additively created by introducing or bonding additional material.

“**Authorized Users**” means Customer’s employees that Customer has authorized to use the Markforged Technology.

“**Customer**” means an organization that licenses software under this Agreement.

“**Customer Content**” means, collectively, (a) any files, designs, models, data sets, meshes, geometries, images, documents or similar material uploaded to the Markforged Technology by Customer; and (b) the specific tangible output generated from the Markforged Technology, if any, based on the foregoing, including, but not limited to, physical parts, articles, tools and prototypes. Customer Content expressly excludes all Markforged Technology.

“**Documentation**” means any guides or other documentation relevant to the Markforged Technology made



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available by Markforged.

“**Firmware**” means any pre-installed software embedded on any Markforged 3D Printer, including any updates thereto provided to Customer by Markforged.

“**Licensed Software**” means the proprietary software program(s) made available to Customer by Markforged or any of its authorized distributors or resellers to enable Authorized Users’ use of a Product.

“**Markforged 3D Printer**” means a 3D Printer manufactured by or on behalf of Markforged, including, but not limited to, the Metal X 3D print system, X3 print system, X5 print system, X7 print system, Onyx One, Onyx Pro and Mark Pro.

“**Markforged Technology**” means the Licensed Software, Products (including the Firmware) and Documentation.

“**Materials**” means printing materials made available by Markforged for use in Markforged 3D Printers including, but not limited to, any and all metal filaments or metal powders, plastics, composites and carbon fiber filament fabrication materials made available by Markforged.

“**Metrics**” means information about Customer’s access and use of the Markforged Technology, including, but not limited to, information regarding use of storage space and features of the Markforged Technology and any other statistical or analytical information or data derived from any of the foregoing.

“**Products**” means Markforged 3D Printers, Materials and any other products made available by Markforged.

“**Product Ts&Cs**” means the Markforged Product Terms and Conditions attached hereto and incorporated herein as Schedule 1.

“**Sites**” means www.markforged.com and/or www.eiger.io.

“**You**” means Customer.

2. ACCESS AND USE OF THE MARKFORGED TECHNOLOGY

The Markforged Technology is intended to enable Customer to engage in additive manufacturing of three-dimensional objects for Customer’s internal business purposes through processes in which such objects are additively created by introducing or bonding Materials, in all cases, in accordance with this Agreement (including the Acceptable Use Policy set forth below) and the Documentation (the “**Intended Use**”).

3. CUSTOMER CONTENT

3.1 Ownership of Customer Content. Customer maintains sole and exclusive ownership of, and responsibility for, Customer Content. Customer acknowledges and agrees that (a) Customer will evaluate and bear all risks associated with Customer Content and (b) under no circumstances will Markforged be liable in



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any way for Customer Content, including, but not limited to any errors or omissions.

4. INTELLECTUAL PROPERTY RIGHTS

4.1 Markforged Technology. Markforged and its respective licensors or suppliers own all right, title, and interest in and to the Markforged Technology, and all intellectual property rights in or to any of the foregoing or that claim or cover any of the foregoing (the “**Markforged IP**”). Customer is not granted any licenses or rights of any kind to the Markforged IP, except as expressly set forth in this Agreement. Customer will not do, or cause to be done, any acts or things contesting or in any way impairing or tending to impair any portion of the right, title and interest of Markforged in and to the Markforged IP. Customer will not delete or in any manner alter the copyright, trademark, or other proprietary rights notices or markings that appear on the Markforged Technology as delivered to Customer.

4.2 Access and Use of Firmware, Documentation and Licensed Software. Subject to Customer’s compliance with this Agreement and the Documentation, Markforged grants Customer a nonexclusive, non-sublicensable, non-transferable license to (a) use the Firmware, solely as installed on Markforged 3D Printers, (b) install and use one (1) copy of the Licensed Software in object code form only as delivered pursuant to this Agreement and consistent with the use limitations set forth in this Agreement, including the Acceptable Use Policy, for Customer’s internal business purposes, solely in connection with Customer’s use of the Products, and (c) use the Documentation, solely in connection with Customer’s use of the Markforged Technology. Customer may permit the Licensed Software to be used by Authorized Users provided all such use is solely for Customer’s internal business purposes and Customer remains responsible and liable for all acts and omissions of such Authorized Users. Customer will not permit any third party to use the Licensed Software other than Authorized Users. Customer will immediately notify Markforged of any unauthorized use, or suspected unauthorized use, of the Licensed Software.

4.3 Unblocking License. It is possible that Customer may develop an invention through the use of the Markforged Technology that is or includes an improvement to the Markforged IP and that the related patent claims will be infringed by the manufacture, use, sale, offer for sale or importing of Markforged’s existing or future products or services. Both Customer and Markforged agree that it is not the intent for Customer to use the Markforged Technology and, as a result, restrict Markforged from running its business. For the avoidance of doubt, Customer retains ownership of all such patent rights and only grant the foregoing license to Markforged and its customers to the extent each of the foregoing clauses (a)-(c) is satisfied.

4.4 Feedback. To the extent Customer provides any suggestions, comments or other feedback related to the Markforged Technology to Markforged or its authorized third party agent(s) (“**Feedback**”), Customer hereby grants to Markforged a worldwide, non-exclusive, perpetual, irrevocable, royalty-free, sublicensable, transferable license to copy, display, distribute, perform, modify and otherwise use such Feedback or subject matter thereof in any way and without limitation.

5. ACCEPTABLE USE POLICY

5.1 Acceptable Use Policy. Customer represents, warrants and covenants that Customer will comply with Markforged’s acceptable use policy, as set forth in clauses (a)-(d) below (the “**Acceptable Use Policy**”).



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(a) Customer will not use the Markforged Technology to collect, upload, transmit, display, or distribute any of Customer Content (i) that violates any third-party right, including any copyright, trademark, patent, trade secret, moral right, privacy right, right of publicity, or any other intellectual property or proprietary right; (ii) that is unlawful, harassing, abusive, tortious, threatening, harmful, invasive of another's privacy, vulgar, defamatory, false, intentionally misleading, trade libelous, pornographic, sexually explicit, obscene, patently offensive, promotes racism, bigotry, hatred, or physical harm of any kind against any group or individual, promotes illegal activities or contributes to the creation of weapons, illegal materials, or is otherwise objectionable; (iii) that is harmful to minors in any way; (iv) to engage in fraudulent activity (including impersonating another person or entity, or submitting misleading or false declarations concerning Customer's affiliation with a person or entity, or use proxy or anonymizing servers, or falsify headers or manipulate identifiers or addresses in any other way for the purpose of concealing the origin of any data sent via the Markforged Technology) or perpetrate a hoax or engage in phishing schemes or forgery or other similar falsification or manipulation of data; or (v) that is in violation of any law, regulation, or obligations or restrictions imposed by any third party.

(b) Customer will not (i) modify, alter, tamper with, repair, translate, transmit, adapt, arrange, or create derivative works based on the Markforged Technology, except as expressly permitted herein; (ii) decompile, disassemble, disassociate, decrypt, extract, reverse compile or otherwise reverse engineer the Markforged Technology or any component thereof, or otherwise attempt to decipher the source code, algorithms, methods, structure, interfaces, protocols, messaging or techniques used or embodied in the Markforged Technology or any component thereof, except and only to the extent required by applicable law; (iii) distribute, rent, loan, lease, sell, resell, sublicense, convey, publicly display, publicly perform, exploit or otherwise make the Markforged Technology available for use by others in any time-sharing, service bureau or similar arrangement; (iv) remove, alter, or obscure any copyright, trademark, confidentiality or other proprietary notices, labels or marks from, on or pertaining to the Markforged Technology; or (v) use the Markforged Technology for any other benchmarking or competitive purposes or attempt to create similar products or services through use of the Markforged Technology.

(c) Customer will not use the Markforged Technology to: (i) upload, transmit, or distribute any computer viruses, worms, or any software intended to damage or alter a computer system or data; (ii) utilize any equipment, device, software, or other means to (or designed to) circumvent or remove any form of technical protection used by Markforged in connection with the Markforged Technology; (iii) interfere with or disrupt the Markforged Technology or servers or networks used by Markforged to provide the Markforged Technology; (iv) use the Markforged Technology to perform any stress, vulnerability, penetration, availability, or performance testing on, or otherwise attempt to access in a manner not expressly permitted by Markforged, any network, system, server, or computer hosting the Markforged Technology; (v) interfere with, disrupt, or create an undue burden on servers or networks connected to the Markforged Technology or violate the regulations, policies, or procedures of such networks; (vi) attempt to gain unauthorized access to the Markforged Technology, other computer systems or networks connected to or used together with the Markforged Technology, through password mining or other means; or (vii) access or use the Markforged Technology.

(d) Except for branches of the United States Armed Forces, or civilian agencies of the United States government authorized to do so, Customer will not use the Markforged Technology (i) in connection with any military operations or the operation of nuclear facilities, aircraft navigation, communication systems, medical devices, air traffic control devices, real time control systems or other situations in which the failure of the Markforged Technology could lead to death, personal injury, or physical property or environmental damage; however, the



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use of Markforged Technology to build physical models of equipment or other tools to use for military or government training, planning, briefing is an acceptable use of the Markforged Technology (ii) to experiment with ordnance or collect, upload, transmit, display, print, extrude, deposit or distribute any of Customer Content that contributes to the creation or modification of any firearm slide, lower, upper, upper receiver, lower receiver, barrel, bolt, or any other firearm or ordnance component, in whole or in part, that is capable of containing pressures in excess of 500 PSI; or (iii) in any manner or for any purpose other than for the Intended Use and as expressly permitted by this Agreement and any Documentation.

5.2 Enforcement. The Customer agrees to maintain reasonable records with respect to its installation and use of the Licensed Software, including, without limitation, records identifying the computer on which the Licensed Software is installed from time to time and identifying all individuals having access to the Licensed Software, and to retain all such records for a period of at least one (1) year following the end of the Term (the “**Usage Records**”). Markforged has the right (but not the obligation) to take appropriate action permitted by federal law against Customer in Markforged’s sole and absolute discretion if Customer demonstrates an intent to violate, violate or appear to violate the Acceptable Use Policy or any other provision of this Agreement. Any use or access other than in accordance with this Agreement is unauthorized.

6. CONFIDENTIALITY

6.1 Confidential Information. “**Confidential Information**” means all confidential information disclosed by one party (the “**Disclosing Party**”) to the other party (the “**Receiving Party**”), whether disclosed orally or in writing, that is explicitly designated as “confidential”, “proprietary” or some similar designation, or is by its nature reasonably recognizable as potentially confidential and/or proprietary or is disclosed in a manner that it may be reasonably inferred to be confidential and/or proprietary to the Disclosing Party at the time of disclosure. Customer’s Confidential Information shall include Customer Content (subject to Section 3.2); Markforged’s Confidential Information shall include the Markforged Technology and related product plans and technical information. Confidential Information shall not include any information that (a) is or becomes generally known to the public without breach on the part of the Receiving Party of any obligation owed to the Disclosing Party hereunder; (b) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed by the Receiving Party to the Disclosing Party hereunder; (c) is received from a third party without breach by the Receiving Party of any obligation owed to the Disclosing Party hereunder; (d) was independently developed by the Receiving Party without reliance on any Confidential Information disclosed by the Disclosing Party hereunder; or (e) constitutes Feedback.

6.2 Confidentiality Obligations. The Receiving Party shall use at least the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care) and agrees (a) not to use any Confidential Information of the Disclosing Party for any purpose except to exercise its rights or perform its obligations under this Agreement, and (b) to limit access to Confidential Information of the Disclosing Party to those of the Receiving Party’s and its affiliates’ employees, contractors and professional advisers (e.g. lawyers, accountants, etc.) who need such access for purposes consistent with this Agreement and who are subject to written nondisclosure and nonuse obligations (or, in the case of professional advisers, ethical obligations) with the Receiving Party that are no less stringent than those set forth herein.

6.3 Legal Related Disclosure. The Receiving Party may disclose Confidential Information of the Disclosing



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Party if it is compelled by applicable law including the Freedom of Information Act, court order, regulation, the rules of any relevant securities exchange or legal process to do so, provided that the Receiving Party gives the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted). If such disclosure is made at Customer's request, Markforged may invoice the Customer for the costs of compiling and providing access to such Confidential Information.

7. INDEMNIFICATION

7.1 Reserved.

7.2 Indemnification by Markforged. Markforged shall, at Markforged's sole expense and to the fullest extent permitted by law, indemnify, defend, and hold Customer and any of Customer's officers, directors, agents and employees, to the extent applicable (the "**User Indemnified Parties**") harmless against any and all Liabilities arising from any third party Claim arising out of an allegation that the Licensed Software or Firmware infringes or misappropriates any U.S. patent, copyright, trademark, trade secret or other intellectual property right of a third party, provided that Markforged shall have no obligation under this Section 7.2 for or with respect to claims to the extent arising as a result of (a) the combination, operation or use of the Markforged Technology with any items not supplied by Markforged, (b) modification of the Markforged Technology by any party other than Markforged or its authorized agents or contractors under the direction of Markforged, (c) use of the Markforged Technology in a manner that constitutes a breach of this Agreement (including the Product Ts&Cs) or the Documentation.

7.3 Action in Response to Potential Infringement. If the Markforged Technology becomes, or in Markforged's reasonable opinion is likely to become, the subject of an infringement or misappropriation Claim, or if use of the Markforged Technology is permanently enjoined for any reason, Markforged, at its option and expense, may (a) replace or modify the applicable Markforged Technology so as to make it non-infringing so long as the modified Markforged Technology perform materially the same functions in a non-infringing manner; (b) procure the right for Customer to continue to use the applicable Markforged Technology as contemplated herein; (c) substitute an equivalent for the applicable Markforged Technology; or (d) if options (a)-(c) are not reasonably practicable, terminate this Agreement and Markforged will reimburse Customer within thirty (30) days for a pro rata portion of the purchase price paid by Customer for any affected Markforged 3D Printers and unused Materials based on straight-line depreciation over a thirty-six (36) month period following the delivery date of such 3D Printers and Materials. This Section 7 states Markforged's entire liability to Customer as to infringement and misappropriation claims and Customer sole remedy for any infringement or misappropriation claims concerning the Markforged Technology.

7.4 Indemnification Procedure. If a User Indemnified Party or a Customer Indemnified Party (each, an "**Indemnified Party**") becomes aware of any matter it believes it should be indemnified for under Section 7.1 or Section 7.2, as applicable, involving any Claim, action, suit, investigation, arbitration or other proceeding against the Indemnified Party by any third party (each an "**Action**"), the Indemnified Party will give the other party (the "**Indemnifying Party**") prompt written notice of such Action. The Indemnified Party will cooperate, at the expense of the Indemnifying Party, with the Indemnifying Party and its counsel in the defense and the Indemnified Party will have the right to participate fully, at its own expense, in the defense of such Action with counsel of its own choosing. Any compromise or settlement of an Action will require the prior written consent of both Parties hereunder, such consent not to be unreasonably withheld or delayed.



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8. DISCLAIMERS; LIMITATION OF LIABILITY

8.1 Disclaimers. Markforged offers a limited warranty with respect to the Products, solely as set forth in the Product Ts&Cs. EXCEPT FOR THE LIMITED WARRANTY SET FORTH THEREIN, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE MARKFORGED TECHNOLOGY IS PROVIDED ON AN “AS IS” BASIS AND NEITHER MARKFORGED NOR ITS SUPPLIERS MAKE ANY WARRANTIES, REPRESENTATIONS, OR CONDITIONS OF ANY KIND, EXPRESS OR IMPLIED (INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT OR TITLE, OR WARRANTIES OTHERWISE IMPLIED BY STATUTE OR FROM A COURSE OF DEALING OR USAGE OF TRADE). WITHOUT LIMITING THE FOREGOING, MARKFORGED DOES NOT WARRANT (A) THAT THE LICENSED SOFTWARE WILL BE UNINTERRUPTED, TIMELY, ERROR-FREE, SECURE, ACCURATE, RELIABLE, OR COMPLETE, WHETHER OR NOT UNDER SUBSCRIPTION OR SUPPORT BY MARKFORGED OR ANY THIRD PARTY OR (B) THAT THE MARKFORGED TECHNOLOGY WILL MEET CUSTOMER’S REQUIREMENTS OR EXPECTATIONS.

8.2 Limitation of Liability. TO THE MAXIMUM EXTENT ALLOWED BY APPLICABLE LAW AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY OR LIMITATION OF LIABILITY, (A) IN NO EVENT WILL EITHER PARTY OR ANY OF ITS SUPPLIERS BE LIABLE FOR SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, CONSEQUENTIAL, OR ANY OTHER DAMAGES OF LIKE KIND WHATSOEVER ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE MARKFORGED TECHNOLOGY (HOWEVER CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY, WHETHER DERIVED FROM CONTRACT, TORT (INCLUDING WITHOUT LIMITATION NEGLIGENCE) OR OTHERWISE), INCLUDING WITHOUT LIMITATION LOSS OF PROFITS, LOSS OF REVENUE, LOSS OF USE, LOSS OF OR DAMAGE TO DATA, BUSINESS INTERRUPTION, LOSS OF OR DAMAGE TO REPUTATION OR GOODWILL, COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES OR OTHER COVER, OR ANY OTHER SIMILAR COMMERCIAL OR ECONOMIC LOSS OF ANY KIND, EVEN IF ADVISED OF THE POSSIBILITY THEREOF, NOR WILL ANY OF THE FOREGOING PARTIES BE LIABLE FOR ANY DAMAGES WHATSOEVER RESULTING FROM A FORCE MAJEURE EVENT OR ANY ACT OF A THIRD PARTY; AND (B) THE TOTAL CUMULATIVE COLLECTIVE LIABILITY OF EACH PARTY AND EACH OF ITS SUPPLIERS FOR ALL COSTS, LOSSES OR DAMAGES FROM ALL CLAIMS, ACTIONS OR SUITS HOWEVER CAUSED OR ARISING FROM OR IN RELATION TO THIS AGREEMENT SHALL NOT EXCEED (I) ALL AMOUNTS PAID OR DUE FROM CUSTOMER WITH RESPECT TO THE PARTICULAR MARKFORGED TECHNOLOGY GIVING RISE TO THE CLAIM DURING THE SIX (6) MONTHS IMMEDIATELY PRECEDING THE CLAIM (NO MATTER WHEN PAYMENTS WERE ACTUALLY MADE), OR (II) ONE HUNDRED DOLLARS (\$100), WHICHEVER IS GREATER. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, THE FOREGOING LIMITATIONS IN THIS SECTION 8.2 WILL NOT APPLY TO ANY LIABILITY ARISING FROM (A) EITHER PARTY’S INDEMNIFICATION OBLIGATIONS UNDER SECTION 7, (B) EITHER PARTY’S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS UNDER SECTION 6 OR (C) CUSTOMER’S BREACH OF SECTIONS 4.2 OR 5.

THE FOREGOING LIMITATIONS OF LIABILITY SHALL APPLY, EVEN IF MARKFORGED AND/OR ITS SUPPLIERS HAVE BEEN ADVISED, OR ARE OTHERWISE AWARE, OF THE POSSIBILITY OF



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DAMAGES IN EXCESS OF SUCH LIMITATIONS. SOME STATES DO NOT ALLOW EXCLUSION OF IMPLIED WARRANTIES OR LIMITATIONS ON LIABILITY, SO THE LIMITATIONS AND EXCLUSIONS SET FORTH IN SECTIONS 8.1 AND 8.2 OF THIS AGREEMENT MAY NOT APPLY. IN SUCH STATES, THE LIABILITY OF MARKFORGED AND ITS SUPPLIERS SHALL BE LIMITED TO THE GREATEST EXTENT PERMITTED BY LAW. NOTWITHSTANDING THE FOREGOING, NOTHING IN THIS SECTION SHALL BE DEEMED TO 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.

8.3 Functionality Limitations. The Markforged Technology consists of commercial professional tools intended to be used by trained professionals only. The Markforged Technology is intended only to assist Customer with Customer's design, analysis, simulation, estimation, testing and/or other activities and are not a substitute for Customer's own independent design, analysis, simulation, estimation, testing, and/or other activities, including those with respect to product stress, safety and utility. Due to the large variety of potential applications for the Markforged Technology, the Markforged Technology has not been tested in all situations under which it may be used. MARKFORGED WILL NOT BE LIABLE IN ANY MANNER WHATSOEVER FOR THE RESULTS OBTAINED THROUGH USE OF THE MARKFORGED TECHNOLOGY.

8.4 Basis of the Bargain. Customer agrees that releases, waivers, warranty disclaimers, limitations of liability and indemnities this Agreement are a fundamental basis of the bargain between Customer and Markforged, and are a material part of the consideration received by Markforged for entering into this Agreement with Customer and providing Customer with the Markforged Technology, and Markforged would not have entered into these Terms or provided Customer with the Markforged Technology in the absence of such releases, waivers, warranty disclaimers, limitations of liability and indemnities. Customer and Markforged agree that the disclaimers and limitations of liability set forth in this Section 8 are reasonable in light of the fees paid for the Markforged Technology.

9. SUPPORT AND MAINTENANCE

Except for any support or maintenance expressly outlined in the Product Ts&Cs or otherwise in a written agreement between Customer and Markforged, Markforged has no obligation to provide Customer with any support or maintenance in connection with the Markforged Technology. Further, this Agreement does not provide for the performance of any installation, training, customization or other services with respect to the Licensed Software.

10. TERM AND TERMINATION

10.1 Term and Termination. This Agreement commences on the Effective Date and continue until terminated as set forth herein (the "Term"). Customer may terminate this Agreement at any time, with or without cause, upon written notice to Markforged, provided that under no circumstances will Customer be entitled to a refund for any fees paid or credit against fees due in connection with the Markforged Technology.

10.2 Effect of Termination. Upon any termination of this Agreement for any reason, Customer (and all of Customer's Authorized Users) must immediately cease using the Licensed Software and return to Markforged



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all copies, notes, memoranda and other tangible embodiments of Markforged's Confidential Information in its possession or under its control or destroy all such tangible embodiments and certify such destruction in writing to Markforged.

11. GENERAL

11.1 Governing Law; Dispute Resolution. This Agreement shall be governed by the federal laws of the United States. In no event shall either the United Nations Convention on Contracts for the International Sale of Goods or any adopted version of the Uniform Computer Information Transactions Act apply to, or govern, this Agreement.

11.2 Government Rights. For U.S. Government procurements, Markforged Technology is deemed to be a "Commercial Item" as defined at 48 C.F.R. 2.101 and 48 C.F.R. Part 12.212. If acquired by or on behalf of a civilian agency, the U.S. Government agrees to acquire commercial computer software and/or commercial computer software documentation in the Markforged Technology subject to the terms of this Agreement as specified in 48 C.F.R. 12.212 (Computer Software) and 12.211 (Technical Data) of the Federal Acquisition Regulation ("FAR") and its successors. If acquired by or on behalf of any agency within the Department of Defense ("DOD"), the U.S. Government agrees commercial computer software and/or commercial computer software documentation in the Markforged Technology are subject to the terms of this Agreement as specified in 48 C.F.R. 227.7202-3 and 48 C.F.R. 227.7202-4 of the DOD FAR Supplement ("DFARS") and its successors, and consistent with 48 C.F.R. 227.7202. This U.S. Government Rights clause, consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202 is in lieu of, and supersedes, any other FAR, DFARS, or other clause or provision that addresses Government rights in computer software, computer software documentation or technical data related to the Markforged Technology under this Agreement and in any subcontract under which this commercial computer software and commercial computer software documentation is acquired or licensed. Any use, modification, reproduction release, performance, display or disclosure of the Markforged Technology by the U.S. Government shall be solely in accordance with the commercial license rights and restrictions described herein.

11.3 Export Control. Customer acknowledges and agrees that Customer's use of the Markforged Technology may be subject to compliance with U.S. and other applicable country export control and trade sanctions laws, rules and regulations, including, without limitations the regulations promulgated by the U.S. Department of Commerce and the U.S. Department of the Treasury ("**Export Control Laws**").

11.4 Relationship Between the Parties. This Agreement will not be construed as creating any partnership, joint venture or agency relationship between Customer and Markforged. Neither party will have the authority to obligate or bind the other in any manner, and nothing herein contained shall give rise or is intended to give rise to any rights of any kind to any third parties. Neither party will represent to the contrary, either expressly, implicitly or otherwise.

11.5 Severability. To the extent that any of these provisions are contrary to law, they should not be given full force and effect. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, illegal, or unenforceable, then: (a) the remaining provisions of this Agreement shall remain in full force and effect; and (b) such affected provision shall be ineffective solely as to such jurisdiction (and only to the extent and for the duration of such invalidity, illegality, or unenforceability), and shall be substituted (in respect of



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such jurisdiction) with a valid, legal, and enforceable provision that most closely approximates the original legal intent and economic impact of such provision.

11.6 Headings and Language. The section headings used in this Agreement are for convenience only and will not be given any substantive effect. When used in this Agreement, “includes” or “including” will be deemed to mean “including but not limited to” or “include but are not limited to.” The English language version of this Agreement is legally binding in case of any inconsistencies between the English version and any translations. The parties hereto confirm that it is their wish that this Agreement, as well as other documents relating hereto, including notices, have been and will be written in the English language only.

11.7 Waiver. A party may only waive its rights under this Agreement by a written document executed by an authorized representative of such party. No failure or delay to enforce any provision of, or exercise any right or remedy under, this Agreement shall constitute a waiver thereof or of any other provision hereof, nor shall any single or partial exercise of any such right or remedy preclude any other or further exercise thereof or the exercise of any other right or remedy.

11.8 Assignment. This Agreement may only be assigned with approval by the Contracting Officer in accordance with the novation process set forth at FAR 42.12.

11.9 Notices. Markforged may send Customer, in electronic form, information about the Markforged Technology, and information the law requires Markforged to provide to Customer and certain other additional information. Markforged may provide required information to Customer by email at the address Customer specified when Customer signed up for the Service or by access to a website that Markforged identifies.

11.10 Force Majeure. Neither party shall be responsible or have any liability for any delay or failure to perform to the extent due to unforeseen circumstances or causes beyond its reasonable control, including, without limitation, acts of God, earthquake, fire, flood, embargoes, strikes, lockouts or other labor disturbances, civil unrest, failure, unavailability or delay of suppliers or licensors, riots, terrorism or terrorist acts, war, failure or interruption of the Internet or third party Internet connection(s) or infrastructure, power failures, acts of civil and military authorities and severe weather as more specifically set forth at FAR 52.212-4(f). Such party will give the other party prompt written notice (when possible) of the failure to perform and use its reasonable efforts to limit the resulting delay in its performance.

11.11 Survival All provisions of this Agreement which, by their nature, should survive the expiration or termination of Customer’s relationship with Markforged shall survive such expiration or termination, including, without limitation, Sections 1, 3, 4.1, 4.3, 4.4, 6, 7, 8, 10 and 11.

11.12 Entire Agreement. This Agreement (including, without limitation, the Product Ts&Cs) contain the entire agreement between Customer and Markforged with respect to the subject matter hereof and supersede all prior or contemporaneous communications and proposals, whether electronic, oral or written, between Customer and Markforged with respect to the Markforged Technology. In the event of a conflict or inconsistency between this Agreement and the Product Ts&Cs, this Agreement will control.



SCHEDULE 1

Terms & Conditions

OVERVIEW

These Terms of Service apply to your purchase and/or use of our products and services and sets forth the policies and procedures with respect to the purchase of products and/or services from Markforged, Inc. (“Markforged”, “we”, “us” or “our”). For our purposes of these Terms of Service “you” and “your” refer to you, the person or entity using the products, services, or Website(s) and/or purchasing any product or service from Markforged.

Please read these Terms of Service carefully before purchasing products or services from us or using our products or services. By purchasing products or services from us, you agree to be bound by these Terms of Service as well as those additional terms and conditions and policies referenced herein and/or available by hyperlink, including without limitation our Privacy Policy at www.markforged.com/privacy (collectively referred to herein as “Terms of Service”). If you do not agree to all the terms and conditions of these Terms of Service, then you may not purchase any products or services, use the products or services, or access our Websites. If these Terms of Service are considered an offer, our acceptance is expressly limited to your agreement to these Terms of Service. If you are purchasing or using products or services on behalf of an entity, you represent and warrant that you have the authority to bind the entity on whose behalf you are purchasing or using the products or services to these Terms of Service and such entity will be subject to all terms and conditions of these Terms of Service. **These Terms of Service are subject to the Software License Agreement. To the extent that any of these terms are contrary to law, they should not be given full force and effect.**



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Children. Children are not eligible to use our Websites and we ask that minors (under the age of 18) do not use our Websites and our Websites are not directed to children under 18 years of age.

PURCHASE AND LICENSE OF PRODUCTS AND SERVICES

Product and Service Descriptions. “Materials” means printing filament materials (including, but not limited to, any polymer materials or Composite Filament Fabrication materials combining a reinforcing fiber with a matrix). “Products” means Markforged systems and/or 3D printers, and/or materials, and/or Markforged provided content, and/or executable software code made available to You hereunder. “Services” includes the products, any guides or other documentation provided or made available by Markforged, and any software, script, client or server services or content provided by Markforged hereunder or accessed or generated in connection with the products. All descriptions of our products and services are subject to change at any time, with or without notice, in our sole discretion; provided, however, that services then under contract shall not be discontinued, and further that any modifications to services then under contract will not result in diminution in the quality of such services. Further, we reserve the right to modify or discontinue any of our products or services at any time, with or without notice in our sole discretion. The information provided online with respect to products and services may be out of date, and we make no commitment to update the information provided online with respect to products and services. If the product or service you purchase includes or consists of software, the software is licensed and not sold and will be governed by the end user license agreement which accompanies the software. You agree to be bound by all terms and conditions of the Software and/or Cloud Licensing Agreement when accessing and/or using the software.

Shipping and Delivery. For orders of products, we will ship your order upon product availability. We cannot guarantee that we will have the quantities of the products you order immediately available and product availability may be delayed, including without limitation due to the popularity of our products or supply



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constraints. We reserve the right to change quantities available for purchase at any time, even after you place and we accept an order. Further, there may be occasions where we confirm your order but subsequently learn that we cannot supply the ordered product, in which case, we will cancel your order and refund the price you paid in full. Since the actual delivery of your order may be impacted by events beyond our control once it leaves our facilities and subject to federal law, we cannot be held liable for late deliveries.

Prices. Reserved.

Payment. Reserved.

Export; Compliance with Law. Our products are subject U.S. and foreign export control laws and regulations and must be purchased, sold, exported, re-exported, transferred and used in compliance with such export laws and regulations. Any offer for any product or service made on our Websites is void where prohibited by law. You may not use or otherwise export or re-export the products except in accordance with applicable export laws.

Restrictions on Use. You agree that you will not directly or indirectly, or encourage, assist, permit or direct any third party to: (i) modify, alter, tamper with, repair, translate, adapt, arrange, or create derivative works based on the products or services or any component thereof, except as permitted herein or in an end user license agreement accompanying the products or services; (ii) decompile, disassemble or otherwise reverse engineer the products, services, or any component thereof, or determine or attempt to modify, translate, determine, discover, or recreate any designs, source code, algorithms, methods, structure, interfaces, protocols, messaging or techniques used or embodied in the services or products or any component thereof, except and only to the extent that the applicable law expressly permits doing so; (iii) distribute, rent, loan, lease, sell, resell, sublicense, or otherwise transfer all or any portion of the services, your rights with respect to the services or any part of these Terms, to any other person or legal entity; (iv) remove, alter, or obscure any copyright, trademark,



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confidentiality or other proprietary notices, labels, or marks from, on or pertaining to the products or services; (v) use the products or services to collect, upload, transmit, display, print, extrude, deposit or distribute any content that is in violation of any law, regulation, or obligations or restrictions imposed by any third party; (vi) make or permit use of any trademark, trade name, service mark or other commercial symbol of Markforged without its prior written consent; and/or (vii) take or permit any other action which could impair Markforged's rights, or damage the image or reputation of quality inherent in the products or services, Markforged's business, reputation, Intellectual Property or other valuable assets or rights. In the event You rent, lease, sell or otherwise transfer the products to a third party, You agree that you will require such third party to be bound by at least Sections herein entitled "Product and Service Descriptions", "Restrictions on Use", and "Intellectual Property" hereof as a condition of such rental, lease, sale or other transfer.

RETURN POLICY

You may return to us any item that you purchased from us in accordance with the following terms and conditions:

30 Days — You can return items to us within 30 days of the date they were shipped to you. After 30 days, we do not accept returns.

Return to Manufacturer Authorization (RMA) — Before returning an item, contact us at support@markforged.com to explain the reason for the return, the details of your original order, and whether you want a refund or an exchange. As appropriate, we will issue you an RMA number, which you need to include in the package for the returned item, along with a copy of the original order information. We do not accept returned items for which an RMA has not been issued.

Condition — The item being returned must be unused, undamaged, complete with all parts and accessories, in



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the same condition you received it, and in its original packaging. Returns of consumables will not be accepted if packaging is opened.

Shipping — You must pack the item to prevent damage in transit and insure the package for its value, as you will be responsible for damage or loss in transit. We recommend you use a shipping service that allows you to track the package. You are responsible for paying all shipping and insurance costs for the return shipment. If you are seeking an exchange, you will also be responsible for all costs of shipping the new item to you and for any difference in price plus any taxes, duties, tariffs or similar charges.

International Returns — Presently, all of our facilities are located in the USA. We are not responsible for international return shipping costs and any incidental fees or tariffs. You should make yourself familiar with your region's customs policies and shipping providers.

Upon Receipt — Once your return is received and inspected, we will send you an email to notify you that we have received your returned item and whether your request for refund or exchange has been approved. We may charge a fee for missing or used accessories.

Restocking Fee — For non-defective items, we charge a restocking fee equal to 10% of the original purchase price of each item returned. This fee will be deducted from your refund, or if you have requested an exchange, you will need to pay the fee to us before we will ship the replacement item.

Refund — If a refund is approved, a credit will automatically be applied to your credit card or original method of payment. This refund amount may take some time to show in your records, so before contacting us, please check with your credit card company, bank, or other payment service.

Exchange — If an exchange is approved, we will ship the new item to you, after your payment of any applicable restocking and shipping fees and any difference in price plus any taxes, duties, tariffs or similar charges.



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EXCLUSIVE LIMITED WARRANTY; EXCLUSIONS; DISCLAIMER

Applicability. Please access and review the online help resources referred to in the documentation accompanying the affected hardware product before requesting warranty service. If the product is still not functioning properly after making use of these resources, please contact us at support@markforged.com. You must assist us in diagnosing issues with your product and follow our warranty processes and procedures.

We may restrict service to the fifty states of the United States of America and the District of Columbia, and provide warranty service (i) by sending you prepaid way bills (and if you no longer have the original packaging, we may send you packaging material) to enable you to ship the product to our repair service location for service, or (ii) by sending you new or refurbished customer-installable replacement product or parts to enable you to service or exchange your own product (“DIY Service”).

Exclusive Limited Warranty. We warrant Markforged-branded hardware products against defects in materials and workmanship under normal use in accordance with the products’ documentation for the time periods set forth below and as set forth below (each, a “Warranty Period”). If a hardware defect arises and a valid claim is received within the Warranty Period, at our sole option and to the extent permitted by law we will do the following:

Labor: For a period of ninety days from the date of shipment to the original purchaser (“Labor Warranty”), we will, at our option, either (1) repair the hardware defect at no charge, using new or refurbished replacement parts, (2) provide you with new or refurbished user-installable replacement parts to enable you to repair the hardware defect as DIY Service, (3) exchange the product with a product that is new or reconditioned by us or that has been manufactured from new or serviceable used parts and is at least functionally equivalent to the original product, or (4) refund the purchase price of the product. If we elect to repair or replace the product after this Labor Warranty has expired but while the Parts Warranty below is still in effect, we will do so for the



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applicable labor charge.

Parts: For a period of one year from the date of shipment to the original purchaser (“Parts Warranty”), we will supply you with new or refurbished parts replacement parts in exchange for parts determined to be defective.

A replacement product or part, including a user-installable part that has been installed in accordance with instructions provided by us, assumes the remaining warranty of the original product or ninety (90) days from the date of replacement or repair (or, in the case of user-installable replacement parts, the date on which we shipped the user-installable replacement parts), whichever provides longer coverage for you. Parts provided by us in fulfillment of our warranty obligation must be used in products for which warranty service is claimed.

When a product or part is exchanged, any replacement item becomes your property and the replaced item becomes our property, and you agree to follow our instructions, including, if required, arranging the return of original product or part to us in a timely manner. When a refund is given, the product for which the refund is provided must first be returned to us before we will issue the refund and the product becomes our property on our receipt of the product. In the event of DIY Service requiring the return of the original product or part, we may require a credit card authorization as security for the retail price of the replacement product or part and applicable shipping costs. If you follow instructions, we will cancel the credit card authorization, so you will not be charged for the product or part and shipping costs. If you fail to return the replaced product or part as instructed, we will charge the credit card for the authorized amount.

Service options, parts availability, and response times may vary. Service options are subject to change at any time. In accordance with applicable law, we may require that you furnish proof of purchase details and/or comply with registration requirements before receiving warranty service.

You acknowledge and agree that THE CONTENTS OF YOUR PRODUCT WILL BE DELETED AND THE STORAGE MEDIA REFORMATTED IN THE COURSE OF WARRANTY SERVICE. Your product will be

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returned to you configured as originally purchased, subject to applicable updates.

You are responsible for all shipping costs associated with returning a defective product or part to us; provided, however, that if we determine that the product or part is eligible for warranty coverage, we will pay the shipping costs associated with shipping the repaired or replacement product or part to you. If we determine the product or part is not eligible for the warranty, we will return the product or part to you at your sole cost and expense and may require you to pay such costs prior to shipping the product or part.

The foregoing limited warranty is an express, exclusive limited warranty and your sole remedy for any defect in the Markforged hardware. For the avoidance of doubt, any software provided by Markforged or included in a Markforged product and any third party product is provided “as is” and without any warranty.

No Markforged reseller, distributor, agent, or employee is authorized to make any modification, extension, or addition to the exclusive limited warranty set forth herein.

Exclusions. The foregoing limited warranty applies only to hardware products manufactured by or for Markforged that can be identified by the “Markforged” trademark, trade name, or logo affixed to them and which are used only with Markforged proprietary materials, and does not apply to any third party hardware products or to any third party or Markforged software products, even if packaged or sold with the Markforged hardware, all of which are provided “as is” and without warranty. For the avoidance of doubt, if you use the product with materials that were not provided by Markforged, Markforged has no obligation to you under the foregoing limited warranty. Further, the foregoing limited warranty does not apply: (a) to damage caused by use with materials, products or software not developed by Markforged; (b) to damage caused by accident, abuse, misuse, flood, fire, earthquake, or other external causes or by failure to follow instructions relating to the product’s use; (c) to damage caused by operating the product



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outside the permitted or intended uses described in the product’s documentation; (d) to damage caused by service (including upgrades and expansions) performed by anyone who is not an authorized representative of Markforged; (e) to a product or part that has been modified to alter functionality or capability without our prior written permission; (f) to consumable parts, unless damage has occurred due to a defect in materials or workmanship; (g) to cosmetic damage, including but not limited to scratches, dents; or (h) if any Markforged serial number has been removed or defaced.

THIRD-PARTY TOOLS AND WEBSITES

We may provide you with access to third-party tools which we neither monitor nor have any control over. You acknowledge and agree that we provide access to such tools ”as is” and “as available” without any warranties, representations or conditions of any kind and without any endorsement. We shall have no liability whatsoever arising from or relating to your use of optional third-party tools. Any use by you of optional tools offered through the site is entirely at your own risk and discretion and you should ensure that you are familiar with and approve of the terms on which tools are provided by the relevant third-party provider(s).

Third-party links on our Websites may direct you to third-party websites that are not affiliated with us. We are not responsible for examining or evaluating the content or accuracy and we do not warrant and will not have any liability or responsibility for any third-party materials or websites, or for any other materials, products, or services of third-parties.

We are not liable for any harm or damages related to the purchase or use of goods, services, resources, content, or any other transactions made in connection with any third-party websites. Please review carefully the third-party’s policies and practices and make sure you understand them before you engage in any transaction. Complaints, claims, concerns, or questions regarding third-party products should be directed to the third-party.



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INTELLECTUAL PROPERTY

Our products and services are protected by United States and international intellectual property rights protections, including without limitation trade secret, patent and copyright. All rights not expressly granted herein are reserved. You acknowledge and agree that Markforged and its current licensors own all right, title, and interest in all intellectual property that relates to the products or services and the use thereof. Unless we have granted you licenses to our intellectual property in these Terms and/or applicable terms of an accepted software end user license agreement, our providing you with the products or services does not give you any license to our intellectual property. All rights not expressly granted herein are reserved.

You may from time to time, make known to us suggestions, enhancement requests, techniques, know-how, comments, feedback or other input with respect to our products and services (collectively, “Feedback”) and you hereby grant to us a royalty-free, worldwide, irrevocable, fully paid up, perpetual license to use, disclose, distribute, publicly display and perform, reproduce, license and sublicense, create derivative works, make and have made, and otherwise exploit any Feedback without restriction or obligation of any kind, on account of confidential information, intellectual property rights or otherwise, and may incorporate into our products and services any service, product, technology, enhancement, documentation or other development (“Improvement”) incorporating or derived from any Feedback.

You hereby grant to Markforged and to authorized users of Markforged products and services a fully paid-up, royalty-free, worldwide, non-exclusive, irrevocable, transferable right and license in, under, and to any patents and copyrights enforceable in any country, issued to, obtained by, developed by or acquired by You that incorporate, are derived from and/or improve upon the intellectual property of Markforged; are developed using Markforged products or services; and are applicable to Markforged 3D printers or software, uses thereof or printing materials thereof.



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You agree that Markforged may make nominative use of mark(s) and/or logos owned by you on Markforged.com and/or successor websites and/or printed embodiments of the same identifying you as a customer, and that the fact of your purchase of a Markforged product or service is not confidential. Markforged agrees to disclaim any endorsement or sponsorship by such nominative use of your mark(s) and/or logo(s), and to not use such mark(s) and/or logos in any way which is prejudicial to your reputation or interests or to the status or protection of your mark(s) or logos. Markforged acknowledges that your mark(s), logos and all goodwill associated with them are your exclusive property, and undertakes to cease to use them upon your request or upon termination of these Terms of Service.

ERRORS, INACCURACIES, AND OMISSIONS

Occasionally there may be information on our Websites or in our product documentation that contains typographical errors, inaccuracies or omissions that may relate to product descriptions, pricing, promotions, offers, product shipping charges, transit times and availability. We reserve the right, at any time and with or without prior notice (including after you have submitted your order), to correct any errors, inaccuracies or omissions, and to change or update information or cancel orders if any information is inaccurate. Further, our Websites may contain certain historical information. Historical information, necessarily, is not current and is provided for your reference only.

Notwithstanding the foregoing, we undertake no obligation to update, amend or clarify information on our Websites or in our product documentation, including without limitation, pricing information, except as required by law. We are not responsible if information made available on our Websites is not accurate, complete or current. The material on our Websites are provided for general information only and should not be relied upon or used as the sole basis for making decisions without consulting primary, more accurate, more complete or more timely sources of information. Any reliance on the material on our Websites is at your own risk.



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MISCELLANEOUS TERMS

Entire Agreement — These Terms of Service, the Agreement and the MAS 70 Contract and the documents referenced herein constitute the entire agreement and understanding between you and us and govern your purchases of products and/or services from us, superseding any prior or contemporaneous agreements, communications and proposals, whether oral or written, between you and us (including, but not limited to, any prior versions of the Terms of Service). We object to and reject any additional or different terms proposed by you, including those contained in your purchase order or other ordering documents, acceptance or website. Our failure to object elsewhere to any provisions of any subsequent document, communication, or act of you shall not be deemed a waiver of any of the terms hereof. Our obligations hereunder are neither contingent on the delivery of any future functionality or features of the products or services nor dependent on any oral or written public comments made by us (including without limitation on our Websites) regarding future functionality or features of any product or service. Any ambiguities in the interpretation of these Terms of Service shall not be construed against the drafting party. No employee or agent of Markforged has any authority to vary any of the terms and conditions set forth herein. The headings used in this agreement are included for convenience only and will not limit or otherwise affect these Terms of Service.

Waiver — The failure of us to exercise or enforce any right or provision of these Terms of Service shall not constitute a waiver of such right or provision.

Applicable Law — To the maximum extent permitted by law, these Terms of Service and any separate agreements whereby we provide you service or products shall be governed by the federal laws of the United States.

Actions Permitted — Except for actions for nonpayment or breach of a party's proprietary rights, no action, regardless of form, arising out of or relating to the Agreement may be brought by either party more than one



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year after the cause of action has accrued.

Relationship of the Parties — We and you agree that no joint venture, partnership, employment, or agency relationship exists between us as a result of these Terms of Service and that we are acting as an independent contractor in performing any services for you.

Severability — If any part of these Terms of Service is determined to be invalid or unenforceable pursuant to applicable law including, but not limited to, the warranty disclaimers and liability limitations set forth above, then the invalid or unenforceable provision will be deemed superseded by a valid, enforceable provision that most closely matches the intent of the original provision so that the terms shall remain in full force and effect, and the remainder of these Terms of Service shall continue in full force and effect.

No Third Party Beneficiaries — These Terms of Service shall not be interpreted or construed to confer any rights or remedies on any third parties.

Data Protection — You acknowledge and agree that it is necessary for us to collect, process and use your data in order to process sales, perform service, and confirm compliance with applicable laws. We will protect your information in accordance with our Privacy Policy.



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Appendix B-4



MICRO FOCUS GOVERNMENT SOLUTIONS LLC CUSTOMER PASS THROUGH TERMS

Micro Focus Government Solutions' ("MFGS") obligations with respect to products or services supplied by Micro Focus and procured by an end-user customer (hereinafter "Customer") from authorized MFGS Business Partners are limited to the terms and conditions in these MFGS CUSTOMER PASS THROUGH TERMS ("Terms") and the specific Supporting Material included with the Micro Focus supplied products and services. MFGS is not responsible for the acts or omissions of MFGS Business Partners, for any obligations undertaken by them or representations that they may make, or for any other products or services that they supply to Customer.

1. **Orders.** "Order" means the accepted order including any Micro Focus-branded supporting material which is identified as incorporated either by attachment or reference ("**Supporting Material**"). Supporting Material may include (as examples) product lists, appliance (hardware) or software specifications, service descriptions, data sheets and their supplements and statements of work (SOWs), Micro Focus Packaged Support Service Agreement, published warranties and service level agreements, and may be available to Customer in hard copy or by accessing a designated Micro Focus website.
2. **Title.** When Micro Focus delivers to Customer directly, risk of loss or damage and title for appliance products will pass upon delivery to Customer or its designee.
3. **Installation.** If Micro Focus is providing installation with the product purchase, Micro Focus's site guidelines (available upon request) will describe Customer requirements. Micro Focus will conduct its standard installation and test procedures to confirm completion.
4. **Support Services.** Micro Focus's support services will be described in the applicable Supporting Material, which will cover the description of Micro Focus's offering, eligibility requirements, service limitations and Customer responsibilities, as well as the Customer systems supported, and for Micro Focus Packaged Support Services purchases, the Micro Focus Packaged Support Service Agreement governing terms.
5. **Software-as-a-Service.** "Micro Focus Software-as-a-Service" or "Micro Focus SaaS" mean the Micro Focus branded online software solutions that Micro Focus makes available for Customer use through a network connection, each as described in the applicable Supporting Material, Micro Focus and Customer obligations with respect to Micro Focus SaaS are set forth in the SaaS Exhibit included in these Terms.
6. **Professional Services.** Micro Focus will deliver any ordered IT consulting, training, or other services as described in the applicable Supporting Material.
7. **Professional Services Acceptance.** The acceptance process (if any) will be described in the applicable Supporting Material, will apply only to the deliverables specified, and shall not apply to other products or services to be provided by Micro Focus.
8. **Eligibility.** Micro Focus's service, support and warranty commitments do not cover claims resulting from:
 1. improper use, site preparation, or site or environmental conditions or other non-compliance with applicable Supporting Material;
 2. modifications or improper system maintenance or calibration not performed by Micro Focus or authorized by Micro Focus;
 3. failure or functional limitations of any non-Micro Focus software or product impacting systems receiving Micro Focus support or service;
 4. malware (e.g. virus, worm, etc.) not introduced by Micro Focus; or
 5. abuse, negligence, accident, fire or water damage, electrical disturbances, transportation by Customer, or other causes beyond Micro Focus's control.
9. **Dependencies.** Micro Focus's ability to deliver services will depend on Customer's reasonable and timely cooperation and the accuracy and completeness of any information from Customer needed to deliver the services.
10. **Change Orders.** Requests to change the scope of services or deliverables will require a change order signed by both parties.



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11. **Product Performance.** All Micro Focus-branded appliance (hardware) products are covered by Micro Focus’s limited warranty statements that are provided with the products or otherwise made available. Hardware warranties begin on the date of delivery or if applicable, upon completion of Micro Focus installation, or (where Customer delays Micro Focus installation) at the latest 30 days from the date of delivery. Non-Micro Focus branded products receive warranty coverage as provided by the relevant third party supplier.
12. **Software Performance.** Micro Focus warrants that its branded software products will conform materially to their specifications and be free of malware at the time of delivery. Micro Focus warranties for software products will begin on the date of delivery and unless otherwise specified in Supporting Material, will last for ninety (90) days. Micro Focus does not warrant that the operation of software products will be uninterrupted or error-free or that software products will operate in appliance (hardware) and software combinations other than as authorized by Micro Focus in Supporting Material.
13. **Services Performance.** Services are performed using generally recognized commercial practices and standards. Customer agrees to provide prompt notice of any such service concerns and Micro Focus will re-perform any services that fail to meet this standard.
14. **Services with Deliverables.** If Supporting Material for services defines specific deliverables, Micro Focus warrants those deliverables will conform materially to their written specifications for 30 days following delivery. If Customer notifies Micro Focus of such non-conformity during the 30 day period, Micro Focus will promptly remedy the impacted deliverables or refund to Customer the fees paid for those deliverables and Customer will return those deliverables to Micro Focus.
15. **Product Warranty Claims.** When we receive a valid warranty claim for Micro Focus appliance or software product, Micro Focus will either repair the relevant defect or replace the product. If Micro Focus is unable to complete the repair or replace the product within a reasonable time, Customer will be entitled to a full refund upon the prompt return of the product to Micro Focus (if hardware) or upon written confirmation by Customer that the relevant software product has been destroyed or permanently disabled. Micro Focus will pay for shipment of repaired or replaced products to Customer and Customer will be responsible for return shipment of the product to Micro Focus.
16. **Remedies.** These Terms state all remedies for warranty claims. To the extent permitted by law, Micro Focus disclaims all other warranties.
17. **Intellectual Property Rights.** No transfer of ownership of any intellectual property will occur under these Terms. Customer grants Micro Focus a non-exclusive, worldwide, royalty-free right and license to any intellectual property that is necessary for Micro Focus and its designees to perform the ordered support services. If deliverables are created by Micro Focus specifically for Customer and identified as such in Supporting Material, Micro Focus hereby grants Customer a worldwide, non-exclusive, fully paid, royalty-free license to reproduce and use copies of the deliverables internally.
18. **Intellectual Property Rights Infringement.** Micro Focus will defend and/or settle any claims against Customer that allege that Micro Focus-branded product or service as supplied under these Terms infringes the intellectual property rights of a third party. Micro Focus will rely on Customer’s prompt notification of the claim and cooperation with our defense. Micro Focus may modify the product or service so as to be non-infringing and materially equivalent, or we may procure a license. If these options are not available, we will refund to Customer the amount paid for the affected product in the first year or the depreciated value thereafter or, for support services, the balance of any pre-paid amount or, for professional services, the amount paid. Micro Focus is not responsible for claims resulting from any unauthorized use of the products or services. This section shall also apply to deliverables identified as such in the relevant Supporting Material except that Micro Focus is not responsible for claims resulting from deliverables content or design provided by Customer.
19. **License Grant.** Micro Focus grants Customer a non-exclusive license to use the version or release of the Micro Focus-branded software listed in the Order. Permitted use is for internal purposes only (and not for further commercialization), and is subject to any specific software licensing information that is in the



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software product or its Supporting Material. For non-Micro Focus branded software, the third party's license terms will govern its use.

20. **Updates.** Customer may order new software versions, releases or maintenance updates ("Updates"), if available, separately or through Micro Focus software support agreement. Additional licenses or fees may apply for these Updates or for the use of the software in an upgraded environment. Updates are subject to the license terms in effect at the time that Micro Focus makes them available to Customer.
21. **License Restrictions.** Micro Focus may monitor use/license restrictions remotely and, if Micro Focus makes a license management program available, Customer agrees to install and use it within a reasonable period of time. Customer may make a copy or adaptation of a licensed software product only for archival purposes or when it is an essential step in the authorized use of the software. Customer may use this archival copy without paying an additional license only when the primary system is inoperable. Customer may not copy licensed software onto or otherwise use or make it available on any public external distributed network. Licenses that allow use over Customer's intranet require restricted access by authorized users only. Customer will also not modify, reverse engineer, disassemble, decrypt, decompile or make derivative works of any software licensed to Customer under these Terms unless permitted by statute, in which case Customer will provide Micro Focus with reasonably detailed information about those activities.
22. **License Term and Termination.** Unless otherwise specified, any license granted is perpetual, provided however that if Customer fails to comply with these Terms, Micro Focus may terminate the license upon written notice. Immediately upon termination, or in the case of a limited-term license, upon expiration, Customer will either destroy all copies of the software or return them to Micro Focus, except that Customer may retain one copy for archival purposes only.
23. **License Transfer.** Customer may not sublicense, assign, transfer, rent or lease the software or software license except as permitted by Micro Focus. Micro Focus-branded software licenses are generally transferable subject to Micro Focus's prior written authorization and payment to Micro Focus of any applicable fees. Upon such transfer, Customer's rights shall terminate and Customer shall transfer all copies of the software to the transferee. Transferee must agree in writing to be bound by the applicable software license terms. Customer may transfer firmware only upon transfer of associated appliance (hardware).
24. **License Compliance.** Micro Focus may audit Customer compliance with the software license terms. Upon reasonable notice, Micro Focus may conduct an audit during normal business hours (with the auditor's costs being at Micro Focus's expense). If an audit reveals underpayments then Customer will pay to Micro Focus such underpayments. If underpayments discovered exceed five (5) percent of the contract price, Customer will reimburse Micro Focus for the auditor costs.
25. **Confidentiality.** Information exchanged under these Terms will be treated as confidential if identified as such at disclosure or if the circumstances of disclosure would reasonably indicate such treatment. Confidential information may only be used for the purpose of fulfilling obligations or exercising rights under these Terms, and shared with employees, agents or contractors with a need to know such information to support that purpose. Confidential information will be protected using a reasonable degree of care to prevent unauthorized use or disclosure for 3 years from the date of receipt or (if longer) for such period as the information remains confidential. These obligations do not cover information that: i) was known or becomes known to the receiving party without obligation of confidentiality; ii) is independently developed by the receiving party; or iii) where disclosure is required by law or a governmental agency.
26. **Personal Information.** Each party shall comply with their respective obligations under applicable data protection legislation. Micro Focus does not intend to have access to personally identifiable information ("PII") of Customer in providing services. To the extent Micro Focus has access to Customer PII stored on a system or device of Customer, such access will likely be incidental and Customer will remain the data controller of Customer PII at all times. Micro Focus will use any PII to which it has access strictly for purposes of delivering the services ordered.



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27. **US Federal Government Use.** If software is licensed to Customer for use in the performance of a US Government prime contract or subcontract, Customer agrees that consistent with FAR 12.211 and 12.212, commercial computer software, documentation and technical data for commercial items are licensed under Micro Focus's standard commercial license.
28. **Global Trade Compliance.** Products and services provided under these Terms are for Customer's internal use and not for further commercialization. If Customer exports, imports or otherwise transfers products and/or deliverables provided under these Terms, Customer will be responsible for complying with applicable laws and regulations and for obtaining any required export or import authorizations. Micro Focus may suspend its performance under these Terms to the extent required by laws applicable to either party.
29. **Limitation of Liability.** Micro Focus's liability to Customer under these Terms is limited to the greater of \$1,000,000 or the amount payable by Customer to Micro Focus for the relevant Order. Neither Customer nor Micro Focus will be liable for lost revenues or profits, downtime costs, loss or damage to data or indirect, special or consequential costs or damages. This provision does not limit either party's liability for: unauthorized use of intellectual property, death or bodily injury caused by their negligence; acts of fraud; willful repudiation of these Terms; nor any liability which may not be excluded or limited by applicable law.
30. **Force Majeure.** Neither party will be liable for performance delays nor for non-performance due to causes beyond its reasonable control, except for payment obligations.
31. **Order of Precedence.** To the extent these Terms conflict with the Micro Focus Packaged Support Services Agreement, the Micro Focus Packaged Support Services Agreement shall take precedence.
32. **General.** These Terms represent our entire understanding with respect to its subject matter and supersede any previous communication or agreements that may exist. Modifications to these Terms will be made only through a written amendment signed by Micro Focus and Customer. These Terms will be governed by the laws of the country of Micro Focus or the Micro Focus affiliate accepting the Order and the courts of that locale will have jurisdiction. Customer and Micro Focus agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply. Claims arising or raised in the United States will be governed by the laws of the state of Delaware, excluding rules as to choice and conflict of law.



Appendix B-4

AvePoint Public Sector, Inc.
2111 Wilson Boulevard, Suite 210
Arlington, VA 22201 www.avepointpublicsector.com

Carahsoft Rider to Manufacturer End User License Agreements (for U.S. Government End Users)

1. **Scope.** This Carahsoft Rider and the Manufacturer End User License Agreement (EULA) establish the terms and conditions enabling Carahsoft to provide Software and Services to U.S. Government agencies (the "Client" or "Licensee").
2. **Applicability.** The terms and conditions in the attached Manufacturer EULA [http://www.avepoint.com/license/Master_Software_License_and_Support_Agreement_\(Public_Sector\)\(form\).pdf](http://www.avepoint.com/license/Master_Software_License_and_Support_Agreement_(Public_Sector)(form).pdf) are hereby incorporated by reference to the extent that they are consistent with Federal Law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341(a)(1)(B)), the Contracts Disputes Act of 1978 (41 U.S.C. § 601-613), the Prompt Payment Act, the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. 15), 28 U.S.C. § 516 (Conduct of Litigation Reserved to Department of Justice (DOJ)), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent the terms and conditions in the Manufacturer's EULA are inconsistent with the Federal Law (See FAR 12.212(a)), they shall be deemed deleted and unenforceable under any resultant orders under Carahsoft's contract #GS-35F-0119Y, including, but not limited to the following:
 - (a) **Contracting Parties.** The Government customer (Licensee) is the "Ordering Activity", "defined as an entity authorized to order under GSA contracts as set forth in GSA ORDER 4800.2G ADM, as may be revised from time to time. The Licensee cannot be an individual because any implication of individual licensing triggers the requirements for legal review by Federal Employee unions. Conversely, because of competition rules, the contractor must be defined as a single entity even if the contractor is part of a corporate group. The Government cannot contract with the group, or in the alternative with a set of contracting parties.
 - (b) **Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 200 0) (Deviation I 2010) (AUG 1987), and 52.212 -4 (f) Excusable delays. (JUN 2010) regarding which the GSAR and the FAR provisions shall take precedence.
 - (c) **Contract Formation.** Subject to FAR Sections 1.601(a) and 43.102, the Government Order must be signed by a duly warranted contracting officer, in writing. The same requirement



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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) **Audit.** During the term of this Agreement: (a) If Ordering Activity's security requirements included in the Order are met, Manufacturer or its designated agent may audit Ordering Activity's facilities and records to verify Ordering Activity's compliance with this Agreement. Any such audit will take place only during Ordering Activity's normal business hours contingent upon prior written notice and adherence to any security measures the Ordering Activity deems appropriate, including any requirements for personnel to be cleared prior to accessing sensitive facilities. Carahsoft on behalf of the Manufacturer will give Ordering Activity written notice of any non-compliance, including the number of underreported Units of Software or Services ("Notice"); or (b) If Ordering Activity's security requirements are not met and upon Manufacturer's request, Ordering Activity will provide a written certification, executed by a duly authorized agent of Ordering Activity, to verify in writing Ordering Activity's compliance with this Agreement.
- (e) **Termination.** Clauses in the Manufacturer EULA referencing termination or cancellation the Manufacturer's EULA are hereby deemed to be deleted. Termination shall be governed by the FAR 52.212-4 and the Contract Disputes Act, 41 U.S.C. §§ 601-613, subject to the following exceptions:
- Carahsoft may request cancellation or termination of the License Agreement on behalf of the Manufacturer if such remedy is granted to it after conclusion of the Contracts Disputes Act dispute resolutions process referenced in Section Q below or if such remedy is otherwise ordered by a United States Federal Court.
- (f) **Consent to Government Law / Consent to Jurisdiction.** Subject to the Contracts Disputes Act of 1978 (41. U.S.C §§ 7101-7109) and Federal Tort Claims Act (28 U.S.C. §1346(b)). The validity, interpretation and enforcement of this Rider will be governed by and construed in accordance with the laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by law, it will not apply to this Agreement, and the governing law will remain as if such law or regulation had not been enacted. All clauses in the Manufacturer EULA referencing equitable remedies are deemed not applicable to the Government order and are therefore deemed to be deleted.
- (g) **Force Majeure.** Subject to FAR 52.212 -4 (f) Excusable delays. (JUN 2010). Unilateral Termination by the Contractor does not apply to a Government order and all clauses in the Manufacturer EULA referencing unilateral termination rights of the Manufacturer are hereby deemed to be deleted.



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- (h) Assignment.** All clauses regarding Assignment are subject to FAR Clause 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements, and all clauses governing Assignment in the Manufacturer EULA are hereby deemed to be deleted.
- (i) Waiver of Jury Trial.** All clauses referencing waiver of Jury Trial are subject to FAR Clause 52.233-1, Disputes (JUL. 2002), and all clauses governing waiver of jury trial in the Manufacturer EULA are hereby deemed to be deleted.
- (j) Customer Indemnities.** All Manufacturer EULA clauses referencing Customer Indemnities are hereby deemed to be deleted.
- (k) Contractor Indemnities.** All Manufacturer EULA clauses that (1) violate DOJ's right (28 U.S.C. 516) to represent the Government in any case and/or (2) require that the Government give sole control over the litigation and/or settlement, are hereby deemed to be deleted.
- (l) Renewals.** All Manufacturer EULA clauses that violate the Anti-Deficiency Act (31 U.S.C. 1341, 41 U.S.C. 11) ban on automatic renewal are hereby deemed to be deleted.
- (m) Future Fees or Penalties.** All Manufacturer EULA clauses that violate the Anti-Deficiency Act (31 U.S.C. 1341, 41 U.S.C. 11), which prohibits the Government from paying any fees or penalties beyond the Contract amount, unless specifically authorized by existing statutes, such as the Prompt Payment Act, or Equal Access To Justice Act 31 U.S.C. 3901, 5 U.S.C. 504 are hereby deemed to be deleted.
- (n) Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all federal, state, local taxes and duties.
- (o) Third Party Terms.** Subject to the actual language agreed to in the Order by the Contracting Officer. Any third party manufacturer will be brought into the negotiation, or the components acquired separately under Federally-compatible agreements, if any. Contractor indemnities do not constitute effective migration.
- (p) Installation and Use of the Software.** Installation and use of the software shall be in accordance with the Rider and Manufacturer EULA, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid task order placed pursuant to the Government contract.
- (q) Dispute Resolution and Venue.** Any disputes relating to the Manufacturer EULA and to this Rider shall be resolved in accordance with the FAR, and the Contract Disputes Act, 41 U.S.C. §§ 7101-7109. The Ordering Activity expressly acknowledges that Carahsoft, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.
- (r) Limitation of Liability: Subject to the following:**
Carahsoft, Manufacturer and Ordering Activity shall not be liable for any indirect, incidental, special, or consequential damages, or any loss of profits,



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revenue, data, or data use. Further, Carahsoft, Manufacturer and Ordering Activity shall not 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 Government Contract under any federal fraud statute, including the False Claims Act, 31 U.S.C. §§ 3729-3733.

- (s) Advertisements and Endorsements.** Unless specifically authorized by an Ordering Activity in writing, such use of the name or logo of any U.S. Government entity is prohibited.
- (t) Public Access to Information.** Manufacturer agrees that the EULA and this Rider contain no confidential or proprietary information and acknowledges the EULA and this Rider will be available to the public.
- (u) Confidentiality.** Any provisions that require the Licensee 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.

MASTER SOFTWARE LICENSE AND SUPPORT AGREEMENT

This Master Software License and Support Agreement (the “Agreement”) is made by and between AvePoint Public Sector, Inc., a Virginia corporation, with offices at 2111 Wilson Boulevard, Suite 210, Arlington, VA 22201 (“AvePoint”), and the company or entity, as identified in the signature block below, using certain of AvePoint’s Licensed Property (“Customer”). The parties hereto acknowledge that this Agreement is intended to be a master agreement under which Customer may license Licensed Property from time to time. Pursuant to the terms of this Agreement, the Technical Architecture Addendum, and the Support Addendum, AvePoint or its Affiliates may license the Licensed Property and provide support to Customer or Affiliates of Customer. This Agreement is effective immediately upon delivery of Licensed Property (the “Effective Date”).

WHEREAS, AvePoint has developed and is the owner of an extensive platform of products (the Software, as defined below);

WHEREAS, Customer desires a non-exclusive license to use some of the products of the Software known as the Licensed Property (as defined below); and

WHEREAS, AvePoint is willing to grant such a license on the terms and conditions set forth below.

NOW, THEREFORE, in consideration of the foregoing and of the mutual promises contained in this Agreement, AvePoint and Customer agree as follows:

1. **DEFINITIONS**

For purposes of this Agreement,

- 1.1 “**Affiliate**” shall mean, with respect to any person, any other person that controls or is controlled by or under common control with such Person; provided, that a person shall be deemed to be an Affiliate only so long as such control exists. For the purposes of this definition, “person” means any individual, corporation, partnership, or limited liability company; and “control,” when used with respect to any Person, means ownership of at least fifty percent (50%) of the voting stock, shares or other equity interest in the controlled Person and possession of the power to direct or cause the direction of the management and policies of the controlled Person.
- 1.2 “**Authorized Users**” shall mean Customer’s employees, and those consultants who have agreed to maintain the Licensed Property in confidence and use it only for the benefit of Customer.
- 1.3 “**Documentation**” shall mean the end user documentation delivered with the Software.
- 1.4 “**Internal Use**” means use of the Licensed Property by employees of Customer in Customer’s internal operations but does not include access of the Licensed Property by, or use of the Licensed Property in the provisions of services to, Customer’s clients or customers. Internal Use also includes use of the Licensed Property by contractors of Customer, including contractors providing outsourcing or hosting services, as long as Customer assumes full responsibility

for the compliance with this Agreement in such use. Use of the Licensed Property (or any part thereof) for the benefit of others, whether by means of a software as a service offering, service bureau application, application service provider, outsourcing or other means of providing service to any third party shall not be considered Internal Use.

1.5 **“Licensed Property”** shall mean the portion of the Software and the Documentation to which Customer has purchased a License as identified on an applicable invoice by AvePoint. Licensed Property shall include any updates or upgrades to the Licensed Property that AvePoint may at its discretion deliver to Customer.

1.6 **“Server”** means each single instance of an operating system, whether physically installed on a computer or within a virtualized environment.

1.7 A **“SharePoint Server”** is a Server running a service or component of the Microsoft SharePoint platform. SharePoint Servers shall be classified and counted as per the SharePoint Server Technical Architecture Addendum (**“Technical Architecture Addendum”**) attached hereto.

1.8 **“Software”** shall mean the object code (machine readable) version of any computer programs offered by AvePoint and any ancillary data files, modules, libraries, tutorial or demonstration programs or other components and copies of any of the foregoing or portions thereof.

1.9 **“Support Addendum”** shall mean the Master Software Support Addendum attached hereto.

2. **GRANT OF LICENSE**

2.1 **Grant; Limitations.** Subject to the observance by Customer of the terms and conditions of this Agreement, AvePoint hereby grants to Customer and Customer hereby agrees to pay for a perpetual, non-exclusive, non-transferable (except as set forth in Section 11.5) license to use the Licensed Property solely for Customer’s Internal Use in accordance with the following limitations (the “License”):

- (a) for Licensed Property that is classified as Licensed per SharePoint Server, one License per Server in Tier 1 and Tier 2, as classified and counted per the Technical Architecture Addendum, in each SharePoint environment in which the Licensed Property is run;
- (b) for Licensed Property that is classified as Licensed per specific Server

type or per the number of Servers in a particular Tier or Tiers, one License per Server of the specified type or within the specified Tier or Tiers, as classified and counted in the Technical Architecture Addendum, which may include but is not limited to SharePoint Web Servers, User Facing Front-end Web Servers, SharePoint Application Servers, SQL Servers running SharePoint, or other Server types as specified on the applicable invoice by AvePoint, in each environment in which the Licensed Property is run;

- (c) for Licensed Property that is classified as Licensed per Usage, the License granted hereunder is based on the size or amount of data processed by the Licensed Property and is limited to the amount specified on the applicable invoice by AvePoint;
- (d) for Licensed Property that is classified as Licensed per Organization, the License granted hereunder is for use only on Servers owned or controlled by and used exclusively by the Customer (and does not include Servers controlled by or providing services to Customer's Affiliates); and
- (e) for Licensed Property that is classified as part of the DocAve Software Platform, one License per DocAve Manager and per Media Services used, where such usage is limited to the amount specified on the applicable invoice by AvePoint.

Except with respect to Licensed Property that is licensed per Organization as set forth in (d) above, Customer may grant sublicenses hereunder to its Affiliates for use in accordance with the terms of this Agreement, as long as Customer assumes full responsibility for the compliance of such Affiliate with this Agreement. No other sublicensing of use or access is permitted.

2.2 **License Restrictions.** Any use of the Licensed Property not expressly permitted by this Agreement is prohibited. Without limiting the generality of the foregoing, Customer shall not:

- (a) permit persons other than Authorized Users to access or use the Licensed Property (or any part thereof); or
- (b) remove or modify any program markings or any notice of AvePoint or its licensors' proprietary rights; or
- (c) cause or permit reverse engineering (unless required by law for interoperability), disassembly or decompilation of the programs;
or
- (d) use the Licensed Property (or any part thereof) in breach of any applicable laws or regulations.

2.3 **Back-Up Copies.** Customer may make copies of the Licensed Property as reasonably necessary for back-up (disaster recovery) purposes provided that such copies are used only for such purposes and are not otherwise used on an

active system.

2.4 **No Other License.** Except as expressly set forth in this Agreement, no license is granted and none shall be deemed granted by implication, estoppel or otherwise.

2.5 **Delivery.** Unless otherwise requested by Customer, AvePoint shall provide an electronic link to make available to Customer the Licensed Property by electronic download and a license key to activate the Licensed Property.

2.6 **Services.** Except as set forth on the Support Addendum attached hereto, AvePoint is under no obligation to provide any services to Customer with respect to the Licensed Property (including, without limitation, any installation of the Software or Licensed Property, training or maintenance).

3. **FEES**

3.1 **Payments.** AvePoint's invoices to Customer are payable within thirty (30) days of the date of Customer's receipt of said invoice.

4. **PROPERTY RIGHTS; PROHIBITIONS AS TO LICENSED PROPERTY**

4.1 **Property Rights.** AvePoint or its licensors retain all ownership and intellectual property rights to the Software and Licensed Property. Third party technology that may be appropriate or necessary for use with the Licensed Property is specified in the Documentation. Such third party technology is licensed to you under the terms of the third party technology license agreement specified in the program documentation and not under the terms of this Agreement.

4.2 **Trade Secrets.** Customer agrees that the Software and all associated trade secrets, including but not limited to the Licensed Property, its configurations, architecture, communications and performance benchmarks, are the exclusive property of AvePoint. Customer agrees not to disclose, disseminate, transmit via any medium whatsoever, or make available the Software, Licensed Property or any associated trade secrets to any third party without AvePoint's prior written consent.

5. **NO WARRANTY AND DISCLAIMER**

EXCEPT AS MAY BE SET FORTH ON THE SUPPORT ADDENDUM WHILE SUCH SUPPORT ADDENDUM REMAINS IN EFFECT, THE SOFTWARE, INCLUDING WITHOUT LIMITATION THE LICENSED, IS PROVIDED TO CUSTOMER ON AN "AS IS" "WHERE IS" BASIS WITHOUT

WARRANTY AND CUSTOMER'S USE THEREOF IS AT ITS OWN RISK. AVEPOINT DOES NOT MAKE, AND HEREBY SPECIFICALLY DISCLAIMS, AND CUSTOMER RELEASES AND WAIVES, ANY AND ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING,

WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE AND PURPOSE, NON-INFRINGEMENT, TITLE, OR ANY WARRANTY ARISING UNDER STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OR TRADE PRACTICE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, AVEPOINT DOES NOT WARRANT THAT THE LICENSED PROPERTY IS ACCURATE OR WILL MEET CUSTOMER'S REQUIREMENTS, WILL OPERATE IN ANY COMBINATION THAT MAY BE SELECTED FOR USE BY CUSTOMER OR IN COMBINATION WITH OTHER SOFTWARE, OR WILL OPERATE UNINTERRUPTED OR ERROR FREE. FURTHERMORE, AVEPOINT DOES NOT WARRANT THAT ANY SOFTWARE ERRORS, DEFECTS OR INEFFICIENCIES WILL BE CORRECTED, NOR DOES AVEPOINT ASSUME ANY LIABILITY FOR FAILURE TO CORRECT ANY SUCH ERROR, DEFECT OR INEFFICIENCY. AVEPOINT MAKES NO WARRANTY, AND CUSTOMER ASSUMES THE ENTIRE RISK, AS TO THE INTEGRITY OF ANY DATA AND THE RESULTS, CAPABILITIES, SUITABILITY, USE, NON-USE OR PERFORMANCE OF THE LICENSED PROPERTY. IN NO EVENT SHALL AVEPOINT BE LIABLE TO CUSTOMER FOR ANY DAMAGES RESULTING FROM OR RELATED TO THE USE OR PERFORMANCE OF THE LICENSED PROPERTY.

6. LIMITATION OF LIABILITY

EXCEPT WITH RESPECT TO A BREACH OF SECTION 2 OR 4, OR AS PROVIDED IN SECTION 7 HEREOF, UNDER NO CIRCUMSTANCES SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES SUFFERED BY THE OTHER PARTY, ANY PARTY CLAIMING ON BEHALF OF OR THROUGH THE OTHER PARTY, OR ANY OTHER THIRD PARTY RESULTING FROM OR ARISING OUT OF OR RELATED TO THIS AGREEMENT, ANY ADDENDUM HERETO OR THE PERFORMANCE OR BREACH THEREOF, INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS OR PROFITS, BUSINESS INTERRUPTION, DAMAGE OR LOSS OR DESTRUCTION OF DATA OR LOSS OF USE OF THE LICENSED PROPERTY, EVEN IF SUCH PARTY HAS BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL AVEPOINT HAVE ANY LIABILITY TO CUSTOMER IN EXCESS OF THE AMOUNTS PAID BY CUSTOMER TO AVEPOINT UNDER THIS AGREEMENT OR ANY ADDENDUM HERETO.

7. INDEMNITY

AvePoint will, defend Customer from and against any claim or action commenced by a third party alleging that the Licensed Property, when used in accordance with the terms of this Agreement, infringes any patent, copyright or trademark, or is a misappropriation of a trade secret, and AvePoint will indemnify Customer from any costs (including reasonable attorneys' fees) associated with the defense or settlement of and/or damages finally awarded against Customer in any such claim. If such a claim is made or appears likely to be made, AvePoint, at its option, shall have the right to either (i) procure for the Customer the right to continue to use the Licensed Property, (ii) modify or replace the Licensed Property so that it is no longer infringing (in a manner that substantially retains its functionality and quality), or (iii) require Customer to terminate the use of and return the Licensed Property and refund a pro rata portion, if any, of the amount paid by Customer for the infringing Licensed Property, which pro rata portion shall be a fraction, the numerator of which shall be equal to the number of months, if any, remaining from the date the termination becomes effective until the occurrence of the fifth (5th) anniversary of the Effective Date, and the denominator of which shall be equal to sixty (60). Notwithstanding the foregoing, AvePoint shall have no liability to Customer if the infringement results from use of the Licensed Property in combination with software not provided by AvePoint or from modifications made by AvePoint to conform to specifications

provided by Customer. The indemnification obligations in this section are subject to notification in writing of any claim (provided that Customer's failure to provide reasonable written notice shall only relieve AvePoint of its indemnification obligations hereunder to the extent such failure materially limits or prejudices such claim). Pursuant to 28 USC § 516, AvePoint agrees that only the Attorney General, acting through the attorneys of the US Department of Justice, may represent the Customer in litigation. THIS SECTION STATES CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES FOR INFRINGEMENT OR CLAIMS ALLEGING INFRINGEMENT.

8. TERM AND TERMINATION

Term. This Agreement shall remain in full force and effect from the Effective Date unless terminated pursuant to this Section.

8.1 **Termination of License.** The parties agree that Government contracts are subject to the Contract Disputes Act of 1978 (41 USC §§ 601-613) and that said Act requires a certain process for resolving disputes, and that AvePoint shall proceed diligently with performance of this Agreement, pending final resolution under the terms of the FAR Disputes clause at 52.233-1. Should a final resolution be made that AvePoint may terminate this Agreement, then this Agreement and the License and other rights granted hereunder may be terminated by AvePoint within thirty (30) days of receipt of said final resolution.

8.2 **Effect of Termination of License.** Immediately upon any termination, cancellation or expiration of this Agreement or of any License granted hereunder for any reason:

- (a) all rights and Licenses granted to Customer under this Agreement shall cease and terminate and Customer shall have no right thereafter to use, and shall cease the use of, the Licensed Property or any portion thereof; and
- (b) Customer shall return the Licensed Property (including all copies thereof) to AvePoint.

8.3 **Survival Provisions of the Agreement.** The provisions of Section 3 through 11 of this Agreement and Section 1 of the Support Addendum shall survive the termination, cancellation or expiration of this Agreement for any reason.

8.4 **Termination of Support.** The Support Addendum and the rights granted thereunder may be terminated independently of the Agreement in accordance with Section 6 of the Support Addendum.

9. FORCE MAJEURE

Neither party shall be liable to the other party for any delay or failure in the performance of its obligations under this Agreement or the Support Addendum while in effect or otherwise if such delay or failure arises from any cause or causes beyond the control of such party including, without limitation, labor shortages or disputes, strikes, other labor or industrial disturbances, delays in transportation, acts of God, floods, lightning, fire, epidemic, shortages of materials, rationing, utility or communication failures, earthquakes, casualty, war, acts of the public enemy, an act of civil or military authority, sabotage, explosives, riots, insurrections, embargoes, blockades, actions, restrictions, regulations or orders of any government, agency or subdivision thereof, or failure of suppliers.

10. **EXPORT REGULATIONS: U.S. GOVERNMENT RESTRICTIONS**

Customer acknowledges that the Licensed Property may be subject to United States export laws, statutes and regulations and to export laws, statutes and regulations of other countries, and that Customer will at all times comply with the provisions of such laws, statutes and regulations including obtaining any necessary or required licenses. Customer shall not export or re-export or otherwise transmit, directly or indirectly, the Licensed Property or any direct products thereof into, or use the Licensed Property or any direct products thereof in, any country prohibited or restricted under United States export laws, statutes or regulations or any other applicable laws.

11. **MISCELLANEOUS PROVISIONS**

11.1 **Binding Effect.** This Agreement and all of the provisions hereof shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. In accordance with this Section 11.1, Customer here shall mean the Government Agency itself and shall not mean nor bind (i) the individual(s) who utilize the Licensed Property on Customer's behalf, or (ii) any individual users who happen to be employed by, or otherwise associated with, the Customer. AvePoint will look solely to Customer to enforce any violation or breach of this Agreement by such individuals, subject to federal law.

11.2 **Amendment.** This Agreement may be amended only by a writing duly executed by the authorized representatives of the parties hereto which makes specific reference to this Agreement.

11.3 **Notices.** All notices, requests, demands, consents, authorizations, claims, and other communications (each a "Notice") hereunder must be in writing and sent to the other party by overnight delivery. Any Notice shall be deemed duly given one

(1) business day following the date sent when sent by overnight delivery. No party may send any Notice to the intended recipient using any other means. Notices to AvePoint shall be sent to AvePoint Public Sector, Inc., 2111 Wilson Boulevard, Suite 210, Arlington, VA 22201, Attn: CEO. Unless otherwise specified by Customer in writing, Notices to Customer shall be sent to the registered agent of the Customer in the jurisdiction in which the Customer is organized or incorporated. Any party may change the address to which Notices are to be delivered by giving the other parties Notice in the manner herein set forth.

- 11.4 **Governing Law.** The validity and construction of this Agreement and all matters pertaining thereto are to be determined in accordance with the laws of the Commonwealth of Virginia, without reference to the conflicts of laws provisions thereof. Customer agrees that any proceedings related to this Agreement, including any suit filed against AvePoint, shall be brought in the Federal Courts located in the City of Richmond, Virginia. Customer waives any objections to personal jurisdiction and venue to that forum. The parties specifically direct and agree that the CISG (UN-Convention on Contracts for the International Sale of Goods) and the Uniform Computer Information Transactions Act (UCITA) are specifically excluded and neither shall apply to this Agreement or to the performance hereof by the parties hereto.
- 11.5 **Assignment.** Customer may not, directly or indirectly, sell, assign, sublicense, lease, rent, distribute, or otherwise transfer the License, the Licensed Property, or any rights therein, or any rights or obligations under this Agreement, to any other person or entity, unless Customer first obtains the written consent of AvePoint, except in conjunction with the sale of all or substantially all of the stock or assets of Customer.
- 11.6 **Waiver.** No party to this Agreement shall be deemed to have waived any of its rights, powers or remedies under this Agreement unless such waiver is expressly set forth in a writing signed by the waiving party. No written waiver of any provision of this Agreement shall be deemed to be, or shall constitute, (i) a waiver of any other provision of this Agreement, whether or not similar, or (ii) a continuing or subsequent waiver of the same or another provision of this Agreement. The failure of either party to enforce at any time any of the provisions of this Agreement, or the failure to require at any time performance by the other party of any of the provisions of this Agreement, will in no way be construed to be a present or future waiver of any such provisions, or in any way affect the validity of either party to enforce each and every such provision thereafter.
- 11.7 **Captions.** The captions and headings of Sections and subsections contained in this Agreement are provided for convenience of reference only and shall not be considered a part hereof for purposes of interpreting this Agreement, and, may affect the meaning or intent of this Agreement or any of its terms or provisions.
- 11.8 **Severability.** If any Section or other provision of this Agreement, or the application of such Section or provision, is held invalid, then the remainder of this Agreement, and the application of such Section or provision to persons or circumstances other than those with respect to which it is held invalid, shall not in any way be affected or impaired thereby. In the event that any provision of this Agreement becomes or is declared by a court of competent jurisdiction or panel of arbitrators to be illegal, unenforceable or void, this Agreement shall

continue in full force and effect without said provision. The parties agree to negotiate in good faith a substitute valid and enforceable provision that most nearly effects the parties' intent and to be bound by the mutually agreed substitute provision.

- 11.9 **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together will constitute one and the same instrument.
- 11.10 **Remedies.** All remedies shall be cumulative and not alternative and in addition to all other rights and remedies available in law and in equity.
- 11.11 **Entire Agreement.** This Agreement, including the Technical Architecture Addendum and any Support Addendum referenced herein and attached hereto (which shall be deemed incorporated herein by this reference), constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof, and supersedes, supplants, and renders null and void any and all prior and contemporaneous negotiations, discussions, proposals, agreements, understandings, representations or communications, oral or written, of the parties hereto with respect to the subject matter hereof. Notwithstanding the foregoing, a purchase order submitted by Customer and accepted by AvePoint may set forth only the type, description and quantity of Licensed Property and provide for a longer Support Level Term under Section 1 of the Support Addendum and such terms shall be deemed binding. No other purchase order terms or conditions of the Customer shall be deemed to modify this Agreement. There are no representations, agreements, arrangements or understandings, oral or written, between the parties hereto relating to the subject matter of the Agreement which are not fully expressed herein.
- 11.12 **Negotiated Agreement.** This Agreement is intended to be a master agreement for licensing. This Agreement is a negotiated agreement between the parties and supersedes and replaces any and all other standard terms of either party set forth in any quote, purchase order, invoice or communication and applies so long as this Agreement remains in effect.

MASTER SOFTWARE SUPPORT ADDENDUM

THIS ADDENDUM to the AVEPOINT MASTER SOFTWARE LICENSE AND SUPPORT

AGREEMENT (the "Support Addendum"), is made and entered into by and between AvePoint Public Sector, Inc., a Virginia corporation, (hereinafter referred to as "AvePoint") and the Customer as defined in the attached Agreement ("Customer"). The terms and conditions of this Support Addendum shall be binding so long as Customer purchases support as it relates to the Licensed Property and does not materially breach the terms and conditions of this Support Addendum. In accordance with this preamble, Customer here shall mean the Government Agency itself and shall not mean nor bind (i) the individual(s) who utilize the Licensed Property or Support Services on Customer's behalf, or (ii) any individual users who happen to be employed by, or otherwise associated with, the Customer. AvePoint will look solely to Customer to enforce any violation or breach of this Agreement by such individuals, subject to federal law. Any defined term used herein which is not otherwise defined shall have the meaning set forth in the attached AvePoint Master Software License and Support Agreement.

1. **TERM.** This Support Addendum is effective immediately upon delivery of the Licensed Property to which the support services relate (the "Effective Date") and, unless a longer initial period is specified in a quote signed by the Customer or in the absence thereof, a purchase order accepted by AvePoint, continue for an initial period of one (1) year (the "Initial Term") and thereafter for additional periods as determined by Customer, unless terminated pursuant to Section 6 of this Support Addendum. To the extent that there is pre-existing Licensed Property, Customer agrees to align the support schedule for newly acquired Licensed Property to the same support schedule as the pre-existing Licensed Property.

2. **SUPPORT SERVICES.** Support Services are intended to resolve issues experienced by the Customer with the installation, configuration, and operation of the Licensed Property. The Support Services provided to the Customer during the Term are determined by the level of support purchased by the Customer ("Support Level" or "Level"). The Support Level shall be specified in a quote signed by the Customer or in the absence thereof, a purchase order accepted by AvePoint and shall be one (1) of the following Levels: Basic, Standard, or Premier. The Support Level must be the same for all Licensed Property. The Support Levels are set forth below.
 - 2.1 **Program Fix Service.** If the Licensed Property as furnished and without Customer modification fails to function due to an error in the Licensed Property and Customer has reasonably determined that the failure is not due to incorrect or defective data entry or operator performance by Customer, AvePoint will make a prompt and reasonable attempt to provide Customer with a suitable workaround or program change to correct or avoid such error. AvePoint shall have the right to verify the existence of any error reported by Customer and AvePoint shall have no obligation to correct any error or defect unless the error or defect can be re-created with an unaltered version of the Licensed Property. Error verifications shall be conducted at Customer's or AvePoint's place of business, as determined by AvePoint. Customer

agrees to provide to AvePoint any data, configuration information, and copies of all programs used by Customer in making its determination that an error exists. Notification to AvePoint and subsequent follow-up shall be conducted through AvePoint’s Call Center Support.

2.2 **Call Center Support.** AvePoint shall provide email, web support ticket, phone, and web conferencing (each a “Support Channel” or “Channel”) based Support Services to Customer according to the Customer’s Support Level. Support Channels and hours shall be provided as per the Support Level table below, where the “Local Office Time” shall be the given time at the nearest appropriate AvePoint office or Call Center designated to provide support services to Customer at AvePoint’s discretion, and “Business Days” shall be the days such AvePoint office is opened for regular business per locally accepted businesses practices.

SUPPORT PROGRAM FEATURES

<u>Support Level</u>	<u>Basic</u>	<u>Standard</u>	<u>Premier</u>
Support Channels	Email or Web Support Ticket Only	Email, Web Support Ticket, Phone and Web Conferencing	Email, Web Support Ticket, Phone and Web Conferencing
Support Hours	Business Days, 7:00 am–7:00 pm Local Office Time	Business Days, 7:00 am–7:00 pm Local Office Time	24 hours / day, 7 days / week
Email/web support ticket response time	Based on Issue Severity	Based on Issue Severity	Based on Issue Severity, with priority handling within Issue Severity Level

As indicated, email and web support ticket response times shall be based on Issue Severity Level, as defined in the Email and Web Support Ticket Response Times table below. Such Issue Severity Level shall be assigned by AvePoint at the time of receipt of such email or web support ticket request from Customer per the Issue Description guidelines given in the table below at AvePoint’s sole discretion. AvePoint shall make all commercially reasonable efforts to respond to such support requests within the given Response Time. Requests received from Customers with Premier Level Support Services shall receive priority handling over other requests within a given Issue Severity Level.

SUPPORT TICKET RESPONSE TIMES

<u>Issue Severity</u>	<u>Issue Description</u>	<u>Email and Web Response Time</u>	<u>Phone Response Time*</u>
Low	<ul style="list-style-type: none"> • Minor issue which does not impact production environment • Documentation error that does not directly impact a job on production • Feature or suggestion for enhancement 	48 hours or less	Immediate
Medium	<ul style="list-style-type: none"> • An issue affecting production environment at a minor level • Very limited direct impact on operations 	24 hours or less	Immediate
High	<ul style="list-style-type: none"> • An issue affecting production environment at a major level • Production environment is operational, but DocAve activities are limited • Long-time adverse effects can lead to productivity being hindered 	4 hours or less	Immediate
Very High	<ul style="list-style-type: none"> • DocAve activities on production environment are completely inoperable • Major restoration or project is at a mission-critical state • Severe impact on business operations 	2 hours or less	Immediate

*Phone support is only available for Standard and Premier Level Support Services, in accordance with the Support Hours as set forth on the Support Program Features table above.

2.3 Integration. If Customer has Premier Level Support Services, in the event that an error in installation, configuration, or operation of the Licensed Property is caused by Customer's introduction of a new and unique or unusual configuration, hardware component or components, architecture, network setup, or customization, AvePoint shall integrate the Licensed Property to work for Customer, provided such integration requires less than eight (8) man hours of development work, as determined by AvePoint at its sole discretion. For Customers with Basic or Standard Level Support Services or for Customers with Premier Level Support Services where such integration requires greater than eight (8) man hours of development work, AvePoint shall make its best, commercially reasonable, efforts to offer such Integration to Customer at an additional fee for the man hours required beyond those covered under the Support Addendum and on the same basis and at the same rates as charged by AvePoint to other similarly situated Customers.

2.4 Product Releases. In addition to the Support Services described above, AvePoint may, in its sole discretion, release updates and modifications to the Software (“Product Releases”). Such Product Releases shall be numbered according to AvePoint’s Standard Numbering Convention, defined as follows: in the N1.n2.n3.n4 format, with each number representing a different release type and classified by AvePoint as Hotfixes, Cumulative Update, Service Packs, and Platform Upgrades, as described below.

- (a) A “Hotfix” is an update or modification to the Software designed to address a specific issue identified in the installation, configuration, or operation of the Software. A release that is considered a Hotfix shall be so indicated by an increase or change in the n4 portion of the Standard Numbering Convention.
- (b) A “Cumulative Update” is an update or modification to the Software that may include Hotfixes and may also include performance improvements, Compatibility Updates, and other enhancements, but that does not include new options or feature additions to the Software. A “Compatibility Update” updates or modifies the compatibility of the Software with underlying operating systems and required components. Compatibility Updates do not include updates or modifications that add support for the Software to act upon a new system, platform, or application. A release that is considered a Cumulative Update shall be so indicated by an increase or change in the n3 portion of the Standard Numbering Convention.
- (c) A “Service Pack” is an update or modification to the Software that may include Hotfixes and Cumulative Updates and that adds new options or feature additions to the Software. A release that is considered a Service Pack shall be so indicated by an increase or change in the n2 portion of the Standard Numbering Convention.
- (d) A “Platform Upgrade” is an upgrade or modification to the architecture, user interface, or other significant portion of the Licensed Property. Such Platform Upgrades shall be considered a new generational line of the Licensed Property, and may differ in overall function and use from other generational lines. A release that is considered a Platform Upgrade shall be so indicated by an increase or change in the N1 portion of the Standard Numbering Convention.

Customer access to Product Releases shall be based on Support Services Level as detailed in the table below. For Customers with access to a particular Product Release, AvePoint will provide such Product Releases in such form and with accompanying instructions sufficient to enable Customer to install the Product Releases without the assistance of AvePoint. Customer shall be solely responsible for installation of the Product Releases. If requested by Customer, AvePoint will install the Product Release at AvePoint's daily rates then in effect plus reimbursement for reasonable travel and living expenses incurred by AvePoint and its personnel in providing such installation services. Customer agrees that any Product Releases provided by AvePoint shall be held by Customer upon all of the terms and shall be subject to all of the conditions

contained in the Agreement and this Support Addendum entered into by and between AvePoint and Customer with respect to the Licensed Property. Product Releases may update or modify portions of the Software not included as part of Customer's Licensed Property. Availability of and access to Product Releases shall not be construed to entitle Customer to new options or features that are sold separately and that are not direct additions to the Licensed Property to which the Customer's Support Services are associated.

PRODUCT RELEASES INCLUDED IN SUPPORT LEVEL

<u>Product Release</u>	<u>Basic</u>	<u>Standard</u>	<u>Premier</u>
Hotfixes	Yes	Yes	Yes
Cumulative Update	Yes	Yes	Yes
Service Pack	No	Yes	Yes
Platform Upgrade	No	No	Yes

2.5 **Exclusions.** AvePoint shall not be required to provide any support services occasioned by neglect or misuse of the Licensed Property or equipment on which the Licensed Property are run, or unauthorized alterations or modifications of the Licensed Property. In the event that Customer requires maintenance and support for a program, system, application, or hardware outside of the Licensed Property, AvePoint may, at its sole discretion, offer such support to Customer at an additional fee.

3. SUPPORT FEES.

3.1 The payment as provided on a written price quote or invoice by AvePoint to Customer is payable prior to the commencement of any services hereunder.

3.2 In the event of on-site services requested by Customer, Customer agrees to reimburse AvePoint for any and all pre-approved or reasonable and necessary direct expenses incurred by AvePoint for purposes of performing such on-site services (including travel and living expenses).

3.3 AvePoint's invoices to Customer are payable within thirty (30) days of Customer's receipt of the invoice therefor. AvePoint, within its reasonable discretion, shall invoice the Customer approximately forty-five (45) days prior to the beginning of each annual period, as applicable.

4. **WARRANTIES AND LIMITATION OF WARRANTIES.** During the Term, Customer shall be entitled to the following warranties:

4.1 AVEPOINT EXPRESSLY WARRANTS THAT THE LICENSED PROPERTY, AS DELIVERED AND INSTALLED, SHALL PERFORM IN ACCORDANCE WITH THE SPECIFICATIONS CONTAINED IN THE THEN CURRENT DOCUMENTATION SUPPLIED BY AVEPOINT TO CUSTOMER THAT RELATE TO THE VERSION OF THE LICENSED PROPERTY DELIVERED BY AVEPOINT TO CUSTOMER.

4.2 EXCEPT AS TO COMPATIBILITY OF THE LICENSED PROPERTY AS DESCRIBED IN AVEPOINT'S DOCUMENTATION, AVEPOINT MAKES NO WARRANTIES TO CUSTOMER WITH RESPECT TO THE CUSTOMER'S COMPUTER EQUIPMENT OR SYSTEM SOFTWARE OR ITS CAPACITY AND THIS WARRANTY DISCLAIMER IS MADE EXPRESSLY IN LIEU OF ANY AND ALL EXPRESS OR IMPLIED WARRANTIES TO CUSTOMER; INCLUDING, WITHOUT LIMITATION, ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ALL WARRANTIES WITH RESPECT CUSTOMER'S COMPUTER EQUIPMENT AND SYSTEM SOFTWARE OR ITS CAPACITY ARE HEREBY EXPRESSLY DISCLAIMED.

5. **USE.** Customer is solely responsible for determining the appropriate uses and limitations of the Licensed Property in Customer's operations.

6. **TERMINATION.**

6.1 This Support Addendum shall terminate upon the happening of one or more of the following:

- (a) Termination, for any reason, of that certain Agreement for the applicable Licensed Property to which the support services relate;
- (b) The parties agree that Government contracts are subject to the Contract Disputes Act of 1978 (41 USC §§ 601-613) and that said Act requires a certain process for resolving disputes, and that AvePoint shall proceed diligently with performance of this Agreement, pending final resolution under the terms of the FAR Disputes clause at 52.233-1. Should a final resolution be made that AvePoint may terminate this Agreement, then AvePoint shall terminate this Support Addendum upon thirty (30) days after receipt of said final resolution. For the purposes of this Section 6.1(b), Customer's failure to pay the full sums provided for in this Support

Addendum shall be considered a material breach of this Support Addendum. Upon termination by AvePoint for Customer's nonpayment, all remaining payments hereunder shall become immediately due and payable by Customer;

6.2 Customer acknowledges and agrees that any termination of this Support Addendum under Section 6.1(a) shall not permit or entitle Customer to a refund of any monies paid hereunder. If Customer terminates pursuant to Section 6.1(b) for cause, then Customer shall be entitled to a refund of pre-paid fees for the remaining months in the then-current Term, up to a maximum refund of twelve (12) months fees.

7. **Negotiated Addendum.** This Support Addendum is intended to be a master addendum for Support Services. This Support Addendum is a negotiated addendum between the parties and supersedes and replaces any and all other standard terms of either party set forth in any quote, purchase order, invoice or communication and applies so long as this Support Addendum remains in effect.

**TECHNICAL ARCHITECTURE ADDENDUM
TO THE AVEPOINT MASTER SOFTWARE LICENSE AND
SUPPORT AGREEMENT**

For the purposes of calculating License quantities, Customer's SharePoint Servers shall be classified as and counted as Servers within Tier 1, Tier 2, or Tier 3 as defined below:

- (a) All "SharePoint Web Servers", meaning any Server running the Windows SharePoint Services Web Application service, shall be classified as and counted as Servers within "Tier 1", which may also be referred to as the "Web Services", "Web Server", or "Web" Tier.
"User Facing Front-end Web Servers" are defined as Servers within the Web Tier that directly processes user requests, as shown in Microsoft's SharePoint planning guidance, available from the following link: <http://technet.microsoft.com/en-us/library/cc261834.aspx>.
- (b) All "SharePoint Application Servers", meaning any Server running a SharePoint service application, including but not limited to Excel Calculation Services, Query and Index Services, Windows SharePoint Services Search, Office SharePoint Server Search, or other SharePoint service applications, shall be classified as and counted as Servers within "Tier 2", which may also be referred to as the "Application Services", "Application Server", "Application", "Job Services", or "Job Server" Tier.
- (c) All "SQL Servers Running SharePoint", meaning any Server running the Windows SharePoint Services Database Service or that is hosting a database required for the operation of Microsoft SharePoint, plus any Servers, storage systems, or platforms storing SharePoint content or associated metadata, shall be classified as and counted as Servers within "Tier 3", which may also be referred to as the "SQL Services", "SQL", "Database", or "Storage" Tier.
- (d) For the purpose of License calculations, any Server that performs multiple functions within the SharePoint platform and that can be classified in more than one Tier, as defined above, shall be counted only once per Licensed Property and shall be classified according to the following:
 - 1) First, if meeting the criteria of the Web Tier, in addition to any other Tier or Tiers, as a Server in Tier 1.
 - 2) Second, if not meeting the criteria of the Web Tier, but meeting the criteria of both the Application Tier and the Storage Tier, as a Server in Tier 2.
 - 3) In such instances where the License related to Licensed Property is

based solely on the number of Servers in Tier 2, a Server that meets the criteria of the Application Tier shall be classified as and counted as a Server within Tier 2, even if such a Server also performs other functions within the SharePoint platform and can be classified in another Tier or Tiers.

- 4) In such instances where the License related to Licensed Property is based solely on the number of Servers in Tier 3, a Server that meets the criteria of the Storage Tier shall be classified as and counted as a Server within Tier 3, even if such a Server also performs other functions within the SharePoint platform and can be classified in another Tier or Tiers.

Appendix B-5

This DocuSign Master Services Agreement for Resell Customers (“MSA”) is made between DocuSign, Inc., a Delaware corporation, (“DocuSign”) and the Customer identified in the Order Form (“Customer”), together referred to as the “Parties” and each individually as a “Party.” Specific services terms, product details and any applicable license and/or subscription terms may be set forth in applicable Service Schedule(s), each of which become binding on the Parties and subject to this MSA upon the provisioning of any DocuSign Services (defined below) to Customer. Customer’s use of the DocuSign Services is governed by and incorporates the following documents in effect as of the date of last update of such documents, collectively referred to as the “Agreement” that consists of:

1. any attachments and/or appendix(ices) to a Service Schedule;
2. Service Schedule(s); and
3. this MSA.

The applicable attachment(s), appendix(ices), and Service Schedule(s) are determined by the DocuSign Service(s) purchased on the Order Form (Service Schedules corresponding to respective DocuSign Services may be found here: (located at <https://www.docusign.com/company/terms-and-conditions/reseller-msa-service-schedules>)). In the event of a conflict between any attachment, appendix, Service Schedule or this MSA, the order of precedence is as set out above in descending order of control. This offer by DocuSign is expressly conditioned on assent to the terms and conditions of this Agreement, and any different or additional terms or conditions specified by Customer at any time in purchase orders or other documentation are hereby rejected.

Resell Customer MSA Version: December 1, 2019.

Each Party agrees as follows:

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1. DEFINITIONS

“Account” means a unique account established by Customer to enable its Authorized Users to access and use a DocuSign Service.

“Account Administrator” is an Authorized User who is assigned and expressly authorized by Customer as its agent to manage Customer’s Account, including, without limitation, to configure administration settings, assign access and use

authorizations, request different or additional services, provide usage and performance reports, manage templates, execute approved campaigns and events, assist in third-party product integrations, and to receive privacy disclosures. Customer may appoint an employee or a third-party business partner or contractor to act as its Account Administrator and may change its designation at any time through its Account.

“Affiliate” of a Party means any entity that the Party directly or indirectly owns or controls more than fifty percent (50%) of the voting interests of the subject entity. Any legal entity will be considered a Party’s Affiliate as long as that interest is maintained.

“Authorized User” means one individual natural person, whether an employee, business partner, contractor, or agent of Customer or its Affiliates who is registered by Customer to use the DocuSign Services. An Authorized User must be identified by a unique email address and user name, and two or more persons may not use the DocuSign Services as the same Authorized User. If the Authorized User is not an employee of Customer, use of the DocuSign Services will be allowed only if the user is under confidentiality obligations with Customer at least as restrictive as those in this Agreement and is accessing or using the DocuSign Services solely to support Customer’s and/or Customer Affiliates’ internal business purposes.

“Confidential Information” means (a) for DocuSign and its Affiliates, the DocuSign Services and Documentation; (b) for Customer and its Affiliates, Customer Data; (c) any other information of a Party, including its Affiliates that is disclosed in writing or orally and is designated as confidential or proprietary at the time of disclosure to the Party, including its Affiliates, receiving Confidential Information (“Recipient”) (and, in the case of oral disclosures, summarized in writing and delivered to the Recipient within thirty (30) days of the initial disclosure), or that due to the nature of the information the Recipient would clearly understand it to be confidential information of the disclosing Party; and (d) the specific terms and conditions of this Agreement between the Parties. Confidential Information does not include any information that: (i) was or becomes generally known to the public through no fault or breach of this Agreement by the Recipient; (ii) was rightfully in the Recipient’s possession at the time of disclosure without restriction on use or disclosure; (iii) was independently developed by the Recipient without use of or reference to the disclosing Party’s Confidential Information; or (iv) was rightfully obtained by the Recipient from a third party not under a duty of confidentiality and without restriction on use or disclosure.

“Customer” means the entity that has contracted with the Reseller for the purchase of applicable DocuSign Services.

“Customer Data” means any content, eDocuments, materials, data and information that Customer or its Authorized Users enter into the DocuSign Cloud Services, including, but not limited to, any Customer personal data and information contained in eDocuments. Customer Data does not include any component of the DocuSign Cloud Services or material provided by or on behalf of DocuSign.

“Documentation” means DocuSign’s then-current technical and functional documentation for the DocuSign Services as made generally available by DocuSign.

“DocuSign Cloud Service(s)” means any subscription-based, hosted solution that is supported and operated on demand and provided by DocuSign under this Agreement.

“DocuSign Service(s)” means the products and services identified in a corresponding Order Form that are provided by DocuSign.

“eDocument” refers to a contract, notice, disclosure, or other record or document deposited into the DocuSign Cloud Service by Customer for processing.

“Order Form” means the online or paper ordering document or other document between Customer and Reseller specifying the relevant DocuSign Services ordered and purchased by Customer from the Reseller; in the event of a conflict

related to the DocuSign Services purchased, services terms, product details or descriptions or any applicable license and/or subscription terms (e.g., Order Start Dates and Order End Dates) between an Order Form and the corresponding order form or other ordering document between Reseller and DocuSign, the conflicting terms in the order form or other ordering document between Reseller and DocuSign will apply to Customer.

“Order End Date” means the end date for provision of a respective DocuSign Service specified in a corresponding Order Form.

“Order Start Date” means the start date for provision of a respective DocuSign Service specified in a corresponding Order Form.

“Professional Services” means any integration, consulting, architecture, training, transition, configuration, administration, and similar ancillary DocuSign Services that are set forth in an Order Form.

“Purchase Agreement” means the Order Form and any other agreement between Customer and Reseller relating to Customer’s purchase of DocuSign Services from that Reseller.

“Reseller” means an entity that has contracted with DocuSign or one of DocuSign’s authorized distributors to resell DocuSign Services and with which Customer has contracted directly to purchase applicable DocuSign Services.

“Service Schedule” means the service-specific terms and conditions applicable to a particular DocuSign Service or Services.

2. USAGE AND ACCESS RIGHTS.

2.1 Right to Use. DocuSign will provide the DocuSign Services to Customer as set forth in the Order Form. Subject to the terms and conditions of this Agreement, DocuSign grants to Customer a worldwide, limited non-exclusive, non-transferrable right and license during the Term, solely for its and its Affiliates’ internal business purposes, and in accordance with the Documentation, to: (a) use the DocuSign Services; (b) implement, configure, and through its Account Administrator, permit its Authorized Users to access and use the DocuSign Services; and (c) access and use the Documentation. Customer will ensure that its Affiliates and all Authorized Users using the DocuSign Services under its Account comply with all of Customer’s obligations under this Agreement, and Customer is responsible for their acts and omissions relating to the Agreement as though they were those of Customer.

2.2 Restrictions. Customer shall not, and shall not permit its Authorized Users or others under its control to, do the following with respect to the DocuSign Services:

- (a) use the DocuSign Services, or allow access to it, in a manner that circumvents contractual usage restrictions or that exceeds Customer’s authorized use or usage metrics set forth in this Agreement, including the applicable Order Form;
- (b) license, sub-license, sell, re-sell, rent, lease, transfer, distribute, time share or otherwise make any portion of the DocuSign Services or Documentation available for access by third parties except as otherwise expressly provided in this Agreement;
- (c) access or use the DocuSign Services or Documentation for the purpose of: (i) developing or operating products or services intended to be offered to third parties in competition with the DocuSign Services or, (ii) allowing access to its Account by a direct competitor of DocuSign;
- (d) reverse engineer, decompile, disassemble, copy, or otherwise attempt to derive source code or other trade secrets from or about any of the DocuSign Services or technologies, unless and then only to the extent expressly permitted by applicable law, without consent;
- (e) use the DocuSign Services or Documentation in a way that (i) violates or infringes upon the rights of a third party, including those pertaining to: contract, intellectual property, privacy, or publicity; or (ii) effects or

facilitates the storage or transmission of libelous, tortious, or otherwise unlawful material including, but not limited to, material that is harassing, threatening, or obscene;

- (f) fail to interfere with or disrupt the integrity, operation, or performance of the DocuSign Services or interfere with the use or enjoyment of it by others;
- (g) use the DocuSign Services to create, use, send, store, or run viruses or other harmful computer code, files, scripts, agents, or other programs, or circumvent or disclose the user authentication or security of the DocuSign Cloud Service or any host, network, or account related thereto or use any aspect of the DocuSign Services components other than those specifically identified in an Order Form, even if technically possible; or
- (h) use, or allow the use of, the DocuSign Services in violation of Section 12.5 (Trade Restriction).

2.3 Suspension of Access. DocuSign may suspend any use of the DocuSign Services, or remove or disable any Account or content that DocuSign reasonably and in good faith believes violates this Agreement. DocuSign will use commercially reasonable efforts to notify Customer prior to any such suspension or disablement, unless DocuSign reasonably believes that: (a) it is prohibited from doing so under applicable law or under legal process (such as court or government administrative agency processes, orders, mandates, and the like); or (b) it is necessary to delay notice in order to prevent imminent harm to the DocuSign Services or a third party. Under circumstances where notice is delayed, DocuSign will provide notice if and when the related restrictions in the previous sentence no longer apply.

2.4 Trial Usage. If Customer registers for a free trial, promotional offer, or other type of limited offer for use of the DocuSign Services ("Free Trial"), Customer may be presented with additional terms and conditions when registering for a Free Trial, and any such additional terms and conditions are hereby incorporated into this Agreement by reference as a Service Schedule and are legally binding upon the Parties. ANY DATA THAT CUSTOMER ENTERS INTO THE DOCUSIGN SERVICES, AND ANY CONFIGURATIONS MADE BY OR FOR CUSTOMER, DURING THE FREE TRIAL WILL BE PERMANENTLY LOST AT THE END OF THE TRIAL PERIOD UNLESS CUSTOMER: (a) PURCHASES A SUBSCRIPTION TO THE SAME DOCUSIGN SERVICES AS THOSE COVERED BY THE TRIAL; (b) PURCHASES AN UPGRADED VERSION OF THE DOCUSIGN SERVICES; OR (c) EXPORTS SUCH DATA BEFORE THE END OF THE TRIAL PERIOD. CUSTOMER CANNOT TRANSFER DATA ENTERED OR CONFIGURATIONS MADE DURING THE FREE TRIAL TO A DOCUSIGN SERVICE THAT WOULD BE A DOWNGRADE FROM THAT COVERED BY THE TRIAL, AND IN SUCH SITUATION ANY CUSTOMER DATA OR CUSTOMIZATION WILL BE PERMANENTLY LOST. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, INCLUDING WITHOUT LIMITATION SECTION 7 (WARRANTIES AND DISCLAIMERS), FREE TRIALS ARE PROVIDED "AS-IS" AND "AS AVAILABLE" AND, TO THE FULLEST EXTENT PERMISSIBLE BY LAW, WITHOUT ANY REPRESENTATION OR WARRANTY, WHETHER EXPRESS, IMPLIED OR STATUTORY; AND DOCUSIGN'S TOTAL AGGREGATE LIABILITY ARISING OUT OF OR RELATING TO CUSTOMER'S USE OF THE FREE TRIAL IS \$100.

3. OWNERSHIP.

3.1 Customer Data. Customer Data processed using the DocuSign Services is and will remain, as between Customer and DocuSign, owned by Customer. Customer hereby grants DocuSign the right to process, transmit, store or disclose the Customer Data in order to provide the DocuSign Services to Customer or, subject to the terms of Section 10.2 (Required Disclosure) below.

3.2 DocuSign Services. DocuSign, its Affiliates, or its licensors own all right, title, and interest in and to any and all copyrights, trademark rights, patent rights, database rights, and other intellectual property or other rights in and to the DocuSign Services and Documentation, any improvements, design contributions, or derivative works thereto, and any knowledge or processes related thereto and/or provided hereunder. All deliverables provided by or for DocuSign in the performance of Professional Services, excluding Customer Data and Customer Confidential Information, are owned by DocuSign and constitute part of the DocuSign Service(s) under this Agreement.

3.3 Third-Party Services and Materials. Customer may choose to purchase or otherwise obtain from DocuSign products,

services or materials that are provided or supported by third parties (“Third-Party Services and Materials”) for use with DocuSign Services. DocuSign assumes no responsibility for, and specifically disclaims any liability or obligation with respect to, any Third-Party Services and Materials that are provided pursuant to the terms of the applicable third-party license or separate agreement between the licensor of the Third-Party Services and Customer. DocuSign does not represent and/or warrant in any manner that Third-Party Services and Materials are accurate, current, or comply with laws, rules and/or regulations of, or are otherwise valid and enforceable in or appropriate for, the jurisdiction in which the Third-Party Services and Materials are used or for Customer’s purposes.

3.4 Feedback. DocuSign encourages Customer to provide suggestions, proposals, ideas, recommendations, or other feedback regarding improvements to DocuSign Services and related resources (“Feedback”). To the extent Customer provides Feedback, Customer grants to DocuSign a royalty-free, fully paid, sub-licensable, transferable (notwithstanding Section 12.2 (Assignability)), non-exclusive, irrevocable, perpetual, worldwide right and license to make, use, sell, offer for sale, import, and otherwise exploit Feedback (including by incorporation of such feedback into the DocuSign Services) without restriction; provided that such Feedback does not identify Customer, its Affiliates, or Authorized Users, or include any Customer Data without Customer’s prior written consent.

4. SECURITY AND CUSTOMER DATA.

4.1 Data Storage/Transfer. If Customer or Customer Affiliate is established in the United Kingdom, a Member State of the European Economic Area, or Switzerland, the Data Protection Attachment for DocuSign Signature found at: <https://www.docusign.com/company/terms-and-conditions/schedule-docusign-signature/attachment-data-protection> (“DPA”) applies to the processing of any Personal Data (as defined in Section 1 of the DPA).

4.2 Security. DocuSign will use commercially reasonable industry standard security technologies in providing the DocuSign Services. DocuSign has implemented and will maintain appropriate technical and organizational measures, including information security policies and safeguards, to preserve the security, integrity, and confidentiality of Customer Data and personal data and to protect against unauthorized or unlawful disclosure or corruption of or access to personal data. Additional security obligations, if any, shall be set forth or referenced in the applicable Service Schedule, attachment and/or appendix.

4.3 Customer Data. Customer is responsible for Customer Data (including Customer personal data) as entered into, supplied or used by Customer and its Authorized Users in the DocuSign Services. Further, Customer is solely responsible for determining the suitability of the DocuSign Services for Customer's business and complying with any applicable data privacy and protection regulations, laws or conventions applicable to Customer Data and Customer’s use of the DocuSign Services. Customer grants to DocuSign the non-exclusive right to process Customer Data (including personal data) for the sole purpose of and only to the extent necessary for DocuSign: (a) to provide the DocuSign Services; (b) to verify Customer’s compliance with the restrictions set forth in Section 2.2 (Restrictions) if DocuSign has a reasonable belief of Customer’s non-compliance; and (c) as otherwise set forth in this Agreement.

4.4 Use of Aggregate Data. Customer agrees that DocuSign may collect, use, and disclose quantitative data derived from the use of the DocuSign Services for business purposes, including industry analysis, benchmarking, analytics, and marketing. All data collected, used, and disclosed will be in aggregate and deidentified form only and will not identify Customer, its Authorized Users, Customer Data, or any third parties utilizing the DocuSign Services.

5. PURCHASE AGREEMENT.

Customer will comply with the terms of the Purchase Agreement. Customer acknowledges that compliance with the terms of the Purchase Agreement is a material condition under this Agreement, and if Reseller notifies DocuSign that Customer is in breach of such Purchase Agreement, DocuSign may consider the Customer to be in breach of this

Agreement.

6. TERM AND TERMINATION.

6.1 Term. The term of an Order Form and any associated Service Schedule(s) is the period of time, including all renewals thereto, that begins on the Order Start Date and, unless terminated sooner as provided herein, will continue until the Order End Date, both dates as specified on the Order Form (the "Term"). The term of this MSA and this Agreement shall continue as long as an Order Form remains valid and in effect. Notwithstanding anything else contained in this Agreement, DocuSign may, in its sole discretion, immediately terminate any Order Forms, this Agreement and/or the provision of any DocuSign Services in the event Customer is in breach of any terms or conditions of the Purchase Agreement.

6.2 Termination for Breach; Termination for Insolvency. If either Party commits a breach or default in the performance of any of its obligations under this Agreement, then the other Party may terminate this Agreement in its entirety by giving the defaulting Party written notice of termination, unless the breach or default in performance is cured within thirty (30) days after the defaulting Party receives notice thereof. Either Party may terminate this Agreement in its entirety upon written notice if the other Party becomes the subject of a petition in bankruptcy or any proceeding related to its insolvency, receivership or liquidation, in any jurisdiction, that is not dismissed within sixty (60) days of its commencement, or an assignment for the benefit of creditors.

6.3 Post-Termination Obligations. If this Agreement expires or is terminated for any reason: (a) Customer will pay to DocuSign any amounts owed by Customer to DocuSign that have accrued before, and remain unpaid as of, the effective date of the expiration or termination; (b) any and all liabilities of either Party to the other Party that have accrued before the effective date of the expiration or termination will survive; (c) licenses and use rights granted to Customer with respect to DocuSign Services and intellectual property will immediately terminate; (d) DocuSign's obligation to provide any further services to Customer under this Agreement will immediately terminate, except any such services that are expressly to be provided following the expiration or termination of this Agreement; and (e) the Parties' rights and obligations under Sections 6.1, 6.3, 7.3, and 9 through 12 will survive.

7. WARRANTIES AND DISCLAIMERS.

7.1 DocuSign Service Warranties. DocuSign warrants that during the applicable Term, the DocuSign Services, when used as authorized under this Agreement, will perform substantially in conformance with the Documentation associated with the applicable DocuSign Services. Customer's sole and exclusive remedy for any breach of this warranty by DocuSign is for DocuSign to repair or replace the affected DocuSign Services to make them conform, or, if DocuSign determines that the foregoing remedy is not commercially reasonable, then either Party may terminate this Agreement.

7.2 Mutual Warranties. Each Party represents and warrants that: (a) this Agreement has been duly executed and delivered and constitutes a valid and binding agreement enforceable against it in accordance with the terms of this Agreement; and (b) no authorization or approval from any third party is required in connection with its execution, delivery, or performance of this Agreement.

7.3 Disclaimer. Except for the express representations and warranties stated in this Section 7 (Warranties and Disclaimers) or a Service Schedule, DocuSign: (a) makes no additional representation or warranty of any kind -- whether express, implied in fact or by operation of law, or statutory -- as to any matter whatsoever; (b) disclaims all implied warranties, including but not limited to merchantability, fitness for a particular purpose, and title; and (c) does not warrant that the DocuSign Services are or will be error-free or meet Customer's requirements. Customer has no right to make or pass on any representation or warranty on behalf of DocuSign to any third party.

8. THIRD-PARTY CLAIMS.

Upon demand, Customer will: (1) defend DocuSign and its Affiliates and each of the foregoing's respective employees, directors, agents, and representatives (collectively, the "Indemnified Parties") from and against any actual or threatened third-party claim or legal or administrative agency action or proceeding (a "Claim") to the extent arising from or related to: (a) use of the DocuSign Services by Customer or its Authorized Users; (b) any breach by Customer of its obligations under Section 2.2 (e)-(f) (Restrictions) or Section 10 (Confidentiality); or (c) the nature and content of all Customer Data processed by the DocuSign Services; and (2) indemnify the Indemnified Parties against all settlement amounts agreed to in connection with any such Claim, all damages and costs awarded in connection with any such Claim and all costs, expenses and losses incurred by any Indemnified Party in connection with a Claim (including legal costs). Customer reserves the right, at its expense, to provide applicable Indemnified Parties with prompt written notice of its intention to assume the exclusive defense and control of any Claim (absent which DocuSign or other Indemnified Party, as determined by DocuSign, will control such defense and may defend such Claim at Customer's expense). Customer may not enter into any settlement of any Claim unless DocuSign gives its prior written approval of the settlement.

9. LIMITATIONS OF LIABILITY.

9.1 Exclusion of Damages. UNDER NO CIRCUMSTANCES, AND REGARDLESS OF THE NATURE OF THE CLAIM, SHALL DOCUSIGN (OR ITS AFFILIATES) BE LIABLE TO CUSTOMER FOR LOSS OF PROFITS, SALES OR BUSINESS, LOSS OF ANTICIPATED SAVINGS, LOSS OF USE OR CORRUPTION OF SOFTWARE, DATA OR INFORMATION, WORK STOPPAGE OR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL, COVER, PUNITIVE, OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATED TO THE TRANSACTIONS CONTEMPLATED UNDER THIS AGREEMENT, EVEN IF APPRISED OF THE LIKELIHOOD OF SUCH LOSSES..

9.2 Limitation of Liability. EXCEPT FOR DAMAGES RESULTING FROM DEATH OR BODILY INJURY ARISING FROM DOCUSIGN'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, TO THE EXTENT PERMITTED BY LAW, THE TOTAL, CUMULATIVE LIABILITY OF DOCUSIGN (OR ITS AFFILIATES) ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE SERVICES PROVIDED HEREUNDER WHETHER BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF STATUTORY DUTY, OR ANY OTHER LEGAL OR EQUITABLE THEORY, SHALL BE LIMITED TO THE AMOUNTS PAID BY CUSTOMER TO RESELLER FOR THE DOCUSIGN SERVICE(S) GIVING RISE TO THE CLAIM DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE FIRST EVENT GIVING RISE TO LIABILITY. THE EXISTENCE OF MORE THAN ONE CLAIM SHALL NOT ENLARGE THIS CUMULATIVE LIMIT. THE PARTIES FURTHER ACKNOWLEDGE THAT CUSTOMER MAY HAVE STATUTORY RIGHTS AGAINST DOCUSIGN FRANCE SAS AND CUSTOMER ACKNOWLEDGES AND AGREES THAT ANY AMOUNTS RECOVERED BY CUSTOMER AGAINST DOCUSIGN FRANCE SAS PURSUANT TO SUCH RIGHTS SHALL BE AGGREGATED WITH ANY OTHER CLAIMS HEREUNDER FOR PURPOSES OF THE CAP ON DAMAGES SET FORTH ABOVE.

9.3 Independent Allocations of Risk. h provision of this Agreement that provides for a limitation of liability, disclaimer of warranties, or exclusion of damages represents an agreed allocation of the risks of this Agreement between the Parties. This allocation is an essential element of the basis of the bargain between the Parties. Each of these provisions is severable and independent of all other provisions of this Agreement, and each of these provisions will apply even if the warranties in this Agreement have failed of their essential purpose.

10. CONFIDENTIALITY.

10.1 Restricted Use and Nondisclosure. During and after the Term, Recipient will: (a) use the Confidential Information of the other Party solely for the purpose for which it is provided; (b) not disclose such Confidential Information to a third

party, except on a need-to-know basis to its Affiliates, attorneys, auditors, consultants, and service providers who are under confidentiality obligations at least as restrictive as those contained herein; and (c) protect such Confidential Information from unauthorized use and disclosure to the same extent (but using no less than a reasonable degree of care) that it protects its own Confidential Information of a similar nature..

10.2 Required Disclosure. If Recipient is required by law to disclose Confidential Information of the other Party or the terms of this Agreement, Recipient will give prompt written notice to the other Party before making the disclosure, unless prohibited from doing so by the legal or administrative process and cooperate with the disclosing Party to obtain where reasonably available an order protecting the Confidential Information from public disclosure.

10.3 Ownership. Recipient acknowledges that, as between the Parties, all Confidential Information it receives from the disclosing Party, including all copies thereof in Recipient's possession or control, in any media, is proprietary to and exclusively owned by the disclosing Party. Nothing in this Agreement grants Recipient any right, title or interest in or to any of the disclosing Party's Confidential Information. Recipient's incorporation of the disclosing Party's Confidential Information into any of its own materials will not render Confidential Information non-confidential.

10.4 Remedies. Recipient acknowledges that any actual or threatened breach of this Section 10 (Confidentiality) may cause irreparable, non-monetary injury to the disclosing Party, the extent of which may be difficult to ascertain. Accordingly, the disclosing Party is entitled to (but not required to) seek injunctive relief in addition to all remedies available to the disclosing Party at law and/or in equity, to prevent or mitigate any breaches of this Agreement or damages that may otherwise result from those breaches. Absent written consent of the disclosing Party to the disclosure, the Recipient, in the case of a breach of this Section 10 (Confidentiality), has the burden of proving that the disclosing Party's Confidential Information is not, or is no longer, confidential or a trade secret and that the disclosure does not otherwise violate this Section 10 (Confidentiality).

11. GOVERNING LAW AND VENUE.

The Parties agree to the following country-specific provisions for governing law and venue for all claims and disputes arising out of or relating to this Agreement. This Agreement will be interpreted, construed, and enforced in all respects in accordance with the following laws based on the ship-to address of the Customer reflected on the Order Form.

- (11.1) United Kingdom, a Member State of the European Economic Area, or Switzerland. This Agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including without limitation non-contractual disputes or claims) are governed by and construed in accordance with the law of the Republic of Ireland. Each Party irrevocably agrees that the courts of the Republic of Ireland shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims). The provisions of the U.N. Convention on Contracts for the International Sale of Goods are expressly excluded and do not apply to this Agreement.
- (11.2) Australia. This Agreement is governed by the laws of New South Wales, Australia, and both Customer and DocuSign agree to submit to the non-exclusive jurisdiction of the New South Wales courts. The provisions of the 1980 U.N. Convention on Contracts for the International Sale of Goods are expressly excluded and do not apply to this Agreement. Any legal action arising under this Agreement must be initiated within two years after the cause of action arises. Each Party hereby irrevocably waives, to the fullest extent permitted by law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Agreement.
- (11.3) Singapore. This Agreement is governed by the laws of Singapore, and both Customer and DocuSign agree to submit to the non-exclusive jurisdiction of the courts of the Republic of Singapore. The provisions of the 1980 U.N. Convention on Contracts for the International Sale of Goods are expressly excluded and do not apply to this Agreement. Any legal action arising under this Agreement must be initiated within two years after the cause of action arises.

- (11.4) This Agreement is governed by the laws of the State of California, U.S.A., without reference to its choice of law rules to the contrary. The Parties hereby irrevocably consent to the exclusive jurisdiction of, and venue in, any federal or state court of competent jurisdiction located in San Francisco County, California, for the purposes of adjudicating any dispute arising out of this Agreement. To the extent permitted by law, choice of law rules, the United Nations Convention on Contracts for the International Sale of Goods, and the Uniform Computer Information Transactions Act as enacted shall not apply. Notwithstanding the foregoing, either Party may at any time seek and obtain appropriate legal or equitable relief in any court of competent jurisdiction for claims regarding such Party's intellectual property rights. Each Party hereby irrevocably waives, to the fullest extent permitted by law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Agreement.
- (11.5) To the extent allowed by law, the English version of this Agreement is binding, and other translations are for convenience only.

12. GENERAL

12.1 Relationship. The Parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the Parties. Except as set forth in this Agreement, nothing in this Agreement, expressed or implied is intended to give rise to any third-party beneficiary.

12.2 Assignability. Neither Party may assign its rights or obligations under this Agreement without the other Party's prior written consent. Notwithstanding the foregoing, either Party may assign its rights and obligations under this Agreement to an Affiliate as part of a reorganization, or to a purchaser of its business entity or substantially all of its assets or business to which rights and obligations pertain without the other Party's consent, provided that: (a) the purchaser is not insolvent or otherwise unable to pay its debts as they become due; (b) the purchaser is not a competitor of the other Party; and (c) any assignee is bound hereby. Other than the foregoing, any attempt by either Party to transfer its rights or obligations under this Agreement will be void.

12.3 Notices. Any notice required or permitted to be given in accordance with this Agreement will be effective only if it is in writing and sent using: (a) DocuSign Services; (b) certified or registered mail; or (c) a nationally recognized overnight courier, to the appropriate Party at the address set forth on the Order Form, with a copy, in the case of DocuSign, to legal@docusign.com. Each Party hereto expressly consents to service of process by registered mail. Either Party may change its address for receipt of notice by notice to the other Party through a notice provided in accordance with this Section 12.3 (Notices). Notices are deemed given upon receipt if delivered using DocuSign Services, two (2) business days following the date of mailing, or one (1) business day following delivery to a courier.

12.4 Force Majeure. In the event that either Party is prevented from performing, or is unable to perform, any of its obligations under this Agreement due to any cause beyond the reasonable control of the Party invoking this provision (including, without limitation, for causes due to war, fire, earthquake, flood, hurricane, riots, acts of God, telecommunications outage not caused by the obligated Party, or other similar causes) ("Force Majeure Event"), the affected Party's performance will be excused and the time for performance will be extended for the period of delay or inability to perform due to such occurrence; provided that the affected Party: (a) provides the other Party with prompt notice of the nature and expected duration of the Force Majeure Event; (b) uses commercially reasonable efforts to address and mitigate the cause and effect of such Force Majeure Event; (c) provides periodic notice of relevant developments; and (d) provides prompt notice of the end of such Force Majeure Event. Obligations to pay are excused only to the extent that payments are entirely prevented by the Force Majeure Event.

12.5 Trade Restrictions. The DocuSign Services, Documentation, and the provision and derivatives thereof are subject to the export control and sanctions laws and regulations of the United States and other countries that may prohibit or restrict access by certain persons or from certain countries or territories ("**Trade Restrictions**").

13.5.1 Each Party shall comply with all applicable Trade Restrictions. In addition, each Party represents that it is not a Restricted Party, nor is it owned or controlled by, or acting on behalf of any person or entity that is a Restricted

Party. **“Restricted Party”** means any person or entity that is: (a) listed on any U.S. government list of persons or entities with which U.S. persons are prohibited from transacting, including, but not limited to, OFAC’s List of Specially Designated Nationals and Other Blocked Persons, the U.S. State Department’s Nonproliferation Sanctions lists, the U.S. Commerce Department’s Entity List or Denied Persons List located at <https://www.export.gov/article?id=Consolidated-Screening-List>; or (b) subject to end destination export control regulations, such as, but not limited to, the U.S. Export Administration Regulations and EU Dual-Use Regulation EC 428/2009.

13.5.2 Customer acknowledges and agrees that it is solely responsible for complying with, and shall comply with, Trade Restrictions applicable to any of its own or its Affiliates' or Authorized Users' content or Customer Data transmitted through the DocuSign Services. Customer shall not and shall not permit any Authorized User to access, use, or make the DocuSign Services available to or by any Restricted Party or to or from within in a country or territory subject to comprehensive U.S. sanctions (currently including, but not limited to, Cuba, the Crimea region of the Ukraine, Iran, North Korea, and Syria).

12.6 Anti-Corruption. In connection with the services performed under this Agreement and Customer’s use of DocuSign’s products and services, the Parties agree to comply with all applicable anti-corruption and anti-bribery related laws, statutes, and regulations.

12.7 U.S. Government Rights. All DocuSign software (including DocuSign Services) is commercial computer software and all services are commercial items. “Commercial computer software” has the meaning set forth in Federal Acquisition Regulation (“FAR”) 2.101 for civilian agency purchases and the Department of Defense (“DOD”) FAR Supplement (“DFARS”) 252.227-7014(a)(1) for defense agency purchases. If the software is licensed or the DocuSign Services are acquired by or on behalf of a civilian agency, DocuSign provides the commercial computer software and/or commercial computer software documentation and other technical data subject to the terms of this Agreement as required in FAR 12.212 (Computer Software) and FAR 12.211 (Technical Data) and their successors. If the software is licensed or the DocuSign Services are acquired by or on behalf of any agency within the DOD, DocuSign provides the commercial computer software and/or commercial computer software documentation and other technical data subject to the terms of this Agreement as specified in DFARS 227.7202-3 and its successors. Only if this is a DOD prime contract or DOD subcontract, the Government acquires additional rights in technical data as set forth in DFARS 252.227-7015. Except as otherwise set forth in an applicable Service Schedule, this Section 12.7 (U.S. Government Rights) is in lieu of, and supersedes, any other FAR, DFARS or other clause or provision that addresses U.S. Government rights in computer software or technical data.

12.8 Publicity. Neither Party shall refer to the identity of the other Party in promotional material, publications, or press releases or other forms of publicity relating to the DocuSign Service unless the prior written consent of the other Party has been obtained, provided, however, that DocuSign may use Customer’s name and logo for the limited purpose of identifying Customer as a customer of the DocuSign Service.

12.9 Waiver. The waiver by either Party of any breach of any provision of this Agreement does not waive any other breach. The failure of any Party to insist on strict performance of any covenant or obligation in accordance with this Agreement will not be a waiver of such Party’s right to demand strict compliance in the future, nor will the same be construed as a novation of this Agreement.

12.10 Severability. If any part of this Agreement is found to be illegal, unenforceable, or invalid, the remaining portions of this Agreement will remain in full force and effect.

12.11 Amendment. DocuSign reserves the right to change or modify any of the terms and conditions contained in this Agreement (including, in any Schedule, appendix or attachment or by the addition of one or more Schedules, attachments or appendices) at any time and in its sole discretion upon providing notice at <https://www.docusign.com/company/terms-and-conditions/reseller>. Any changes or modifications will be effective thirty (30) days following posting of such notice;

provided, no amendments, modifications or other changes will apply retroactively. Customer waives any right it may have to receive additional notice of such changes or modifications. Customer's continued use of any DocuSign Service following the posting of a revised Agreement will constitute Customer's agreement to be bound by the revised Agreement. Customer agrees that if it does not agree to any terms any revised Agreement, Customer will cease using DocuSign Services.

12.12 Entire Agreement. This Agreement is the final, complete, and exclusive expression of the agreement between the Parties regarding the DocuSign Services provided under this Agreement. This Agreement supersedes and replaces, and the Parties disclaim any reliance on, all previous oral and written communications (including any confidentiality agreements pertaining to the DocuSign Services under this Agreement), representations, proposals, understandings, undertakings, and negotiations with respect to the subject matter hereof and apply to the exclusion of any other terms that Customer seeks to impose or incorporate, or which are implied by trade, custom, practice, or course of dealing.

LinkedIn
2029 Stierlin Court
Mountain View,
CA 94043
www.linkedin.com

**Carahsoft Rider to Manufacturer End User License Agreements
(for U.S. Government End Users, to the extent applicable to LinkedIn
EULA)**

- 1. Scope. This Carahsoft Rider and the Manufacturer End User License Agreement (EULA) establish the terms and conditions enabling Carahsoft to provide Software and Services to U.S. Government agencies (the "Client" or "Licensee").**

- 2. Applicability.** The terms and conditions in the attached Manufacturer EULA are hereby incorporated by reference to the extent that they are consistent with Federal Law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341(a)(1)(B)), the Contracts Disputes Act of 1978 (41 U.S.C. § 601-613), the Prompt Payment Act, the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. 15), 28 U.S.C. § 516 (Conduct of Litigation Reserved to Department of Justice (DOJ)), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent the terms and conditions in the Manufacturer's EULA are inconsistent with the Federal Law (*See FAR 12.212(a)*), they shall be deemed deleted and unenforceable under any resultant orders under Carahsoft's contract #GS-35F-0119Y, including, but not limited to the following:
 - (a) Contracting Parties.** The Government customer (Licensee) is the "Ordering Activity", "defined as an entity authorized to order under GSA contracts as set forth in GSA ORDER 4800.2H ADM, as may be revised from time to time. The Licensee cannot be an individual because any implication of individual licensing triggers the requirements for legal review by Federal Employee unions. Conversely, because of competition rules, the contractor must be defined as a single entity even if the contractor is part of a corporate group. The Government cannot contract with the group, or in the alternative with a set of contracting parties.

- (b) Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 200 0) (Deviation I 2010) (AUG 1987), and 52.212 -4 (f) Excusable delays. (JUN 2010) regarding which the GSAR and the FAR provisions shall take precedence.
- (c) Contract Formation.** Subject to FAR Sections 1.601(a) and 43.102, the Government Order must be signed by a duly warranted contracting officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.
- (d) Audit.** During the term of this Agreement: (a) If Ordering Activity's security requirements included in the Order are met, Manufacturer or its designated agent may audit Ordering Activity's facilities and records to verify Ordering Activity's compliance with this Agreement. Any such audit will take place only during Ordering Activity's normal business hours contingent upon prior written notice and adherence to any security measures the Ordering Activity deems appropriate, including any requirements for personnel to be cleared prior to accessing sensitive facilities. Carahsoft on behalf of the Manufacturer will give Ordering Activity written notice of any non-compliance, including the number of underreported Units of Software or Services ("Notice"); or (b) If Ordering Activity's security requirements are not met and upon

Manufacturer's request, Ordering Activity will run a self-assessment with tools provided by and at the direction of Manufacturer ("Self-Assessment") to verify Ordering Activity's compliance with this Agreement.

- (e) Termination.** Clauses in the Manufacturer EULA referencing termination or cancellation the Manufacturer's EULA are hereby deemed to be deleted. Termination shall be governed by the FAR 52.212-4 and the Contract Disputes Act, 41 U.S.C. §§ 601-613, subject to the following exceptions:

Carahsoft may request cancellation or termination of the License Agreement on behalf of the Manufacturer if such remedy is granted to it after conclusion of the Contracts Disputes Act dispute resolutions process referenced in Section Q below or if such remedy is otherwise ordered by a United States Federal Court.

- (f) Consent to Government Law / Consent to Jurisdiction.** Subject to the Contracts Disputes Act of 1978 (41. U.S.C §§ 7101-7109) and Federal Tort Claims Act (28 U.S.C. §1346(b)). The validity, interpretation and enforcement of this Rider will be governed by and construed in accordance with the laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by law, it will not apply to this Agreement, and the governing law will remain as if such law or regulation had not been enacted. All clauses in the Manufacturer EULA referencing equitable remedies are deemed not applicable to the Government order and are therefore deemed to be deleted.

- (g) Force Majeure.** Subject to FAR 52.212 -4 (f) Excusable delays. (JUN 2010). Unilateral Termination by the Contractor does not apply to a Government order and all clauses in the Manufacturer EULA referencing unilateral termination rights of the Manufacturer are hereby deemed to be deleted.

- (h) Assignment.** All clauses regarding Assignment are subject to FAR Clause 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements, and all clauses governing Assignment in the Manufacturer EULA are hereby deemed to be deleted.

- (i) Waiver of Jury Trial.** All clauses referencing waiver of Jury Trial are subject to FAR Clause 52.233-1, Disputes (JUL. 2002), and all clauses governing waiver of jury trial in the Manufacturer EULA are hereby deemed to be deleted.

- (j) Customer Indemnities.** All Manufacturer EULA clauses referencing Customer Indemnities are hereby deemed to be deleted.

- (k) Contractor Indemnities. All Manufacturer EULA clauses that (1) violate DOJ's right (28 U.S.C. 516) to represent the**

Government in any case and/or (2) require that the Government give sole control over the litigation and/or settlement, are hereby deemed to be deleted.

(l) Renewals. All Manufacturer EULA clauses that violate the Anti-Deficiency Act (31 U.S.C. 1341, 41 U.S.C. 11) ban on automatic renewal are hereby deemed to be deleted.

(m) Future Fees or Penalties. All Manufacturer EULA clauses that violate the Anti-Deficiency Act (31 U.S.C. 1341, 41 U.S.C. 11), which prohibits the Government from paying any fees or penalties beyond the Contract amount, unless specifically authorized by existing statutes, such as the Prompt Payment Act, or

Equal Access To Justice Act 31 U.S.C. 3901, 5 U.S.C. 504 are hereby deemed to be deleted.

- (n) Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all federal, state, local taxes and duties.
- (o) Third Party Terms.** Subject to the actual language agreed to in the Order by the Contracting Officer. Any third party manufacturer will be brought into the negotiation, or the components acquired separately under Federally-compatible agreements, if any. Contractor indemnities do not constitute effective migration.
- (p) Installation and Use of the Software.** Installation and use of the software shall be in accordance with the Rider and Manufacturer EULA, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid task order placed pursuant to the Government contract.
- (q) Dispute Resolution and Venue.** Any disputes relating to the Manufacturer EULA and to this Rider shall be resolved in accordance with the FAR, and the Contract Disputes Act, 41 U.S.C. §§ 7101-7109. The Ordering Activity expressly acknowledges that Carahsoft, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.
- (r) Limitation of Liability: Subject to the following:**
- Carahsoft, Manufacturer and Ordering Activity shall not be liable for any indirect, incidental, special, or consequential damages, or any loss of profits, revenue, data, or data use. Further, Carahsoft, Manufacturer and Ordering Activity shall not 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 Government Contract under any federal fraud statute, including the False Claims Act, 31 U.S.C. §§ 3729-3733.
- (s) Advertisements and Endorsements.** Unless specifically authorized by an Ordering Activity in writing, such use of the name or logo of any U.S. Government entity is prohibited.
- (t) Public Access to Information.** Manufacturer agrees that the EULA and this Rider contain no confidential or proprietary information and acknowledges the EULA and this Rider will be available to the public.
- (u) Confidentiality.** Any provisions that require the Licensee 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.



LinkedIn Corporate Subscription Agreement

This LinkedIn Corporate Subscription Agreement (“Agreement”) governs any order form (“Order Form” or “GSA Customer Purchase Order”) signed by the customer identified in that Order Form (“Customer”) and the LinkedIn company identified in that Order Form (“LinkedIn”). Each Order Form, together with the User Agreement (as defined in Section 2.2) this Agreement, the underlying GSA Schedule Contract, Schedule Price List, form the entire agreement that applies to LinkedIn’s services. If any conflict exists between any of these documents, the Negotiated Purchase Order will govern, followed by the Agreement, standard terms of the Order Form/GSA Purchase Order, and finally the User Agreement.

1. Services, Payment & Taxes. Customer and its Affiliates may order LinkedIn’s services by signing an Order Form. An “Affiliate” means an entity that controls, is controlled by, or under common control with, a party. LinkedIn improves its services from time to time, and Customer may use these improvements for no additional fee. Customer will pay the fees for the services included in, and in accordance with, the Order Form/GSA Customer Purchase Order and/or the GSA Schedule Contract, as applicable. Except as set forth in Section 5 below, Customer’s payment for services is non--- refundable and the parties may not cancel any signed Order Form. Customer will maintain complete and accurate billing and contact information with LinkedIn. Customer’s payments are subject to applicable governmental regulations and rulings, including withholding of taxes. Upon LinkedIn’s request, Customer will provide LinkedIn with copies of documents related to any withholding. LinkedIn’s fees exclude, and Customer will be responsible for, taxes and similar charges, as applicable, including sales, usage, excise, and ad---valorem taxes. Nothing in this section requires either party to pay income taxes or similar charges of the other party.

2. Customer’s Responsibilities.

2.1 Use of Services. Except for LinkedIn’s Sales Navigator service, Customer will use the services and information about LinkedIn members only to recruit individuals to become employees and consultants of Customer or its Affiliates, or, if Customer is an approved agency, only to recruit individuals to become employees and consultants of its clients. Customer may use LinkedIn’s Sales Navigator service only to generate sales leads. Customer will not directly or indirectly provide the services to any third party, except to its Affiliates. Customer is responsible for its Affiliates, including their compliance with this Agreement. Customer will not spam or otherwise harass LinkedIn members. Customer will comply with all laws, orders, codes and regulations, including all privacy laws, in its use of the services, and shall not use the services in a manner that damages a third party or, in particular, results in the infringement of a third party’s intellectual property right by content, data or other information posted or uploaded into LinkedIn’s system by Customer.

2.2 Customer User. A “Customer User” is an employee or contractor that Customer authorizes to access the services. A Customer User must be a LinkedIn member. Customer will designate in writing one Customer User for each seat it purchases, and will promptly provide to and maintain with LinkedIn accurate contact information for each Customer User. Customer will not, and will not permit a Customer User to, share a Customer User’s access with any other individual. Customer will ensure that Customer Users comply with the then current version of the user agreement, the current version is attached hereto.

2.3 LinkedIn Member Data. Customer and Customer Users may store content, data, and other information about LinkedIn members only within the system operated by LinkedIn, unless Customer has the consent of the LinkedIn member (e.g. an application by a LinkedIn member to a Customer job posting). Customer acknowledges that the storage of this content, data and other information outside of LinkedIn's system without the LinkedIn member's consent may result in outdated or erroneous information about a LinkedIn member and may violate data protection or privacy laws in certain jurisdictions. If Customer provides LinkedIn with any data about any individual in connection with its use of LinkedIn's Talent Pipeline service or other certain services ("**Customer Uploaded Data**"), LinkedIn, in providing these services, holds and stores Customer Uploaded Data on behalf of the Customer, and the parties agree that the Customer is the controller of Customer Uploaded Data. LinkedIn confirms that it: (a) will process Customer Uploaded Data in compliance with the instructions received from the Customer; (b) will not use or process any Customer Uploaded Data for any purpose except the performance of its obligations under this Agreement; (c) has in place appropriate technical and organizational security measures in storing and processing such Customer Uploaded Data to manage the risk of unauthorized or accidental access, loss, alteration, disclosure or destruction of such data; and (d) will take reasonable steps to ensure that persons employed or engaged by it with access to Customer Uploaded Data are aware of and comply with this Agreement. The Customer represents and warrants that any personal data in

the Customer Updated Data will be processed in accordance with applicable privacy and data protection laws and rules and that it has all appropriate consents and authorizations enabling it to avail of LinkedIn's services. The Customer agrees that it controls the Customer Uploaded Data and that it is primarily responsible to the data subjects whose personal data is comprised in the Customer Uploaded Data.

- 3. Confidential Information.** "Confidential Information" means information provided by a party to the other party that is designated as confidential or reasonably should be considered confidential, excluding information that becomes public through no fault of the receiving party. Each party will use reasonable efforts to prevent the disclosure of the other party's Confidential Information that are at least as strong as those it uses to protect its own confidential information, and will include disclosing confidential information only as required by law or under an obligation of confidentiality and only on a need-to-know basis. LinkedIn recognizes that (1) courts of competent jurisdiction may require certain information to be released and that (2) Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. § 552, which requires that information that does not fall under certain exceptions must be released when requested and, therefore, some information may be released despite being characterized as "confidential" by the vendor.
- 4. Intellectual Property Rights and Ownership.** The parties acknowledge that this Agreement does not transfer any right, title or interest in any intellectual property right to the other, except for Customer's ability to access and use information regarding LinkedIn members as expressly set forth in this Agreement. Customer and Customer Users are not obligated to provide LinkedIn or its Affiliates with any suggestions, enhancement requests, recommendations or other feedback about the services or otherwise. If, however, Customer or a Customer User provides this type of feedback to LinkedIn, LinkedIn may use and modify this feedback without any restriction or payment.
- 5. Term and Termination.** This Agreement is effective on the date the first Order Form is fully signed by Customer and LinkedIn and remains in effect until terminated. Recourse against the United States for any alleged breach of this Agreement must be made under the terms of the Federal Tort Claims Act or as a dispute under the contract disputes clause (Contract Disputes Act) as applicable. LinkedIn shall proceed diligently with performance of this contract, and comply with any decision of the Contracting Officer. The Customer may terminate this Agreement or an applicable Order Form if LinkedIn materially breaches this Agreement and fails to cure the breach within 30 days after receiving notice of the breach. Upon termination of this Agreement or an Order Form, Customer will notify Customer Users that their access to the services has terminated, and LinkedIn may withhold, remove or discard any content, data, or other information that Customer Users post or upload into LinkedIn's system while using the services. LinkedIn will delete Customer Uploaded Data. LinkedIn is not obligated to store, maintain or provide a copy of any content, data or other information that Customer or Customer Users made available or provided when using the services. Sections 2 through 10 survive termination of this Agreement.
- 6. NO EXPRESS OR IMPLIED WARRANTY.** THE SERVICES ARE PROVIDED "AS IS". LINKEDIN MAKES NO REPRESENTATION OR WARRANTY REGARDING THE SERVICES, INCLUDING ANY REPRESENTATION THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE. TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, LINKEDIN DISCLAIMS ANY IMPLIED OR STATUTORY WARRANTY, INCLUDING ANY IMPLIED WARRANTY OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
- 7. Third-Party Indemnity.**

 - 7.1 Indemnification.** LinkedIn will defend and indemnify Customer, its Affiliates, and their respective directors, officers and employees from and against all third party claims to the extent resulting from or alleged to have resulted from (a) the services' infringement of a third party's intellectual property right or (b) LinkedIn's breach of this Agreement. LinkedIn will be given an opportunity to intervene in any suit or claim filed against the GSA Customer, at its own expense, through counsel of its choosing. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute, 28 U.S.C. 516.
- 8. Limitation of Liability.** Except with respect to a party's confidentiality or indemnification obligations, and excluding a party's violation of the other's intellectual property rights, to the fullest extent permitted by law, neither party,

will be liable to the other in connection with this Agreement for (a) lost profits or lost business opportunities, or any incidental, consequential, special or punitive damages, or (b) an amount that exceeds the total fees payable to LinkedIn during the 12-month period before the event giving rise to the liability. LinkedIn will not be liable for Customer's lost data or any unauthorized third party access to Customer's or Customer Users' content, data, programs, information, network, or systems. Nothing in this Agreement limits either party's liability for gross negligence to the extent permitted by law or intentional misconduct, fraud, for death or personal injury, or for any

other matter for which liability cannot be excluded by law.

- 9. Dispute Resolution.** The parties will attempt to resolve any dispute related to this Agreement through good faith, informal negotiation. This Agreement is governed by United States Federal law. Venue and jurisdiction are mandated by applicable Federal law.
- 10. Miscellaneous.** Except as expressly stated in this Agreement, the parties will provide notices under this Agreement in writing and will deliver them by personal delivery or commercial overnight courier to the address of the other party set forth on the Order Form. Notices are effective on the date of delivery as indicated in the records of the courier. This Agreement does not create a partnership, agency relationship, or joint venture between the parties. Any assignment of this Agreement by Customer in whole or in part without LinkedIn's prior written consent will be null and void, except an assignment to a successor that is not a competitor of LinkedIn's made in connection with a merger or sale of all or substantially all of Customer's assets or stock or to an Affiliate. Customer is responsible for any agents and contractors it uses in connection with the services, including compliance with this Agreement, and will notify LinkedIn in writing of agencies that it uses in connection with the services. If this Agreement is translated into a language other than English, the translation is for convenience only, and the English language version will govern. LinkedIn may monitor Customer's use of the services to ensure compliance with this Agreement, and may conduct a reasonable audit of Customer, including Affiliates, if LinkedIn reasonably believes that Customer is in breach of this Agreement. If any provision of this Agreement is unenforceable, that provision will be modified to render it enforceable to the extent possible to affect the parties' intention and the remaining provisions will not be affected. The parties may amend this Agreement only in a written amendment signed by both parties. If Customer is an agency signing this Agreement on behalf of a client, Customer represents and warrants that it is authorized to sign this Agreement and any Order Form on behalf of its client, and will notify LinkedIn in writing of the name and address of its client that will use the services. The parties may sign this Agreement electronically and in counterparts, each of which is deemed to be an original and all of which taken together comprise a single document.

CUSTOMER	LINKEDIN
Signature:	Signature:
Name:	Name:
Title:	Title:
Date Signed:	Date Signed:

User Agreement

Welcome, and thanks for using LinkedIn.com, SlideShare.net, Pulse and/or other LinkedIn services and apps! The Customer shall ensure that its users read and comply with the following:

1. Introduction

We are a social network and online platform for professionals.

1.1. Purpose

Our mission is to connect the world's professionals to allow them to be more productive and successful. Our services are designed to promote economic opportunity for our members by enabling you and millions of other professionals to meet, exchange ideas, learn, and find opportunities or employees, work, and make decisions in a network of trusted relationships.

1.2. Agreement

When you use our Services, you are entering into a legal agreement and you agree to all of these terms. You also agree to our Privacy Policy (attached hereto), which covers how we collect, use, share, and store your personal information.

For Government Customers, your agreement is with LinkedIn Corporation (each, "LinkedIn" or "we").

This "Agreement" includes this User Agreement and the Privacy Policy (attached hereto). If you do not agree to this Agreement, do NOT click "Join Now" (or similar) and do not access or otherwise use any of our Services. Registered users of our Services are "Members" and unregistered users are "Visitors". This Agreement applies to both.

2. Obligations

2.1. Service Eligibility

To use the Services, you agree that: (1) you must be the "Minimum Age" (defined below) or older; (2) you will only have one LinkedIn account (and/or one SlideShare or Pulse account, if applicable), which must be in your real name; and (3) you are not already restricted by LinkedIn from using the Services.

“Minimum Age” means (a) 18 years old for the People's Republic of China, (b) 16 years old for the Netherlands, (c) 14 years old for the United States, Canada, Germany, Spain, Australia and South Korea, and (d) 13 years old for all other countries. However, if law requires that you must be older in order for LinkedIn to lawfully provide the Services to you (including the collection, storage and use of your information) then the Minimum Age is such older age. The Services are not for use by anyone under the age of 13.

2.2. Your Membership

You'll keep your password a secret.

You will not share an account with anyone else and will follow our rules and the law.

As between you and others, your account belongs to you. You agree to: (1) try to choose a strong and secure password; (2) keep your password secure and confidential; (3) not transfer any part of your account (e.g., connections, groups) and (4) follow the law and the Dos and Don'ts below. You are responsible for anything that happens through your account unless you close it or report misuse.

Note that for Premium Services purchased by another party for you to use (e.g. Recruiter seat bought by your employer), the party paying for the Premium Service controls such an account (which is different from your personal account) and may terminate your access to it.

2.3 Payment

You'll honor your payment obligations. Also, there may be fees and taxes that are added to our price, as applicable. Notwithstanding the terms of the Federal, State, and Local Taxes Clause, the contract price excludes all State and Local taxes levied on or measured by the contract or sales price of the services or completed supplies furnished under this contract. LinkedIn shall state separately on its invoices taxes excluded from the fees, and the Customer agrees either to pay the amount of taxes (based on the current value of the equipment) to the contractor or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

We don't guarantee refunds. Recourse against the United States for any alleged breach of this agreement must be made under the terms of the Federal Tort Claims Act or as a dispute under the contract disputes clause (Contract Disputes Act) as applicable. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer.

2.4. Notices and Service Messages

You're okay with us using our websites, mobile apps, and email to provide you with important notices. This Agreement applies to mobile applications as well. Also, you agree certain additional information can be shared with us.

You agree that we may provide notices to you through an authorized representative of the Government customer. .

Please review your [LinkedIn.com](#) and [Slideshare.net](#) settings to control and limit what kind of messages you receive from us.

2.5. Messages and Sharing

When you share information, others can see, copy and use that information.

Our Services allow messaging and sharing of information in many ways, such as your profile, slide deck, links to news articles, job postings, InMails and blogs. Information and content that you share or post may be seen by other Members or, if public, by Visitors. Where we have made settings available, we will honor the choices you make about who can see content or information (e.g., sharing to a group instead of your network, changing the default setting for SlideShare content from public to a more restricted view, limiting your profile visibility, or not letting people know when you change your profile, make recommendations or follow companies). Note that other activities, such as applying for a job or sending an InMail, are by default private, only visible to the addressee(s).

We are not obligated to publish any information or content on our Service and can remove it in our sole discretion, with or without notice.

3. Rights and Limits

3.1. Your License to LinkedIn

You own all of the content, feedback, and personal information you provide to us, but you also grant us a non-exclusive license to it. We'll honor the choices you make about who gets to see your information and content.

You promise to only provide information and content that you have the right to share, and that your LinkedIn profile will be truthful. As between you and LinkedIn, you own the content and information that you submit or post to the Services and you are only granting

LinkedIn the following non-exclusive license: A worldwide, transferable and sublicensable right to use, copy, modify, distribute, publish, and process, information and content that you provide through our Services, without any further consent, notice and/or compensation to you or others. These rights are limited in the following ways:

1. You can end this license for specific content by deleting such content from the Services, or generally by closing your account, except (a) to the extent you shared it with others as part of the Service and they copied or stored it and (b) for the reasonable time it takes to remove from backup and other systems.

2. We will not include your content in advertisements for the products and services of others (including sponsored content) to others without your separate consent. However, we have the right, without compensation to you or others, to serve ads near your content and information, and your comments on sponsored content may be visible as noted in the Privacy Policy.
3. We will get your consent if we want to give others the right to publish your posts beyond the Service. However, other Members and/or Visitors may access and share your content and information, consistent with your settings and degree of connection with them.
4. While we may edit and make formatting changes to your content (such as translating it, modifying the size, layout or file type or removing metadata), we will not modify the meaning of your expression.
5. Because you own your content and information and we only have non-exclusive rights to it, you may choose to make it available to others, including under the terms of a [Creative Commons](#) license.

You agree that we may access, store and use any information that you provide in accordance with the terms of the [Privacy Policy](#) (attached hereto) and your privacy settings.

By submitting suggestions or other feedback regarding our Services to LinkedIn, you agree that LinkedIn can use and share (but does not have to) such feedback for any purpose without compensation to you.

You agree to only provide content or information if that does not violate the law nor anyone's rights (e.g., without violating any intellectual property rights or breaching a contract). You also agree that your profile information will be truthful. LinkedIn may be required by law to remove certain information or content in certain countries.

3.2. Service Availability

We may change or discontinue any of our Services. We can't promise to store or keep showing any information and content you've posted. We may change, suspend or end any Service. To the extent allowed under law, these changes may be effective upon notice provided to you.

LinkedIn is not a storage service. You agree that we have no obligation to store, maintain or provide you a copy of any content or information that you or others provide, except to the extent required by applicable law and as noted in Section 3.1 of our Privacy Policy

3.3. Other Content, Sites and apps

When you see or use others' content and information posted on our Services, it's at your own risk.

Third parties may offer their own products and services through LinkedIn, and we aren't responsible for those third-party activities. By using the Services, you may encounter content or information that might be inaccurate, incomplete, delayed, misleading, illegal, offensive or otherwise harmful. LinkedIn generally does not review content provided by our Members. You agree that we are not

responsible for third parties' (including other Members') content or information or for any damages as result of your use of or reliance on it.

You are responsible for deciding if you want to access or use third party apps or sites that link from our Services. If you allow a third party app or site to authenticate you or connect with your LinkedIn account, that app or site can access information on LinkedIn related to you and your connections. Third party apps and sites have their own legal terms and privacy policies, and you may be giving others permission to use your information in ways we would not. Except to the limited extent it may be required by applicable law, LinkedIn is not responsible for these other sites and apps -- use these at your own risk. Please see Sections 2.6 and 2.7 of the [Privacy Policy](#) (attached hereto).

3.4. Limits

We have the right to limit how you connect and interact on our Services.

We're providing you notice about our intellectual property rights.

LinkedIn reserves the right to limit your use of the Services, including the number of your connections and your ability to contact other Members.

LinkedIn reserves all of its intellectual property rights in the Services. For example, LinkedIn, SlideShare, LinkedIn (stylized), the SlideShare and "in" logos and other LinkedIn trademarks, service marks, graphics, and logos used in connection with LinkedIn are trademarks or registered trademarks of LinkedIn. Other trademarks and logos used in connection with the Services may be the trademarks of their respective owners.

4. Disclaimer and Limit of Liability

4.1. No Warranty

This is our disclaimer of legal liability for the quality, safety, or reliability of our Services.

TO THE EXTENT ALLOWED UNDER LAW, LINKEDIN (AND THOSE THAT LINKEDIN WORKS WITH TO PROVIDE THE SERVICES) (A) DISCLAIM ALL IMPLIED WARRANTIES AND REPRESENTATIONS (E.G. WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY OF DATA, AND NONINFRINGEMENT); (B) DO NOT GUARANTEE THAT THE SERVICES WILL FUNCTION WITHOUT INTERRUPTION OR ERRORS, AND (C) PROVIDE THE SERVICE (INCLUDING CONTENT AND INFORMATION) ON AN “AS IS” AND “AS AVAILABLE” BASIS.

SOME LAWS DO NOT ALLOW CERTAIN DISCLAIMERS, SO SOME OR ALL OF THESE DISCLAIMERS MAY NOT APPLY TO YOU.

4.2. Exclusion of Liability

These are the limits of legal liability we may have to you.

TO THE EXTENT PERMITTED UNDER LAW (AND UNLESS LINKEDIN HAS ENTERED INTO A SEPARATE WRITTEN AGREEMENT THAT SUPERSEDES THIS AGREEMENT), LINKEDIN (AND THOSE THAT LINKEDIN WORKS WITH TO PROVIDE THE SERVICES) SHALL NOT BE LIABLE TO YOU OR OTHERS FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, OR ANY LOSS OF DATA, OPPORTUNITIES, REPUTATION, PROFITS OR REVENUES, RELATED TO THE SERVICES (E.G. OFFENSIVE OR DEFAMATORY STATEMENTS, DOWN TIME OR LOSS, USE OR CHANGES TO YOUR INFORMATION OR CONTENT).

IN NO EVENT SHALL THE LIABILITY OF LINKEDIN (AND THOSE THAT LINKEDIN WORKS WITH TO PROVIDE THE SERVICES)

EXCEED, IN THE AGGREGATE FOR ALL CLAIMS, AN AMOUNT THAT IS THE LESSER OF (A) FIVE TIMES THE MOST RECENT MONTHLY OR YEARLY FEE THAT YOU PAID FOR A PREMIUM SERVICE, IF ANY, OR (B) US \$1000.

THIS LIMITATION OF LIABILITY IS PART OF THE BASIS OF THE BARGAIN BETWEEN YOU AND LINKEDIN AND SHALL APPLY TO ALL CLAIMS OF LIABILITY (E.G. WARRANTY, TORT, NEGLIGENCE, CONTRACT, LAW) AND EVEN IF LINKEDIN HAS BEEN TOLD OF THE POSSIBILITY OF ANY SUCH DAMAGE, AND EVEN IF THESE REMEDIES FAIL THEIR ESSENTIAL PURPOSE.

SOME LAWS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY, SO THESE LIMITS MAY NOT APPLY TO YOU.

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

5. Termination

The GSA Customer can each end this Agreement anytime it wants.

The GSA Customer may terminate this Agreement at any time with notice to LinkedIn. On termination, you lose the right to access or use the Services. The following shall survive termination:

- Our rights to use and disclose your feedback;
- Members' and/or Visitors' rights to further re-share content and information you shared through the Service to the extent copied or re-shared prior to termination;
- Sections 4, 6 and 7 of this Agreement;
- Any amounts owed by either party prior to termination remain owed after termination.

You can visit our Help Center to learn how to [close your LinkedIn account](#), [close your Pulse account](#), or [close your Slideshare account](#).

6. Dispute Resolution

In the unlikely event we end up in a legal dispute, it will be governed by United States Federal law. Venue and statute of limitations are mandated by applicable Federal law.

7. General Terms

Here are some important details about how to read the Agreement.

To the extent allowed by law, the English version of this Agreement is binding and other translations are for convenience only. This Agreement (including additional terms that may be provided by us when you engage with a feature of the Services), together

with the GSA Schedule Contract, Schedule Price List, and GSA Customer Purchase Order, is the only agreement between us regarding the Services and supersedes all prior agreements for the Services.

If we don't act to enforce a breach of this Agreement, that does not mean that LinkedIn has waived its right to enforce this Agreement. You may not assign or transfer this Agreement (or your membership or use of Services) to anyone without our consent. Assignment by LinkedIn is subject to FAR 52.232-23 "Assignment of Claims" (May 2014) and FAR subpart 42.12 "Novation and Change-of-Name Agreements." There are no third party beneficiaries to this Agreement.

8. LinkedIn "DOs" and "DON'Ts."

8.1. Dos. You agree that you will:

- Comply with all applicable laws, including, without limitation, privacy laws, intellectual property laws, anti-spam laws, export control laws, tax laws, and regulatory requirements;
- Provide accurate information to us and keep it updated;

- Use your real name on your profile;
- Use the Services in a professional manner.

8.2. Don'ts. You agree that you will not:

- Act dishonestly or unprofessionally, including by posting inappropriate, inaccurate, or objectionable content;
- Add content that is not intended for, or inaccurate for, a designated field (e.g. submitting a telephone number in the "title" or any other field, or including telephone numbers, email addresses, street addresses or any personally identifiable information for which there is not a field provided by LinkedIn);
- Use an image that is not your likeness or a head-shot photo for your profile;
- Create a false identity on LinkedIn;
- Misrepresent your current or previous positions and qualifications;
- Misrepresent your affiliations with a person or entity, past or present;
- Misrepresent your identity, including but not limited to the use of a pseudonym;
- Create a Member profile for anyone other than yourself (a real person);
- Invite people you do not know to join your network;
- Use or attempt to use another's account;
- Harass, abuse or harm another person;
- Send spam or other unwelcomed communications to others;
- Scrape or copy profiles and information of others through any means (including crawlers, browser plugins and add-ons, and any other technology or manual work);
- Act in an unlawful, libelous, abusive, obscene, discriminatory or otherwise objectionable manner;
- Disclose information that you do not have the right to disclose (such as confidential information of others (including your employer));
- Violate intellectual property rights of others, including patents, trademarks, trade secrets, copyrights or other proprietary rights;
- Violate the intellectual property or other rights of LinkedIn, including, without limitation, using the word "LinkedIn" or our logos in any business name, email, or URL except as provided in the [Brand Guidelines](#);
- Use LinkedIn invitations to send messages to people who don't know you or who are unlikely to recognize you as a known contact;
- Post any unsolicited or unauthorized advertising, "junk mail," "spam," "chain letters," "pyramid schemes," or any other form of solicitation unauthorized by LinkedIn;
- Send messages to distribution lists, newsgroup aliases, or group aliases;
- Post anything that contains software viruses, worms, or any other harmful code;
- Manipulate identifiers in order to disguise the origin of any message or post transmitted through the Services;
- Create profiles or provide content that promotes escort services or prostitution.
- Creating or operate a pyramid scheme, fraud or other similar practice;
- Copy or use the information, content or data of others available on the Services (except as expressly authorized);
- Copy or use the information, content or data on LinkedIn in connection with a competitive service (as determined by LinkedIn);
- Copy, modify or create derivative works of LinkedIn, the Services or any related technology (except as expressly authorized by LinkedIn);

- Reverse engineer, decompile, disassemble, decipher or otherwise attempt to derive the source code for the Services or any related technology, or any part thereof;
- Imply or state that you are affiliated with or endorsed by LinkedIn without our express consent (e.g., representing yourself as an accredited LinkedIn trainer);
- Rent, lease, loan, trade, sell/re-sell access to the Services or related any information or data;
- Sell, sponsor, or otherwise monetize a LinkedIn Group or any other feature of the Services, without LinkedIn's consent;
- Deep-link to our Services for any purpose other than to promote your profile or a Group on LinkedIn (as set forth in the [Brand Guidelines](#)), without LinkedIn's consent;
- Remove any copyright, trademark or other proprietary rights notices contained in or on our Service;
- Remove, cover or obscure any advertisement included on the Services;
- Collect, use, copy, or transfer any information obtained from LinkedIn without the consent of LinkedIn;
- Share or disclose information of others without their express consent;
- Use manual or automated software, devices, scripts robots, other means or processes to access, "scrape," "crawl" or "spider" the Services or any related data or information;
- Use bots or other automated methods to access the Services, add or download contacts, send or redirect messages;
- Monitor the Services' availability, performance or functionality for any competitive purpose;
- Engage in "framing," "mirroring," or otherwise simulating the appearance or function of the Services;
- Access the Services except through the interfaces expressly provided by LinkedIn, such as its mobile applications, linkedin.com and slideshare.net;
- Override any security feature of the Services;
- Interfere with the operation of, or place an unreasonable load on, the Services (e.g., spam, denial of service attack, viruses, gaming algorithms); and/or

9. Complaints Regarding Content

We respect the intellectual property rights of others. We require that information posted by Members be accurate and not in violation of the intellectual property rights or other rights of third parties. We provide a [policy and process](#) for complaints concerning content posted by our Members.

10. How To Contact Us

If you want to send us notices or service of process, please
contact us: ONLINE at:<https://help.linkedin.com/app/home>

OR BY MAIL at:

For Members in the United States:

LinkedIn Corporation
Attn: Agreement Matters (Legal)
2029 Stierlin Court
Mountain View CA 94043
USA

For Members outside the United States:

*LinkedIn Ireland
Attn: Agreement Matters (Legal)
Wilton Plaza,
Wilton Place, Dublin 2
Ireland*

LinkedIn Privacy Policy

We are a social network and online platform for professionals.

LinkedIn's mission is to connect the world's professionals to allow them to be more productive and successful. Our registered users ("Members") share their professional identities, engage with their network, exchange knowledge and professional insights, post and view relevant content, and find business and career opportunities. Content on some of our services is also visible to unregistered viewers ("Visitors"). We believe that our services allow our Members to effectively compete and achieve their full career potential. The cornerstone of our business is to focus on our Members first.

We protect your personal information using industry-standard safeguards. We may share your information with your consent or as required by law.

Maintaining your trust is our top priority, so we adhere to the following principles to protect your privacy:

- We protect your personal information and will only provide it to third parties: (1) with your consent; (2) where it is necessary to carry out your instructions; (3) as reasonably necessary in order to provide our features and functionality to you; (4) when we reasonably believe it is required by law, subpoena or other legal process; or (5) as necessary to enforce our User Agreement or protect the rights, property, or safety of LinkedIn, our Members and Visitors, and the public.
- We have implemented appropriate security safeguards designed to protect your information in accordance with industry standards.

This Privacy Policy applies to LinkedIn.com and the LinkedIn mobile application, SlideShare.net and SlideShare mobile app ("SlideShare"), Pulse.me and Pulse mobile app ("Pulse"), LinkedIn platform technology (such as "Share on LinkedIn" plugins for publishers), the advertising platform created by Bizo Inc. (and its successor products) and all other LinkedIn websites, apps, developer platforms and other products and services (collectively the "Services").

1. What information we collect

1.1. Data Controllers

Our Privacy Policy applies to any Member or Visitor. We collect information when you use our Services to offer you a personalized and relevant experience, including growing your network and enabling business opportunities.

If you reside in the United States, then the personal information provided to or collected by our Services is controlled by LinkedIn Corporation, 2029 Stierlin Court, Mountain View, California 94043. If you reside outside the United States, then this personal information is controlled by LinkedIn Ireland, Wilton Plaza, Wilton Place, Dublin 2, Ireland. If you have any concern about providing information to us or having such information displayed on our Services or otherwise used in any manner permitted in this Privacy Policy and the User Agreement, you should not become a Member, visit our websites, apps or otherwise use our Services. If you have already registered, you can close your accounts (e.g., LinkedIn, SlideShare and Pulse).

We collect your personal information in the following ways:

1.2. Registration

When you create an account with us, we collect information (including your name, email address, and password).

To create an account on LinkedIn, you must provide us with at least your name, email address and/or mobile number, and a password and agree to our User Agreement and this Privacy Policy, which governs how we treat your information. You may provide additional information during the registration flow (for example, your postal code, job title, and company) to help you build your profile and to provide you more customized services (for example: language-specific profile pages, updates, content, more relevant ads and career opportunities). You understand that, by creating an account, we and others will be able to identify you by your LinkedIn profile. We may also ask for your credit card details if you purchase certain additional services.

We also provide the option to register for a SlideShare account, for which you must provide at least your name, email address and/or mobile number, and a password. We no longer provide the option to register for a separate Pulse account, but you may continue to use your existing Pulse account if you already have one.

1.3. Profile Information

We collect information when you fill out a profile. A complete LinkedIn profile that includes professional details – like your job title,

education, and skills – helps you get found by other people for opportunities.

After you create an account (other than the distinct SlideShare and Pulse accounts), you may choose to provide additional information on your LinkedIn profile, such as descriptions of your skills, professional experience, and educational background. You can list honors, awards, professional affiliations, Group memberships, networking objectives, companies or individuals that you follow, and other information including content. Subject to the settings you choose, your connections may provide recommendations and endorsements of you. Providing additional information enables you to derive more benefit from our Services by helping you express your professional identity; find other professionals, opportunities, and information; and help recruiters and business opportunities find you. It also enables us to serve you ads and other relevant content on and off of our Services.

On SlideShare, you can choose what personal information you provide in addition to the information required for registration as noted above. Most of your SlideShare profile, as well as all content that you post on SlideShare, is publicly displayed (with the exceptions provided in the SlideShare account settings), so please do not provide personal information you would not want to be public. We may use and share information you provide in a SlideShare profile and/or Pulse account in the same manner as the information provided in a LinkedIn.com profile, in accordance with this Privacy Policy and our User Agreement.

1.4. Address Book and Other Services That Sync with LinkedIn

We collect information when you sync non-LinkedIn content – like your email address book, mobile device contacts, or calendar – with your account. You can remove your address book and any other synced information whenever you like.

You may use our address book or “contacts” importer (or other similar features) to upload your address book into our Services. We store this information (including phone numbers) and use it to help you manage and leverage your contacts in connection with our Services. We also use this information to enhance your experience with our Services by helping you to grow your network by: identifying your contacts that are already Members of our Services; providing a template to send invitations on your behalf to your contacts that are not Members; and suggesting people you may know (even if not in your contacts) but are not yet connected with you on our Services (as we may infer from your shared connections or shared managers, employers, educational institutions and other such factors). We may also use this information to show you and other Members that you share the same uploaded contacts who may or may not be Members.

Please note that when you send an invitation to connect to another individual on our Service (a “connection”) or to join our Service to connect with you, that person may have access to your email address or, for SMS invitations, mobile number because it may be displayed in the invitation. After sending these invitations, we may also remind your invitees of your invitation on your behalf. Your LinkedIn connections will also have access to your email address.

We make other tools available to sync information with our Services, and may also develop additional features that allow Members to use their account in conjunction with other third-party services. For example, our mobile applications allow you to sync your device’s calendar, email and/or contacts apps with our Services to show you the LinkedIn profiles of meeting attendees, email correspondents and/or your contacts.

Another example are software tools that allow you to see our and other public information about the people you email or meet with and leverage our Services to help you gain insights from and grow your network. If you grant these products (mobile applications or our other Services that sync external email and calendar services, such as “LinkedIn Connected”) permission to access your email and calendar accounts, they will access and may store some of your email header and calendar history

information. Our products that sync with external email services may also temporarily cache message content for performance reasons, in a way that is unreadable by us and our service providers.

Any information that you upload or sync with our Services is covered by the User Agreement and this Privacy Policy. You can remove your information at your convenience using the features we make available or in accordance with Section 3. You can remove your address book and any other synced information at any time.

1.5. Customer Service

We collect information when you contact us for customer support.

When you contact our customer support services (e.g. on our Help Center and SlideShare's Help Center), we may have to access your InMails, Groups and other contributions to our Services and collect the information we need to categorize your question, respond to it, and, if applicable, investigate any breach of our User Agreement or this Privacy Policy. We also use this information to track potential problems and trends and customize our support responses to better serve you. We do not use this information for advertising.

1.6. Using the LinkedIn Sites and Applications

We collect information when you visit our Services (including, LinkedIn, SlideShare and Pulse), use our mobile applications, and interact with advertising on and off our Services.

We collect information when you use (whether as a Member or a Visitor) our websites, applications, our platform technology (such as “Share on LinkedIn” plugins for publishers) or other Services. For example, we collect information when you view or click on ads on and off our Services, perform a search, import your address book, join and participate in groups, participate in polls, install one of our mobile applications, view content on Pulse or SlideShare, share articles on our Services and apply to jobs through our Services. If you are logged in on LinkedIn.com, SlideShare.net, the Pulse app or another Service or one of our cookies on your device identifies you, your usage information and the log data described in Section 1.10 of this policy, such as your IP address, will be associated by us with your account.

Even if you’re not logged into a Service, we log information about devices used to access our Services, including IP address.

1.7. Using Third-Party Services and Visiting Third-Party Sites

We collect information when you use your account to sign in to other sites or services, and when you view web pages that include our plugins and cookies.

You allow us to receive information when you use your account to log in to a third-party website or application. Also, when you visit a third- party site that embeds our social plugins (such as “Share on LinkedIn” for publishers) we receive information that those pages have loaded in your web browser. If you are logged in as a Member when you visit sites with our plugins, we use this information to recommend tailored content to you. We will use this information to personalize the functionality we provide on third-party sites, including providing you insights from your professional network and allowing you to share information with your network. Our retention of this data is addressed in Section

3.2. We may provide reports containing aggregated impression information to companies hosting our plugins and similar technologies to help them measure traffic to their websites, but no personal data. Please note that SlideShare.net, Pulse.me and the Pulse app are part of the LinkedIn Services, not third-party sites or applications.

You also allow us to receive information about your visits and interaction with the sites and services of our partners that include our cookies and similar technologies, unless you opt out. If you are not a Member, we rely on the online terms between you and our partners.

1.8. Cookies

We use cookies and similar technologies to collect information.

As described in our Cookie Policy, we use cookies and similar technologies, including mobile application identifiers, to help us recognize you across different Services, learn about your interests both on and off our Services, improve your experience, increase security, measure use and effectiveness of our Services, and serve advertising. You can control cookies through your browser settings and other tools. By visiting our Services, you consent to the placement of cookies and beacons in your browser and HTML-based emails in accordance with this Privacy Policy, which incorporates by reference our Cookie Policy.

1.9. Advertising Technologies and Web Beacons

We use advertising technologies and web beacons to collect information. We give you a number of ways to opt out of targeted ads, including through the Ad Choices icon shown with any ads we serve on third-party sites. If you do not want us to track your behavior on third-party sites, you can opt out. If you do not opt out, you consent to our use of beacons and other advertising technologies.

We target (and measure the performance of) ads to Members, Visitors and others both on and off of our Services through a variety of ad networks and ad exchanges, using the following, whether separately or combined:

- Advertising technologies on and off of our Services, like web beacons, pixels, ad tags, cookies, and mobile identifiers as permitted by mobile platforms;
- Member-provided profile and contact information and categories (for example, “product managers in Texas”);
- Information inferred from a Member’s profile (for example, using job titles to infer age, industry, seniority, and compensation bracket; or names to infer gender);
- Your use of our Services (for example, your search history, the content you read on SlideShare or Pulse, who you follow or is following you on SlideShare, Groups participation, which pages you visit, your clicking on a LinkedIn ad, etc.) and log files generated as described in Section 1.10;
- Information from 3rd parties (e.g. advertising partners, publishers and data aggregators) which we use in addition to the information from our cookies (and similar technologies), your profile and use of our Services.

We do not share your personal information with any third-party advertisers or ad networks for advertising without your separate permission. Note that, as described in Section 2.6, your profile is visible to other Members and through public search depending on your settings. Also, advertising partners may associate personal information collected by the advertiser directly from you with our cookies and similar technologies. In such instances, we contractually require such advertisers to obtain your explicit opt-in consent before doing so.

We may show you sponsored content in your network update stream (NUS), which will be designated as sponsored content and will behave like other NUS updates. If you take social action (for example, if you “like” or “comment” on the sponsored content), your action may be seen by your network and other Members who are shown the sponsored content after you have acted on it. Please note that all social

actions on SlideShare (e.g. liking certain content, following or being followed by others) are public, unless expressly specified otherwise with respect to premium accounts.

We adhere to the Digital Advertising Alliance's self-regulatory principles for online behavioral advertising and the European principles for online behavioral advertising. If you wish to not receive targeted ads from most third party companies, you may opt-out by, as applicable, clicking on the AdChoice icon in or next to the ad or by visiting <http://www.aboutads.info> or <https://www.youronlinechoices.eu>. Please note this does not opt you out of being served advertising. You will continue to receive generic ads or targeted ads by companies not listed with these opt-out tools. You can also opt out specifically from our use of cookies and similar technologies to track your behavior on third party sites. For non-Members, this opt out setting is here.

1.10. Log Files, IP Addresses, and Information About Your Computer and Mobile Device

We collect information from the devices and networks that you use to access our Services.

When you visit or leave our Services (whether as a Member or Visitor) by clicking a hyperlink or when you view a third-party site that includes our plugin or cookies (or similar technology), we automatically receive the URL of the site from which you came or the one to which you are directed. Also, advertisers receive the URL of the page that you are on when you click an ad on or through our Services. We also receive the internet protocol ("IP") address of your computer or the proxy server that you use to access the web, your computer operating system details, your type of web browser, your mobile device (including your mobile device identifier provided by your mobile device operating system), your mobile operating system (if you are accessing LinkedIn using a mobile device), and the name of your ISP or your mobile carrier. We may also receive location data passed to us from third-party services or GPS-enabled devices that you have set up, which we use to show you local information (for example, Pulse articles about your area or jobs postings in your location) on our mobile applications and for fraud prevention and security purposes. Most mobile devices allow you to prevent real time location data being sent to us, and of course we will honor your settings.

In the case of our Android apps, you will be provided notice of the types of data (e.g. location) that will be sent to us. If you choose to use our app after this notice, we process this data to enable registration or preview product features for you (e.g. jobs near you). If you choose not to become a Member, we will delete this information.

1.11. Other

We are constantly innovating to improve our Services, which means we may create new ways to collect information on the Services.

Our Services are a dynamic, innovative environment, which means we are always seeking to improve the Services we offer you. We often introduce new features, some of which may result in the collection of new information (for example, when the Endorsements feature launched, we began collecting information about skills for which Members were endorsed and the individuals who endorsed them).

Furthermore, new partnerships or corporate acquisitions may result in new features, and we may potentially collect new types of information. If we start collecting substantially new types of personal information and materially change how we handle your data, we will notify you in accordance with Section 4.3.

2.1. Consent to LinkedIn Processing Information About You

Information you provide on your profile can be seen by others and used by us as described in this Privacy Policy and our User Agreement.

The personal information that you provide to us may reveal or allow others to identify aspects of your life that are not expressly stated on your profile (for example, your picture or your name may reveal your gender). By providing personal information to us when you create or update your account and profile, you are expressly and voluntarily accepting the terms and conditions of our User Agreement and freely accepting and agreeing to our processing of your personal information in ways set out by this Privacy Policy. Supplying to us any information deemed “sensitive” by applicable law is entirely voluntary on your part. You can withdraw or modify your consent to our collection and processing of the information you provide at any time, in accordance with the terms of this Privacy Policy and the User Agreement, by changing your account settings or your profile on LinkedIn or SlideShare, or by closing your LinkedIn, SlideShare and Pulse accounts.

2.2. LinkedIn Communications

We communicate with you using LinkedIn messaging, email, and other ways available to us. We may send you messages relating to the availability of the Services, security, or other service-related issues. We also may send promotional InMail messages to your LinkedIn inbox. You can change your email settings at any time.

We communicate with you through email, notices posted on the LinkedIn websites or apps, messages to your LinkedIn inbox, and other means available through the Services, including mobile text messages and push notifications. Examples of these communications include: (1) welcome and engagement communications - informing you about how to best use our Services, new features, updates about other Members you are connected to and their actions, etc.; (2) service communications - these will cover service availability, security, and other issues about the functioning of our Services; (3) promotional communications - these include both email and InMail messages (InMail messages are only delivered to your LinkedIn InBox), and may contain promotional information directly or on behalf of our partners, including job opportunities and information from companies that are hiring. These messages will be sent to you based on your profile information and messaging preferences. We track the open rate of your InMails to provide your InMail acceptance score. You may change your email and contact preferences at any time by signing into your account and changing your LinkedIn or SlideShare email settings. You can also opt out of promotional messages by sending a request to LinkedIn Help Center.

Please be aware that you cannot opt out of receiving service messages from us.

2.3. User Communications

With certain communications you send on our Services, the recipient can see your name, email address, and some network information.

Many communications that you initiate through our Services (for example, an invitation sent to a non-Member) will list your name and primary email address in the header of the message. Messages you initiate may also provide the recipient with aggregate information about your network (for example, how many people are in your network). Other communications that you initiate through the Services, like a request for an introduction, will list your name as the initiator but will not include your personal email address contact information. Once you have connected with an individual, regardless of who sent the invitation, your contact information will be shared with that individual.

We use automatic scanning technology to help protect you and other Members. Such technology checks links and other content in your InMails, network updates and Group contributions to help us identify and block malicious links and malware, reduce spam and optimize the delivery of our Services.

2.4. Service Development; Customized Experience

We use the information and content you provide to us to conduct research and development and to customize your experience and try to make it relevant and useful to you.

We use information and content that you and other Members provide to us to conduct research and development for the improvement of our Services in order to provide you and other Members and Visitors with a better, more intuitive experience and drive membership growth and engagement on our Services and to help connect professionals to economic opportunity.

We also customize your experience and the experiences of others on our Services. For example, when you sign in to your account, we may display the names and photos of new Members who have recently joined your network or recent updates from your connections and companies you follow. We try to show you content, such as news and presentations, that is relevant to you, your industry, or your profession. We also use Members information and content for invitations and communications promoting our Services that are tailored to the recipient.

2.5. Sharing Information with Affiliates

We share your information across our different Services, among companies in the LinkedIn family.

We may share your personal information with our affiliates (meaning entities controlled by, controlling or under common control with LinkedIn) outside of the LinkedIn entity that is your data controller (for example, LinkedIn Corporation may share your information with LinkedIn Ireland, or other LinkedIn operating entities) as reasonably necessary to provide the Services.

We combine information internally across different Services. For example, SlideShare may recommend better content to you based on your LinkedIn content preferences and the articles you read on Pulse, and LinkedIn could present you a better tailored network update stream based on your SlideShare activity, whether or not you tied your SlideShare, Pulse and/or LinkedIn accounts (e.g. by signing in SlideShare or Pulse with your LinkedIn account), as we may be able to identify you across different Services using cookies or similar technologies.

2.6. Sharing Information with Third Parties

Any information you put on your profile and any content you post on LinkedIn may be seen by others.

We don't provide any of your non-public information (like your email address) to third parties without your consent, unless required by law, or as described in Sections 2.6 and 2.14 of this Policy.

Other people may find your LinkedIn profile information through search engines (you can choose which parts of your public profile are accessible to public search engines in your settings), or use services like Twitter in conjunction with your LinkedIn account.

We offer a “public profile” feature that allows you as a Member to publish portions of your professional profile to the public Internet. This public profile will be indexed and displayed through public search engines when someone searches for your name. You may choose the parts of your profile that search engines index or completely opt out of this feature in your LinkedIn account settings, or limit the publicly visible information in your SlideShare profile. However, third-party search engines may not automatically update their caches, which may contain old public profile information. Unless you delete them, your profiles on LinkedIn.com and our corresponding app or on SlideShare.net are always viewable on the respective Services.

The visibility of your professional profile to other Members depends on your degree of connection with the viewing Member, the subscriptions they may have, their usage of the Services, access channels and search types (e.g. by name or by keyword). For example, first degree connections can see your full profile and contact information. Others have more limited access, as detailed in our Help Center. Please note that recruiters and other such professional subscribers can see your full profile even if you did not approve their InMail.

We do not rent or sell personal information that you have not posted on our Services, except as described in this Privacy Policy. We will not disclose personal information that is not published to your profile or generated through engagement with our other services, such as Groups and Company Pages, except to carry out your instructions (for example, to process payment information) or unless we have your separate consent, unless we have a good faith belief that disclosure is permitted by law or is reasonably necessary to: (1) comply with a legal requirement or process, including, but not limited to, civil and criminal subpoenas, court orders or other compulsory disclosures; (2) enforce this Privacy Policy or our User Agreement; (3) respond to claims of a violation of the rights of third parties; (4) respond to Member service inquiries; or (5) protect the rights, property, or safety of LinkedIn, our Services, our Members, Visitors, or the public. See Section 2.14 for additional details about our compliance with legal requests for information.

We support middleware providers that offer archiving solutions to firms subject to legal and regulatory archiving requirements, which, with your permission, facilitate the archiving of your communications and other activity by a third party for compliance purposes. Content distributed through our sharing features and third-party integrations may result in displaying some of your personal information outside of our Services. For example, when you post content to a Group that is open for public discussion, your content, including your name as the contributor, may be displayed in search engine results.

Also, if you have opted to bind any of your Service accounts to your Twitter, Facebook or other similar account, you can easily share content from our Services to these third party services, in accordance with your account settings (which you may change at any time) and respective policies of these third parties. Further, we allow third parties to look-up profile information (subject to your privacy settings) using your email address or first and last name information through its profile API (see Section 2.7. below).

Third parties (for example, your email provider) may give you the option to upload certain information in your contacts stored with us onto their own service. If you choose to share your contacts in this way, you will be granting your third party provider the right to store, access, disclose and use your these contacts in the ways described in such third party's terms and privacy policy.

2.7. Third Parties Using LinkedIn Platform Services

We work with developers to build Platform Applications using our developer tools. Whether you use Platform Applications is up to you.

If you have given a Platform Application access to your LinkedIn account, you can revoke that permission anytime. Also, you can opt out of providing information to developers through your connections.

We collaborate with and allow third parties to use our developer platform to offer services and functionality in conjunction with our Services. These third-party developers have either negotiated an agreement to use our platform technology or have agreed to our self- service API and Plugin terms in order to build applications (“Platform Applications”). Both the negotiated agreements and our API and Plugin terms contain restrictions on how third parties may access, store, and use the personal information you provide to us.

If you choose to use a Platform Application, you will be asked to confirm acceptance of the privacy policy and user agreement of the third- party developer. To revoke permission granted to a Platform Application, please visit your settings. Note, however, that even if you revoke the permission granted to a Platform Application, your connections may still be using the Platform Application, so the Platform Application may still have access to certain information about you, just as your connections do. You may opt out of providing information to third-party developers through your connections by accessing the “Turn on/off data sharing with third-party applications” control in the “Groups, Companies, and Applications” tab under settings.

2.8. Polls and Surveys

We conduct our own surveys and polls and also help third parties do this type of research. Your participation in surveys or polls is up to you. You may also opt out of getting invitations to participate in surveys.

Polls and Surveys may be conducted by us, Members, or third parties. Some third parties may target advertisements to you on the results page based on your answers in the poll. We or third parties may follow up with you via InMail regarding your participation unless you have opted out of receiving InMail messages. We may use third parties to deliver incentives to you to participate in surveys or polls. If the delivery of incentives requires your contact information, you may be asked to provide personal information to the third party fulfilling the incentive offer, which will be used only for the purpose of delivering incentives and verifying your contact information. It is up to you whether you provide this information, or whether you desire to take advantage of an incentive. Your consent to use any personal information for the purposes set forth in the poll or survey will be explicitly requested by the party conducting it. We are a member of the Council of American Survey Research Organizations (“CASRO”) and abides by CASRO guidelines for market research. You may opt out of participating in surveys by changing your settings to stop receiving these inquiries and requests.

2.9. Search

Our Services help you search for other professionals, companies, groups, professional content, and jobs.

You can search for Members, employment opportunities, information about companies, and community content from Groups on our Services. For example, you can find Members with particular expertise or experience, or Members that you may know from your industry or profession. You can also find employment opportunities and information about companies. You can also find content from Groups, SlideShare and Pulse. We use personal information from our Services, including Member profiles, Groups content, and Company Pages, to inform and refine our search service.

2.10. Groups

You are responsible for any information you post on our Services, and this content will be accessible to others.

If you participate in Groups, share content on your network update stream, or import a blog or other content, you should be aware that any information you choose to disclose using these services can be read, collected, and used by other Members in these forums, developers, and other third parties, including advertisers. We are not responsible for the information you choose to submit in these forums. Your Groups contributions are typically searchable on our Services and some content in Groups may be public and searchable on the Internet if the group owner has not closed the group for public discussions. You can identify closed groups by the padlock icon next to the group name. You can remove your Groups posts at any time. However, others may have copied and used the information that you shared.

2.11. RESERVED

2.12. Talent Recruiting, Marketing and Sales Solutions

We offer a premium service to recruiters and others, which can be used to search for, organize, and communicate with potential candidates or offer business opportunities. In some cases we allow the export of public profile information. You can control how your information is exported by changing which parts of your public profile are accessible to search engines.

We offer customized people-search functionality along with organizational and communications tools (including activity alerts) as part of our talent recruiting, marketing and sales solutions. These services allow subscribers - generally, enterprises and professional organizations - to export limited information from Members' public profiles, such as name, headline, current company, current title, and location (for example, San Francisco Bay Area), in order to effectively manage candidate sourcing. You may limit or prevent such subscribers from exporting your profile information by configuring your public profile visibility settings to restrict access to these fields. We do not provide email or other contact information to these subscribers. However, if you post that information as part of your profile it will be available to them and others. A recruiter or other such subscriber may also manage and store information it has independently obtained about you outside of our Services, such as a resume, in connection with our platform. Any personal information obtained independently of our Services will not be added by us to your profile and is not under our control but is subject to the policies of our recruiting, marketing or sales solution subscriber. We store such information on behalf of such subscriber who can remove it at any time. We do not further process such information.

2.13. Pages for Companies, Schools, Influencers, and Other Entities

Companies and other entities can create pages on our Services. If you follow one of these pages, non-identifiable information about you will be provided to the page's administrators.

Certain pages on the Services are public (e.g., company and college pages), and any communications or information shared through them will be accessible by the entity that created them. If you follow a person or organization, you will be listed among its followers, which can be viewed by others including the page owner. We use aggregate information about followers and viewers to provide data about such pages' performance (for example, visits and updates).

2.14. Compliance with Legal Process and Other Disclosures

We may disclose your personal information if compelled by law, subpoena, or other legal process, or if necessary to enforce our User Agreement.

It is possible that we may need to disclose personal information, profile information, or information about your activities as a Member or Visitor when required by law, subpoena, or other legal process, whether in the United States, Ireland, or other jurisdictions, or if we have a good faith belief that disclosure is reasonably necessary to (1) investigate, prevent, or take action regarding suspected or actual illegal activities or to assist government enforcement agencies; (2) enforce the User Agreement, investigate and defend ourselves against any third-party claims or allegations, or protect the security or integrity of our Service; or (3) exercise or protect the rights, property, or safety of LinkedIn, our Members, personnel, or others. We attempt to notify Members about legal demands for their personal information when

appropriate in our judgment, unless prohibited by law or court order or when the request is an emergency. In light of our principles, we may dispute such demands when we believe, in our discretion, that the requests are overbroad, vague or lack proper authority, but do not commit to challenge every demand. To find out more about how we engage with government requests for data see our Law Enforcement Data Request Guidelines.

2.15. Disclosures to Others as the Result of a Change in Control or Sale of LinkedIn Corporation

If there is a change in control or sale of all or part of LinkedIn, we may share your information with a third party, who will have the right to use that information in line with this Privacy Policy.

We may also disclose your personal information to a third party as part of a sale of the assets of LinkedIn Corporation, a subsidiary, or division, or as the result of a change in control of the company or one of its affiliates, or in preparation for any of these events. Any third party to which we transfers or sells our assets will have the right to continue to use the personal and other information that you provide to us in the manner set out in this Privacy Policy.

2.16. Service Providers

We may employ third parties to help us with the Services

We may employ third party companies and individuals to facilitate our Services (e.g. maintenance, analysis, audit, marketing and development). These third parties have limited access to your information only to perform these tasks on our behalf and are obligated to LinkedIn not to disclose or use it for other purposes.

2.17 Data Processing Outside Your Country

We may process your information outside the country where you live.

We may transfer your information and process it outside your country of residence, wherever LinkedIn, its affiliates and service providers operate.

3. Your Choices & Obligations

3.1. Rights to Access, Correct, or Delete Your Information, and Closing Your Account

You can change your LinkedIn information at any time by editing your profile, deleting content that you have posted, or by closing your account. You can also ask us for additional information we may have about your account.

You have a right to (1) access, modify, correct, or delete your personal information controlled by LinkedIn regarding your profile, (2) change or remove your content, and (3) close your account. You can request your personal information that is not viewable on your profile or readily accessible to you (for example, your IP access logs) through LinkedIn's Help Center. If you close your account(s), your information will generally be removed from the Service within 24 hours. We generally delete closed account information and will de-personalize any logs or other backup information through the deletion process within 30 days of account closure, except as noted below.

With respect to SlideShare accounts and activity, if you would like us to delete your record and/or remove a particular comment you have made on SlideShare.net, or to provide a copy of any personal information to which you may be entitled, please contact us at privacy@slideshare.com. We will remove your information from SlideShare.net within 24 hours and delete and/or de-personalize it from our systems within 30 days of closure, except as noted below.

Please note: Information you have shared with others (for example, through InMail, network updates, content sharing, or Groups) or that others have copied may also remain visible after you have closed your account or deleted the information from your own profile. Groups content associated with closed accounts will show an unknown user as the source. In addition, you may not be able to access, correct, or

eliminate any information about you that other Members copied or exported out of our Services, because this information may not be in our control. Your public profile may be displayed in search engine results until the search engine refreshes its cache.

3.2. Data Retention

We keep your information for as long as your account is active or as needed. For example, we may keep certain information even after you close your account if it is necessary to comply with our legal obligations, meet regulatory requirements, resolve disputes, prevent fraud and abuse, or enforce this agreement.

We retain the personal information you provide while your account is in existence or as needed to provide you services. We may retain your personal information even after you have closed your account if retention is reasonably necessary to comply with our legal obligations, meet regulatory requirements, resolve disputes between Members, prevent fraud and abuse, or enforce this Privacy Policy and our User Agreement. We may retain personal information, for a limited period of time, if requested by law enforcement. Our Customer Service may retain information for as long as is necessary to provide support-related reporting and trend analysis only, but we generally delete or de-personalize closed account data consistent with Section 3.1., except in the case of our plugin impression data (i.e., the information that you visited on sites carrying our social plugin, but which you did not click on), which we de-personalize within 7 days (although we do maintain 30 days worth of webserver logs for security, debugging, and site stability purposes only) by creating aggregate data sets that cannot be traced back to individuals

4. Important Information

4.1. Minimum Age

You have to meet LinkedIn's minimum age requirements to create an account. Visit our Safety Center for tips on using LinkedIn smartly and securely.

As described in Section 2.1 of the User Agreement, persons must be of Minimum Age to use LinkedIn. Please visit our Safety Center for additional information about safely using our Services.

4.2. TRUSTe and Safe Harbor

We partner with TRUSTe because we take your privacy seriously and are committed to putting you and all of our Members first. TRUSTe certifies our compliance with the TRUSTe program and verifies our compliance with the US-EU and US-Swiss Safe Harbor programs. If you can't resolve a complaint through LinkedIn Customer Support, you may also contact TRUSTe.

TRUSTe European Safe Harbor certification

LinkedIn.com and SlideShare.net have been awarded TRUSTe's Privacy Seal signifying that this Privacy Policy and its practices have been reviewed by TRUSTe for compliance with TRUSTe's program requirements.

If you have questions or concerns regarding this Policy, you should first contact LinkedIn. If contacting us does not resolve your complaint, you may raise your complaint with TRUSTe by Internet, by fax at 415-520-3420, or mail to TRUSTe Safe Harbor Compliance Dept. (click for mailing address). The complaint should include the name of company, the alleged privacy violation, your contact information, and whether you would like the particulars of your complaint shared with the company. The TRUSTe dispute resolution process shall be conducted in English. The TRUSTe program only covers information collected through www.linkedin.com, and does not cover information that may be collected through downloaded software or Plugins.

We comply with the U.S.-E.U. and U.S.-Swiss Safe Harbor Frameworks as set forth by the U.S. Department of Commerce regarding the collection, use, and retention of personal data from European Union member countries and Switzerland. We have certified that it adheres to the Safe Harbor Privacy Principles of notice, choice, onward transfer, security, data integrity, access, and enforcement. To learn more about the Safe Harbor program, and to view LinkedIn's certification, please visit <http://www.export.gov/safeharbor/>.

4.3. RESERVED

4.4. California's Shine the Light Law

We don't share any of your personal information with third parties for direct marketing.

California Civil Code Section 1798.83, known as the "Shine The Light" law, permits our customers who are California residents to request and obtain from us a list of what personal information (if any) we disclosed to third parties for direct marketing purposes in the preceding calendar year and the names and addresses of those third parties. Requests may be made only once a year and are free of charge. Under Section 1798.83, we currently do not share any personal information with third parties for their direct marketing purposes.

4.5. Security

We take privacy and security seriously and have enabled HTTPS access to our site (turn on HTTPS), in addition to existing SSL access over mobile devices. Also, please know that the Internet is not a secure environment, so be careful and select strong passwords.

We have implemented security safeguards designed to protect the personal information that you provide in accordance with industry standards. Access to your data on our Services is password-protected, and data such as credit card information is protected by SSL encryption when it is exchanged between your web browser and the Services. We also offer secure https access to the LinkedIn.com website. To protect any data you store on our servers, we also regularly monitor our system for possible vulnerabilities and attacks, and we use a tier-one secured-access data center. However, since the Internet is not a 100% secure environment, we cannot ensure or warrant the security of any information that you transmit to us. There is no guarantee that information may not be accessed, disclosed, altered, or destroyed by breach of any of our physical, technical, or managerial safeguards. It is your responsibility to protect the security of your login information. Please note that emails, instant messaging, and similar means of communication with other Members are not encrypted, and we strongly advise you not to communicate any confidential information through these means. Please help keep your account safe by using a strong password.

How To Contact Us

If you have questions or comments about this Privacy Policy, please contact us online or by physical mail at: LinkedIn Corporation

Attn: Privacy
Policy Issues
2029 Stierlin
Court Mountain
View, CA
94043 USA

Google Cloud Master General Terms

The Google Cloud Master Terms are comprised of the Google Cloud Master General Terms (“General Terms”), and all Services Schedules and Order Forms that are incorporated by reference into the Google Cloud Master Terms (collectively, the “Terms”).

Google Cloud Master General Terms

1. **Services.** After Customer and Reseller and/or Distributor complete and execute an Order Form, (a) Google will provide the Services to Customer in accordance with the Terms, including the SLAs, and (b) Customer may use the Services in accordance with the applicable Services Schedule.
2. **Customer Obligations.**
 - 2.1 **Consents.** Customer is responsible for any consents and notices required to permit (a) Customer’s use and receipt of the Services and (b) Google’s accessing, storing, and processing of data provided by Customer (including Customer Data, if applicable) under the Terms.
 - 2.2 **Compliance.** Customer will (a) ensure that Customer and its End Users’ use of the Services complies with the Terms, (b) use commercially reasonable efforts to prevent and terminate any unauthorized access or use of the Services, and (c) promptly notify Google of any unauthorized use of, or access to, the Services of which Customer becomes aware.
 - 2.3 **Use Restrictions.** Customer will not, and will not allow End Users to, (a) copy, modify, create a derivative work of, reverse engineer, decompile, translate, disassemble, or otherwise attempt to extract any of the source code of the Services (except to the extent such restriction is expressly prohibited by applicable law); (b) sell, resell, sublicense, transfer, or distribute the Services; or (c) access or use the Services (i) in a manner intended to avoid incurring Fees; (ii) for materials or activities that are subject to the International Traffic in Arms Regulations (ITAR) maintained by the United States Department of State; (iii) in a manner that breaches, or causes the breach of, Export Control Laws; or (iv) to transmit, store, or process health information subject to United States HIPAA regulations except as permitted by an executed HIPAA BAA with Google’s Reseller or Distributor.
3. **RESERVED**
4. **Intellectual Property.**
 - 4.1 **Intellectual Property Rights.** Except as expressly described in the Terms, the Terms do not grant either party any rights, implied or otherwise, to the other’s content or Intellectual Property. As between the parties, Customer retains all Intellectual Property Rights in Customer Data and Customer Applications, and Google retains all Intellectual Property Rights in the Services and Software.

4.2 Feedback. At its option, Customer may provide feedback and suggestions about the Services to Google ("Feedback"). If Customer provides Feedback, then Google and its Affiliates may use that Feedback without restriction and without obligation to Customer.

5. **Confidentiality**.

5.1 Confidentiality Obligations. Subject to Section 5.2 (Disclosure of Confidential Information), and subject to the Freedom of Information Act or similar state open records law, the recipient will use the other party's Confidential Information only to exercise its rights and fulfill its obligations under the Terms. The recipient will use reasonable care to protect against disclosure of the other party's Confidential Information to parties other than the recipient's employees, Affiliates, agents, or professional advisors ("Delegates")

who need to know it and who have a legal obligation to keep it confidential. The recipient will ensure that its Delegates are also subject to the same non-disclosure and use obligations.

5.2 Disclosure of Confidential Information.

(a) General. Regardless of any other provision in the Terms, the recipient and its Delegates may disclose the other party's Confidential Information (i) with the other party's written consent or (ii) in accordance with a Legal Process request, subject to Section 5.2(b) (Legal Process Notification).

(b) Legal Process Notification. The recipient will use commercially reasonable efforts to notify the other party before disclosing that party's Confidential Information in accordance with Legal Process. Notice is not required before disclosure if the recipient is informed that (i) it is legally prohibited from giving notice or (ii) the Legal Process relates to exceptional circumstances involving danger of death or serious physical injury.

(c) Opposition. The recipient will, and will ensure that its Delegates will, comply with the other party's reasonable requests to oppose disclosure of its Confidential Information.

6. **Marketing and Publicity**. Each party may use the other party's Brand Features in connection with these Terms as permitted in these Terms. Customer may state publicly that it is a Google customer and display Google Brand Features in accordance with the Trademark Guidelines. Customer and Google will work together on an announcement of Customer being a Google customer, which will take place on a mutually agreed upon date within 6 months of the Effective Date. Additionally, with prior written consent, the parties may engage in joint marketing activities such as customer testimonials, press engagements, public speaking events, and analyst interviews. A party may revoke the other party's right to use its Brand Features with 30 days' written notice. Any use of a party's Brand Features will inure to the benefit of the party holding Intellectual Property Rights to those Brand Features.

7. **RESERVED**

8. **Disclaimer**. Except as expressly provided for in these Terms, to the fullest extent permitted by applicable law, Google (a) does not make any warranties of any kind, whether express, implied, statutory, or otherwise, including warranties of merchantability, fitness for a particular use, noninfringement, or error-free or

uninterrupted use of the Services or Software and (b) makes no representation about content or information accessible through the Services. The Services are not intended to be used for High Risk Activities. Any use of the Services for High Risk Activities by Customer or its End Users will be at Customer's own risk, and Customer will be solely liable for the results of any failure of the Services when used for High Risk Activities.

9. Indemnification.

9.1 Google Indemnification Obligations. Google will defend Customer and its Affiliates participating under these Terms ("Customer Indemnified Parties"), and indemnify them against Indemnified Liabilities in any Third-Party Legal Proceeding to the extent arising from an allegation that the Customer Indemnified Parties' use of Google Indemnified Materials infringes the third party's Intellectual Property Rights.

9.2 Customer Intellectual Property Infringement. If Google is damaged or becomes subject to a Third-Party Legal Proceeding as a result of Customer's infringement of any third-party intellectual property, Google will pursue available remedies under applicable federal, state, or local law.

9.3 Indemnification Exclusions. Sections 9.1 (Google Indemnification Obligations) and 9.2 (Customer Intellectual Property infringement) will not apply to the extent the underlying allegation arises from (a) the Customer's or Google's breach of the Terms or (b) a combination of the Google Indemnified Materials or Customer Materials (as applicable) with materials not provided by Google or the Customer under the Terms, unless the combination is required by the Terms.

9.4 Indemnification Conditions. Sections 9.1 (Google Indemnification Obligations)) is conditioned on the following:

(a) Customer must promptly notify Reseller who will promptly notify Google in writing of any allegation(s) that preceded the Third-Party Legal Proceeding and cooperate reasonably with Google to resolve the allegation(s) and Third-Party Legal Proceeding. If breach of this Section 9.4(a) prejudices the defense of the Third-Party Legal Proceeding, then Google's obligations under Section 9.1 (Google Indemnification Obligations) will be reduced in proportion to the prejudice.

(b) Customer must tender sole control of the indemnified portion of the Third-Party Legal Proceeding to Google, subject to the following: (i) the Customer may appoint its own non-controlling counsel, at its own expense; and (ii) any settlement requiring the Customer to admit liability, pay money, or take (or refrain from taking) any action, will require the Customer's prior written consent, not to be unreasonably withheld, conditioned, or delayed.

9.5 Remedies.

(a) If Google reasonably believes the Services might infringe a third party's Intellectual Property Rights, then Google may, at its sole option and expense, (i) procure the right for Customer to continue using the Services, (ii) modify the Services to make them non-infringing without materially reducing their functionality, or (iii) replace the Services with a non-infringing, functionally equivalent alternative.

(b) If Google does not believe the remedies in Section 9.5(a) are commercially reasonable, then Google may Suspend or terminate the impacted Services.

9.6 Sole Rights and Obligations. Without affecting either party's termination rights, this Section 9 (Indemnification) states the Customer's' sole and exclusive remedy under the Terms for any third-party allegations of Intellectual Property Rights infringement covered by this Section 9 (Indemnification).

10. Liability.

10.1 Limited Liabilities.

(a) **To the extent permitted by applicable law and subject to Section 10.2 (Unlimited Liabilities), neither party will have any Liability arising out of or relating to the Terms for any (i) indirect, consequential, special, incidental, or punitive damages or (ii) lost revenues, profits, savings, or goodwill.**

(b) **Each party's total aggregate Liability for damages arising out of or relating to the Terms is limited to the Fees Customer paid under the applicable Services Schedule during the 12 month period before the event giving rise to Liability.**

10.2 Unlimited Liabilities. Nothing in these Terms excludes or limits either party's Liability for:

- (a) **subject to Section 8 (Disclaimer), death, personal injury, or tangible personal property damage resulting from its negligence or the negligence of its employees or agents;**
- (b) **its fraud or fraudulent misrepresentation;**
- (c) **its obligations under Section 9 (Indemnification);**
- (d) **its infringement of the other party's Intellectual Property Rights;**
- (e) **its payment obligations; or**
- (f) **matters for which liability cannot be excluded or limited under applicable law.**

11. Term and Termination.

11.1 Term. The Terms will remain in effect for the Term unless it expires or is terminated in accordance with the Reseller Agreement or Distributor Agreement.

11.2 Termination for Convenience. Subject to any financial commitments in an Order Form or addendum to the Terms, Customer may terminate the Terms or an Order Form for convenience with prior written notice to Reseller or Distributor.

11.3 RESERVED.

11.4 Effects of Termination. If the Terms terminate or expire, then all Services Schedules and Order Forms also terminate or expire. If an Order Form terminates or expires, then after that Order

Form's termination or expiration effective date, (a) all rights and access to the Services under that Order Form will terminate (including access to Customer Data, if applicable), unless otherwise described in the applicable Services Schedule, and (b) Reseller or Distributor will send Customer a final invoice (if applicable) for payment obligations under that Order Form. Termination or expiration of one Order Form will not affect other Order Forms.

11.5 Survival. The following Sections will survive expiration or termination of the Terms: Section 4 (Intellectual Property), Section 5 (Confidentiality), Section 8 (Disclaimer), Section 9 (Indemnification), Section 10 (Liability), Section 11.4 (Effects of Termination), Section 12 (Miscellaneous), Section 13 (Definitions), and any additional sections specified in the applicable Services Schedule.

12. Miscellaneous.

12.1 Notices. Google will provide notices under the Terms to Customer by sending an email to the Notification Email Address. Customer will provide notices under the Terms to Google by sending an email to legalnotices@google.com. Notice will be treated as received when the email is sent. Customer is responsible for keeping its Notification Email Address current throughout the Term.

12.2 Emails. The parties may use emails to satisfy written approval and consent requirements under these Terms.

12.3 RESERVED.

12.4 RESERVED.

12.5 Force Majeure. Neither party will be liable for failure or delay in performance of its obligations to the extent caused by circumstances beyond its reasonable control, including acts of God, natural disasters, terrorism, riots, or war.

12.6 Subcontracting. Google may subcontract obligations under the Terms but will remain liable to Customer for any subcontracted obligations.

12.7 No Agency. These Terms do not create any agency, partnership, or joint venture between the parties.

12.8 No Waiver. Neither party will be treated as having waived any rights by not exercising (or delaying the exercise of) any rights under the Terms.

12.9 Severability. If any part of the Terms are invalid, illegal, or unenforceable, the rest of the Terms will remain in effect.

12.10 No Third-Party Beneficiaries. The Terms do not confer any rights or benefits to any third party unless it expressly states that it does.

- 12.11 Equitable Relief. Nothing in the Terms will limit either party's ability to seek equitable relief.
- 12.12 RESERVED.
- 12.13 Amendments. Except as specifically described otherwise in the Terms, any amendment to the Terms must be in writing, expressly state that it is amending the Terms.
- 12.14 Independent Development. Nothing in the Terms will be construed to limit or restrict either party from independently developing, providing, or acquiring any materials, services, products, programs, or technology that are similar to the subject of the Terms, provided that the party does not breach its obligations under the Terms in doing so.
- 12.15 RESERVED.
- 12.16 Conflicting Terms. If there is a conflict among the documents that make up the Terms, then the documents will control in the following order: the applicable Order Form, the applicable Services Schedule, the General Terms, and the URL Terms.
- 12.17 RESERVED.
- 12.18 RESERVED.
- 12.19 RESERVED.
- 12.20 Headers. Headings and captions used in the Terms are for reference purposes only and will not have any effect on the interpretation of the Terms.

13. Definitions.

"Affiliate" means any entity that directly or indirectly Controls, is Controlled by, or is under common Control with a party.

"AUP" means Google's acceptable use policy as defined in the applicable Services Schedule.

"BAA" or "Business Associate Agreement" is an amendment to the Customer's Reseller Agreement or Distributor Agreement, and covers the handling of Protected Health Information (as defined in HIPAA).

"Brand Features" means each party's trade names, trademarks, logos, domain names, and other distinctive brand features.

"Confidential Information" means information that one party (or an Affiliate) discloses to the other party under these Terms, and that is marked as confidential or would normally be considered confidential information under the circumstances. Customer Data is Customer's Confidential Information. Confidential Information does not include information that is independently developed by the recipient, is shared with the recipient by a third party without confidentiality obligations, or is or becomes public through no fault of the recipient.

“Control” means control of greater than 50% of the voting rights or equity interests of a party.

“Customer Application” has the meaning described in the Services Schedule.

“Customer Data” has the meaning described in the Services Schedule (if applicable).

“Distributor” means an entity authorized by Google to distribute the Services to a Reseller for resale to federal, state, or local government entities of the United States (or representatives of such entities).

“Distributor Agreement” means, if applicable, the separate agreement between Customer and Distributor regarding the Services. The Distributor Agreement is independent of and outside the scope of these Terms.

“Customer Materials” has the meaning described in the applicable Services Schedule.

“End User” or “Customer End User” means an individual that Customer permits to use the Services or a Customer Application.

“Export Control Laws” means all applicable export and re-export control laws and regulations, including (i) the Export Administration Regulations (“EAR”) maintained by the U.S. Department of Commerce, (ii) trade and economic sanctions maintained by the U.S. Treasury Department’s Office of Foreign Assets Control, and (iii) the International Traffic in Arms Regulations (“ITAR”) maintained by the U.S. Department of State.

“Fees” means the product of the amount of Services used or ordered by Customer multiplied by the Prices, plus any applicable Taxes. Fees will be described in Customer’s Reseller Agreement or Distributor Agreement.

“Google Indemnified Materials” has the meaning described in the applicable Services Schedule.

“High Risk Activities” means activities where the failure of the Services could lead to death, serious personal injury, or severe environmental or property damage.

“HIPAA” means the Health Insurance Portability and Accountability Act of 1996 as it may be amended from time to time, and any regulations issued under it.

“Including” means including but not limited to.

“Indemnified Liabilities” means any (i) settlement amounts approved by the Customer, and (ii) damages and costs finally awarded against the Customer by a court of competent jurisdiction.

“Intellectual Property” or “IP” means anything protectable by an Intellectual Property Right.

“Intellectual Property Right(s)” means all patent rights, copyrights, trademark rights, rights in trade secrets (if any), design rights, database rights, domain name rights, moral rights, and any other intellectual property rights (registered or unregistered) throughout the world.

“Legal Process” means an information disclosure request made under law, governmental regulation, court

order, subpoena, warrant, governmental regulatory or agency request, or other valid legal authority, legal procedure, or similar process.

“Liability” means any liability, whether under contract, tort (including negligence), or otherwise, regardless of whether foreseeable or contemplated by the parties.

“Notification Email Address” has the meaning described in the applicable Services Schedule.

“Order Form” has the meaning described in the applicable Services Schedule or, as applicable, an Order Form provided by a Reseller or Distributor.

“Order Term” means the period of time starting on the Services Start Date for the Services and continuing for the period indicated on the Order Form unless terminated in accordance with the Terms.

“Reseller Agreement” means the separate agreement between Customer and Reseller regarding the Services. The Reseller Agreement is independent of and outside the scope of these Terms.

“Reseller” means, if applicable, the authorized non-Affiliate third party reseller that sells Google Services through a Distributor to Customer.

“Prices” means those prices listed in the applicable Reseller Agreement or Distributor Agreement.

“Service Level Agreement” or “SLA” has the meaning described in the Services Schedule.

“Services” has the meaning described in the applicable Services Schedule.

“Services Schedule(s)” means a schedule to the Terms with terms that apply only to the services and software (if applicable) described in that schedule.

“Services Start Date” means either the start date described in the Order Form or, if none is specified in the Order Form, the date Google makes the Services available to Customer.

“Software” has the meaning described in the Services Schedule (if applicable).

“Suspend” or “Suspension” means disabling access to or use of the Services or components of the Services.

“Term” means the Term as described in the applicable Reseller Agreement or Distributor Agreement.

“Third-Party Legal Proceeding” means any formal legal proceeding filed by an unaffiliated third party before a court or government tribunal (including any appellate proceeding).

“Trademark Guidelines” means Google’s Brand Terms and Conditions described at <https://www.google.com/permissions/trademark/brand-terms.html>.

“URL” means a uniform resource locator address to a site on the internet.

“URL Terms” has the meaning described in the Services Schedule.

“Use Restrictions” means the restrictions in Section 2.3 (Use Restrictions) of these General Terms and any additional restrictions on the use of Services described in a section entitled “Additional Use Restrictions” in the applicable Services Schedule.

Google Cloud Master Terms G Suite Services Schedule

This G Suite Services Schedule (the “Services Schedule”) supplements and is incorporated by reference into the Google Cloud Master Terms. This Services Schedule applies solely to the services described in this Services Schedule and is effective so long as there is an active Order Form. Terms defined in the General Terms apply to this Services Schedule.

1. Using the Services.

- 1.1 Admin Console. Google will provide Customer access to the Admin Console through which Customer may manage its use of the Services. Customer may specify one or more Administrators through the Admin Console who will have the right to access Admin Accounts. Customer is responsible for (a) maintaining the confidentiality and security of the End User Accounts and associated passwords and (b) any use of the End User Accounts. Customer agrees that Google’s responsibilities do not extend to the internal management or administration of the Services for Customer.
- 1.2 Additional Use Restrictions. Unless otherwise permitted in the G Suite Service Specific Terms, Customer will not use, and will not allow End Users to use, the Services to place or receive emergency services calls.
- 1.3 Requesting Additional End User Accounts During Order Term. Customer may purchase additional End User Accounts during an Order Term by (a) executing an additional Order Form reflecting the purchase or (b) ordering End User Accounts via the Admin Console.

2. Data Processing and Security.

- 2.1 Data Processing Amendment. The Data Processing Amendment is incorporated into this Services Schedule once Customer accepts it in the Admin Console. If the processing of Personal Data under the Terms is subject to the GDPR, then Customer will accept the Data Processing Amendment in the Admin Console.
- 2.2 Updates to Data Processing Amendment. Google may only change the Data Processing Amendment where such change is required to comply with applicable law, applicable regulation, court order, or guidance issued by a governmental regulator or agency, where such change is expressly permitted by the Data Processing Amendment, or where such change meets all of the following requirements:

- (a) the change is commercially reasonable;

- (b) the change does not result in a degradation of the overall security of the Services;
- (c) the change does not expand the scope of or remove any restrictions on Google's processing as described in Section 5.2 (Scope of Processing) of the Data Processing Amendment; and
- (d) the change does not otherwise have a material adverse impact on Customer's rights under the Data Processing Amendment.

If Google makes a material change to the Data Processing Amendment in accordance with this Section 2.2, Google will notify Customer.

3. Additional Payment Terms.

3.1 Usage and Invoicing. Customer will pay all Fees for the Services and such payment will be made pursuant to the Reseller Agreement or Distributor Agreement. Google's measurement tools will be used to determine Customer's usage of the Services. Unless otherwise provided in an Order Form or required by law, Fees for Services are nonrefundable.

3.2 RESERVED.

4. Modifications.

4.1 Modifications to URL Terms. Google may change the URL Terms, subject to the following:

(a) Notification of Material Changes. Google will notify Customer of any material change to the URL Terms.

(b) When Changes Take Effect. Material changes to the URL Terms will become effective 30 days after notice is given, except that (i) materially adverse SLA changes will become effective 90 days after notice is given and (ii) changes applicable to new Services or functionality, or required by a court order or applicable law, will be effective immediately.

(c) Objection to Changes.

(i) If a change to the URL Terms (other than as described in Section 4.1(b)(ii)) has a material adverse impact on Customer, then Customer may object to the change by notifying Google within 30 days after Google provides notice.

(ii) If Customer so notifies Google, then Customer will remain governed by the URL Terms in effect immediately before the change until the earlier of (1) the end of the then-current Order Term or (2) 12 months after the notice was given.

4.2 Modifications to Services.

- (a) Deprecation Policy. Google will notify Customer at least 12 months before a Significant Deprecation unless Google reasonably determines that (i) Google is not permitted to do so by law or by contract (including if there is a change in applicable law or contract) or (ii) continuing to provide the Service that is subject to the Significant Deprecation could create a security risk or substantial economic or technical burden.
- (b) Other Modifications. Subject to Section 4.2(a) (Deprecation Policy), Google may make changes to the Services, which may include adding, updating, or discontinuing any Services or portion or feature(s) of the Services. Google will notify Customer of any material change to the Core Services.

5. Temporary Suspension.

- 5.1 Limitations on Services Suspension. Google may Suspend Services as described in Sections 5.2 (AUP Breaches) and 5.3 (Emergency Suspension). Any Suspension under those Sections will be to the minimum extent and for the shortest duration required to (a) prevent or terminate the offending use, (b) prevent or resolve the Emergency Security Issue, or (c) comply with applicable law.
- 5.2 AUP Breaches. If Google becomes aware that Customer's or any End User's use of the Services breaches the AUP, Google will request that Customer correct the breach. If Customer fails to correct such breach within 24 hours of such request, or if Google is otherwise required by applicable law to take action, then Google may Suspend Services.
- 5.3 Emergency Suspension. Google may immediately Suspend Customer's use of the Services or an End User Account if (a) there is an Emergency Security Issue, or (b) Google is required to Suspend such use to comply with applicable law. At Customer's request, unless prohibited by applicable law, Google will notify Customer of the basis for the Suspension as soon as is reasonably possible. For Suspensions of End User Accounts, Google will provide Customer's Administrator the ability to restore End User Accounts in certain circumstances.

6. Technical Support. Google will provide G Suite Technical Support Services to Customer during the Order Term in accordance with the G Suite Technical Support Services Guidelines.

7. Additional Customer Responsibilities.

- 7.1 Customer Domain Name Ownership. Customer is responsible for obtaining and maintaining any rights necessary for Customer's and Google's use of the Customer Domain Names under the Terms. Before providing the Services, Google may require that Customer verify that Customer owns or controls the Customer Domain Names. If Customer does not own or control the Customer Domain Names, then Google will have no obligation to provide the Services to Customer.
- 7.2 Abuse Monitoring. Customer is solely responsible for monitoring, responding to, and otherwise processing emails sent to the "abuse" and "postmaster" aliases for Customer Domain Names, but Google may monitor emails sent to these aliases to allow Google to identify Services abuse.

8. **Using Brand Features Within the Services.** Google will display only those Customer Brand Features that Customer authorizes Google to display by uploading them into the Services. Google will display those Customer Brand Features within designated areas of the web pages displaying the Services to End Users. Customer may specify the nature of this use in the Admin Console. Google may also display Google Brand Features on such web pages to indicate that the Services are provided by Google.
9. **Additional Products.** Google makes optional Additional Products available to Customer and its End Users. Customer's use of Additional Products is subject to the Additional Product Terms.
10. **Reseller Orders.** This Section applies if Customer orders the Services from a Reseller under a Reseller Agreement.
- 10.1 **Orders.** If Customer orders Services from Reseller, then (a) fees for the Services will be set between Customer and Reseller, and any payments will be made directly to Reseller under the Reseller Agreement; (b) RESERVED (c) Customer will receive applicable SLA credits (if any) from Reseller; (d) Google may share Customer Confidential Information with Reseller as a Delegate subject to General Terms Section 5.1 (Confidentiality Obligations); and (e) Customer may request additional End User Accounts during the Order Term by contacting Reseller.
- 10.2 **Reseller as Administrator.** At Customer's discretion, Reseller may access Customer's Account or Customer's End User Accounts. As between Google and Customer, Customer is solely responsible for (a) any access by Reseller to Customer's Account or Customer's End User Accounts and (b) defining in the Reseller Agreement any rights or obligations as between Reseller and Customer with respect to the Services.
- 10.3 **Reseller Verification of Domain Names.** Reseller may verify that Customer owns or controls the Customer Domain Names. If Customer does not own or control the Customer Domain Names, then Google will have no obligation to provide the Services to Customer.
- 10.4 **Reseller Technical Support.** Customer acknowledges and agrees that Reseller may disclose End User Personal Data to Google as reasonably required in order for Reseller to handle any support issues that Customer escalates to or via Reseller.
11. **Termination of Previous Agreements.** If Google and Customer have previously entered into a G Suite Agreement, then that agreement will terminate on the Services Start Date, and these terms will govern the provision and use of the Services going forward.
12. **Additional Definitions.**

"Additional Products" means products, services, and applications that are not part of the Services but may be accessible for use in conjunction with the Services.

"Additional Product Terms" means the then-current terms at https://gsuite.google.com/intl/en/terms/additional_services.html.

“Admin Account” means a type of End User Account that Customer (or Reseller, if applicable) may use to administer the Services.

“Admin Console” means the online console(s) and tool(s) provided by Google to Customer for administering (i) the Services under this Services Schedule and (ii) the services set out in a Complementary Product Services Summary (if applicable).

“Administrator” means Customer-designated personnel who administer the Services to End Users on Customer’s behalf, and have the ability to access Customer End User Accounts. Such access includes the ability to access, monitor, use, modify, withhold, or disclose any data available to End Users associated with their End User Accounts.

“AUP” means the then-current acceptable use policy for the Services described at <https://cloud.google.com/terms/aup/>.

“Complementary Product Services Summary” has the meaning given in the Data Processing Amendment.

“Core Services” means the then-current “Core Services for G Suite” as described in the Services Summary at https://gsuite.google.com/terms/user_features.html.

“Customer Data” means data submitted, stored, sent, or received via the Services by Customer or its End Users.

“Customer Domain Name” means a domain name specified in the Order Form to be used in connection with the Services.

“Customer Materials” means Customer Data and Customer Brand Features.

“Data Processing Amendment” means the then-current terms describing data protection and processing obligations with respect to Customer Data, as described at https://gsuite.google.com/terms/dpa_terms.html.

“Emergency Security Issue” means either (a) Customer’s or an End User’s use of the Services in breach of the AUP, where such use could disrupt (i) the Services, (ii) other customers’ or their customer end users’ use of the Services, or (iii) the Google network or servers used to provide the Services; or (b) unauthorized third-party access to the Services.

“End User Account” means a Google-hosted account established by Customer through the Services for an End User to use the Services.

“GDPR” has the meaning given to it in the Data Processing Amendment.

“Google Indemnified Materials” means Google’s technology used to provide the Services and Google’s Brand Features.

“G Suite Service Specific Terms” means the then-current terms specific to one or more Services described at <https://gsuite.google.com/terms/service-terms/>.

“G Suite Technical Support Services” or “TSS” means the technical support service provided by Google to Customer under the G Suite Technical Support Services Guidelines.

“G Suite Technical Support Services Guidelines” or “TSS Guidelines” means the then-current G Suite support service guidelines described at <https://gsuite.google.com/terms/tssg.html>.

“Notification Email Address” means the email address(es) designated by Customer in the Admin Console.

“Order Form” means the order form issued by the Reseller and/or Distributor and executed by Customer and the Reseller and/or Distributor.

“Other Services” means the then-current “Other Services for G Suite” as described in the Services Summary at https://gsuite.google.com/terms/user_features.html.

“Personal Data” has the meaning given to it in the Data Processing Amendment.

“Services” means the then-current Core Services and Other Services described at https://gsuite.google.com/terms/user_features.html.

“Significant Deprecation” means a material discontinuance of or backwards incompatible change to the Services that results in the Services no longer enabling Customer or End Users to (i) send and receive email messages; (ii) schedule and manage events; (iii) create, share, store, and synchronize files; (iv) communicate with other End Users in real time; or (v) search, archive, and export email messages.

“SLA” means the then-current service level agreement described at <https://gsuite.google.com/terms/sla.html>.

“URL Terms” means, as applicable, the AUP, G Suite Service Specific Terms, G Suite Technical Support Services Guidelines, and SLAs

Google Cloud Master General Terms

The Google Cloud Master Terms are comprised of the Google Cloud Master General Terms (“General Terms”), and all Services Schedules and Order Forms that are incorporated by reference into the Google Cloud Master Terms (collectively, the “Terms”).

Google Cloud Master General Terms

1. **Services.** After Customer and Reseller and/or Distributor complete and execute an Order Form, (a) Google will provide the Services to Customer in accordance with the Terms, including the SLAs, and (b) Customer may use the Services in accordance with the applicable Services Schedule.
2. **Customer Obligations.**
 - 2.1 Consents. Customer is responsible for any consents and notices required to permit (a) Customer’s use and receipt of the Services and (b) Google’s accessing, storing, and processing of data provided by Customer (including Customer Data, if applicable) under the Terms.
 - 2.2 Compliance. Customer will (a) ensure that Customer and its End Users’ use of the Services complies with the Terms, (b) use commercially reasonable efforts to prevent and terminate any unauthorized access or use of the Services, and (c) promptly notify Google of any unauthorized use of, or access to, the Services of which Customer becomes aware.
 - 2.3 Use Restrictions. Customer will not, and will not allow End Users to, (a) copy, modify, create a derivative work of, reverse engineer, decompile, translate, disassemble, or otherwise attempt to extract any of the source code of the Services (except to the extent such restriction is expressly prohibited by applicable law); (b) sell, resell, sublicense, transfer, or distribute the Services; or (c) access or use the Services (i) in a manner intended to avoid incurring Fees; (ii) for materials or activities that are subject to the International Traffic in Arms Regulations (ITAR) maintained by the United States Department of State; (iii) in a manner that breaches, or causes the breach of, Export Control Laws; or (iv) to transmit, store, or process health information subject to United States HIPAA regulations except as permitted by an executed HIPAA BAA with Google’s Reseller or Distributor.
3. **RESERVED**
4. **Intellectual Property.**
 - 4.1 Intellectual Property Rights. Except as expressly described in the Terms, the Terms do not grant either party any rights, implied or otherwise, to the other’s content or Intellectual Property. As between the parties, Customer retains all Intellectual Property Rights in Customer Data and Customer Applications, and Google retains all Intellectual Property Rights in the Services and Software.

4.2 Feedback. At its option, Customer may provide feedback and suggestions about the Services to Google (“Feedback”). If Customer provides Feedback, then Google and its Affiliates may use that Feedback without restriction and without obligation to Customer.

5. Confidentiality.

5.1 Confidentiality Obligations. Subject to Section 5.2 (Disclosure of Confidential Information), and subject to the Freedom of Information Act or similar state open records law, the recipient will use the other party’s Confidential Information only to exercise its rights and fulfill its obligations under the Terms. The recipient will use reasonable care to protect against disclosure of the other party’s Confidential Information to parties other than the recipient’s employees, Affiliates, agents, or professional advisors (“Delegates”) who need to know it and who have a legal obligation to keep it confidential. The recipient will ensure that its Delegates are also subject to the same non-disclosure and use obligations.

5.2 Disclosure of Confidential Information.

(a) General. Regardless of any other provision in the Terms, the recipient and its Delegates may disclose the other party’s Confidential Information (i) with the other party’s written consent or (ii) in accordance with a Legal Process request, subject to Section 5.2(b) (Legal Process Notification).

(b) Legal Process Notification. The recipient will use commercially reasonable efforts to notify the other party before disclosing that party’s Confidential Information in accordance with Legal Process. Notice is not required before disclosure if the recipient is informed that (i) it is legally prohibited from giving notice or (ii) the Legal Process relates to exceptional circumstances involving danger of death or serious physical injury.

(c) Opposition. The recipient will, and will ensure that its Delegates will, comply with the other party’s reasonable requests to oppose disclosure of its Confidential Information.

6. Marketing and Publicity. Each party may use the other party’s Brand Features in connection with these Terms as permitted in these Terms. Customer may state publicly that it is a Google customer and display Google Brand Features in accordance with the Trademark Guidelines. Customer and Google will work together on an announcement of Customer being a Google customer, which will take place on a mutually agreed upon date within 6 months of the Effective Date. Additionally, with prior written consent, the parties may engage in joint marketing activities such as customer testimonials, press engagements, public speaking events, and analyst interviews. A party may revoke the other party’s right to use its Brand Features with 30 days’ written notice. Any use of a party’s Brand Features will inure to the benefit of the party holding Intellectual Property Rights to those Brand Features.

7. RESERVED

8. **Disclaimer.** Except as expressly provided for in these Terms, to the fullest extent permitted by applicable law, Google (a) does not make any warranties of any kind, whether express, implied, statutory, or otherwise, including warranties of merchantability, fitness for a particular use, noninfringement, or error-free or uninterrupted use of the Services or Software and (b) makes no representation about content or information accessible through the Services. The Services are not intended to be used for High Risk Activities. Any use of the Services for High Risk Activities by Customer or its End Users will be at Customer's own risk, and Customer will be solely liable for the results of any failure of the Services when used for High Risk Activities.

9. **Indemnification.**

9.1 **Google Indemnification Obligations.** Google will defend Customer and its Affiliates participating under these Terms ("Customer Indemnified Parties"), and indemnify them against Indemnified Liabilities in any Third-Party Legal Proceeding to the extent arising from an allegation that the Customer Indemnified Parties' use of Google Indemnified Materials infringes the third party's Intellectual Property Rights.

9.2 **Customer Intellectual Property Infringement.** If Google is damaged or becomes subject to a Third-Party Legal Proceeding as a result of Customer's infringement of any third-party intellectual property, Google will pursue available remedies under applicable federal, state, or local law.

9.3 **Indemnification Exclusions.** Sections 9.1 (Google Indemnification Obligations) and 9.2 (Customer Intellectual Property infringement) will not apply to the extent the underlying allegation arises from (a) the Customer's or Google's breach of the Terms or (b) a combination of the Google Indemnified Materials or Customer Materials (as applicable) with materials not provided by Google or the Customer under the Terms, unless the combination is required by the Terms.

9.4 **Indemnification Conditions.** Sections 9.1 (Google Indemnification Obligations)) is conditioned on the following:

(a) Customer must promptly notify Reseller who will promptly notify Google in writing of any allegation(s) that preceded the Third-Party Legal Proceeding and cooperate reasonably with Google to resolve the allegation(s) and Third-Party Legal Proceeding. If breach of this Section 9.4(a) prejudices the defense of the Third-Party Legal Proceeding, then Google's obligations under Section 9.1 (Google Indemnification Obligations) will be reduced in proportion to the prejudice.

(b) Customer must tender sole control of the indemnified portion of the Third-Party Legal Proceeding to Google, subject to the following: (i) the Customer may appoint its own non-controlling counsel, at its own expense; and (ii) any settlement requiring the Customer to admit liability, pay money, or take (or refrain from taking) any action, will require the Customer's prior written consent, not to be unreasonably withheld, conditioned, or delayed.

9.5 **Remedies.**

- (a) If Google reasonably believes the Services might infringe a third party's Intellectual Property Rights, then Google may, at its sole option and expense, (i) procure the right for Customer to continue using the Services, (ii) modify the Services to make them non-infringing without materially reducing their functionality, or (iii) replace the Services with a non-infringing, functionally equivalent alternative.
- (b) If Google does not believe the remedies in Section 9.5(a) are commercially reasonable, then Google may Suspend or terminate the impacted Services.

9.6 Sole Rights and Obligations. Without affecting either party's termination rights, this Section 9 (Indemnification) states the Customer's' sole and exclusive remedy under the Terms for any third-party allegations of Intellectual Property Rights infringement covered by this Section 9 (Indemnification).

10. Liability.

10.1 Limited Liabilities.

- (a) **To the extent permitted by applicable law and subject to Section 10.2 (Unlimited Liabilities), neither party will have any Liability arising out of or relating to the Terms for any (i) indirect, consequential, special, incidental, or punitive damages or (ii) lost revenues, profits, savings, or goodwill.**
- (b) **Each party's total aggregate Liability for damages arising out of or relating to the Terms is limited to the Fees Customer paid under the applicable Services Schedule during the 12 month period before the event giving rise to Liability.**

10.2 Unlimited Liabilities. Nothing in these Terms excludes or limits either party's Liability for:

- (a) **subject to Section 8 (Disclaimer), death, personal injury, or tangible personal property damage resulting from its negligence or the negligence of its employees or agents;**
- (b) **its fraud or fraudulent misrepresentation;**
- (c) **its obligations under Section 9 (Indemnification);**
- (d) **its infringement of the other party's Intellectual Property Rights;**
- (e) **its payment obligations; or**
- (f) **matters for which liability cannot be excluded or limited under applicable law.**

11. Term and Termination.

11.1 Term. The Terms will remain in effect for the Term unless it expires or is terminated in accordance with the Reseller Agreement or Distributor Agreement.

11.2 Termination for Convenience. Subject to any financial commitments in an Order Form or addendum to the Terms, Customer may terminate the Terms or an Order Form for convenience with prior written notice to Reseller or Distributor.

11.3 RESERVED.

11.4 Effects of Termination. If the Terms terminate or expire, then all Services Schedules and Order Forms also terminate or expire. If an Order Form terminates or expires, then after that Order Form's termination or expiration effective date, (a) all rights and access to the Services under that Order Form will terminate (including access to Customer Data, if applicable), unless otherwise described in the applicable Services Schedule, and (b) Reseller or Distributor will send Customer a final invoice (if applicable) for payment obligations under that Order Form. Termination or expiration of one Order Form will not affect other Order Forms.

11.5 Survival. The following Sections will survive expiration or termination of the Terms: Section 4 (Intellectual Property), Section 5 (Confidentiality), Section 8 (Disclaimer), Section 9 (Indemnification), Section 10 (Liability), Section 11.4 (Effects of Termination), Section 12 (Miscellaneous), Section 13 (Definitions), and any additional sections specified in the applicable Services Schedule.

12. Miscellaneous.

12.1 Notices. Google will provide notices under the Terms to Customer by sending an email to the Notification Email Address. Customer will provide notices under the Terms to Google by sending an email to legal-notices@google.com. Notice will be treated as received when the email is sent. Customer is responsible for keeping its Notification Email Address current throughout the Term.

12.2 Emails. The parties may use emails to satisfy written approval and consent requirements under these Terms.

12.3 RESERVED.

12.4 RESERVED.

12.5 Force Majeure. Neither party will be liable for failure or delay in performance of its obligations to the extent caused by circumstances beyond its reasonable control, including acts of God, natural disasters, terrorism, riots, or war.

12.6 Subcontracting. Google may subcontract obligations under the Terms but will remain liable to Customer for any subcontracted obligations.

12.7 No Agency. These Terms do not create any agency, partnership, or joint venture between the parties.

- 12.8 No Waiver. Neither party will be treated as having waived any rights by not exercising (or delaying the exercise of) any rights under the Terms.
- 12.9 Severability. If any part of the Terms are invalid, illegal, or unenforceable, the rest of the Terms will remain in effect.
- 12.10 No Third-Party Beneficiaries. The Terms do not confer any rights or benefits to any third party unless it expressly states that it does.
- 12.11 Equitable Relief. Nothing in the Terms will limit either party's ability to seek equitable relief.
- 12.12 RESERVED.
- 12.13 Amendments. Except as specifically described otherwise in the Terms, any amendment to the Terms must be in writing, expressly state that it is amending the Terms.
- 12.14 Independent Development. Nothing in the Terms will be construed to limit or restrict either party from independently developing, providing, or acquiring any materials, services, products, programs, or technology that are similar to the subject of the Terms, provided that the party does not breach its obligations under the Terms in doing so.
- 12.15 RESERVED.
- 12.16 Conflicting Terms. If there is a conflict among the documents that make up the Terms, then the documents will control in the following order: the applicable Order Form, the applicable Services Schedule, the General Terms, and the URL Terms.
- 12.17 RESERVED.
- 12.18 RESERVED.
- 12.19 RESERVED.
- 12.20 Headers. Headings and captions used in the Terms are for reference purposes only and will not have any effect on the interpretation of the Terms.

13. Definitions

"Affiliate" means any entity that directly or indirectly Controls, is Controlled by, or is under common Control with a party.

"AUP" means Google's acceptable use policy as defined in the applicable Services Schedule.

“BAA” or “Business Associate Agreement” is an amendment to the Customer’s Reseller Agreement or Distributor Agreement, and covers the handling of Protected Health Information (as defined in HIPAA).

“Brand Features” means each party’s trade names, trademarks, logos, domain names, and other distinctive brand features.

“Confidential Information” means information that one party (or an Affiliate) discloses to the other party under these Terms, and that is marked as confidential or would normally be considered confidential information under the circumstances. Customer Data is Customer’s Confidential Information. Confidential Information does not include information that is independently developed by the recipient, is shared with the recipient by a third party without confidentiality obligations, or is or becomes public through no fault of the recipient.

“Control” means control of greater than 50% of the voting rights or equity interests of a party.

“Customer Application” has the meaning described in the Services Schedule.

“Customer Data” has the meaning described in the Services Schedule (if applicable).

“Distributor” means an entity authorized by Google to distribute the Services to a Reseller for resale to federal, state, or local government entities of the United States (or representatives of such entities).

“Distributor Agreement” means, if applicable, the separate agreement between Customer and Distributor regarding the Services. The Distributor Agreement is independent of and outside the scope of these Terms.

“Customer Materials” has the meaning described in the applicable Services Schedule.

“End User” or “Customer End User” means an individual that Customer permits to use the Services or a Customer Application.

“Export Control Laws” means all applicable export and re-export control laws and regulations, including (i) the Export Administration Regulations (“EAR”) maintained by the U.S. Department of Commerce, (ii) trade and economic sanctions maintained by the U.S. Treasury Department’s Office of Foreign Assets Control, and (iii) the International Traffic in Arms Regulations (“ITAR”) maintained by the U.S. Department of State.

“Fees” means the product of the amount of Services used or ordered by Customer multiplied by the Prices, plus any applicable Taxes. Fees will be described in Customer’s Reseller Agreement or Distributor Agreement.

“Google Indemnified Materials” has the meaning described in the applicable Services Schedule.

“High Risk Activities” means activities where the failure of the Services could lead to death, serious personal injury, or severe environmental or property damage.

“HIPAA” means the Health Insurance Portability and Accountability Act of 1996 as it may be amended from time to time, and any regulations issued under it.

“Including” means including but not limited to.

“Indemnified Liabilities” means any (i) settlement amounts approved by the Customer, and (ii) damages and costs finally awarded against the Customer by a court of competent jurisdiction.

“Intellectual Property” or “IP” means anything protectable by an Intellectual Property Right.

“Intellectual Property Right(s)” means all patent rights, copyrights, trademark rights, rights in trade secrets (if any), design rights, database rights, domain name rights, moral rights, and any other intellectual property rights (registered or unregistered) throughout the world.

“Legal Process” means an information disclosure request made under law, governmental regulation, court order, subpoena, warrant, governmental regulatory or agency request, or other valid legal authority, legal procedure, or similar process.

“Liability” means any liability, whether under contract, tort (including negligence), or otherwise, regardless of whether foreseeable or contemplated by the parties.

“Notification Email Address” has the meaning described in the applicable Services Schedule.

“Order Form” has the meaning described in the applicable Services Schedule or, as applicable, an Order Form provided by a Reseller or Distributor.

“Order Term” means the period of time starting on the Services Start Date for the Services and continuing for the period indicated on the Order Form unless terminated in accordance with the Terms.

“Reseller Agreement” means the separate agreement between Customer and Reseller regarding the Services. The Reseller Agreement is independent of and outside the scope of these Terms.

“Reseller” means, if applicable, the authorized non-Affiliate third party reseller that sells Google Services through a Distributor to Customer.

“Prices” means those prices listed in the applicable Reseller Agreement or Distributor Agreement.

“Service Level Agreement” or “SLA” has the meaning described in the Services Schedule.

“Services” has the meaning described in the applicable Services Schedule.

“Services Schedule(s)” means a schedule to the Terms with terms that apply only to the services and software (if applicable) described in that schedule.

“Services Start Date” means either the start date described in the Order Form or, if none is specified in the Order Form, the date Google makes the Services available to Customer.

“Software” has the meaning described in the Services Schedule (if applicable).

“Suspend” or “Suspension” means disabling access to or use of the Services or components of the Services.

“Term” means the Term as described in the applicable Reseller Agreement or Distributor Agreement.

“Third-Party Legal Proceeding” means any formal legal proceeding filed by an unaffiliated third party before a court or government tribunal (including any appellate proceeding).

“Trademark Guidelines” means Google’s Brand Terms and Conditions described at <https://www.google.com/permissions/trademark/brand-terms.html>.

“URL” means a uniform resource locator address to a site on the internet.

“URL Terms” has the meaning described in the Services Schedule.

“Use Restrictions” means the restrictions in Section 2.3 (Use Restrictions) of these General Terms and any additional restrictions on the use of Services described in a section entitled “Additional Use Restrictions” in the applicable Services Schedule.

Google Cloud Master Terms
Google Cloud Platform Services Schedule

This Google Cloud Platform Services Schedule (the “Services Schedule”) supplements and is incorporated by reference into the Google Cloud Master Terms. This Services Schedule applies solely to the services and software described in this Services Schedule and is effective so long as there is an active Order Form. Terms defined in the General Terms apply to this Services Schedule.

1. Using the Services.

1.1 Admin Console. Google (or Reseller or Distributor) will provide Customer an Account to access the Admin Console through which Customer may manage its use of the Services. Customer may make Customer Applications available to End Users. Customer is responsible for (a) maintaining the confidentiality and security of the Account and associated passwords and (b) any use of the Account.

1.2 Ceasing Services Use. Customer may stop using the Services at any time.

1.3 Additional Use Restrictions. Unless otherwise permitted in the GCP Service Specific Terms, Customer will not use, and will not allow End Users to use, the Services or any Customer Application to operate or enable any telecommunications service or to place or receive calls from any public switched telephone network.

1.4 Resold Customer.

(a) Reseller and Distributor have the ability to suspend the Customer's Account. Customer is solely responsible for: (i) any access by Reseller and Distributor to Customer's Account or Customer's End User Accounts; (ii) any suspension by Reseller or Distributor of Customer's or Customer's End User's Services, and (ii) defining in the Reseller Agreement or Distributor Agreement, as applicable, any rights or obligations as between Reseller and Customer, or Distributor and Customer, with respect to the Services;

(b) Google may share Customer Confidential Information with Reseller and/or Distributor as a Delegate subject to General Terms Section 5.1 (Confidentiality Obligations);

(c) Google will not be liable in any manner whatsoever to Customer arising out of Reseller's and/or Distributor's suspension of the Customer's Account or Reseller's and/or Distributor's access to the Customer's and Customer End User's Account(s).

2. Data Processing and Security.

2.1 Use of Customer Data. Google will only access or use Customer Data to provide the Services ordered by Customer and will not use it for any other Google products, services, or advertising.

2.2 Data Processing and Security Terms. The Data Processing and Security Terms are provided to Customer by Reseller or Distributor

2.3 Federal Risk and Authorization Management Program (FedRAMP).

(a) The following Google Cloud Platform Services received a FedRAMP High Provisional Authority to Operate (ATO) from the Joint Authorization Board (JAB): **Compute:** Compute Engine, App Engine, Google Kubernetes Engine **Storage:** Cloud Storage, Persistent Disk **Security:** Cloud HSM, Cloud Key Management Service **Data Analytics:** BigQuery, Cloud Dataproc, Cloud Pub/Sub **Databases:** Cloud Bigtable,

Cloud Dataflow, Cloud Firestore, Cloud Memorystore, Cloud Spanner, Cloud SQL
Developer Tools: Container Registry.

- (b) The following Google Cloud Platform Services received a FedRAMP Moderate Provisional ATO from the Joint Authorization Board (JAB): **Compute:** Compute Engine, App Engine, Cloud Functions, Google Kubernetes Engine **Storage:** Cloud Storage, Persistent Disk **Networking:** Cloud Armor, Cloud CDN, Cloud DNS, CloudLoad Balancing, Virtual Private Cloud (VPC) **Security:** Cloud Data Loss Prevention API, Cloud HSM, Cloud Identity & Access Management, Cloud Identity-Aware Proxy, Cloud Key Management Service, Cloud Security Scanner, Resource Manager **Management Tools:** Cloud Billing API, Cloud Console, Cloud Console Mobile App, Cloud Deployment Manager, Cloud Shell, Google Cloud Platform Marketplace, Service Consumer Management API, Service Control, Service Management API, Stackdriver Debugger, Stackdriver Error Reporting, Stackdriver Logging, Stackdriver Profiler, Stackdriver Trace **Data Analytics:** BigQuery, Cloud Dataflow, CloudDatalab, Cloud Dataproc, Cloud Pub/Sub, Cloud Talent Solution, Google Genomics **Databases:** Cloud Bigtable, Cloud Datastore, Cloud Firestore, Cloud Memorystore, Cloud Spanner, Cloud SQL **Migration:** BigQuery Data Transfer Service, Cloud Storage Transfer Service **AI/Machine Learning:** Cloud AutoML Natural Language, Cloud AutoML Translation, Cloud AutoML Vision, Cloud Machine Learning Engine, Cloud Natural Language API, Cloud Speech-to-Text, Cloud Text-to-Speech, Cloud Translation API, Cloud Video Intelligence API, Cloud Vision API, Dialogflow Enterprise Edition **Developer Tools:** Cloud Build, Cloud SDK, Cloud Source Repositories, Container Registry **API Management:** Cloud Endpoints **Internet of Things (IoT):** Cloud IoT Core
- (c) Google, Reseller, and Distributor are not liable for any damages, claims, or causes of action that arise from the loss or failure to maintain the ATO. Customer's sole remedy in connection with the loss or failure to maintain the ATO will be the Customer's ability to terminate use of Provider's Google Cloud Platform Service.

3. Additional Payment Terms.

3.1 Usage and Invoicing. Customer will pay all Fees for the Services and GCP Technical Support Services. Google's measurement tools will be used to determine Customer's usage of the Services. Each invoice, which may be generated by Reseller or Distributor, will include data in sufficient detail to allow Customer to validate the Services purchased and associated Fees.

3.2 RESERVED.

3.3 RESERVED.

4. Updates to Services and Terms.

4.1 Changes to Services.

(a) Limitations on Changes. Google may update the Services, provided the updates do not result in a material reduction of the functionality, performance, availability, or security of the Services.

(b) Discontinuance. Google will notify Customer at least 12 months before discontinuing any Service (or associated material functionality), and at least 36 months for any Key Service (or associated material functionality), unless Google replaces such discontinued Service or functionality with a materially similar Service or functionality.

4.2 Changes to Terms. Google may update the URL Terms, provided the updates do not (a) result in a material degradation of the overall security of the Services, (b) expand the scope of or remove any restrictions on Google's processing of Customer Data as described in the Data Processing and Security Terms, or (c) have a material adverse impact on Customer's rights under the URL Terms. Google will notify Customer of any material updates to URL Terms.

4.3 Permitted Changes. Sections 4.1 (Changes to Services) and 4.2 (Changes to Terms) do not limit Google's ability to make changes required to comply with applicable law or address a material security risk, or that are applicable to new or pre-general availability Services or functionality.

5. Temporary Suspension.

5.1 Services Suspension. Google may Suspend Services if (a) necessary to comply with law or protect the Services or Google's infrastructure supporting the Services or (b) Customer or any End User's use of the Services does not comply with the AUP, and it is not cured following notice from Google.

5.2 Limitations on Services Suspensions. If Google Suspends Services, then (a) Google will provide Customer notice of the cause for Suspension without undue delay, to the

extent legally permitted, and (b) the Suspension will be to the minimum extent and for the shortest duration required to resolve the cause for Suspension.

6. **Technical Support.** If Customer has purchased Enterprise Support or Role-Based Support, Google will provide GCP Technical Support Services to Customer during the Order Term in accordance with the GCP Technical Support Services Guidelines. Customer is responsible for the technical support of its Customer Applications and Projects. Customer acknowledges and agrees that Reseller and/or Distributor may disclose Customer Data to Google as may be reasonably required in order for Reseller and/or Distributor to handle any support issues that Customer may escalate to or via Reseller and/or Distributor.
7. **Copyright.** Google provides information to help copyright holders manage their intellectual property online, but Google cannot determine whether something is being used legally without input from the copyright holders. Google will respond to notices of alleged copyright infringement and may terminate repeat infringers in appropriate circumstances as required to maintain safe harbor for online service providers under the U.S. Digital Millennium Copyright Act. If Customer believes a person or entity is infringing Customer's or its End User's copyrights and would like to notify Google, Customer can find information about submitting notices, and Google's policy about responding to notices, at <http://www.google.com/dmca.html>.
8. **Software.**
 - 8.1 **Provision of Software.** Google may make Software available to Customer, including third-party software. Customer may choose to use the Software in connection with Customer's use of the Services. Some Software may be subject to third-party license terms, which Google will provide to Customer.
 - 8.2 **Ceasing Software Use.** If the Customer's Reseller Agreement or Distributor Agreement terminates, or the Google Cloud Platform Order Form terminates or expires, then Customer will stop using the Software.
9. **Benchmarking.** Customer may only publicly disclose (directly or through a third party) the results of any comparative or compatibility testing, benchmarking, or evaluation (each, a "Test") of the Services, if the disclosure includes all information reasonably necessary for Google or a third party to replicate the Test. If Customer conducts, or directs a third party to conduct, a Test of the Services and publicly discloses the results directly or through a third party, then Google (or a Google-directed third party) may conduct Tests of any publicly available cloud products or services provided by Customer and publicly disclose the results of any such Test (which disclosure will include all information necessary for Customer or a third party to replicate the Test).
10. **Survival.** The following sections of this Services Schedule will survive expiration or termination of this Services Schedule: Section 9 (Benchmarking) and Section 12 (Additional Definitions).

11. Termination of Previous Agreements. If Google and Customer have previously entered into a Google Cloud Platform License Agreement, then that agreement will terminate on the Services Start Date, and these terms will govern the provision and use of the Services going forward.

12. Additional Definitions.

“Account” means Customer’s Google Cloud Platform account.

“Admin Console” means the online console(s) and tool(s) provided by Google to Customer for administering the Services under this Services Schedule.

“AUP” means the then-current acceptable use policy for the Services described at <https://cloud.google.com/terms/aup/>.

“Customer Application” means a software program that Customer creates or hosts using the Services.

“Customer Data” means data provided to Google by Customer or End Users through the Services under the Account, and data that Customer or End Users derive from that data through their use of the Services.

“Customer Materials” means Customer Data, Customer Brand Features, Customer Applications, and Projects.

“Data Processing and Security Terms” means the then-current terms describing data processing and security obligations with respect to Customer Data, as described at <https://cloud.google.com/terms/data-processing-terms/partner/>. For purposes of these Terms, references to “Partner Data” in the Data Processing and Security Terms shall mean “Customer Data”.

“GCP Service Specific Terms” means the then-current terms specific to one or more Services or Software described at <https://cloud.google.com/cloud/terms/service-terms>.

“GCP Technical Support Services” or “TSS” means the then-current technical support service provided, if applicable, by Google to Customer under the GCP Technical Support Services Guidelines.

“GCP Technical Support Services Guidelines” or “TSS Guidelines” means the then-current Google Cloud Platform support service guidelines described at <https://cloud.google.com/terms/tssg/>.

“Google Indemnified Materials” means Google’s technology used to provide the Services and Google’s Brand Features.

“Key Services” means the then-current list of Services described at <https://cloud.google.com/terms/key-services>.

“Notification Email Address” means the email address(es) designated by Customer in the Admin Console.

“Order Form” means an order form issued by Reseller and/or Distributor and executed by Customer specifying the Services Google will provide to Customer as described in this Services Schedule.

“Prices” means those prices listed in the applicable Reseller Agreement or Distributor Agreement.

“Project” means a grouping of Services configured by Customer via the Admin Console.

“Services” means the then-current services described at <https://cloud.google.com/terms/services>.

“SLA” means the then-current service level agreements described at <https://cloud.google.com/terms/sla/>.

“Software” means any downloadable tools, software development kits, or other such computer software provided by Google for use in connection with the Services, and any updates Google may make to such Software from time to time.

“URL Terms” means, as applicable, the AUP, Data Processing and Security Terms, GCP Service Specific Terms, GCP Technical Support Services Guidelines, and SLAs.

Pass-through Terms of Service for Google Professional Services

The following Terms of Service govern Google's performance and delivery of certain services and deliverables as described below.

1. **Definitions.**

"Affiliate" means any entity that directly or indirectly controls, is controlled by, or is under common control with, a party.

"Background IP" means all Intellectual Property owned or licensed by a party (a) before the provision of any Professional Services; or (b) independent of the Professional Services.

"Brand Features" means each party's trade names, trademarks, logos, domain names, and other distinctive brand features.

"Confidential Information" means information that one party (or an Affiliate) discloses to the other party under the Terms of Service, and that is marked as confidential or would normally be considered confidential information under the circumstances. It does not include information that is independently developed by the recipient, is rightfully given to the recipient by a third party without confidentiality obligations, or becomes public through no fault of the recipient.

"Deliverables" means any tangible or intangible work product (including third party materials) specific to the Customer to be provided by Google to Customer in connection with the Professional Services.

"Developed IP" means any Intellectual Property (other than Background IP) created or discovered by or on behalf of either party in connection with the Terms of Service.

"Fees" means the applicable fees for the Professional Services, including any reimbursable expenses (if applicable). The Fees for the Professional Services are stated in the applicable Ordering Document or other Partner document.

"Google Product" means any Google services or products made available to Customer under a separate agreement.

"Including" or **"including"** means "including but not limited to," and any examples listed are illustrative and not the sole examples of a particular concept.

"Indemnified Liabilities" means any (a) settlement amounts approved by the indemnifying party; and (b) damages and costs in a final judgment awarded against the indemnified part(ies) by a competent court.

"Intellectual Property" or **"IP"** means anything protectable by an Intellectual Property Right.

“Intellectual Property Rights” means all patent rights, copyrights, trademark rights, rights in trade secrets (if any), design rights, database rights, domain name rights, moral rights, and any other intellectual property rights (registered or unregistered) throughout the world.

“Ordering Document” means an order form or statement of work issued by a Partner, referencing the Terms of Service and signed by Customer and Partner (as applicable). An Ordering Document will describe, at a minimum, the following: (a) details of the Google Professional Services being ordered; (b) the Fees; and (c) the applicable form of payment.

“Partner” means a third party entity authorized by Google to resell the Professional Services.

“Personnel” means a party’s directors, officers, employees, agents, other staff and subcontractors.

“Product Agreement” means the separate agreement (if any) entered into between Google and Customer with respect to a Google Product, as amended from time to time in accordance with its terms.

“Professional Services” means Google professional services ordered by Customer subject to the Terms of Service, as more fully described in the datasheet associated with the applicable SKU referenced in an applicable Ordering Document.

“Third-Party Legal Proceeding” means any formal legal proceeding filed by an unaffiliated third party before a court or government tribunal (including any civil, administrative, investigative or appellate proceeding).

“Trademark Guidelines” means Google’s guidelines for third party use of Google’s Brand Features, located at: <http://www.google.com/permissions/guidelines.html>.

2. **Professional Services.**

2.1 Professional Services. Google will provide Professional Services and Deliverables to Customer in accordance with the Terms of Service, subject to Customer fulfilling its obligations under Section 2.2 (Customer Cooperation). The scope of the Google Professional Services will be detailed in the Ordering Document.

2.2 Customer Cooperation. Time will not be of the essence for performance of the Professional Services or delivery of the Deliverables. Customer will provide reasonable and timely cooperation in connection with Google’s performance of the Professional Services and delivery of the Deliverables. Customer will fulfill any responsibility described in the Ordering Document. Customer will also provide any information that Google needs to provide Professional Services or that is necessary for a Deliverable. If necessary, Customer will provide access to customer controlled facilities and locations. All information that Customer provides Google will be accurate in all material respects. If Customer’s failure to comply with the foregoing causes any delay in Google’s performance of the Professional Services or delivery of the Deliverables, neither Google nor

Partner will be liable for such delay. Partner may charge additional reasonable fees or cancel any uncompleted Professional Services or Deliverables by notifying Customer in writing (email permitted).

2.3 Personnel. Google will determine its Personnel assigned to perform the Professional Services. If Customer has a reasonable basis for requesting a change of such Personnel, Google will reasonably consider the request and use reasonable efforts to replace the assigned Personnel with alternative Google Personnel.

3. **Payments**. If Customer orders Professional Services from a Partner: (a) Customer will pay Partner for the Professional Services; (b) all payment terms are to be decided upon between Customer and Partner; (c) there will not be an Ordering Document between Google and Customer; (d) Google will provide to Partner any refunds or credits that may be due to Customer; and (e) any obligation on the part of Partner to provide any such refunds or credits to Customer will depend on the terms decided upon between Customer and Partner.

4. **Intellectual Property**.

4.1 Background IP. Except for the license rights under Section 5 (Licenses), neither party will own or acquire any right, title, or interest in or to the other party's Background IP under the Terms of Service.

4.2 Deliverables and Developed IP.

(a) Title to Deliverables. Subject to Sections 4.1 (Background IP) and 4.2(b) (Ownership of Developed IP), title to the Deliverables will transfer to Customer upon delivery.

(b) Ownership of Developed IP. As between the parties, and subject to Section 5.3 (License to Developed IP):

(i) Google owns any Developed IP; and

(ii) to the extent that Customer or any of its Personnel owns any rights in the Developed IP, Customer assigns to Google (or agrees to procure the assignment to Google of) all rights

(including Intellectual Property Rights), title, and interest in or to the Developed IP, provided however that if applicable law prevents future assignments, Customer will assign (or will procure the assignment of) such rights as these are created.

(c) Moral Rights. Customer will not assert, and to the extent permitted by applicable law, otherwise waives, any moral rights in the Developed IP. Customer will ensure that its Personnel and other third parties in its control who have moral rights in the Developed IP will also not assert, and to the extent permitted by applicable law, will waive, those moral rights.

5. **Licenses**.

5.1 Google IP. Subject to Customer's payment of applicable Fees, Google grants a limited, nonexclusive, royalty-free, fully-paid, worldwide license (with the right to sublicense to Affiliates only) to Customer to do the following for Customer's internal business purposes:

- (a) use the Developed IP solely in connection with the Deliverables; and
- (b) use any Google Background IP included in the Deliverables solely in connection with the Deliverables.

5.2 Customer Background IP. Customer grants to Google and its Personnel a limited, nonexclusive, non-transferable, royalty-free, fully-paid, worldwide license (with the right to sublicense) to reproduce, maintain, prepare derivative works of, distribute and use Customer Background IP solely in connection with Google's performance of Professional Services and creation and delivery of the Deliverables under the Terms of Service.

5.3 License to Developed IP. If applicable law prevents Customer from assigning ownership to Google of any Developed IP, Customer grants Google a perpetual, irrevocable, exclusive, royalty-free, fully-paid, transferable, worldwide license (with the right to sublicense) to:

- (a) reproduce, prepare derivative works of, distribute, publicly perform, publicly display and otherwise use such Developed IP; and
- (b) make, use, sell, offer for sale, import, export any component of and otherwise dispose of such Developed IP.

6. Confidentiality. The recipient will not disclose the Confidential Information, except to its Personnel, Affiliates, or professional advisors ("Delegates") who need to know it and who have a legal obligation to keep it confidential. The recipient will use the Confidential Information only to exercise rights and fulfill obligations under the Terms of Service, while using reasonable care. The recipient will ensure that its Delegates are also subject to the same non-disclosure and use obligations. The recipient may disclose Confidential Information when required by law after giving reasonable notice to the discloser, if permitted by law. Except for the limited use rights under the Terms of Service, neither party acquires any right, title, or interest in the other party's Confidential Information.

7. Publicity. Unless Customer agrees to different terms with the Reseller, then in connection with Customer's purchase and receipt of the Professional Services, (a) Customer may state publicly that it is a Google customer and display Google Brand Features consistent with the Trademark Guidelines, and (b) Google may (i) orally state that Customer is a Google customer and (ii) include Customer's name or Customer Brand Features in a list of Google customers (whether in Google's online or offline promotional materials). Any use of a party's Brand

Features will inure to the benefit of the party holding Intellectual Property Rights to those Brand Features. A party may revoke the other party's right to use its Brand Features under this Section with written notice to the

other party and a reasonable period to stop the use.

8. Warranties and Disclaimers.

8.1 Google Warranties.

(a) Quality. Google will perform the Professional Services in a professional and workmanlike manner, with reasonable skill and care, in accordance with generally-accepted industry standards. All of Google's Personnel performing the Professional Services have the requisite skills, experience, and qualifications.

(b) No Conflicts. There are no actual or potential conflicts of interest concerning the provision of the Services.

(c) Compliance with Customer's Onsite Policies and Procedures. If Google's Personnel perform Professional Services onsite at Customer's facilities, they will comply with Customer's reasonable procedures and policies made known to Google in writing in advance.

8.2 Remedies. Google's entire liability and Customer's sole remedy for failure to provide Professional Services or Deliverables that conform with Section 8.1(a) (Quality) will be for Google to use reasonable efforts to re-perform the applicable Professional Services or to terminate the applicable Ordering Document, and refund any applicable Fees received for the nonconforming Professional Services.

8.3 Disclaimers. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT AS EXPRESSLY PROVIDED FOR IN THIS SECTION 8, GOOGLE DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE AND NONINFRINGEMENT. GOOGLE MAKES NO REPRESENTATIONS ABOUT ANY GOOGLE PRODUCTS OR ANY CONTENT OR INFORMATION MADE ACCESSIBLE OR AVAILABLE BY OR THROUGH THE PROFESSIONAL SERVICES.

9. Termination.

9.1 Effects of Termination.

(a) Effects of Termination on Professional Services and Deliverables. If there is a termination of the agreement between the Customer and Partner, Google will immediately stop work on any Professional Services and Deliverables that remain incomplete as of the effective date of termination.

(c) Survival. Sections 1 (Definitions), 3 (Payment), 4 (Intellectual Property), 5.3 (License to Developed IP), 6 (Confidentiality), 8.2 (Remedies), 8.3 (Disclaimers), 9.1 (Effects of Termination), 10 (Defense and Indemnity), and 11 (General) will survive expiry or termination of the Terms of Service.

10. Defense and Indemnity.

10.1 Google Indemnification Obligations. Subject to Section 10.4 (Conditions), Google will defend and indemnify Customer against Indemnified Liabilities in any Third-Party Legal Proceeding to the extent arising from an allegation that Customer's use in accordance with the Terms of Service of any of the following (collectively, the "Google Indemnified Materials") infringes the third party's Intellectual Property Rights: (a) Deliverables including Developed IP and Google Background IP (in each case, excluding any open source software and any Developed IP licensed by Customer to Google); or (b) Google's Brand Features.

10.2 Customer Indemnification Obligations. Subject to Section 10.4 (Conditions), Customer will defend Google, its Personnel, and its Affiliates ("Google Indemnified Parties"), and indemnify them against Indemnified Liabilities in any Third-Party Legal Proceeding to the extent arising from an allegation that Google Indemnified Parties' use in accordance with the Terms of Service of any of the following (collectively, the "Customer Indemnified Materials") infringes the third party's Intellectual Property Rights: (a) Customer Background IP, any Developed IP licensed to

Google by Customer and any other information, materials or technology provided to Google by Customer in connection with the Professional Services (in each case, excluding any open source software); or (b) Customer's Brand Features. If Customer is a U.S. (federal, state, or local) government agency, then Customer's indemnification obligations will apply to the extent permitted by law.

10.3 Exclusions. This Section 10 will not apply to the extent the underlying allegation arises from:

- (a) modifications to the Google Indemnified Materials or Customer Indemnified Materials (as applicable) by anyone other than the indemnifying party;
- (b) combination of the Google Indemnified Materials or Customer Indemnified Materials (as applicable) with materials not provided by the indemnifying party; or
- (c) compliance with the indemnified party's instructions, design or request for customized features.

10.4 Conditions. Obligations under Sections 10.1 (Google Indemnification Obligations) and 10.2 (Customer's Indemnification Obligations) are conditioned on the following:

- (a) The indemnified party must have promptly notified the indemnifying party in writing of any allegation(s) that preceded the Third-Party Legal Proceeding and must cooperate reasonably with the indemnifying party to resolve the allegation(s) and Third-Party Legal Proceeding. If breach of this Section 10.4(a) prejudices the defense of the Third-Party Legal Proceeding, the indemnifying party's obligations under Section 10.1 or 10.2 (as applicable) will be reduced in proportion to the prejudice.
- (b) The indemnified party must tender sole control of the indemnified portion of the Third-Party Legal Proceeding to the indemnifying party, subject to the following: (i) the indemnified party may appoint its own non-controlling counsel, at its own expense; and (ii) any settlement requiring the indemnified party to admit liability, pay money, or take (or refrain from taking) any action, will require the indemnified party's prior written consent, not to be unreasonably withheld, conditioned, or delayed.

10.5 Infringement Remedies.

(a) If Google reasonably believes the Professional Services or Deliverables (including the Developed IP and Google Background IP) might infringe a third party's Intellectual Property Rights, then Google may, at its sole option and expense: (i) procure the right for Google to provide the Professional Services or for Customer to use the Deliverables including the Developed IP and Google Background IP (as applicable) in accordance with the Terms of Service; (ii) modify the Professional Services or Deliverables to make them non-infringing without materially reducing their functionality; or (iii) replace the Professional Services or Deliverables with a non-infringing, functionally equivalent alternative.

(b) If Google notifies Customer that Google does not consider the remedies in Section 10.5(a) to be commercially reasonable in the circumstances, or if such remedies are not provided within ninety (90) days of an injunction:

(i) either party may terminate the work described in the Ordering Document immediately on written notice; or

(ii) Google may, with prior written notice, suspend or terminate Customer's use of the impacted Deliverables and provide a pro-rated refund of any Fees paid for such Professional Services to Partner for return to Customer.

10.6 Sole Rights and Obligations. Without affecting either party's termination rights, this Section 10 states the parties' only rights and obligations under the Terms of Service for any third party's Intellectual Property Rights allegations and Third-Party Legal Proceedings.

11. Miscellaneous.

11.1 Independent Development. Nothing in the Terms of Service will be construed to limit or restrict either party from independently developing, providing, or acquiring any materials, services, products, programs or technology that are similar to the subject of the Terms of Service, provided that the party does not violate its obligations under the Terms of Service.

11.2 Force Majeure. Neither party will be liable for failure or delay in performance to the extent caused by circumstances beyond its reasonable control.

11.3 Severability. If any term (or part of a term) in the Terms of Service is invalid, illegal or unenforceable, the rest of the terms will remain in effect.

11.4 No Third-Party Beneficiaries. The Terms of Service do not confer any benefits on any third party unless it expressly states that it does.

11.5 Interpretation of Conflicting Terms. Unless stated otherwise in the applicable Ordering Document, if there is a conflict between any term of the Terms of Service and a term of an Ordering Document, the Terms of Service will govern.

**Schedule A - CLOUDERA (GOVERNMENT SOLUTIONS), INC.
ENTERPRISE SUBSCRIPTION MASTER AGREEMENT**

This Enterprise Subscription Master Agreement (this “ESMA” or “Agreement”) is made and entered into as of _____, 201_ (the “Effective Date”) by and between Cloudera (Government Solutions), Inc., a Delaware corporation located at 8281 Greensboro Drive, Suite 450, McLean, VA 22102 (“CGSI”) the Ordering Activity under GSA Schedule Contracts (“Ordering Activity” or “Customer”) and sets forth the terms under which Customer Ordering Activity may use certain Cloudera Products, and purchase certain Services under Order Forms governed by this ESMA. CGSI is a subsidiary and an Affiliate of Cloudera, Inc. (“Cloudera”), exclusively authorized to sell Cloudera Products and Hortonworks Products to U.S. federal, state and local government agencies, educational institutions, government contractors or other organizations when they are purchasing Cloudera Products and Hortonworks Products under a government contract (each, a “Government Entity,” and collectively, the “Government Entities”).

1. Definitions. For the purposes of the Agreement , including exhibits thereto, the following terms will have the following meanings:

1.1 “Affiliate” means any legal entity in which a party, directly or indirectly, holds more than fifty percent (50%) of the shares or voting rights or controls or is under common control with that legal entity. “Control” means the direct or indirect possession of the power to direct or cause the direction of the management and policies of an entity, whether through ownership, by management agreement, by contract, or otherwise. Any such entity will be considered an Affiliate for only such time as such interest or control is maintained.

1.2 “Agreement” means, for any Order Form referencing this ESMA, collectively the Order Form and the ESMA, together with the the underlying GSA Schedule Contract and Schedule Price List.

1.3 “Authorized Partner” means a reseller or a distributor authorized by CGSI to resell Services and licenses to Cloudera Products.

1.4 “Cloudera Online Services” means: (i) the Cloudera Open Source Distribution and/or Cloudera Software, and/or (ii) any Third Party Software incorporated in the foregoing, set forth in the applicable Order Form for a Subscription Period and provided by CGSI as a hosted, cloud-based service, accessible to Ordering Activity through a web browser.

1.5 “Cloudera Open Source Distribution” means the open source code components set forth in the applicable Order Form for a Subscription Period. Cloudera Open Source Distribution does not include the Hortonworks Products (as defined below).

1.6 “Cloudera Products” means: (i) the Cloudera Open Source Distribution, the Cloudera Software and the Cloudera Online Services, and (ii) any Third Party Software incorporated in the foregoing, set forth in the applicable Order Form for a Subscription Period.

1.7 “Cloudera Software” means CGI’s proprietary software components set forth in the applicable Order Form for a Subscription Period.

1.8 “Hortonworks Products” means software products made available under open source licenses and described at: <https://hortonworks.com/products> (whether available as originally branded,

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or as may be rebranded by Cloudera such that, by way of example, “Hortonworks Data Flow” or “HDF” is renamed “Cloudera Data Flow” or “CDF”). Unless otherwise set forth in the applicable Order Form, Hortonworks Products are procured by, and licensed to, Ordering Activity separately from the Agreement under applicable open source license terms.

1.9 “Hortonworks Support” means the technical support services described at: www.hortonworks.com/support, as such description may be updated from time to time, which are provided during a Subscription Period for the Hortonworks Product(s), as set forth in an applicable Order Form. Hortonworks Support is subject to the support policy available at: <http://hortonworks.com/agreements/support-services-policy/>, as such policy may be updated from time to time.

1.10 “Hortonworks Support Entitlement Metrics” means the applicable metrics by which CGSI sells entitlements to Hortonworks Support as defined in applicable Order Forms.

1.11 “Intellectual Property Rights” means all patents, copyrights, moral rights, trademarks, trade secrets and any other form of intellectual property rights recognized in any jurisdiction, including applications and registrations for any of the foregoing.

1.12 “Licensed Metrics” means the applicable licensing metric for the Cloudera Product as defined in the applicable Order Form and may include but may not be limited to the following: Nodes, Unique Identifiers, and Capacity Under Management.

1.13 “Order Form” means a separate document governed by this ESMA by which Ordering Activity purchases subscriptions to Cloudera Products and/or Services, whether titled an order form or a statement of work.

1.14 “Pre-Existing Property” means any and all Intellectual Property Rights owned or controlled by CGSI prior to the effective date of the applicable Order Form, including but not limited to the Cloudera Products and any and all modifications thereto and derivative works thereof.

1.15 “Professional Services” means the design, development, operational and other professional services performed or to be performed by CGSI under this ESMA, in accordance with the applicable Order Form.

1.16 “Services” means collectively the Professional Services, Hortonworks Support, and Training Services that may be purchased by Ordering Activity under an applicable Order Form.

1.17 “Subscription Period” means the period of time as identified in the applicable Order Form during which Ordering Activity may: (i) access and use the Cloudera Products subscribed to under the Order Form, and/or (ii) receive the Hortonworks Support purchased under the Order Form.

1.18 “Third Party Software” means certain of the copyrighted, patented and/or otherwise legally protected software and/or material of third parties that is licensed to, sublicensed to, and/or otherwise distributed and/or made available by CGSI to Ordering Activity. Third Party Software includes the Cloudera Open Source Distribution and material in the public domain.

1.19 “Training Materials” means the course slides, OnDemand videos and other documentation including the training exercises and labs provided in conjunction with any particular Training Services.

1.20 “Training Services” means: (i) one or more of the then-current Cloudera training offerings listed at <https://www.cloudera.com/more/training/description-of-training-services.html>, as may be updated by Cloudera from time to time, and provided subject to the Agreement and the policies at the foregoing URL; and/or (ii) the then-current training services offerings for the Hortonworks Products set forth in the Order Form and provided subject to the Agreement and the training services policies made available at: <http://www.hortonworks.com/agreements/>, as may be updated by Cloudera from time to time.

1.21 “Update” means a new minor release of a Cloudera Product providing patches, bug fixes and other such modifications, resulting in an increase in the release version number to the right of the decimal point, as X.1 to X.2.

1.22 “Upgrade” means a new major release of a Cloudera Product providing substantially new features, functionality, and/or enhancements, resulting in an increase in the release version number to the left of the decimal point, as in 1.x to 2.x.

1.23 “Work Product” means all tangible materials (including but not limited to drawings and documentation) delivered by CGSI in the course of CGSI’s performance of the Professional Services and/or Training Services that is created for Ordering Activity as set forth in an Order Form for Professional Services and/or Training Services. Work Product expressly excludes any and all: (i) Pre- Existing Property; (ii) Training Materials; (iii) Documentation; (iv) Hortonworks Support; (v) improvements, modifications, enhancements, or extensions to or derivative works of (a) Pre-Existing Property and (b) Hortonworks Products created or developed by CGSI during the course of performing Services that have or could have general applicability to Cloudera’s Ordering Activities (“General Enhancements”); and (vi) ideas, processes, programs, concepts, business methods, inventions, implementation architectures related to Hortonworks Products or Cloudera Products, and developments of general application throughout all industries or a single industry that are discovered, created or developed by CGSI during the course of performing the Services (“CGSI IP”), provided that CGSI IP will never include any of Ordering Activity’s Confidential Information.

2. Grants, Restrictions and Ownership.

2.1 Grants. Subject to the terms and conditions of the Agreement, CGSI grants to Ordering Activity a non-exclusive, non-transferable, non-sublicensable, revocable and limited license to access, use and reproduce (except as to the Cloudera Online Services, which may not be reproduced) the Cloudera Products as identified in the applicable Order Form, for the duration of the Subscription Period, solely for Ordering Activity’s internal business purposes.

2.2 Restrictions.

2.2.1 Except as otherwise expressly set forth in the Agreement, Ordering Activity may not: (i) modify, disclose, alter, translate or create derivative works of the Cloudera Products; (ii) license, sublicense, resell, distribute, lease, rent, lend, transfer, assign or otherwise dispose of the Cloudera Products; (iii) use the Cloudera Products, or allow the transfer, transmission, export or re-export of the Cloudera Products or any portion thereof in violation of any export control laws

or regulations administered by the U.S. Commerce Department, OFAC, or any other U.S. government agency; (iv) disassemble, decompile or reverse engineer any of the Cloudera Products; or (v) cause or permit any third party to do any of the foregoing. In addition, Ordering Activity will not remove, alter or obscure any proprietary notices in the Cloudera Products including copyright notices, or permit any third party to do so.

2.2.2 The parties acknowledge and agree that it will be a material breach, of this Agreement if (i) the Ordering Activity installs any free Cloudera software product licensed under a separate free license on more than one hundred (100) Nodes (as defined in the CSL or in an Order Form) in total across the Ordering Activity's environments, or (ii) Ordering Activity exceeds the installation limits for any free Cloudera software products stated in such separate free license. A claim must first be brought to the Contracting Officer per the Contract Disputes Act (FAR 52.233-1) prior to Ordering Activity being deemed in breach per this §2.2.2.

2.3 Ownership and Reservation of Rights. As between the parties and subject to Sections 2.1 and 3.4.1 of this ESMA, CGSI will own all right, title and interest in and to: (i) the Cloudera Products,

(ii) the CGSI IP, (iii) the Pre-Existing Property; (iv) the General Enhancements; (v) all modifications to and derivative works of the Cloudera Products made by CGSI; and (vi) any and all Intellectual Property Rights embodied in the foregoing. CGSI reserves all rights not expressly granted in the Agreement, and no licenses are granted by CGSI to Ordering Activity, whether by implication, estoppel or otherwise, except as expressly set forth in the Agreement.

2.4 Affiliate Orders. An Affiliate of Ordering Activity may execute an Order Form pursuant to this ESMA, and such Affiliate will be deemed to be the Ordering Activity for purposes of such Order Form.

2.5 Affiliate Use. An Affiliate of Ordering Activity may access and use the Cloudera Products licensed by Ordering Activity under an applicable Order Form, provided that: (i) such Affiliate agrees in writing with Ordering Activity to be bound by and accepts all of the obligations imposed upon Ordering Activity under this ESMA (other than payment obligations for which Ordering Activity is solely responsible to CGSI or its Authorized Partner, as applicable, unless the Affiliate enters into a separate Order Form with CGSI or an Authorized Partner, as applicable); (ii) Ordering Activity agrees to be responsible for the acts and omissions of such Affiliate in relation to the Agreement; (iii) the Affiliate is not a CGSI Ordering Activity under separate contract, nor actively engaged with CGSI in discussions for the purchase of Cloudera Products at the time an Order Form is executed pursuant to this ESMA; (iv) the Affiliate is not a direct competitor of Cloudera; and (v) all of Ordering Activity's obligations under the Agreement will remain in force and undiminished.

2.6 Third Party Service Provider Rights.

2.6.1 CGSI grants to Ordering Activity the right to permit one or more third party service providers to access and use the Cloudera Products licensed under an applicable Order Form during the Subscription Period, provided that: (i) any such third party must exercise such rights solely to provide goods to or perform services for Ordering Activity and/or its Affiliates; (ii) all such use is subject to the terms and conditions of the Agreement; (iii) such third party is not a direct

competitor of Cloudera.; and (iv) Ordering Activity will be responsible for the acts and omissions of each such third party as fully as if they were Ordering Activity's acts and omissions.

2.6.2 Notwithstanding Section 2.6.1 (iii), Ordering Activity may use third party cloud service providers to host Cloudera Products for the benefit of Ordering Activity, provided that: (i) such third party's platform is supported by CGSI; and (ii) Ordering Activity will be fully responsible for ensuring that such platform meets Ordering Activity's performance and availability requirements and for complying with the applicable terms and conditions of use for such platform.

3. Delivery, Services, and Online Services.

3.1 Delivery. Upon CGSI's acceptance of Ordering Activity's Order Form or the Subscription Period start date indicated therein (whichever is later), CGSI will make the Cloudera Products available for download (or, in the case of any Cloudera Online Services, will make the services available to Ordering Activity through CGSI's web site). The Cloudera Products will be deemed delivered when the electronic download or, as the case may be, online access is initially made available. Ordering Activity acknowledges that CGSI does not control the transfer of data over the internet and that CGSI is not responsible for any delays or delivery failures caused by the internet.

3.2 Cloudera Products Support. CGSI will use commercially reasonable efforts to provide the support services as set forth in the Support Terms and Conditions ("Support Terms") attached hereto as Exhibit 1 with respect to the Cloudera Products during the Subscription Period, as such services may be updated by CGSI from time to time (the "Support Services"). Any updates to the Support Services terms during any then-current Subscription Period will apply from the start date of the next Subscription Period. The Support Services include the provision of Updates and Upgrades to the Cloudera Products, when and if such Updates or Upgrades are made generally available during the applicable Subscription Period.

3.3 Hortonworks Support. Subject to the terms and conditions of the Agreement, CGSI will provide to Ordering Activity the Hortonworks Support agreed by the parties in applicable Order Forms. All such Order Forms will be governed by the Agreement. Hortonworks Support is provided only for Ordering Activity's internal use. Ordering Activity may not use the Hortonworks Support to supply any support services to any third party. All Hortonworks Support delivered under the Agreement will be deemed accepted by Ordering Activity upon delivery. CGSI will use commercially reasonable efforts to provide Hortonworks Support with respect to the Hortonworks Products during the Subscription Period. Any updates to the Hortonworks Support terms and/or policy during any then-current Subscription Period will apply from the start date of the next Subscription Period.

3.4 Services.

3.4.1 Ownership of Work Product. In the event that the performance of Professional Services results in Work Product, all right, title and interest in the Work Product (excluding the Pre- Existing Property, General Enhancements, and the CGSI IP) vests in Ordering Activity and is deemed to be a work made for hire, and to the extent it may not be considered a work made for hire, CGSI assigns to Ordering Activity all right, title and interest in and to the Work Product (excluding the Pre-Existing Property, General Enhancements, and the CGSI IP) and any and all Intellectual Property Rights embodied therein. Notwithstanding any terms to the contrary in the Agreement, CGSI owns all right, title and interest in and to any and all bug-fixes, extensions, improvements or enhancements to the Cloudera Products and all Hortonworks Product General Enhancements

(including all Intellectual Property Rights embodied therein), and no rights to the

foregoing are granted hereunder. Any General Enhancements to the Hortonworks Products, if and when made generally available, will be licensed under the applicable open source license terms for Hortonworks Products. CGSI grants to Ordering Activity a non-exclusive, non-transferable, revocable and limited license to use the CGSI IP solely in conjunction with Ordering Activity's use of the Work Product, provided that Ordering Activity may not: (i) modify, disclose, alter, translate or create derivative works of the CGSI IP; (ii) license, sublicense, resell, distribute, lease, rent, lend, transfer, assign or otherwise dispose of the CGSI IP; or (iii) disassemble, decompile or reverse engineer any of the CGSI IP.

3.4.2 Training Services. If Ordering Activity orders Training Services, all works of authorship, inventions, improvements, methods, processes, formulas, designs, techniques and information conceived, discovered, developed or otherwise made (as necessary to establish authorship, inventorship or ownership) by CGSI, solely or in collaboration with others, in the course of performing the Training Services, including any and all Training Materials, will be the sole property of CGSI. No title to or ownership of any property or any associated Intellectual Property Rights are transferred to Ordering Activity in the performance of the Training Services. In addition, Ordering Activity may not make recordings of any kind of the Training Services. Notwithstanding the foregoing, Ordering Activity participants attending the Training Services may retain one copy of the Training Materials for personal use only.

4. Financial Considerations.

4.1 Fees; Taxes.

4.1.1 Fees for Licensed Metrics, Hortonworks Support Entitlement Metrics and Cloud Pre-Pay Credits. Ordering Activity will pay to CGSI or its Authorized Partner, as applicable, the total fees due for the applicable Subscription Period, including any renewals thereof pursuant to Section 9.1. Unless the applicable Order Form provides otherwise, fees set forth in the Order Form are due at the commencement of the Subscription Period for all Licensed Metrics, Hortonworks Support Entitlement Metrics, and Cloud Pre-Pay Credits (as defined in an Order Form), whether used or not. For the avoidance of doubt, with respect to Cloudera Products, all subscriptions (excluding subscriptions for Unique Identifiers) for any given cluster must be for the same Cloudera Product(s) and Support Services entitlements, and be licensed according to the same Licensed Metric.

4.1.2 Fees for Additional Licensed Metrics or Hortonworks Support Entitlement Metrics. During the Subscription Period Ordering Activity may elect to add applicable Licensed Metrics or Hortonworks Support Entitlement Metrics (together, "Metrics") that exceed the quantity of Metrics included in a subscription as set forth in an Order Form, and, in such case, Ordering Activity must notify CGSI or its Authorized Partner, as applicable, of its elected use of such additional Metrics. In the event that during a Subscription Period, Ordering Activity: (i) elects to add Metrics, or (ii) exceeds the quantity of Metrics (whether used or not) included in a subscription as set forth in an Order Form, the fees for such additional Metrics will be calculated for the period commencing immediately upon: (a) the installation date of the additional Nodes, (b) the date when Capacity Under Management or quantity of Unique Identifiers increased (whether used or not), or (c) the date when additional Hortonworks Support Entitlement Metrics are required. The Subscription Period of the additional Metrics will be pro-rated such that it will terminate on the same date as the existing Subscription Period.

4.1.3 Fees in the event of Termination. In the event of a termination by the Ordering Activity, there will be no refunds associated with the portion of the Subscription Period that has been consumed by the Ordering Activity (absent any breach by CGSI).

4.1.4 Fees for Services. The fees associated with the performance of the Services will be as set forth in the Order Form applicable to such Services in accordance with the GSA Schedule Pricelist. Ordering Activity agrees to pay any travel expenses in accordance with Federal Travel Regulation (FTR)/Joint Travel Regulations (JTR), as applicable, Ordering Activity shall only be liable for such travel expenses as approved by Ordering Activity and funded under the applicable ordering document.

4.1.5 Payment Terms. Upon receipt of Ordering Activity's (or an Authorized Partner's) purchase order or Order Form for a Subscription Period, for Services, and/or for any additional Metrics purchased, used or increased during a then-current Subscription Period as provided in this Section above, CGSI or its Authorized Partner, as applicable, will invoice Ordering Activity the applicable fees as described in this Section 4.1. Fees are due to CGSI within thirty (30) days of the receipt date of CGSI's invoice. Where a subscription for a Cloudera Product is purchased through an Authorized Partner, any disputes regarding payment must be addressed to such Authorized Partner.

4.1.6 Payment Method and Currency. Except as may otherwise be set forth in any Order Form between Ordering Activity and an Authorized Partner, if applicable, all payments due under the Agreement will be made: (i) by bank wire transfer, electronic ACH deposit or company check in immediately available funds to an account designated by CGSI; and (ii) in the currency as set forth in the applicable Order Form.

4.1.7 Taxes. CGSI shall state separately on invoices taxes excluded from the fees, and the Ordering Activity agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

5. Confidentiality; Personal Data; Publicity.

5.1 Confidentiality.

5.1.1 "Confidential Information" means all information disclosed (whether in oral, written or other tangible or intangible form) by one party or its Affiliate (the "Disclosing Party") to the other party or its Affiliate (the "Receiving Party") concerning or related to the Agreement or the Disclosing Party (whether before, on or after the Effective Date) that is: (i) characterized as Confidential Information at the time of disclosure or within a reasonable time after disclosure; or (ii) that due to the nature of the information and circumstances surrounding its disclosure would be reasonably understood by a person with no knowledge of the relevant trade or industry to be confidential or proprietary. Confidential Information will not include information that: (i) is in or enters the public domain without breach of the Agreement and through no fault of the Receiving Party; (ii) the Receiving Party can reasonably demonstrate was in its possession prior to first

receiving it from the Disclosing Party; (iii) the Receiving Party can demonstrate was developed by the Receiving Party independently and without use of or reference to the Disclosing Party's Confidential Information; or (iv) the Receiving Party receives from a third party without restriction on disclosure and without breach of a nondisclosure obligation. CGSI

recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which requires that certain information be released, despite being characterized as “confidential” by the vendor.

5.1.2 Period of Confidentiality. The Receiving Party will, during the term of the Agreement and for three years thereafter, use the same degree of care to maintain the confidentiality of the Confidential Information of the Disclosing Party that it uses to maintain the confidentiality of its own Confidential Information, but in no event less than reasonable care. Notwithstanding the foregoing, where the Confidential Information disclosed is: (i) the Disclosing Party’s trade secret, the Receiving Party will treat such information as Confidential Information for as long as the Confidential Information remains the Disclosing Party’s trade secret; or (ii) required by law to be protected for a duration beyond that provided hereunder, the Receiving Party will maintain such information in confidence for the duration required by law.

5.1.3 Use; Disclosure. Any Confidential Information of the Disclosing Party will be used by the Receiving Party solely for the purpose of carrying out the Receiving Party’s obligations under the Agreement. In addition, the Receiving Party will not reproduce Confidential Information disclosed by the Disclosing Party, in any form, except as required to accomplish the Receiving Party’s obligations under the Agreement. The Receiving Party may disclose Confidential Information to the extent compelled to do so pursuant to a judicial or legislative order or proceeding; provided that, to the extent permitted by applicable law, the Receiving Party provides to the Disclosing Party prior notice of the intended disclosure and an opportunity to respond or object to the disclosure, or if prior notice is not permitted by applicable law, prompt notice of such disclosure; and provided further that the Receiving Party must limit the scope of Confidential Information that is disclosed to only that which is required to be disclosed by the applicable order or proceeding.

5.1.4 Remedies. To the extent that any equitable remedy is available, the parties agree that (a) damages may be an inadequate remedy in the event of a breach of this Section 5.1, and (b) the parties may be entitled to seek equitable remedies, in addition to any other rights and remedies otherwise available, in the event of a breach or threatened breach by the other party of this Section 5.1.

5.2 Personal Data. Subject to applicable law, in connection with the performance of the Agreement and Ordering Activity’s use of the Cloudera Products, Hortonworks Products or Services: (i) beyond Account Data (as defined in the Cloudera Privacy and Data Policy) which may include limited Personal Data and that may be collected incident to CGSI’s provision of Services, CGSI agrees that it will not require Ordering Activity to deliver to CGSI any “Personal Data”; and (ii) Ordering Activity agrees not to deliver any Personal Data to CGSI; provided, however, that Ordering Activity’s Account Data may include Personal Data, and will be governed by the Data Policy. To the extent that CGSI processes any Personal Data as a data processor on behalf of Ordering Activity, the terms of the Data Protection Addendum included in Cloudera’s Privacy Policy (the “Privacy and Data Policy”) attached hereto as Exhibit 2 will apply.

5.3 Reserved.

5.4 Policies. Cloudera's Support Terms and Privacy and Data Policy attached hereto will apply to Ordering Activity's use of any Cloudera Products and Services.

6. Warranties; Disclaimer.

6.1 General Warranties. Each party warrants that as of the Effective Date: (i) it is validly existing and in good standing under the laws of the place of its establishment or incorporation; (ii) it has full corporate power and authority to execute, deliver and perform its obligations under this ESMA; (iii) the person signing this ESMA (or an Order Form adopting this ESMA) on its behalf has been duly authorized and empowered to enter into the Agreement; and (iv) this ESMA is valid, binding and enforceable against it in accordance with its terms.

6.2 Cloudera Product Warranty. CGSI warrants that for a period of sixty (60) days following initial delivery (the "Warranty Period"), the Cloudera Products will perform in all material respects in accordance with the applicable documentation as provided by CGSI at <http://www.cloudera.com/content/support/en/documentation.html> (the "Documentation"). Ordering Activity must notify CGSI of any non-conformance with this warranty during the Warranty Period, and as CGSI's sole obligation and Ordering Activity's exclusive remedy for breach of warranty, CGSI will either: (i) repair the Cloudera Product such that it conforms to the warranty; or (ii) replace the Cloudera Product with an equivalent product that conforms to the warranty; provided, however, if neither (i) nor (ii) is reasonable or practicable, Ordering Activity may return the applicable Cloudera Product and obtain a return of the subscription fees Ordering Activity paid to CGSI for the defective Cloudera Product.

6.3 Services Warranty. CGSI warrants that it will perform the Services in a professional manner and consistent with industry standards. For any Services that do not conform to this warranty, Ordering Activity must notify CGSI within sixty (60) days of the delivery of any non-conforming Services, and as CGSI's sole obligation and Ordering Activity's exclusive remedy, CGSI, at its sole discretion, will either: (i) re-perform such non-conforming Services at no additional charge to Ordering Activity, or (ii) refund any Services fees paid to CGSI for such non-conforming Services (where, if the affected Services are Hortonworks Support, the refunded Services fees will be adjusted pro-rata for the remainder of the then-current Subscription Period), and terminate the applicable Order Form.

6.4 Disclaimer. EXCEPT FOR THE EXCLUSIVE WARRANTIES SET FORTH IN THIS ESMA, CGSI AND ITS SUPPLIERS DISCLAIM ANY AND ALL OTHER WARRANTIES (EXPRESS OR IMPLIED, ORAL OR WRITTEN) WITH RESPECT TO THE CLOUDERA PRODUCTS, HORTONWORKS PRODUCTS, THE SUPPORT SERVICES, AND/OR THE SERVICES, WHETHER ALLEGED TO ARISE BY OPERATION OF LAW, BY REASON OF CUSTOM OR USAGE IN THE TRADE, BY COURSE OF DEALING OR OTHERWISE, INCLUDING ANY AND ALL: (I) WARRANTIES OF MERCHANTABILITY; (II) WARRANTIES OF FITNESS OR SUITABILITY FOR ANY PURPOSE (WHETHER OR NOT CGSI KNOWS, HAS REASON TO KNOW, HAS BEEN ADVISED, OR IS OTHERWISE AWARE OF ANY SUCH PURPOSE); AND (III) WARRANTIES OF NONINFRINGEMENT OR CONDITION OF TITLE. CGSI AND ITS SUPPLIERS MAKE NO WARRANTIES WITH RESPECT TO THE CLOUDERA PRODUCTS OR HORTONWORKS PRODUCTS BEING FREE FROM BUGS, ERRORS, OR OMISSIONS. THIS DISCLAIMER AND EXCLUSION WILL APPLY EVEN IF ANY OF THE EXPRESS WARRANTIES SET FORTH ABOVE FAILS OF ITS ESSENTIAL PURPOSE.

7. CGSI's Indemnification Obligations.

7.1 Subject to this Section 7, CGSI agrees, at its own expense, to pay all Damages (as defined

below) and defend Ordering Activity from (or at CGI's option, settle) any claim instituted by a third party and asserted against Ordering Activity that any Cloudera Software when used in accordance with the applicable Documentation, or the Work Product (if any), infringe any United States patent,

copyright, trade secret or other proprietary right of a third party ("IP Claim"), provided that Ordering Activity: (i) promptly notifies CGSI in writing of any such IP Claim; (ii) gives CGSI control over the investigation, preparation, defense and settlement of the IP Claim; and (iii) assists and fully cooperates with CGSI in the defense of same. CGSI agrees to pay any damages awarded by a court of competent jurisdiction against Ordering Activity (or agreed to in a settlement by CGSI) resulting from the IP Claim, including any awarded costs and awarded attorneys' fees (collectively "Damages"). CGSI will not be responsible for any settlement (and the associated Damages agreed to in such settlement) that it does not approve in writing prior to such settlement. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or suit brought against the U.S. pursuant to its jurisdictional statute 28 U.S.C. § 516.

7.2 Following notice of an IP Claim or any facts which may give rise to such IP Claim, CGSI may, in its sole discretion and at its option: (A) with respect to any allegedly infringing Cloudera Software: (i) procure for Ordering Activity the right to continue to use the Cloudera Software; (ii) replace the Cloudera Software; (iii) modify the Cloudera Software to make it non-infringing; or (iv) if Ordering Activity's use of the Cloudera Software is enjoined in a non-appealable judgment, and CGSI determines that it is not commercially reasonable to perform any of alternatives (i) through (iii), CGSI or Ordering Activity will terminate the license for the allegedly infringing Cloudera Software, and CGSI will refund the pre-paid and unused fees paid by Ordering Activity for the use of such allegedly infringing Cloudera Software; or (B) with respect to allegedly infringing Work Product, procure for Ordering Activity the right to continue to use the Work Product; (ii) replace the Work Product; (iii) modify the Work Product to make it non-infringing; or (iv) if Ordering Activity's use of the Work Product is enjoined in a non-appealable judgment, and CGSI determines that it is not commercially reasonable to perform any of alternatives (i) through (iii), CGSI will terminate the Order Form under which such alleged infringement occurred, and upon such termination, Ordering Activity must, at CGSI's option, return or destroy such Work Product and any and all Pre-Existing Property and CGSI IP, and CGSI will provide a refund of all fees paid under such Order Form for the allegedly infringing Work Product.

7.3 In no event will CGSI have any obligations under this Section 7 or any liability for any IP Claim if the IP Claim is caused by, or results from: (i) Ordering Activity's combination or use of the Cloudera Software or Work Product with non-Cloudera software or services, or any equipment, data or other materials, if such IP Claim would have been avoided absent such combination or use; (ii) modification of the Cloudera Software or Work Product by anyone other than CGSI if such IP Claim would have been avoided by use of the unmodified Cloudera Software or Work Product; (iii) Ordering Activity's continued allegedly infringing activity after being notified thereof or after being provided modifications that would have avoided the alleged infringement; (iv) Ordering Activity's use of the Cloudera Software or Work Product in a manner not strictly in accordance with the Agreement; (v) CGSI's modification of the Cloudera Software or Work Product in compliance with Ordering Activity's specifications; (vi) use of other than CGSI's most current release of the Cloudera Software if the IP Claim would have been avoided by use of the most current release, provided Ordering Activity is given an opportunity to use such most current release for no additional fee; or (vii) any open source software. Further, notwithstanding anything to the contrary set forth herein, where Ordering Activity's active subscription(s) consist solely of the Cloudera Enterprise Essentials Edition product for a Subscription Period of fewer than three (3) years, CGSI will have no obligations under this Section 7 and no liability for any alleged infringement.

7.4 THIS SECTION 7 STATES CGSI'S ENTIRE LIABILITY AND ORDERING ACTIVITY'S SOLE AND EXCLUSIVE REMEDY FOR INFRINGEMENT OR ALLEGED INFRINGEMENT OF A THIRD PARTY'S INTELLECTUAL PROPERTY RIGHTS.

8. Limitation of Liability.

8.1 (A) IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY FOR ANY LOSS OF PROFITS, LOSS OF USE, LOSS OF REVENUE, LOSS OF GOODWILL, ANY INTERRUPTION OF BUSINESS, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT WHETHER IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, EVEN IF SUCH PARTY HAS BEEN ADVISED OR IS OTHERWISE AWARE OF THE POSSIBILITY OF SUCH DAMAGES. (B) A PARTY'S TOTAL LIABILITY ARISING OUT OF OR RELATED TO THE AGREEMENT WILL NOT EXCEED THE TOTAL AMOUNT PAID BY THE ORDERING ACTIVITY TO CGSI FOR THE USE OF THE CLOUDERA PRODUCTS, HORTONWORKS PRODUCTS AND THE SERVICES AS SPECIFIED IN THE APPLICABLE ORDER FORM(S) DURING THE TWENTY- FOUR MONTH PERIOD IMMEDIATELY PRIOR TO THE ACCRUAL OF THE FIRST CLAIM.

8.2 EXCLUSIONS. THE LIMITATIONS OF LIABILITY IN SECTION 8.1 DO NOT APPLY TO: (I) CLAIMS ALLEGING FRAUD OR WILLFUL MISCONDUCT; AND (II) BREACHES OF SECTIONS 2.1 OR 2.2. THE LIMITATIONS OF LIABILITY IN SECTION 8.1(B) DO NOT APPLY TO: (I) CGSI'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 7; AND (II) CLAIMS FOR NON-PAYMENT. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO (1) PERSONAL INJURY OR DEATH RESULTING FROM LICENSOR'S NEGLIGENCE; (2) FOR FRAUD; OR (3) FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW.

8.3 SECTION 8 WILL BE GIVEN FULL EFFECT EVEN IF ANY REMEDY SPECIFIED IN THIS AGREEMENT IS DEEMED TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

9. Term and Termination.

9.1 Term; Renewal. Unless terminated as provided in the Agreement: (i) the term of this ESMA will commence on the Effective Date and continue for as long as Ordering Activity has an active subscription to Cloudera Products and/or an active Order Form for Services; and (ii) each Order Form for Professional Services expires one year from the initial effective date of such Order Form, unless both parties agree in writing to extend the term of such Order Form. The Subscription Period may be renewed for additional successive one (1) year terms by executing a new Purchase Order in writing.

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

9.3 Effect of Termination. Upon any expiration or termination of the Agreement or an applicable Order Form: (i) all rights and licenses granted to Activity under the Agreement to the Cloudera Product and all rights to receive Hortonworks Support under the Agreement will immediately terminate; (ii) Ordering Activity must immediately remove any associated license keys provided by CGSI for the purpose of enabling the applicable Cloudera Product features and cease any use of such keys; (iii)

upon request from CGSI, Ordering Activity must confirm in writing Ordering Activity's compliance with the foregoing provisions in (i) and (ii); and (iv) each of Ordering Activity and CGSI will promptly return to one another all of the other party's Confidential Information then in its possession or destroy all copies of Confidential Information; provided, however, that each party may retain sufficient copies of the Confidential Information of the other party solely as may be required for compliance with internal backup policies or applicable law; and provided further that such retained Confidential Information remains subject to the requirements of Section 5.1 and are used for no other purpose. Each of Ordering Activity and CGSI will immediately confirm in writing that it has complied with Section 9.3(iv) if requested by the other party. The following Sections will survive any expiration or termination of this ESMA: 1, 2.2, 2.3, 3.4.1, 3.4.2, 4, 5, 6.4, 8, 9.3 and 10.

10. General Provisions.

10.1 Entire Agreement and Conflicts. The Agreement, together with the underlying GSA Schedule Contract, Schedule Pricelist, Purchase Order(s), sets forth the entire agreement and understanding of the parties relating to the subject matter of the Agreement, and supersedes all prior or contemporaneous agreements, proposals, negotiations, conversations, discussions and understandings, written or oral, with respect to such subject matter and all past dealing or industry custom. The Agreement or a negotiated Order Form will prevail over any additional, conflicting or inconsistent terms and conditions which may appear on any purchase order furnished by Ordering Activity.

10.2 Independent Contractors. Neither party will, for any purpose, be deemed to be an agent, franchisor, franchise, employee, representative, owner or partner of the other party, and the relationship between the parties will only be that of independent contractors. Neither party will have any right or authority to assume or create any obligations or to make any representations or warranties on behalf of any other party, whether express or implied, or to bind the other party in any respect whatsoever.

10.3 Diagnostics and Reporting. Ordering Activity acknowledges that the Cloudera Software and the Cloudera Online Services contain a diagnostic functionality as its default configuration. The diagnostic function collects configuration files, Licensed Metric count, software versions, log files and other information regarding Ordering Activity's environment and use of the Cloudera Products, and reports that information to CGSI for use to proactively identify potential support issues, to understand Ordering Activity's environment, to enhance the usability of the Cloudera Products, and for other internal CGSI purposes. While Ordering Activity may elect to change the diagnostic function in the Cloudera Software in order to disable regular automatic reporting or to report only on filing of a support ticket, Ordering Activity agrees that, no less than once per quarter, it will run the diagnostic function and report the results to CGSI.

10.4 Assignment. Neither the Agreement nor any right or duty under the Agreement may be transferred, assigned or delegated by Ordering Activity, by operation of law or otherwise, without the prior written consent of CGSI, and any attempted transfer, assignment or delegation without such consent will be void and without effect; provided that Ordering Activity may assign this ESMA and/or any Order Form(s), including all rights and duties thereunder, to any of its Affiliates, upon written notice to CGSI, provided that such Affiliate agrees in writing to assume all obligations of Ordering Activity hereunder, and that such Affiliate is, in the sole judgment of CGSI, adequately capitalized and credit-worthy. The Anti-Assignment Act, 41 USC 6305, prohibits the assignment of Government contracts without the Government's prior approval. Procedures for securing such approval are set forth in FAR

42.1204. Subject to the foregoing, this ESMA will be binding upon and will inure to the benefit of the parties and their respective representatives, heirs, administrators, successors and permitted assigns.

10.5 Third Party Software. Notwithstanding any terms to the contrary in the Agreement, Ordering Activity acknowledges and agrees that: (i) the Cloudera Products contain Third Party Software; and (ii) in addition to the terms of the Agreement, there may be terms of such third party licenses applicable to the Third Party Software different from the terms of this ESMA. Ordering Activity hereby acknowledges that CGSI makes the list of Third Party Software, as well as the applicable third party software license terms and copyright notices, available to Ordering Activity: (i) on Cloudera's website, (ii) in the Cloudera Product source code and/or the third party notice file that accompanies the Cloudera Product, and/or (iii) as otherwise agreed between the parties. Nothing herein shall bind the Ordering Activity to any Third Party terms unless the terms are provided for review and agreed to in writing by all parties.

10.6 Amendments and Waivers. No modification, addition or deletion or waiver of any rights under this ESMA will be binding on a party unless made in writing, clearly understood by the parties to be a modification or waiver and signed by a duly authorized representative of each party. No failure or delay (in whole or in part) on the part of a party to exercise any right or remedy hereunder will operate as a waiver thereof or effect any other right or remedy. Except as otherwise expressly set forth herein, all rights and remedies hereunder are cumulative and are not exclusive of any other rights or remedies provided hereunder or by law. The waiver of one breach or default or any delay in exercising any rights will not constitute a waiver of any subsequent breach or default.

10.7 Notices. Any notice or communication required or permitted to be given hereunder must be in writing signed or authorized by the party giving notice, and may be delivered by hand, deposited with an overnight courier, sent by email to a confirmed address identified in an Order Form, or mailed by registered or certified mail, return receipt requested, postage prepaid, in each case to the address of the receiving party as identified on an Order Form or at such other address as may be furnished in writing by either party to the other party. Such notice will be deemed to have been given as of the date it is delivered.

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

10.9 Section Headings. The section headings contained in this ESMA are for reference purposes only and will not affect in any way the meaning or interpretation of the Agreement.

10.10 Reserved.

10.11 Governing Law; Venue. This Agreement is made and will be governed by and construed in accordance with the Federal laws of the United States.

10.12 Government Entities. If Ordering Activity is a Government Entity, the following applies: The Cloudera Software is provided with RESTRICTED RIGHTS as customarily provided to the public as defined in this Agreement. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software).

10.13 Severability. If any provision of this ESMA is invalid, illegal, or incapable of being enforced by any rule of law or public policy, all other provisions of this ESMA will nonetheless remain in full force and effect so long as the economic and legal substance of the transactions contemplated by the Agreement is not affected in any manner adverse to any party. Upon such determination that any provision is invalid, illegal, or incapable of being enforced, the parties will negotiate in good faith to modify this ESMA so as to effect the original intent of the parties as closely as possible in an acceptable manner to the end that the transactions contemplated hereby are fulfilled.

10.14 Counterparts. This ESMA, and any Order Form, may be executed: (i) in two or more counterparts, each of which will be deemed an original and all of which will together constitute the same instrument; and (ii) by the parties by exchange of signatures by electronic means or scanned and emailed signature service where legally permitted. For clarity, electronic, digital, machine-generated or images of signatures will create a valid and binding obligation of the executed party.

10.15 Anti-Corruption Compliance. Each party will comply with all applicable anti-corruption laws, including the U.S. Foreign Corrupt Practices Act ("FCPA"), the U.K. Anti-Bribery Act, and all other applicable anti-corruption laws. Each party acknowledges and agrees that no payment or gift of money or anything of value has been or will be offered, authorized, promised, provided or paid, directly or indirectly, to any government official, state-owned enterprise official, public international organization official, political party official (or candidate for such office) or political party for the purpose of influencing official acts and decisions (including failures to act or decide) in order to assist the other party in obtaining or retaining an improper business advantage. Each party will promptly notify the other party if it receives a request to take any action which may violate its obligations under this Section.

10.16 Audit. During the term of the Agreement and for a period of six (6) months thereafter, CGSI and/or an independent auditor on behalf of CGSI will have the right to audit Ordering Activity's applicable systems, books and records, no more than once every calendar year, during Ordering Activity's normal business hours, subject to Government Security requirements, and in a manner that does not unreasonably interfere with Ordering Activity's normal business operations, to ensure Ordering Activity's compliance with the terms and conditions of the Agreement. If the audit reveals an underpayment, or a failure by Ordering Activity to fully comply with all the payment terms and conditions of the Agreement, then Ordering Activity will immediately pay CGSI the underpaid amount within thirty (30) days of the invoice receipt date, with interest accruing at the rate governed by the Prompt Payment Act (31 USC 3901 et seq) and Treasury regulations at 5 CFR 1315, from the date such amount is due.



END-USER LICENSE AGREEMENT

This End-User License Agreement (“**Agreement**”) is a legal contract between you, either (a) an individual user or (b) a business organization (in either case the “**Licensee**”), and Flexera for the Software, Support and Maintenance, Content and/or Services.

By clicking on the “I ACCEPT” button or by copying, downloading, accessing or otherwise using the Software, Licensee agrees to be bound by the terms of this Agreement). If Licensee is an individual entering into this Agreement on behalf of a company or other legal entity, such individual represents that it has the authority to bind such entity and its Affiliates to these terms and conditions; if such individual does not have such authority, or if such individual does not wish to be bound by the terms of this Agreement, such individual must click the “I DO NOT ACCEPT” button, and/or must not install, access or use the Software. If Licensee has a separately executed written software license agreement with Flexera for the Software, then such separate agreement will apply and this End User License Agreement will be of no force or effect with respect to such Software.

As used herein, *for Licensees in Japan*, “**Flexera**” means Flexera Software GK, a Godo Kaisha organized under the laws of Japan; *for Licensees in Europe, Middle East, Africa, or India*, “**Flexera**” means Flexera Software Limited, a private company limited by shares and incorporated in England and Wales with company number 6524874; *for Licensees in Australia and New Zealand*, “**Flexera**” means Flexera Software Pty Limited. with ABN 40 052 412 156 and *for Licensees outside of the countries listed above*, “**Flexera**” means Flexera Software LLC, a Delaware limited liability company.

MASTER TERMS AND CONDITIONS

All Software licensed hereunder is subject to the definitions set forth below in Section I, the General Terms set forth in Section II, as well as the product specific definitions, terms and conditions set forth in the Schedule attached hereto relating to the particular Software product identified in the Order Confirmation (as defined below).

I. DEFINITIONS

“**Affiliate**” means any entity in which Licensee has the legal and practicable ability to procure compliance by the applicable entity with the terms and conditions of this Agreement.

“**Cloud Software**” means Software provided in a cloud-based software as a service delivery model.

“**Confidential Information**” means any business and/or technical information that is received by a party (“**Recipient**”) from the disclosing party (“**Discloser**”) that a) is in written, recorded, graphical or other tangible form and is marked “Confidential” or “Trade Secret” or similar designation;

b) is in oral form and identified by the Discloser as “Confidential” or “Trade Secret” or similar designation at the time of disclosure, with subsequent confirmation in writing within thirty (30) days of such disclosure; or c) is received under circumstances that should reasonably be interpreted as imposing an obligation of confidentiality.

“**Contractor**” means any third party contracted by Licensee to perform services on behalf of and for the sole benefit of Licensee. “**Documentation**” means the technical specification documentation generally made available by Flexera to its licensees with regard to the Software.

“**License Level**” means the allowed level of usage of the Software licensed to Licensee in an Order Confirmation or License Key email.

“**Licensee Site**” means any location owned or leased solely by Licensee or an Affiliate or that portion of any shared space, such as a shared data center, attributable solely to Licensee or such Affiliate, or in the instance of an employee working remotely, that location from which such employee is working while using Licensee or Affiliate-provided equipment on which the Software may be installed.

“**Master Terms and Conditions**” means the definitions set forth in this Section I and the General Terms set forth in Section II. “**On-Premise Software**” means the object code form of the Software licensed to Licensee for installation at a Licensee Site.

“**Order Confirmation**” means a confirmation document provided by Flexera specifying the Software and Support and Maintenance (if any) purchased by Licensee that are subject to the terms of this Agreement. An Order Confirmation may also be referred to as a “License Certificate” or “Licence Certificate”.

“**Products**” means Software, Content, Support and Maintenance, and Services delivered to Licensee hereunder.

“**Schedule**” means the schedule attached to this End User License Agreement titled “Schedule” that outlines the terms and conditions applicable to the Products identified in such Schedule.

“**Services**” means professional consulting services. Services do not include Support and Maintenance which is otherwise defined herein. “**Software**” means the software products specified in an applicable Order Confirmation with which this Agreement was provided or referenced, including any Updates to the Software provided by Flexera to Licensee. Except as otherwise expressly set forth herein or in the applicable Order Confirmation, Software does not include source code. The Software may include features that will limit use of the Software in excess of the License Level.

“**Subscription Period**” means the fixed period of time applicable to a subscription license set forth in an applicable Order Confirmation for which Licensee is licensed to use the Product.

“**Support and Maintenance**” means the support and maintenance services set forth on the applicable Order Confirmation.

“**Third Party Software**” means any software contained in the Software that is licensed to Flexera by a third-party, including but not limited to open source software.

“**Updates**” means patches, additions, modifications, and new versions of the Software incorporating such patches, additions and modifications that are provided to Licensee by Flexera and that are not included in the initial delivery of the Software. Updates do not include additions or modifications that Flexera considers to be a separate product or for which Flexera charges its customers extra or separately.



“**Warranty Period**” means a period of ninety (90) days from initial delivery of the Software to Licensee pursuant to an Order Confirmation. “**Work Product**” means anything created or provided by Flexera (or its agents) on behalf of Licensee as a part of Services, including, but not limited to, deliverables, work product, code or software and any derivative, enhancement or modification thereof.

ii. GENERAL TERMS

1. General Software Rights and Obligations.

- a. License. The specific license grant for the Software licensed by Licensee with which this Agreement was provided will be set forth in the applicable Schedule to this Agreement.
- b. License Term. An Order Confirmation will identify whether Licensee is purchasing a perpetual license or a subscription license and, if a subscription, the Subscription Period. A Subscription Period is a committed, non-cancelable term.
- c. Delivery. If Licensee licenses On-Premise Software, the On-Premise Software and associated Documentation will be delivered by electronic means. If Licensee licenses Cloud Software, Licensee will receive access to the Cloud Software via a website hosted by Flexera, pursuant to the terms and conditions set forth at <http://media.flexera.com/documents/Cloud-Service-Levels.pdf>.
- d. Reduction in License Level. Unless otherwise agreed to by Flexera in writing, Licensee may not reduce its License Level for any purpose, including without limitation for the purpose of reducing Licensee’s Support and Maintenance fee. Notwithstanding the foregoing, Licensee may terminate its licenses to the applicable Software in their entirety by providing written notice to Flexera.
- e. Installation and Copies. Licensee may install On-Premise Software on Licensee’s or Affiliates’ machines only and only at Licensee Sites as many instances of the Software as is designated in the applicable Order Confirmation. Licensee may not make copies of the Software unless otherwise set forth in an applicable Order Confirmation. Notwithstanding the foregoing, Licensee may make a copy of the Software for back-up purposes. Licensee may allow a Contractor to install On-Premise Software on Contractor’s own premises only if such Contractor signs an acknowledgment in a form provided by Flexera accepting responsibility for compliance with this Agreement.
- f. Use by Affiliates and Contractors. Subject to the terms and conditions of this Agreement, Licensee’s Affiliates and Contractors may also use the licenses granted to Licensee, provided that (a) such use is only for Licensee’s or such Affiliate’s benefit, and (b) Licensee agrees to remain responsible for each such Affiliate’s and Contractor’s compliance with the terms and conditions of this Agreement. Use of the Software by the Affiliates, Contractors and Licensee in the aggregate must be within the License Level.
- g. License Restrictions. Licensee shall not (and shall not allow any third party to):
 - i. decompile, disassemble, or otherwise reverse engineer the Software or attempt to reconstruct or discover any source code, underlying ideas, algorithms, libraries, file formats, data, databases or programming interfaces of or provided with the Software by any means whatsoever (except and only to the extent that applicable law or Third Party Software license terms prohibits or limits reverse engineering restrictions, and then only with prior written notice to Flexera);
 - ii. distribute (except as expressly permitted herein), sell, sublicense, rent, lease or use the Software or Documentation (or any part thereof) for time sharing, service bureau, hosting, service provider or like purposes;
 - iii. remove any product identification, proprietary, copyright or other notices contained in the Software, including but not limited to any such notices contained in the physical and/or electronic media or Documentation, in the Setup Wizard dialog or “about” boxes, in any of the runtime resources and/or in any web-presence or web-enabled notices, code or other embodiments originally contained in or otherwise created by the Software, or in any archival or back-up copies, if applicable;
 - iv. modify any part of the Software or Documentation, create a derivative work of any part of the Software or Documentation, or incorporate the Software (or any part thereof) into or with other software, except to the extent expressly authorized in writing by Flexera or, where applicable to any Third Party Software and then only in relation to such component(s) by any applicable Third Party Software license agreement included with the Software;
 - v. conduct vulnerability scanning or penetration testing of Cloud Software;
 - vi. access any libraries, data or databases incorporated or provided with the Software via any mechanism other than the Software; or vii. publicly disseminate performance information or analysis (including, without limitation, benchmarks) from any source relating to the Software or Documentation.

2. Ownership. Notwithstanding anything to the contrary contained herein, except for the limited license rights expressly provided herein, Flexera and its suppliers will retain all rights, title and interest (including, without limitation, all patent, copyright, trademark, trade secret

and other intellectual property rights) in and to the Products and the Documentation and all copies thereof, modifications thereto, and derivative works based thereupon. Licensee acknowledges that it is obtaining only a limited license right to the Software and the Documentation and that irrespective of any use of the words “purchase”, “sale” or like terms hereunder no ownership rights are being conveyed to Licensee under this Agreement or otherwise.

3. Support and Maintenance.

- a. Support and Maintenance. Unless otherwise set forth in a Schedule, (i) Flexera will provide Support and Maintenance in accordance with the terms set forth at http://resources.flexera.com/web/pdf/archive/Silver_Support.pdf and (ii) Support and Maintenance is for a period of one (1) year from the date of delivery of the Software. Subscription license fees include Support and Maintenance for the duration of the Subscription Period.
- b. Exclusions. Flexera will have no Support and Maintenance obligation to Licensee: (a) where the Software source code has been modified (except for Updates); or (b) for any Evaluation Software or Free Software.



- c. Technical Account Manager. Licensee may purchase Technical Account Manager services to perform the duties set forth in Schedule 9. Technical Account Manager services may be renewed for the first renewal period (the duration of which may be no shorter than one year and no longer than the length of the initial period) for the same annual rate paid during the first period.
 - d. Renewals. For perpetual licenses, in the event Licensee elects not to obtain or renew Support and Maintenance, Licensee may retain the Software and Documentation but will have no further right to Support and Maintenance for the Software. If Licensee wishes to reinstate lapsed Support and Maintenance for a perpetual license, Licensee may do so only within ninety (90) days from expiration of the Support and Maintenance term by paying Flexera an amount equal to (i) the then-applicable annual Support and Maintenance fee plus (ii) one-hundred fifty percent (150%) of the fees that would have been due had Licensee remained enrolled during the lapsed period. For perpetual licenses, Support and Maintenance may be renewed for the first renewal period (the duration of which may be no shorter than one year and no longer than the length of the initial Support and Maintenance period) for the same annual rate paid during the first Support and Maintenance period.
4. Services. Any Services provided by Flexera with respect to the Software will be provided pursuant to this Agreement.
- a. Expenses. If Services are performed onsite at Licensee facilities, Licensee will reimburse Flexera for actual and reasonable travel expenses. Flexera will adhere to the more stringent of either Flexera's or Licensee's travel policy (as provided by Licensee and agreed to by Flexera).
 - b. Delays and Cancellations. If performance of Services is delayed due to Licensee's failure to provide required access, personnel availability or canceled with less than five (5) business days' notice once ordered by Licensee, Licensee shall pay Flexera at its then-current standard rates for each day for each person assigned by Flexera to provide the applicable Services if the Flexera resources cannot be redeployed by Flexera using reasonable efforts. In addition, Licensee agrees to reimburse any travel expenses which have been incurred and are non-cancelable, non-refundable, or non-creditable.
 - c. Work Product.
 - i. Flexera grants to Licensee a perpetual, non-transferable, non-sublicensable, non-exclusive, worldwide license right to import, export, execute, reproduce, distribute, modify, adapt, make derivative works of, and use Work Product for any internal purpose, provided such use is not competitive with Flexera.
 - ii. Notwithstanding anything to the contrary contained herein, except for the limited license rights expressly provided herein, Flexera and its suppliers will retain all rights, title and interest (including, without limitation, all patent, copyright, trademark, trade secret and other intellectual property rights) in and to the Work Product. Licensee acknowledges that it is obtaining only a limited license right to the Work Product and that irrespective of any use of the words "purchase", "sale" or like terms hereunder no ownership rights are being conveyed to Licensee under this Agreement or otherwise.
 - iii. Licensee acknowledges that any source code, design documents, strategy reports or other similar Work Product shall be considered Flexera Confidential Information.
 - iv. Work Product does not include any materials provided to Flexera by or on behalf of Licensee in connection with the Services. Licensee will retain any ownership interest (including all intellectual property rights) in such materials and Flexera will make no ownership claim with respect to such materials.
5. Invoicing and Payment.
- a. Invoicing. Unless otherwise agreed in writing, Flexera will invoice Licensee as follows:
 - i. for perpetual Software licenses, fully in advance;
 - ii. for subscription Products, annually in advance; and
 - iii. for all other Services and associated expenses, monthly in arrears.
 - b. Payment Terms. All payments are non-refundable (except as expressly set forth in this Agreement) and shall be made within thirty (30) days of the date of the applicable invoice. Any late payments will be subject to a service charge equal to 1.5% per month of the amount due or the maximum amount allowed by law, whichever is less.
 - c. Purchases through Resellers. In the event Licensee purchases Products via a reseller, the invoicing and payment terms agreed between Licensee and such reseller will apply in lieu of the terms set forth herein. If the reseller fails to pay the fees applicable to the Products delivered to Licensee, Licensee will be responsible to Flexera for payment of the fees due and not paid by the reseller.
 - d. Multi-Year Purchase Orders. For Products with Subscription Periods longer than one (1) year, Licensee may provide a purchase order for the total payable for the entire Subscription Period, or it may elect to provide a purchase order for one (1) year at a time; regardless of the purchase order form selected, if Licensee licenses a product for a Subscription Period longer than one (1) year, as evidenced by the Order Confirmation, the license is non-cancelable and Licensee will be obligated to pay for the total value of the subscription.
 - e. Taxes. Fees do not include taxes. If Flexera is required to pay any sales, use, GST, VAT, or other taxes in connection with Licensee's

order, other than taxes based on Flexera's income, such taxes will be billed to and paid by Licensee. Licensee will make all payments of fees to Flexera free and clear of, and without reduction for, any withholding taxes; any such taxes imposed on payments of fees to Flexera will be Licensee's sole responsibility and consequently the amount of such fees will be increased such that the net fee received by Flexera will be the same as if such withholding taxes were not imposed, and Licensee will provide Flexera with official receipts issued by the appropriate taxing authority, or such other evidence as the Flexera may reasonably request, to establish that such taxes have been paid.

6. Term. This Agreement is effective as of the date accepted by Licensee and will continue until terminated in accordance herewith or until all Subscription Periods have expired, whichever is earlier.
7. Termination. This Agreement and Licensee's license may be terminated by Flexera if (a) Licensee fails to make payment and/or (b) Licensee fails to comply with the terms of this Agreement within ten (10) days after receipt of written notice of such failure. Upon expiration of a



subscription license or termination of any license, Licensee shall cease any and all use of the expired or terminated Product and destroy all copies of such Product and associated Documentation (including copies in storage media), and so certify to Flexera in writing. This requirement applies to all copies in any form, partial or complete. Any provision that by the very nature of which should survive will survive any termination or expiration of this Agreement.

8. Warranty.

- a. Limited Software Performance Warranty. Flexera warrants to Licensee that during the Warranty Period the Software will operate in substantial conformity with the Documentation. Flexera does not warrant that Licensee's use of the Software will be uninterrupted or error-free or that any security mechanisms implemented by the Software will not have inherent limitations. Flexera's sole liability (and Licensee's exclusive remedy) for any breach of this warranty will be, in Flexera's sole discretion, to use commercially reasonable efforts to provide Licensee with an error-correction or work-around which corrects the reported non-conformity, to replace the nonconforming Software with conforming Software, or if Flexera determines such remedies to be impracticable within a reasonable period of time, to terminate the Agreement and refund the license fee paid for the Software. Flexera will have no obligation with respect to a warranty claim unless notified of such claim in writing within the Warranty Period.
- b. Exclusions. The limited warranties set forth in this Section do not apply to warranty claims arising out of or relating to: (a) use of the Software with hardware or software not required in the Documentation; (b) modifications made to the Software source code; (c) defects in the Software due to accident, abuse or improper use by Licensee; or (d) Evaluation Software, Free Software or NFR Software.

- c. Disclaimer. **THE REPRESENTATIONS AND WARRANTIES IN THIS SECTION ARE LIMITED AND EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, THE PRODUCTS ARE PROVIDED "AS IS". EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, NEITHER FLEXERA NOR ITS SUPPLIERS MAKE ANY OTHER REPRESENTATIONS, WARRANTIES, OR CONDITIONS, AND EXPRESSLY DISCLAIMS ALL OTHER REPRESENTATIONS, WARRANTIES, AND CONDITIONS, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT. LICENSEE MAY HAVE OTHER STATUTORY RIGHTS. HOWEVER, TO THE FULL EXTENT PERMITTED BY LAW, THE DURATION OF STATUTORILY REQUIRED WARRANTIES, IF ANY, WILL BE LIMITED TO THE WARRANTY PERIOD DEFINED HEREIN.**

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12. Controlling Law. For Licensees in North America and Latin America, this Agreement will be governed by the laws of the State of Illinois and the United States without regard to conflicts of laws provisions thereof, and without regard to the United Nations Convention on the International Sale of Goods. For Licensees in Europe, Middle East, or Africa, this Agreement will be governed by the substantive laws of England and Wales, excluding that body of law known as conflicts of law and without regard to the United Nations Convention on Contracts for the Sale of Goods. For Licensees in Australia, this Agreement will be governed by the laws of the State of Victoria, Australia without regard to conflicts of laws provisions thereof, and without regard to the United Nations Convention on the International Sale of Goods. For Licensees in Japan, this Agreement will be governed by the laws of Japan without regard to conflicts of laws provisions thereof, and without regard to the United Nations Convention on the International Sale of Goods. For Licensees in the Asia Pacific region other than Australia and Japan, this Agreement will be governed by the laws of Special Administrative Region of Hong Kong without regard to conflicts of laws provisions thereof, and without regard to the Uniform Computer Information Transactions Act and the United Nations Convention on the International Sale of Goods.
13. Compliance.
 - a. Verification/Audits. Upon Flexera's reasonable request, Licensee will furnish Flexera with a signed statement confirming whether the Products are being used by Licensee in accordance with this Agreement. Such statement must be provided by a person sufficiently aware of the information being certified to and at a level sufficient to bind Licensee. Further, during the term of this Agreement and for a period of one (1) year thereafter, with prior reasonable notice of at least five (5) days, Flexera may audit Licensee for the purpose of verifying the information provided by Licensee under this Agreement, and for the purpose of verifying that Licensee is conforming to the terms of this Agreement. Any such audit will be conducted during regular business hours at Licensee's facilities and will not unreasonably interfere with Licensee's business activities. If an audit reveals an underpayment or that Licensee's usage is greater than the License Level, then Licensee shall immediately pay the difference in License fees and, if applicable, Support and Maintenance fees to bring the License Level into compliance. If an audit reveals that (i) Licensee has intentionally misrepresented its usage of the Products, (ii) Licensee materially breached this Agreement, or (iii) Licensee's usage is more than 5% over the License Level, then Licensee shall pay Flexera's reasonable costs of conducting the audit in addition to any fees due to Licensee's misrepresentation or material breach. Audits will be conducted no more than once annually.
 - b. Validation of Use. In order to protect the Products from unauthorized use and in order to confirm Licensee's compliance with the license grants and restrictions set forth in this Agreement, the Products may contain validation procedures designed to detect and report to Flexera information identifying usage potentially violating the terms of this Agreement. This information does not contain any personally identifiable information of Licensee or the end user.
14. Confidentiality.
 - a. Confidential Information. Any software, documentation or technical information provided by Flexera (or its agents), performance information relating to the Products, and the terms of this Agreement will be deemed "Trade Secrets" of Flexera without any marking or further designation.
 - b. Protection of Confidential Information. The Recipient will a) have the right to disclose the Confidential Information only to its employees, consultants and Affiliates having a need to know and who have agreed in writing to be bound to confidentiality terms substantially similar to those contained herein; b) use at least as great a standard of care in protecting the Discloser's Confidential Information as it uses to protect its own information of like character, but in any event not less than a reasonable degree of care; c) use such Confidential Information only in connection with its rights and/or obligations under this Agreement; and d) at the Discloser's option return or destroy any or all Confidential Information upon the Discloser's demand. Except as expressly authorized herein, for a period of three (3) years following the disclosure date of Confidential Information to the Recipient, the Recipient will hold in confidence and not make any unauthorized use or disclosure of any Confidential Information. No time limit applies to Confidential Information marked or otherwise identified as or deemed to be a "Trade Secret".
 - c. Usage Data. Licensee understands that Flexera may utilize technology that gathers information about Licensee's computer system, however, such data is used solely for the purpose of understanding machine types and other system-oriented information and does not contain any personally identifiable information of Licensee.
 - d. Exclusions. The Recipient's nondisclosure obligation will not apply to information that: (a) was rightfully in its possession or known to it prior to receipt of the Confidential Information; (b) is or has become public knowledge through no fault of the Recipient; (c) is rightfully obtained by the Recipient from a third party without breach of any confidentiality obligation; (d) is independently developed by employees of the Recipient who had no access to such information; or (e) is required to be disclosed pursuant to a regulation, law or court order (but only to the minimum extent required to comply with such regulation or order and with advance notice to the Discloser).

- e. Equitable Relief. The Recipient acknowledges that disclosure of Confidential Information would cause substantial harm for which damages alone would not be a sufficient remedy, and therefore that upon any such disclosure by the Recipient the Discloser will be entitled to appropriate equitable relief in addition to whatever other remedies it might have at law.
15. Third Party Software. The Software licensed hereunder includes Third Party Software. A list of all Third Party Software included with OnPremise Software will be provided to Licensee on request. To the extent that there is a conflict between the terms of this Agreement and such Third Party Software terms, the Third Party Software terms will take precedence.



16. **Publicity.** Either party may include the other party's company name in a list of customers and/or suppliers without the other party's written consent. Any other use of the other party's name or logo is prohibited without such other party's written consent.
17. **Severability.** If any provision of this Agreement is determined by any court of competent jurisdiction to be unenforceable or invalid, that provision will be limited to the minimum extent necessary so that this Agreement will otherwise remain in effect.
18. **Waivers.** No waiver will be implied from conduct or failure to enforce or exercise rights under this Agreement, nor will any waiver be effective unless in writing signed by a duly authorized representative on behalf of the party claimed to have waived.
19. **Notices and Reports.** Any notice or report due to Flexera hereunder must be in writing to the notice address set forth in the preamble to this Agreement (for Flexera, a mandatory copy must always be sent to: Flexera Software LLC, 300 Park Boulevard Suite 500, Itasca, IL 60143, Attention Legal Department). Any notice or report due to Licensee hereunder must be in writing to the address set forth in the Order Confirmation. Notice will be deemed given: (a) upon receipt if by personal delivery; (b) two (2) Business Days following deposit for delivery to the party with an internationally recognized overnight courier; or (c) via confirmed facsimile in which case it will be deemed received on the date of the transmission as evidenced by a valid receipt of confirmation. Each party to this Agreement may change its location for notice under this Agreement by giving notice to the other party in accordance with the notice provisions contained in this Section.
20. **Construction and Interpretation.** The original of this Agreement has been written in English. Licensee waives any rights it may have under the law of its country to have this Agreement written in the language of that country. The use of the terms "including," "include" or "includes" will in all cases herein mean "including without limitation," "include without limitation" or "includes without limitation," respectively. Unless the context otherwise requires, words importing the singular include the plural and vice-versa. Words importing the singular include the plural and words importing the masculine include the feminine and vice versa where the context so requires. This Agreement will be equally and fairly construed without reference to the identity of the party preparing this document. The parties waive the benefit of any statute, law or rule providing that in cases of uncertainty, contract language should be interpreted most strongly against the party who caused the uncertainty to exist. The headings and titles to the articles and sections of this Agreement are inserted for convenience only and will not be deemed a part hereof or affect the construction or interpretation of any provision hereof.
21. **Order of Precedence.** In the event of a conflict between the terms of the Master Terms and Conditions, a Schedule, an Order Confirmation, and/or any other attachment or exhibit, the order of precedence is as follows: (i) Order Confirmation, (ii) Schedule, (iii) attachment, (iv) exhibit, and (v) Master Terms and Conditions.
22. **Independent Contractors.** The parties are independent contractors. There is no relationship of partnership, joint venture, employment, franchise or agency created hereby between the parties. Licensee acknowledges and agrees that the Products may provide results and conclusions based on facts, assumptions, data, material, and other information that Flexera has not independently investigated or verified. Inaccuracy or incompleteness of such facts, assumptions, data, material, and other information could have a material effect on conclusions reached by the Products; all actions taken or not taken by Licensee based on the output of the Products will be the responsibility of Licensee. Neither party will have the power to bind the other or incur obligations on the other party's behalf without the other party's prior written consent.
23. **Non-Solicitation.** During the term of this Agreement and for a period of one year thereafter, Licensee agrees that it will not hire or attempt to hire, on behalf of Licensee or any other organization, any employee of Flexera unless Licensee has first obtained Flexera's written consent. Notwithstanding the foregoing, Licensee will not be in breach of this provision if an employee of Flexera responds to a general advertisement for employment.
24. **Force Majeure.** Neither party will be liable to the other for any delay or failure to perform any obligation under this Agreement (except for a failure to pay fees) if the delay or failure is due to events which are beyond the reasonable control of such party, including but not limited to any strike, blockade, war, act of terrorism, riot, natural disaster, failure or diminishment of power or of telecommunications or data networks or services, or refusal of approval or a license by a government agency.
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26. **Export Compliance.** Licensee acknowledges that the Products are subject to export restrictions by the United States government and import restrictions by certain foreign governments. Unless authorized by a license or by regulation, Licensee must not export or re-export the Products, directly or indirectly, to: (a) any country to which such export or re-export is restricted or prohibited, or as to which the United States government or any agency thereof requires an export license or other governmental approval; (b) any end user who has been prohibited from participating in United States export transactions by any federal agency of the United States government; or (c) any end user who you know or have reason to know will utilize them in the design, development or production of nuclear, chemical or biological weapons, or rocket systems, space launch vehicles, and sounding rockets, or unmanned air vehicle systems. Licensee is responsible for complying with any local laws in your jurisdiction which may impact your right to import, export or use the Products.

27. Equal Opportunity. Flexera agrees that it does not and will not discriminate against any employee or applicant for employment because of race, color, religion, age, sex, handicap, national origin, or sexual orientation.
28. Anti-Bribery. Each party represents and warrants that (i) in connection with this Agreement, it has not and will not make any payments or gifts or any offers or promises of payments or gifts of any kind, directly or indirectly, to any official of any government or any agency or instrumentality thereof and (ii) it will comply in all respects with the Foreign Corrupt Practices Act and UK Bribery Act 2010.



29. **Ambiguities.** Each party and its counsel have participated fully in the review and revision of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party will not apply in interpreting this Agreement.
30. **Remedies Cumulative.** Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties under this Agreement are cumulative and not exclusive of any rights or remedies to which the parties are entitled by law. The exercise by either party of any right or remedy under this Agreement or under applicable law will not preclude such party from exercising any other right or remedy under this Agreement or to which such party is entitled by law.
31. **Schedules.** The following Schedules are attached to this End User License Agreement and are hereby incorporated by reference:
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 - b. [Schedule 2](#) – Terms and Conditions for Application Readiness Products
 - c. [Schedule 3](#) – Terms and Conditions for Software License Optimization Products
 - d. [Schedule 4](#) – Terms and Conditions for Software Vulnerability Management Products
 - e. [Schedule 5](#) – Terms and Conditions for Software Composition Analysis Products
 - f. [Schedule 6](#) – Terms and Conditions for Software Monetization Products
 - g. [Schedule 7](#) – Terms and Conditions for Data Platform Products
 - h. [Schedule 8](#) – Terms and Conditions for Evaluation Software, Free Software, and NFR Software
 - i. [Schedule 9](#) – Terms and Conditions for Technical Account Manager
32. **Entire Agreement.** This Agreement, including all Schedules, is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements and communications relating to the subject matter of this Agreement. No supplement, modification, or amendment of this Agreement will be binding, unless executed in writing by a duly authorized representative of each party to this Agreement, except that Flexera may modify this Agreement from time to time by including a revised version with new versions of the Products. The modified terms will become effective upon inclusion with the new version and will apply only to that version and any future version thereafter. By Licensee accepting the revised Agreement, Licensee agrees to be bound by the current terms then in effect. It is Licensee’s responsibility to review the Agreement for all new versions. No provision of any purchase order or other business form employed by Licensee will supersede the terms and conditions of this Agreement, and any such document relating to this Agreement will be for administrative purposes only and will have no legal effect.

[END OF MASTER TERMS AND CONDITIONS]

SCHEDULE 1 TERMS AND CONDITIONS FOR INSTALLATION PRODUCTS

The terms of this Schedule 1 applies to all Installation products licensed by Flexera to Licensee. Any terms not defined in this Schedule 1 will have the meanings ascribed to them in the Agreement. The provisions of this Schedule 1 will be in addition to the terms included in the Master Terms and Conditions, provided that in the event of a conflict between the terms included in this Schedule 1 and the Master Terms and Conditions, the terms included in this Schedule 1 will control. As of April 2018, the following products are considered “Installation products” and such list may be updated from time to time by Flexera in its sole discretion without amending this Schedule 1:

InstallShield Express

InstallShield Professional
InstallShield Premier
InstallShield Standalone Build

InstallShield Lite

InstallAnywhere
InstallAnywhere Standalone Build

I. DEFINITIONS

“**Build System**” means a machine or group of machines dedicated to compiling code via automated or scheduled tasks.

“**Internal Purposes**” means distribution of installation programs of Licensee products both internally within Licensee and externally to Licensee’s customers.

“**Upgrade**” means a new version of Software made available by Flexera, and identified in an invoice, Order Confirmation, or SKU as an “Upgrade”. “**User**” means the individuals who access the Software for the purposes of designing and developing software installations.

ii. INSTALLSHIELD LITE

The use of InstallShield Lite will be governed by the terms set forth in this Article II, in addition to the terms set forth in the Agreement. Each individual User may only register for a single instance of InstallShield Lite. In the event of a conflict between the terms of this Article II and the rest of the Agreement, the terms of this Article II will prevail.

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2. No Support. InstallShield Lite is provided without support, updates, or upgrades from Flexera. InstallShield Lite customers may, however, request and share knowledge and expertise via Flexera Community, located at <https://community.flexera.com/>



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IV. SERVICE PROVIDER USE LICENSE RIGHTS AND OBLIGATIONS

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- b. **"Software Engineering Services"** means those services that Licensee provides to Customers utilizing the Software for the purpose of creation or modification of installation programs of Customer products.

2. Grant of License. Subject to all of the terms and conditions of this Agreement and upon Licensee's payment of the fees shown on the invoice and acceptance of this Agreement, Flexera grants Licensee a non-transferable, non-sublicensable, non-exclusive license to use, within the License Level, for the sole purpose of providing Software Engineering Services to Customers for such Customer's Internal Purposes, (i) Software, in accordance with the Documentation, and (ii) Documentation. For the purpose of this clause, the definition of "Internal Purposes" replaces "Licensee" with "Customer".

3. Installation. Licensee may install and operate the Software at a Customer location.

4. License Models.

- a. Node-Locked Licenses. If Licensee has licensed Software on a node-locked basis, Licensee may install and use one instance of the Software on a single computer either physically installed or on a virtual image on that computer only at Licensee's site(s) for delivery of Software Engineering Services only in accordance with the License Level. A node-locked license is limited to use by a single User on a single computer or virtual image; Licensee may not install the Software on a shared computer. Copying a virtual image for the purposes of using the image either simultaneously or as a replacement on another machine is strictly prohibited.
- b. Concurrent Licenses. If Licensee has licensed on a concurrent basis, Licensee may install the Software on any machine at Licensee's site(s) for delivery of Software Engineering Services only in accordance with the License Level. All machines using the Software must have the ability to communicate with a license server to be authorized to use the Software. For the purpose of certification as set forth in the Agreement, the number of concurrent Users is the highest number of Users that accessed the Software at any single point during the previous year.

2. License Restrictions.

- a. Software may not be left behind at Customer's site or on Customer's systems once the Software Engineering Services are completed. If computers, servers or networks on which the Software is installed are no longer owned or leased by Licensee, Licensee must remove the Software from such computers, servers or networks.
- b. Licensee may not use the Software for its own Internal Purposes.

3. Licensee Obligations.

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- b. Business Practices. Licensee agrees not to engage in any deceptive, misleading, illegal or unethical practices that may be detrimental to Flexera or its Software and agrees to comply with all applicable federal, state and local laws and regulations (including, without limitation, data protection, privacy and import and export compliance laws and regulations) in connection with its performance under this Agreement. Licensee further agrees to notify Flexera sixty (60) days in advance if Licensee intends to sell, represent or promote any products competitive with the Software.
- c. Licensee Indemnity. Licensee will defend, indemnify and hold harmless Flexera from and against any loss, cost, liability or damage, including attorneys' fees, for which Flexera becomes liable arising from or relating to: (a) any breach by Licensee of any term of this Agreement, (b) the issuance by Licensee of any warranty or representation not authorized in writing by Flexera or (c) any other act or omission of Licensee in connection with the marketing or distribution of the Software under this Agreement.
- d. Software Engineering Services Site. Licensee shall identify, upon Flexera's request, the Customer and the site of the performance of the Software Engineering Services for such Customer for each applicable license.
- e. Notice of Termination of Software Engineering Services for Named Customer. In the event Software Engineering Services expire or are terminated for a particular Customer, Licensee may be required to notify Flexera of such expiration or termination within thirty (30) days of the effective date of such expiration or termination.
- f. Flow-Through of Terms. Licensee shall enter into an agreement with a Customer that is equally as protective of the Software as this Agreement. Licensee shall notify Flexera of any uncured breach of any terms related to the Software of which it becomes aware. Licensee will enforce the agreement it has with its Customer as it relates to the Software in the same manner as Licensee enforces

such agreement with respect to Licensee's own intellectual property, which shall be at least in a reasonable manner. In any event, Flexera and Licensee will reasonably cooperate on actions to be taken to enforce breaches of Flexera's intellectual property rights against a Customer.

4. Expiration.

- a. Expiration of Licenses. Upon completion or termination of the Software Engineering Services for a Customer (the "Expiration Date"), Licensee will cease using the applicable licenses for such Customer. If the Software was installed and used at Customer's site, Licensee will uninstall the Software from any equipment used for the provision of Software Engineering Services to such Customer, and will



provide Flexera with certification thereof. For the purpose of clarity, Licensee may not transfer licenses to Customers without Flexera's prior written consent, which may be withheld in Flexera's sole discretion.

- b. Effect of Termination. In no event will Licensee be entitled to receive a refund of any licensee fees paid prior to the applicable termination date, and Licensee shall be responsible for the fees applicable for the remainder of the license term as if such license had not been terminated or expired.
- 5. Support and Maintenance. Flexera will have no support or maintenance obligations whatsoever to Customers.
- 6. Marketing and Trademarks.
 - a. Marketing Materials. All marketing materials, demonstration copies of the Software (if applicable), and other materials provided by Flexera hereunder will remain the property of Flexera, and upon termination or expiration, such materials will be returned to Flexera within thirty (30) days.
 - b. Trademarks. Licensee may use Flexera's trademarks in connection with the Software. All displays of Flexera's trademarks that Licensee intends to use will conform to reasonable guidelines provided from time to time by Flexera. Flexera will have the right to approve all usage by Licensee of its trademarks. Licensee will not use any of Flexera's trademarks in conjunction with another trademark.

[END OF SCHEDULE 1]

SCHEDULE 2 TERMS AND CONDITIONS FOR APPLICATION READINESS PRODUCTS

The terms of this Schedule 2 will apply to all Application Readiness products licensed by Flexera to Licensee. Any terms not defined in this Schedule 2 will have the meanings ascribed to them in the Agreement. The provisions of this Schedule 2 will be in addition to the terms included in the Master Terms and Conditions, provided that in the event of a conflict between the terms included in this Schedule 2 and the Master Terms and Conditions, the terms included in this Schedule 2 will control. As of April 2018, the following products are considered "Application Readiness products" and such list may be updated from time to time by Flexera in its sole discretion without amending this Schedule 2:

AdminStudio Standard

AdminStudio Professional

AdminStudio Enterprise

WiseScript Editor AdminStudio AppRisk Module

AdminStudio Limited Edition

Workflow Manager

I. DEFINITIONS

- 1. "**Administrator**" means the individuals within Licensee's organization who access the software for the purpose of packaging, re-packaging, evaluating compatibility or suitability of, or creating any workflows for the purpose of deploying a software application or any administrative function related to the Software. Each Administrator license may be installed on one computer and used solely by an individual Administrator within Licensee's organization. Software licensed on a per Administrator model is node-locked and is limited to use by a single individual on a single computer or virtual image; Licensee may not install the Software on a shared computer. Copying a virtual image for the purposes of using the image either simultaneously or as a replacement on another machine is strictly prohibited. For the purpose of clarity, a single Administrator license may not be used by more than one individual. For the purpose of certification as set forth in this Agreement, the number of Administrators includes all Administrators that accessed the Software at any point during the previous year.
- 2. "**Device**" means any physical or virtual device for which any function is performed by the Software (including but not limited to scanning, delivering, installing, updating, migrating or repairing any computer program or data file; or scanning, monitoring, tracking, or reporting on the status, history, or security vulnerabilities of any software or hardware components or software licenses on or used by the device). For the purpose of certification as set forth in the Agreement, the number of Devices includes the highest number of Devices that were in place at any point during the previous year. A "Device" may have also been referred to in legacy license models as "Desktop" or "Endpoint Device".
- 3. "**Internal Purposes**" means distribution of packages to Licensee's own systems and employees.
- 4. "**Employee**" means any individual in Licensee's organization that may request, have deployed to, or otherwise receive any application, package, or other software prepared using the Software. For the purpose of certification as set forth in this Agreement, the number of Employees includes the highest number of Employees that were in place at any point during the previous year. The Software may be installed and used by Licensee on computers only at Licensee's site(s) solely for the benefit of some or all of the Employees within Licensee's organization, and only if that total number of Employees within Licensee's organization does not exceed the License Level.

ii. ADMINSTUDIO LIMITED EDITION

The use of AdminStudio Limited Edition will be governed by the terms set forth in this Article II, in addition to the terms set forth in the Agreement. In the event of a conflict between the terms of this Article II and the rest of the Agreement, the terms of this Article II will prevail. Each individual User may only register for a single instance of AdminStudio Limited Edition.

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2. **Redistributables.** The Software component parts may not be separated for use on more than one computer, except as set forth in this Agreement. Licensee may copy the files specifically identified in the documentation as "redistributables" and redistribute such files to Licensee's end users of Licensee's products, provided that: (a) such products add primary and substantial functionality to the redistributables, (b) all copies of the redistributables must be exact and unmodified; and (c) Licensee grants Licensee's end users a limited, personal, non-exclusive and non-transferable license to use the redistributables only to the extent required for the permitted operation of Licensee's products and not to distribute them further. Licensee will reproduce with the redistributables all applicable trademarks and copyright notices that accompany the Software, but Licensee may not use Flexera's name, logos or trademarks to market Licensee's products.
3. **Transfers.** Transfers of Administrator licenses that are the result of employee turnover or reassignment are allowed, provided that such transfers do not occur more frequently than once annually.

IV. SERVICE PROVIDER USE LICENSE RIGHTS AND OBLIGATIONS

This Article IV sets forth the terms and conditions under which Licensee has licensed quantities of the Software for use in the delivery of Packaging Services to its Customers, as those terms are defined below.

1. **Definitions.**
 - a. **"Customers"** means the customers of Licensee for which Licensee has purchased a service provider license to use the Software to provide Packaging Services. Licensee may not be its own Customer. Licensee shall be solely responsible for the Customer relationship; Flexera will have no obligations whatsoever to Customers.
 - b. **"Packaging Services"** means those services that Licensee provides to Customers utilizing the Software for the purpose of rationalizing and/or creating application packages for deployment within Customer's internal organization.
2. **Grant of License.** Subject to all of the terms and conditions of this Agreement and upon Licensee's payment of the fees shown on the invoice and acceptance of this Agreement, Flexera grants Licensee a non-transferable, non-sublicensable, non-exclusive license to use,

within the License Level, for the sole purpose of providing Packaging Services to Customers for such Customers' Internal Purposes, (i) Software, in accordance with the Documentation, and (ii) Documentation. For the purpose of this clause, the definition of "Internal Purposes" replaces "Licensee" with "Customer".

3. Installation. Licensee may install and operate the Software at a Customer location.

4. License Models.

- a. Concurrent Licenses. Service Provider licenses may be provided on a concurrent Administrator basis. Notwithstanding the definition of "Administrator", if Licensee has licensed Service Provider licenses on a concurrent Administrator basis, the Software may be used by any individuals within Licensee's organization, up to the License Level. All machines using the Software must have the ability to communicate with a license server to be authorized to use the Software. For the purpose of certification as set forth in the Agreement, the number of Administrators is the highest number of Administrators that accessed the Software at any single point during the previous year.
- b. Multiple Customer. If Licensee purchases licenses based on a multiple Customer model, Licensee is acquiring licenses to be used for any of Licensee's Customers. Licenses not identified as "Multiple Customer" or "Package Factory" licenses on an Order Confirmation may not be used for multiple Customers and will be governed by Section 4.3 below.
- c. Named Customer. If Licensee purchases licenses based on a named Customer model, Licensee may use the Software for the named Customer identified in the applicable Order Confirmation, provided that Licensee may not use the Software for any Customer other than the Customer identified in the applicable Order Confirmation.



5. License Restrictions.

- a. Software may not be left behind at Customer's site or on Customer's systems once the Packaging Services are completed. If computers, servers or networks on which the Software is installed are no longer owned or leased by Licensee, Licensee must remove the Software from such computers, servers or networks.
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- c. Licensee may not use the Software for its own Internal Purposes.

6. Licensee Obligations.

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- c. Licensee Indemnity. Licensee will defend, indemnify and hold harmless Flexera from and against any loss, cost, liability or damage, including attorneys' fees, for which Flexera becomes liable arising from or relating to: (a) any breach by Licensee of any term of this Agreement, (b) the issuance by Licensee of any warranty or representation not authorized in writing by Flexera or (c) any other act or omission of Licensee in connection with the marketing or distribution of the Software under this Agreement.
- d. Packaging Services Site. Licensee shall identify, upon Flexera's request, the Customer and the site of the performance of the Packaging Services for such Customer for each applicable license.
- e. Notice of Termination of Packaging Services for Named Customer. In the event Packaging Services expire or are terminated for a particular Customer, Licensee may be required to notify Flexera of such expiration or termination within thirty (30) days of the effective date of such expiration or termination.
- f. Flow-Through of Terms. Licensee shall enter into an agreement with a Customer that is equally as protective of the Software as this Agreement. Licensee shall notify Flexera of any uncured breach of any terms related to the Software of which it becomes aware. Licensee will enforce the agreement it has with its Customer as it relates to the Software in the same manner as Licensee enforces such agreement with respect to Licensee's own intellectual property, which shall be at least in a reasonable manner. In any event, Flexera and Licensee will reasonably cooperate on actions to be taken to enforce breaches of Flexera's intellectual property rights against a Customer.

7. Expiration.

- a. Expiration of Licenses. Upon completion or termination of the Packaging Services for a Customer (the "Expiration Date"), Licensee will cease using the applicable licenses for such Customer. If the Software was installed and used at Customer's site, Licensee will uninstall the Software from any equipment used for the provision of Packaging Services to such Customer and will provide Flexera with certification thereof. For the purpose of clarity, Licensee may not transfer licenses to Customers without Flexera's prior written consent, which may be withheld in Flexera's sole discretion.
- b. Effect of Termination. In no event will Licensee be entitled to receive a refund of any licensee fees paid prior to the applicable termination date, and Licensee shall be responsible for the fees applicable for the remainder of the license term as if such license had not been terminated or expired.

8. Support and Maintenance. Flexera will have no support or maintenance obligations whatsoever to Customers.

9. Marketing and Trademarks.

- a. Marketing Materials. All marketing materials, demonstration copies of the Software (if applicable), and other materials provided by Flexera hereunder will remain the property of Flexera, and upon termination or expiration, such materials will be returned to Flexera within thirty (30) days.
- b. Trademarks. Licensee may use Flexera's trademarks in connection with the Software. All displays of Flexera's trademarks that Licensee intends to use will conform to reasonable guidelines provided from time to time by Flexera. Flexera will have the right to approve all usage by Licensee of its trademarks. Licensee will not use any of Flexera's trademarks in conjunction with another trademark.

[END OF SCHEDULE 2]



SCHEDULE 3 TERMS AND CONDITIONS FOR SOFTWARE LICENSE OPTIMIZATION PRODUCTS

The terms of this Schedule 3 will apply to all Software License Optimization products licensed by Flexera to Licensee. Any terms not defined in this Schedule 3 will have the meanings ascribed to them in the Agreement. The provisions of this Schedule 3 will be in addition to the terms included in the Master Terms and Conditions, provided that in the event of a conflict between the terms included in this Schedule 3 and the Master Terms and Conditions, the terms included in this Schedule 3 will control. As of April 2018, the following products are considered “Software License Optimization products” and such list may be updated from time to time by Flexera in its sole discretion without amending this Schedule 3:

FlexNet Manager Suite

FlexNet Manager for Clients
FlexNet Manager for Data Centers

Service Life Data Pack

FlexNet Manager for Engineering Applications

FlexNet Manager for Engineering Applications Foundation
FlexWrap

FlexNet Manager for Cloud Infrastructure
Workflow Manager

**App Portal Enterprise
Edition App Broker
for ServiceNow**

FLEXNET MANAGER SUITE

1. “**Device**” means any physical or virtual device (excluding Servers) for which any function is performed by the Software (including but not limited to scanning, delivering, installing, updating, migrating or repairing any computer program or data file; or scanning, monitoring, tracking, or reporting on the status, history, or security vulnerabilities of any software or hardware components or software licenses on or used by the device).
2. “**Internal Purposes**” means management of Devices located within Licensee’s own systems.
3. “**Server**” means any computer server (physical or virtual) for which any function is performed with the Software. For the purpose of certification as set forth in the Agreement, the number of Servers includes the highest number of Servers that were in place at any point during the previous year.
4. “**User**” means the individuals within Licensee’s organization who access any software application or database on an SAP system or SAP may deem as a user. For the purpose of certification as set forth in the Agreement, the number of Users includes all Users who have accessed any such software application or database at any point during the previous year. For the purpose of clarity, a single User may not be more than one individual.
5. **Grant of License.** Subject to all of the terms and conditions of this Agreement and upon Licensee’s payment of the fees shown on the invoice and acceptance of this Agreement, Flexera grants Licensee a non-transferable, non-sublicensable, non-exclusive license to use, within the License Level, for Internal Purposes only, (i) Software, in accordance with the Documentation, and (ii) Documentation. Management of Devices of any third party requires a service provider license.
6. **IBM Cognos.** Flexera may provide Licensee rights to use certain IBM Cognos programs embedded within the Software solely in conjunction with the Software. In addition to Licensee’s obligations hereunder, Licensee shall also comply with the terms and conditions contained at <http://support.installshield.com/kb/view.asp?articleid=Q203636>.
7. **Prohibited use.** Scanning Servers using the FlexNet Manager for Clients Software is strictly prohibited. Licensee must purchase a license to the FlexNet Manager for Datacenter Software in order to inventory Servers.

FLEXNET MANAGER FOR ENGINEERING APPLICATIONS, FLEXNET MANAGER

FOR ENGINEERING APPLICATIONS
FOUNDATION AND FLEXWRAP

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2. **“Internal Purposes”** means management of applications located within Licensee’s own systems.
3. **“User”** means the individuals within Licensee’s organization who access a license server for which FlexNet Manager for Engineering Applications is providing reporting services. For the purpose of certification as set forth in the Agreement, the number of Users includes all Users who have accessed such license server at any point during the previous year. For the purpose of clarity, a single User may not be more than one individual.
4. **Grant of License.** Subject to all of the terms and conditions of this Agreement and upon Licensee’s payment of the fees shown on the invoice and acceptance of this Agreement, Flexera grants Licensee a non-transferable, non-sublicensable, non-exclusive license to use, within the License Level, for Internal Purposes only, (i) Software, in accordance with the Documentation, and (ii) Documentation. Management of applications of any third party requires a service provider license.



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6. **FlexNet Manager for Engineering Applications.** Each license for FlexNet Manager for Engineering Applications permits the management and administration of license servers and processing of reports associated with the licensed number of Users within Licensee's organization who access the software application identified by a distinct vendor daemon name(s) ("Vendor Daemon"). FlexNet Manager for Engineering Applications may be installed on a single named server identified by a distinct server identification ("HostID"). A set of redundant servers is considered a "single named server" for purposes of this license.
 - a. **HostID Changes.** The designated HostID may be changed only once during the Support and Maintenance period while Licensee is under a maintenance contract without additional cost to Licensee. Additional changes may require an additional fee.
 - b. **Vendor Daemon Substitutions.** The designated Vendor Daemon(s) may not be substituted unless the underlying vendor changes the Vendor Daemon. In such instances, there is no extra charge for exchanging the Vendor Daemon.
7. **FlexWrap.** Each license for FlexWrap permits the "wrapping" of an unlimited number of internally used applications to provide FlexNet licensing capabilities for such applications and a license server to manage license check-ins and check-outs for these applications. FlexWrap provides application usage management and optional enforcement of concurrent limits on application usage. The license server may be installed on a single named server identified by a HostID. A set of redundant servers is considered a "single named server" For the purpose of this license. This license does not permit applications to be wrapped and distributed externally to any other parties. FlexWrap may be used by the total number of FlexWrap Authors within Licensee's organization, and only if that total number of FlexWrap Authors does not exceed the License Level set forth in the applicable Order Confirmation.

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2. **"Internal Purposes"** means management of Instances for Licensee's own business purposes.
3. **Grant of License.** Subject to all of the terms and conditions of this Agreement and upon Licensee's payment of the fees shown on the invoice and acceptance of this Agreement, Flexera grants Licensee a non-transferable, non-sublicensable, non-exclusive license to use, within the License Level, for Internal Purposes only, (i) Software, in accordance with the Documentation, and (ii) Documentation. Management of Instances for the benefit of any third party requires a service provider license.
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3. **Grant of License.** Subject to all of the terms and conditions of this Agreement and upon Licensee's payment of the fees shown on the invoice and acceptance of this Agreement, Flexera grants Licensee a non-transferable, non-sublicensable, non-exclusive license to use, within the License Level, for Internal Purposes only, (i) Software, in accordance with the Documentation, and (ii) Documentation. Management of Devices of any third party requires a service provider license.

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3. Grant of License. Subject to all of the terms and conditions of this Agreement and upon Licensee's payment of the fees shown on the invoice and acceptance of this Agreement, Flexera grants Licensee a non-transferable, non-sublicensable, non-exclusive license to use, within the License Level, for Internal Purposes only, (i) Software, in accordance with the Documentation, and (ii) Documentation. Management of applications of any third party requires a service provider license.

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1. "**User**" means any individual that may request, have deployed to, or otherwise receive any application, package, or other software, or other IT or corporate resource or service, prepared using the Software. For the purpose of certification as set forth in this Agreement, the number of Users includes the highest number of Users that were in place at any point during the previous year.
2. "**Internal Purposes**" means management of applications located within Licensee's own systems.
3. Grant of License. Subject to all of the terms and conditions of this Agreement and upon Licensee's payment of the fees shown on the invoice and acceptance of this Agreement, Flexera grants Licensee a non-transferable, non-sublicensable, non-exclusive license to use, within the License Level, for Internal Purposes only, (i) Software, in accordance with the Documentation, and (ii) Documentation. Management of applications of any third party requires a service provider license.

[END OF SCHEDULE 3]



SCHEDULE 4 TERMS AND CONDITIONS FOR SOFTWARE VULNERABILITY MANAGEMENT PRODUCTS

The terms of this Schedule 4 will apply to all Software Vulnerability Management products licensed by Flexera to Licensee. Any terms not defined in this Schedule 4 will have the meanings ascribed to them in the Agreement. The provisions of this Schedule 4 will be in addition to the terms included in the Master Terms and Conditions, provided that in the event of a conflict between the terms included in this Schedule 4 and the terms of the Master Terms and Conditions, the terms included in this Schedule 4 will control. As of April 2018, the following products are considered “Software Vulnerability Management products” and such list may be updated from time to time by Flexera in its sole discretion without amending this Schedule 4:

**Corporate Software Inspector
Vulnerability
Intelligence Manager
Software Vulnerability
Research Software
Vulnerability Manager**

I. DEFINITIONS

1. “**Device**” means any physical or virtual device for which any function is performed by the Software (including but not limited to scanning, delivering, installing, updating, migrating or repairing any computer program or data file; or scanning, monitoring, tracking, or reporting on the status, history, or security vulnerabilities of any software or hardware components or software licenses on or used by the device). For the purpose of certification as set forth in the Agreement, the number of Devices includes the highest number of Devices that were in place at any point during the previous year.

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2. Disclaimer. While the Software is intended to detect and disclose vulnerabilities in Licensee’s system, Flexera makes no representation or warranty that the Software will detect all vulnerabilities.

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SOFTWARE VULNERABILITY MANAGER

1. **“Internal Purposes”** for Corporate Software Inspector means reporting of vulnerabilities related to applications located within Licensee’s own systems.



2. Grant of License. Subject to all of the terms and conditions of this Agreement and upon Licensee's payment of the fees shown on the invoice and acceptance of this Agreement, Flexera grants Licensee a non-transferable, non-sublicensable, non-exclusive license to use, within the License Level, for Internal Purposes only, (i) Software, in accordance with the Documentation, and (ii) Documentation. Providing advisories or vulnerability updates or reporting (x) on applications located within third party systems or (y) to third parties other than Contractors, is prohibited.

IV. SERVICE PROVIDER USE LICENSE RIGHTS AND OBLIGATIONS

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[END OF SCHEDULE 4]



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7. **Indemnification.** Licensee shall defend and indemnify Flexera from and against any claim asserted against Flexera by a third party based upon an allegation that a Licensee FNO Product, or Flexera's copying, hosting or distribution thereof infringes, without limitation, U.S. patent, U.S. copyright, or U.S. trademark in place as of the date of the applicable Order Confirmation for Licensees in North America and Latin America; A patent enforceable in a Patent Cooperation Treaty jurisdiction, copyright enforceable in a jurisdiction that is a signatory to the Berne Convention, or trademark in place as of the date of the applicable Order Confirmation for Licensees in Europe, Middle East, Africa, or the Asia Pacific Region. The foregoing indemnification obligation of Licensee shall not apply if the Licensee FNO Product is modified (except for setting configuration options provided in the FlexNet Operations Software) by Flexera (unless done so at Licensee's request). THIS SECTION SETS FORTH LICENSEE'S SOLE LIABILITY AND FLEXERA'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO ANY CLAIM OF INTELLECTUAL PROPERTY INFRINGEMENT, INCLUDING A BREACH OF ANY REPRESENTATION OR WARRANTY RELATED THERETO.

FLEXNET OPERATIONS CLOUD ELECTRONIC DELIVERY

1. **"Cloud Site"** means the website hosted by Flexera through which Licensee may access Cloud Software.
2. **Export.** To provide the Cloud Site and comply with U.S. export laws, Flexera may obtain from Licensee and/or FNO End Users, store, and use personally identifying information about Accounts and/or FNO End Users. Such data will be considered Confidential Information of Licensee, provided Flexera may disclose it to government agencies, including without limitation the Bureau of Industry and Security of the U.S. Department of Commerce (the "BIS"), as required by applicable law or regulation, including without limitation the U.S. Export Administration Regulations ("EAR"). Each party shall comply fully with applicable U.S. laws and regulations governing the export of technical data, including, but not limited to the EAR and other U.S. export laws and regulations. Licensee shall cooperate with Flexera in its efforts to ensure that the Cloud Site complies with the EAR and other applicable export laws and regulations. Such cooperation shall include Licensee's providing to Flexera export information regarding the Licensee FNO Products, including encryption levels, U.S. export control classification numbers ("ECCN") and, if applicable, U.S. commodity classification automated tracking system ("CCATS") numbers and any export control rules or data applicable to the Flexera and/or its products and services additional to those imposed by the U.S. government. Licensee shall also provide to Flexera identifying Account and FNO End User information, including Account and FNO End User names, full addresses and e-mail addresses, to enable Flexera to perform adequate export screening and any required BIS reporting. Flexera may disallow downloads outside the United States of Licensee FNO Products for which Licensee has not provided required information, may disallow downloads by Accounts or FNO End Users for which Licensee has not provided required information and may disallow downloads in order to comply with U.S. or other applicable export controls. Any such disallowance of downloads by Flexera will not constitute a breach of this Agreement or excuse non-payment by Licensee. Licensee shall not allow downloads of Licensee FNO Products with an ECCN of 5D002 outside of the United States when using the Cloud Site in Flexera's pre-production user acceptance testing environment. Licensee authorizes Flexera to file any necessary export control documentation on its behalf.
3. **Metrics.** The Order Confirmation will establish the number of GB that Licensee is entitled to store in the Cloud Site (the "**Storage Limit**") and as well as the number of GB that Licensee is entitled to deliver via the Cloud Site (the "**Delivery Limit**"). To the extent Licensee exceeds the Storage Limit or Delivery Limit, Licensee shall pay Flexera overage fee(s) equal to twice the fees paid on a per GB basis for all GBs in excess of the Storage Limit or Delivery Limit.

FLEXNET OPERATIONS STANDALONE CLOUD ELECTRONIC DELIVERY

1. **Cloud Software.** Where an Order Confirmation includes the Standalone Cloud Electronic Delivery Module, the FlexNet Operations Provided Via the Cloud Site and Cloud Electronic Delivery terms and conditions included in this Schedule 6 will apply in respect of the same.

CONNECT
GENERAL
TERMS AND
CONDITIONS

1. Definitions.

- a. **"Cloud Site"** means the website hosted by Flexera through which Licensee may access Cloud Software.
- b. **"FNC End User"** means a licensee of a Licensee FNC Products.
- c. **"FNC Platform"** means a separately purchased component of the FlexNet Connect Software that relates to a unique combination of (i) a development language, (ii) an operating system and (iii) a processor set.
- d. **"FNC Revenue"** means the sum of (i) all revenue from all sources directly related to the Licensee FNC Software Products recognized in accordance with GAAP during each of Licensee's fiscal years, including, but not limited to all license, subscription and recurring maintenance and support revenue plus (ii) all revenue from all sources directly related to the Licensee FNC Hardware Products recognized in accordance with GAAP during each of Licensee's fiscal years, including, but not limited to all license, lease and recurring maintenance and support revenue. FNC Revenues does not include (a) revenue from consulting services related to the



implementation, installation, customization or configuration of Licensee FNC Products or (b) revenue from any generic hardware (e.g., a 3rd party blade server) sold alongside a Licensee FNC Product.

- e. **“Licensee FNC Hardware Products”** means all of Licensee’s hardware products with which Licensee directly or indirectly uses the FlexNet Connect Software. A Licensee hardware product is not a Licensee FNC Hardware Product merely because the FlexNet Connect Software or a Licensee FNC Software Product is installed upon it; rather the FlexNet Connect Software must be used with the Licensee hardware product itself for it to be a Licensee FNC Hardware Product.
- f. **“Licensee FNC Products”** means collectively, the Licensee FNC Software Products and the Licensee FNC Hardware Products.
2. **Fiscal Year.** The last month of Licensee’s fiscal year will be established as December. Licensee may request a change by providing a written request to Flexera regarding such change.
3. **Redistributables.** Licensee may copy any files specifically identified in the Documentation as “redistributables” and redistribute such files with Licensee FNC Products to FNC End Users, provided that: (a) such Licensee FNC Products add primary and substantial functionality to the redistributables, (b) all copies of the redistributables must be exact and unmodified; (c) Licensee grants the FNC End Users a limited, personal, non-exclusive and non-transferable license to use the redistributables only to the extent required for the permitted operation of the Licensee FNC Products; and (d) Licensee informs the FNC End Users of the connection, collection and dissemination of information between such FNC End Users, Licensee and/or Flexera, as applicable. Licensee will reproduce with the redistributables all applicable trademark and copyright notices that accompany the FlexNet Connect Software and/or redistributables, but Licensee may not use Flexera’s name, logos or trademarks to market Licensee’s products. The termination of any FlexNet Connect Software license will not require the removal or deletion of the redistributables from Licensee FNC Products that were distributed prior to the effective date of termination.
4. **Limitations.** Licensee shall not (and shall not allow any third party to):
 - a. use the FlexNet Connect Software to capture, collect or transfer any information, including, but not limited to, information related to its FNC End Users, in violation of any privacy, confidentiality or other restrictions, laws or regulations of any United States or foreign agency or authority applicable to such information. In addition, Licensee shall ensure that the use of any such information complies with all privacy, confidentiality or other restrictions, laws or regulations of any United States or foreign agency or authority applicable to such information;
 - b. publicly disseminate pricing, performance information, features, or analysis (including, without limitation, benchmarks) from any source relating to the FlexNet Connect Software;
 - c. use the data captured using the Instrumentation Management module of the FlexNet Connect Software to post-charge Licensee customers in any way (maintenance, subscription, surcharge, etc.); or
 - d. use the FlexNet Connect Software with a Licensee product where the primary functionality of such Licensee product when taken as a whole is substantially similar to the functionality of the FlexNet Connect Software.
5. **Reference Linux Platforms.**
 - a. For any FNC Platforms any identified on an Order Confirmation that include the phrase “reference Linux” in its name on the applicable Order Confirmation (the “FlexNet Connect Reference Linux Platforms”), Licensee may implement such FNC Platform(s) on the processor set listed in the FlexNet Connect Reference Linux Platform name in combination with any Linux operating systems other than any of the Linux operating system FNC Platforms available from Flexera as of the date of the applicable Order Confirmation.
 - b. Support and Maintenance is only available on the FlexNet Connect Reference Linux Platforms licensed regardless of the Linux platform on which Licensee implements FlexNet Connect. Accordingly, all requests for support related to a Linux platform must be reproducible by Licensee on the licensed FlexNet Connect Reference Linux Platform. In the event the support request is reproducible on the FlexNet Connect Reference Linux Platform, Flexera will provide support to Licensee. In the event the support request is not reproducible on the FlexNet Connect Reference Linux Platform, Flexera will have no obligation to provide support to Licensee with respect to such request.
6. **Porting Kits.**
 - a. For any FlexNet Connect Porting Kit identified on an Order Confirmation, Licensee is granted the right to use the FlexNet Connect Porting Kit in order to port the FlexNet Connect Software to any platform other than a FNC Platform available from Flexera as of the date of the applicable Order Confirmation (each a “Licensee Ported FNC Platform”). Licensee acknowledges that Flexera will retain all ownership in and to the FlexNet Connect Porting Kit and the port to the Licensee Ported FNC Platform(s).
 - b. Licensee understands and acknowledges that Support and Maintenance is only available on the FNC Platform(s) licensed and will not be provided for any Licensee Ported FNC Platforms. Accordingly, all requests for support on the Licensee Ported FNC Platforms must be reproducible by Licensee on the FNC Platform(s) licensed or, if no FNC Platform is licensed, on one of the CentOS or Debian Linux

FNC Platforms available from Flexera at the time of Licensee's request for support (each a "FlexNet Connect Reference Platform"). In the event the support request is reproducible on an applicable FlexNet Connect Reference Platform, Flexera will provide support to Licensee. In the event the support request is not reproducible on an applicable FlexNet Connect Reference Platform, Flexera will have no obligation to provide support to Licensee with respect to such request.

FLEXNET CONNECT ON-PREMISES SOFTWARE

1. Definitions.

- a. **"Licensee FNC Software Products"** means all of Licensee's software products with which Licensee directly or indirectly uses the FlexNet Connect Software to provide updates, instruments or messages to its customers and end users.



2. **Grant of License.** Subject to all of the terms and conditions of this Agreement and upon Licensee's payment of the fees shown on the invoice and acceptance of this Agreement, Flexera grants Licensee, solely for Licensee's Internal Purposes at Licensee's site(s) only, a nontransferable, non-sublicensable, non-exclusive license to use solely with Licensee FNC Products that generate revenue and that generate FNC Revenue in an amount that does not exceed the License Level, (i) the Software, in accordance with the Documentation, and (ii) Documentation.
3. **Delivery.** The FlexNet Connect Software consists of both a server element (the "Back Office Software") and a client element (the "Client Software"). Licensee may install the Back Office Software on Licensee's computers for use only by Licensee's employees and Contractors. Licensee may make a copy of the Back Office Software solely for back-up or testing purposes. The Client Software shall be deemed a "redistributable" and subject to the limitations set forth in the applicable Order Confirmation.

FLEXNET CONNECT PROVIDED VIA THE CLOUD SITE

1. **Definitions.**
 - a. "Cloud Site" means the website hosted by Flexera through which Licensee may access CloudSoftware.
 - b. "Licensee FNC Software Products" means all of Licensee's software products with which Licensee directly or indirectly uses the FlexNet Connect Software.
2. **Grant of License.** Subject to all of the terms and conditions of this Agreement and upon Licensee's payment of the fees shown on the invoice and acceptance of this Agreement, Flexera grants Licensee, solely for Licensee's Internal Purposes at Licensee's site(s) only, a nontransferable, non-sublicensable, non-exclusive license to use solely with Licensee FNC Products that generate revenue and that generate FNC Revenue in an amount that does not exceed the License Level, (i) the Software, in accordance with the Documentation, and (ii) Documentation.
3. **Delivery.** The FlexNet Connect Software consists of both a server element (the "Back Office Software") and a client element (the "Client Software"). Flexera will make the Back Office Software available to Licensee remotely via a Cloud Site.
4. **Licensee Grant.** Licensee grants to Flexera the right to reproduce, copy, host and distribute the Licensee FNC Products as necessary for Flexera to implement and provide the Cloud Site as set forth herein. Notwithstanding the foregoing, Licensee or its licensors own all right, title and interest in and to the Licensee FNC Products and related Licensee documentation, and in all proprietary and intellectual property rights related thereto, including but not limited to patent, copyright, trademark and trade secret rights wherever arising in the world. Subject to the limited licenses granted herein, no such rights are transferred to Flexera hereunder. Flexera will not use, copy, modify, distribute, or provide any third party access to the Licensee FNC Products except as contemplated under this Agreement. Flexera will not decompile, disassemble or reverse engineer the Licensee FNC Products. Licensee warrants that (i) it has the authority to grant to Flexera the license described herein and (ii) it shall use commercially available anti-virus software to test the Licensee FNC Products for viruses, worms, Trojan horses or other harmful, malicious or destructive code and such test has shown no such viruses, worms, Trojan horses or other harmful, malicious or destructive code.
5. **Ownership.** Flexera or its licensors own all right, title and interest in and to the Cloud Site and related documentation, and in all proprietary and intellectual property rights related thereto, including but not limited to patent, copyright, trademark and trade secret rights wherever arising in the world. Subject to the limited licenses granted herein, no such rights are transferred to Licensee hereunder. Licensee will not use, copy, modify distribute, or provide any third party access to the Cloud Site (including their user interfaces) except as provided in this Agreement.
6. For any FlexNet Connect Cloud Enterprise Update Management Modules identified on an Order Confirmation, Flexera grants to Licensee the right to provide each FNC End User with limited access to the Cloud Site for the limited purpose of managing such FNC End User's assets and entitlements to Licensee FNC Products. Notwithstanding the foregoing, Flexera or its licensors own all right, title and interest in and to the Cloud Site and related documentation, and in all proprietary and intellectual property rights related thereto, including but not limited to patent, copyright, trademark and trade secret rights wherever arising in the world. Subject to the limited licenses granted herein, no such rights are transferred to Licensee hereunder. Licensee will not use, copy, modify distribute, or provide any third party access to the Cloud Site (including their user interfaces) except as provided in this Agreement.

END OF SCHEDULE 6



SCHEDULE 7

TERMS AND CONDITIONS FOR DATA PLATFORM PRODUCTS

The terms of this Schedule 7 will apply to all Data Platform products licensed by Flexera to Licensee. Any terms not defined in this Schedule 7 will have the meanings ascribed to them in the Agreement. The provisions of this Schedule 7 will be in addition to the terms included in the Master Terms and Conditions, provided that in the event of a conflict between the terms included in this Schedule 7 and the Master Terms and Conditions, the terms included in this Schedule 7 will control. As of April 2018, the following products are considered “Data Platform products” and such list may be updated from time to time by Flexera in its sole discretion without amending this Schedule 7:

Analyze

Norma lize

Technopedia Catalog

1. Definitions.
 - a. “**Content**” means the content, or any subset thereof, contained in the Technopedia Catalog.
 - b. “**Device**” means any IP-connected device that is not a Server such as desktops, routers, switches, etc. for which any function is performed with the Content. For the purpose of certification as set forth in the Agreement, the number of Devices includes the highest number of Devices, Servers or End-Points that were in place at any point during the previous year.
 - c. “**End Point**” means any Server and/or Device, or the combination thereof.
 - d. “**End Use**” means the final work product resulting from Licensee’s combination of the Content with Licensee’s asset management data as necessary to enhance such Licensee’s data, as permitted under the Agreement and Order Confirmation.
 - e. “**Internal Purposes**” means the cataloging, reporting and management of Licensee’s hardware and software applications.
 - f. “**Server**” means any computer server (physical or virtual) for which any function is performed with the Content.
 - g. “**Technopedia® Catalog**” means the proprietary compilation of content or any subset thereof. Technopedia Catalog is a ‘compilation’ as such term is defined in 17 U.S. Code Section 101 (the “Copyright Act of 1976”). Flexera owns a copyright in the selection, coordination, arrangement and enhancement of such Technopedia Catalog, including the taxonomy employed by Flexera to organize the Technopedia Catalog. Licensee does not acquire, and does not claim, any rights in the Content itself apart from the End Use.
2. Grant of License. Subject to all of the terms and conditions of this Agreement and upon Licensee’s payment of the fees shown on the invoice and acceptance of this Agreement, Flexera grants to Licensee a non-transferable (except as provided herein), non-sublicensable, nonexclusive license to access and use the Content within the License Level for Internal Purposes only as necessary to produce the End Use.
3. Limited Use. An Order Confirmation may designate a license as “Limited Use”. Any licenses with such designation will be limited to the specific use case identified in the Order Confirmation.
4. Support and Maintenance Exclusion. Support and Maintenance does not apply to the Content; however, Flexera will update the Content on a regular basis, in its discretion.
5. Warranty Exclusion. The limited warranties in Section 10 of the Master Terms and Conditions do not apply to the Content.

TERMS AND CONDITIONS FOR EVALUATION SOFTWARE, FREE SOFTWARE, AND NFR SOFTWARE

The use of Software received by Licensee for purposes of evaluation (“**Evaluation Software**”), regardless of how labeled, any Software provided at no charge (“**Free Software**”), and any software that is identified as a “Not for Resale” or “NFR” license (“**NFR Software**”) will be governed by the terms set forth in this Schedule 8. Any terms not defined in this Schedule 8 will have the meanings ascribed to them in the Agreement. The provisions of this Schedule 8 will be in addition to the terms included in the main body of the Agreement, provided that in the event of a conflict between the terms included in this Schedule 8 and the terms of the main body of the Agreement, the terms included in this Schedule 8 will prevail.

1. Grant of License. Subject to all of the terms and conditions of this Agreement, Flexera grants Licensee:
 - a. *For Evaluation Software*: during the Evaluation Period, a limited, internal use, non-exclusive, non-transferable license to use the Software solely to evaluate its suitability for Licensee's internal business requirements at Licensee's site(s) only. Without limiting the foregoing, Licensee may not use the Software during the Evaluation Period to create or deploy any application, package, or other software or for any other purpose. This license may be terminated by Flexera at any time upon notice to Licensee and will automatically terminate, without notice, upon the first to occur of the following: (a) the completion of Licensee's evaluation of the Software or (b) the expiration of the Evaluation Period. Except as otherwise expressly set forth herein or in the applicable Order Confirmation, the license does not include source code.
 - b. *For Free Software*: a limited, internal use, non-exclusive, non-transferable license to use the Software for Licensee's internal business requirements at Licensee's site(s) only. Except as otherwise expressly set forth herein or in the applicable Order Confirmation, the license does not include source code.
 - c. *For NFR Software*: a temporary, limited, internal use, non-exclusive, non-transferable license to use NFR Software solely for the purposes of training, education, and support for Licensee's internal personnel. Without limiting the foregoing, Licensee may not use NFR Software to create or deploy any application, package, or other software, manage any device, or for any other purpose. This license may be terminated by Flexera at any time upon notice to Licensee.



SCHEDULE 8

2. Evaluation Period. If Licensee has received the Software for purposes of evaluation, regardless of how labeled, the use of the Software is limited to a specified period of time, as detailed in the email accompanying the download instructions, or if not specified in such email, twenty one (21) days from Licensee's acceptance of this Agreement (the "Evaluation Period).
3. Limited Use. Portions of the full-use version of the Software may be withheld or unusable. Full use of the Software may be restricted by technological protections.
4. No Support and Maintenance. Flexera will have no Support and Maintenance obligation to Licensee for unless otherwise agreed by the parties.
5. Disclaimer of Warranty. **EVALUATION SOFTWARE, FREE SOFTWARE, AND NFR SOFTWARE ARE PROVIDED ON AN "AS IS" BASIS. NEITHER FLEXERA NOR ITS SUPPLIERS MAKE ANY WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT. LICENSEE MAY HAVE OTHER STATUTORY RIGHTS. HOWEVER, TO THE FULL EXTENT PERMITTED BY LAW, THE DURATION OF STATUTORILY REQUIRED WARRANTIES, IF ANY, WILL BE LIMITED TO THE SHORTER OF (I) THE STATUTORILY REQUIRED PERIOD OR (II) THIRTY (30) DAYS FROM LICENSEE'S ACCEPTANCE OF THIS AGREEMENT.**
6. Limitation of Liability. **IN NO EVENT WILL FLEXERA BE LIABLE FOR ANY DAMAGES, INCLUDING LOST PROFITS OR DATA, OR OTHER INCIDENTAL OR CONSEQUENTIAL DAMAGES, ARISING OUT OF THE USE OR INABILITY TO USE THE SOFTWARE OR ANY DATA SUPPLIED THEREWITH, EVEN IF FLEXERA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY CLAIM BY ANY OTHER PARTY. IN NO CASE WILL FLEXERA'S LIABILITY FOR ANY DAMAGES HEREUNDER EXCEED FIFTY DOLLARS (US\$50).**
7. Termination. Licensee's license may be terminated by Flexera at any time immediately upon notice to Licensee. In the event of termination, Licensee must cease using the Software, destroy all copies of the Software (including copies in storage media), if applicable, and certify such destruction to Flexera. This requirement applies to all copies in any form, partial or complete. Upon the effective date of any termination, Licensee relinquishes all rights granted under this Agreement.

[END OF SCHEDULE 8]

TERMS AND CONDITIONS FOR TECHNICAL ACCOUNT MANAGER

This Schedule 9 describes the Technical Account Manager ("TAM") services that may be purchased by Licensee. Any terms not defined in this Schedule 9 will have the meanings ascribed to them in the Agreement. The provisions of this Schedule 9 will be in addition to the terms included in the main body of the Agreement, provided that in the event of a conflict between the terms included in this Schedule 9 and the terms of the main body of the Agreement, the terms included in this Schedule 9 will prevail.

1. TAM Overview. The TAM provides focused account management for all Licensee service related issues. The TAM oversees all Licensee service activities and provides consolidated information for all technical support issues. This personalized point-of-contact works to enable Flexera in partnership with Licensee to deliver on agreed expectations.
2. TAM Scope. The products supported by the TAM will be identified in the applicable Order Confirmation. The TAM works closely with Licensee staff to perform the following tasks:
 - a. *Communication and Reporting*
 - i. Conducts weekly open incident reviews with Licensee.
 - ii. Provides monthly incident activity reports on bugs and enhancements.
 - iii. Provides annual onsite executive briefing (Annual Business Review) at the designated Licensee facility. The TAM provides a report representing ongoing projects, open issue, enhancements, bugs, product road maps, key performance indicators, release dates and improvement recommendations. The executive briefing occurs at the designated site as agreed by Flexera and Licensee.
 - iv. The TAM in conjunction with designated Licensee personnel sets the agenda for each meeting, which will include, but not be limited to, topics to be discussed, Flexera attendees, Licensee attendees and any other requirements to confirm the correct teams are involved.
 - v. Attends regular review meetings with Licensee operational personnel and senior management that may fall outside defined

weekly, monthly and quarterly meetings. These meetings may include any levels of Licensee staff (Operational and Management).

b. Proactive Support

- i. Maintains a high level of awareness of the account and identify issues potentially affecting the Flexera product environment.
- ii. Leverages Flexera industry practice knowledge to help Licensee optimize the use of Flexera applications.
- iii. Manages the processing and implementation of bugs and enhancements.
- iv. Identifies training gaps and suggests documentation and Flexera tools to increase efficiency and help optimize the use of Flexera products.

c. Problem Management

- i. The TAM confirms that the appropriate resource is assigned to each incident, drives escalation when necessary, and follows up to confirm resolution. The specific responsibilities include:
- ii. Reviewing open incident inquires and facilitating resolution.
- iii. Providing proper response to high severity incidents is in accordance with Licensee maintenance contract and facilitating a resolution.
- iv. Acting as primary point-of-contact for all call escalations and critical incident reporting.



SCHEDULE 9

3. Out of Scope. Activities outside the scope of the TAM include, but are not limited to:
- a. Project work managed by a Flexera Project Manager.
 - b. Multiple, basic installation services requiring project management services.
 - c. Installing and configuring of Flexera applications.
 - d. Managing new application implementations.
 - e. Any chargeable professional services specialist functions.
 - f. Any application or host system tasks that encompass coding, scripting, application analysis, system performance, troubleshooting, or application logins.
 - g. The TAM can be engaged prior to or after an Incident is open, but will have no responsibility for opening an Incident.
 - h. The TAM does not ensure that any or every issue that is raised will be or can be resolved. The TAM provides Licensee with a focal point and advocate for the issues and enhancements requested by Licensee. As a result, Flexera makes no guarantee or warranty to be able to solve or resolve any specific issue.

4. TAM Deliverables. Flexera will provide Licensee with the following deliverables:

Phase	Deliverable
<i>Kick Off</i>	TAM introduction
<i>Weekly</i>	Open incident summary
<i>Monthly</i>	Incident activity reports /Management meeting
<i>Annually</i>	Onsite executive summary (Annual Business Review)

5. Licensee Obligations. Prior to and/or during the engagement, Licensee must:
- a. Continue to follow the standard channels for opening an Incident (email/phone/web).
 - b. Nominate a primary technical person and respective backup technical person for all communications with the TAM on operational



issues.

- c. Keep the TAM apprised of business, organizational, and technical issues that may have direct impact on the effective delivery of the TAM's obligations.
6. Escalations. The TAM will be the conduit for all escalations, which will include escalations on Incidents, professional services work or any other issues associated with Flexera. During times of leave/holidays, the TAM will provide Licensee with the contact details of the person/team that will cover the different aspects of the role in his/her absence. In the event of a Severity 1 problem, which is defined as a problem that causes an urgent, critical impact that impairs the performance of substantially all major functions of the Software or a Licensee product, Licensee should contact the TAM immediately via a phone call followed by an email.

Escalation level			
1	2	3	4

Licensee IT	Operations Team	Management team	Senior Vice president level	CEO,CIO level
Flexera	Technical Account Manger	Vice president of Account Management	Senior Vice president of Product and Services	President and CEO

[END OF SCHEDULE 9]

Boomi Services Master Services Agreement – Federal Sales

This Master Services Agreement (the “Agreement”) is made between you, the Customer (“Customer”) and Dell Federal Systems LP with its principal place of business at 2300 Greenlawn Blvd., MS RR3-63, Round Rock, TX 78664-7090 (“Dell”) specifically for the sale of Boomi Services, as defined below. Customer’s address shall be the address stated in Dell Order into which this Agreement is incorporated by reference.

1. **Definitions.** Capitalized terms not defined in context will have the meanings assigned to them below:

(a) “**Affiliate**” means any legal entity controlling, controlled by, or under common control with a party to this Agreement, for so long as such control relationship exists.

(b) “**Boomi Services**” means one or more of the software services provided by Dell under this Agreement (such as the Boomi AtomSphere Service) and the Software to which Customer is given access in connection with such service (the “**Software**”).

(c) “**Documentation**” means the user manuals and documentation that Dell makes available for the Boomi Services.

(d) “**Support Services**” means Dell’s maintenance and support for the Boomi Services as stated at www.boomi.com/legal/service.

(e) “**Order**” means the document by which Customer orders Boomi Services. Orders that are signed by both Customer and Dell will be governed solely by the terms of this Agreement and the applicable Order. Any conflicting or additional terms in or accompanying an Order will not be binding on Dell unless Dell accepts such terms in writing. Each Order will be subject to approval and acceptance by Dell and will represent the Customer’s irrevocable commitment to purchase and

pay for the Boomi Services stated in the Order.

(f) “**Services Order**” or “**SO**” means the document by which Customer orders consulting and/or training services, such as a Services Order Form or Statement of Work, which will be governed by the Professional Service Addendum below. Dell, through its employees, agents and contractors, will perform the consulting and/or training services described in the Services Order. Any conflicting or additional terms in or accompanying a Services Order will not be binding on Dell unless Dell accepts such terms in writing. Each Services Order will be subject to approval by Dell.

(g) “**Professional Services**” means the Activities or Project Deliverables identified in a Services Order and defined in the Professional Service Addendum (the “Addendum” or “Professional Service Addendum”), attached below. Customer’s purchase of Professional Services, if any, is governed by this Agreement and the Addendum.

2. **License.**

(a) **General.** Subject to the terms of this Agreement, Dell grants to Customer, and Customer accepts a non-exclusive, non-transferable (except as otherwise set forth herein) and non-sublicensable license to access and use the quantities of the Boomi Services identified in the applicable Order to support the internal business operations of itself and its Affiliates for the term stated on the applicable Order. If any Software delivered to Customer for Customer’s installation and use on its own equipment is provided in connection with the Boomi Services, the license duration for such Software will be for the term stated on the applicable Order. All rights not specifically granted by Dell hereunder are hereby reserved by Dell.

(b) **Evaluation Use.** If an Order indicates that the Boomi Services are to be used by Customer for evaluation purposes, or if access to the Boomi Services is otherwise obtained from Dell for evaluation purposes, such as a free trial or a proof of concept, Customer will be granted a right to use the Boomi Services solely for Customer’s own non-production, internal evaluation purposes (an “**Evaluation Right**”). Each Evaluation Right shall be for a period of up to thirty (30) days (subject to Dell’s right to terminate the Evaluation Right in Dell’s sole discretion at any time) from the date of delivery of the credentials needed to access the applicable Boomi Services, plus any extensions granted by Dell in writing (the “**Evaluation Period**”). There is no fee for an Evaluation Right during the Evaluation Period, but Customer is responsible for any fees associated with usage beyond the scope permitted herein. Notwithstanding anything otherwise set forth in

this Agreement, Customer understands and agrees that Evaluation Rights are provided “AS IS” and that Dell does not provide warranties or Support Services for Evaluation Rights.

(c) **Use by Third Parties.** Customer may allow its services vendors and contractors (each, a “**Third-Party User**”) to access and use the Boomi Services made available to Customer hereunder solely for purposes of providing services to support the internal business operations of Customer, provided that Customer ensures that (i) the Third-Party User’s access to or use of the Boomi Services is subject to the restrictions and limitations contained in this Agreement, and the applicable Order(s), (ii) the Third-Party User cooperates with Dell during any compliance review, and (iii) the Third-Party User promptly removes any Software installed on its computer equipment, environment, and the integrated system(s) upon the completion of the Third-Party User’s need for access or use as permitted by this Section. Customer agrees that it will be liable to Dell for those acts and omissions of its Third-Party Users as if they were done or omitted by Customer itself.

3. **Proprietary Rights.** Customer understands and agrees that (a) the Boomi Services are protected by copyright and other intellectual property laws and treaties, (b) Dell, its Affiliates and/or its licensors own the copyright, and other intellectual property rights in the Boomi Services, (c) this Agreement does not grant Customer any rights to Dell’s trademarks or service marks, and (d) Dell reserves any and all rights, implied or otherwise, which are not expressly granted to Customer in this Agreement.

4. **Payment.** Customer agrees to pay to Dell the fees specified in each Order or Services Order. Customer will be invoiced promptly following execution of the Order or Services Order and Customer will make all payments due to Dell in full within thirty (30) days from the date of each invoice or such other period (if any) stated in an Order or Services Order. Customer will provide a Purchase Order (“PO”) to Dell prior to or at the time of execution, except if otherwise stated in the Order or Service Order. If Customer fails to provide the PO to Dell, then Dell will not be obligated to provide the Dell and/or Professional Services until the PO has been received. All fees not subject to a good faith dispute and not paid when due shall accrue interest of 1.5% per month (or the maximum rate permitted by law, if lower).

5. **Taxes.** The fees stated in an Order are exclusive of taxes. If Dell is required to pay sales, use, property, value-added or other taxes based on a Boomi Service provided under this Agreement or on Customer’s use of a Boomi Service, then

such taxes will be billed to and paid by Customer. This Section does not apply to taxes based on Dell's income. All applicable state and local taxes and travel and living expenses, if any, will be billed as separate line items. *In the event Dell is to invoice Customer outside of the United States*, then if Customer is required by law to make a withholding or deduction in respect of the price payable to Dell, Customer will pay Dell the amount necessary to ensure that the actual amount Dell receives after deduction or withholding (and after payment of any additional taxes due because of such additional amount) equals the amount that would have been payable to Dell if such deduction or withholding were not required.

6. **Termination.** The term of this Agreement will begin on the last or only date of the signatures of the Order or Services Order into which it is incorporated below, or if executed by the parties, the last or only date of the signatures on this Agreement (the "Effective Date") and will continue for the term stated therein.

Upon termination or expiration of this Agreement or an Order or Service Order for any reason, all rights granted to Customer for the applicable Boomi Services or Professional Services, respectively, shall immediately cease and Customer shall immediately: (i) cease using such services, and (ii) remove all copies, installations, and instances of any Software from all Customer computers and any other devices on which the Software was installed, and ensure that all applicable Third Party Users do the same.

Notwithstanding such termination or expiration, including, without limitation, the Conduct, Payment, Proprietary Rights, Taxes, Termination, Warranty Disclaimer, Infringement Indemnity, Limitation of Liability, Confidential Information, and General Sections of this Agreement. Termination of this Agreement or a license shall be without prejudice to any other remedies that the terminating party may have under law, subject to the limitations and exclusions set forth in this Agreement.

If so required by law enforcement or legal process, or in the event of an imminent security risk to Dell or its customers, Dell may suspend Customer's use of the Boomi Services. Dell will make commercially reasonable efforts under the circumstances to provide prior notice of any such suspension.

7. **Export.** Customer's purchase of Boomi Services and access to related technology (the "Materials") are for its own use, not for resale, export, re-export, or transfer. Customer is subject to and responsible for compliance with the export control and economic sanctions laws of the United States and other applicable jurisdictions. Materials may not be used, sold, leased, exported,

imported, re-exported, or transferred except as in compliance with such laws, including, without limitation, export licensing requirements, end-user, end-use, and end-destination restrictions, and prohibitions on dealings with sanctioned individuals and entities, including but not limited to persons on the Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List or the U.S. Department of Commerce Denied Persons List. Customer represents and warrants that it is not the subject or target of, and that Customer is not located in a country or territory (including without limitation, North Korea, Cuba, Iran, Syria, and Crimea) that is the subject or target of, economic sanctions of the United States or other applicable jurisdictions.

8. **Warranties and Remedies.**

(a) **Warranties & Remedies.** Dell warrants that, during the term of an Order, the applicable Boomi Services will (i) substantially conform to the applicable Documentation (the "**Operational Warranty**"); and (ii) be available twenty-four hours a day, seven days a week except for scheduled maintenance, the installation of updates, and factors beyond the reasonable control of Dell as described in the Boomi SLA at www.boomi.com/sla (the "**Availability Warranty**"). Customer's sole and exclusive remedy and Dell's sole obligation for any breach of the Operational Warranty or Availability Warranty will be for Dell to provide a fix or reasonably accepted workaround for the Boomi Services and for Dell to provide Service Level Credits as defined at www.boomi.com/sla.

(b) **Warranty Disclaimer.** THE EXPRESS WARRANTIES AND REMEDIES SET FORTH IN THIS SECTION ARE THE ONLY WARRANTIES AND REMEDIES RECOVERABLE. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ALL OTHER WARRANTIES OR REMEDIES ARE EXCLUDED, EXPRESS OR IMPLIED, ORAL OR WRITTEN, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, NON-INFRINGEMENT, SATISFACTORY QUALITY, AND ANY WARRANTIES ARISING FROM USAGE OF TRADE OR COURSE OF DEALING OR PERFORMANCE. DELL DOES NOT WARRANT THAT BOOMI SERVICES WILL BE UNINTERRUPTED, MALWARE FREE, OR ERROR-FREE.

(c) **High-Risk Disclaimer.** customer understands and agrees that The BOOMI SERVICES are not fault-tolerant and are not designed or intended for use in any high-risk or hazardous environment, including without limitation, the operation of nuclear facilities, aircraft OPERATION OR air traffic control, life support, weapons, or any other application where failure or malfunction can reasonably be expected to result in death, personal injury, severe property damage or severe

environmental harm (A **“High Risk Environment”**). accordingly, (i) customer should not use the BOOMI SERVICES in a HIGH-RISK Environment, (ii) any use of the BOOMI SERVICES by customer in a HIGH-RISK environment is at customer’s own risk, (iii) Dell, its affiliates and suppliers will not be liable to Customer in any way for use of the BOOMI SERVICES in a HIGH-RISK Environment, and (iv) Dell makes no warranties or assurances, express or implied, regarding use of THE BOOMI SERVICES in a HIGH-RISK Environment.

9. **Infringement Indemnity.** Dell will defend Customer from and against any claim, suit, action, or proceeding brought against Customer by a third-party to the extent it is based on an allegation that the Boomi Services directly infringe any patent, copyright, trademark, or other proprietary right enforceable in the country in which Dell has authorized Customer to use the Boomi Services, including, but not limited to the country to which the Boomi Services is delivered to Customer, or misappropriates a trade secret in such country (a **“Claim”**). Dell will pay (a) the resulting costs and damages finally awarded against Customer by a court of competent jurisdiction to the extent that such are the result of the third-party Claim. Dell’s obligations under this *Infringement Indemnity* Section are conditioned upon Customer giving prompt written notice of the Claim to Dell, and (ii) using all reasonable efforts to mitigate any actual or anticipated claims and providing Dell with cooperation and assistance as Dell may reasonably request in connection with the Claim.

Dell will have no obligation hereunder to defend Customer against any Claim (a) resulting from use of the Boomi Services other than as authorized by this Agreement, (b) resulting from a modification of the Boomi Services other than by Dell, (c) to the extent the Claim arises from or is based on the use of the Boomi Services with other products, services, or data not supplied by Dell if the infringement would not have occurred but for such use, (d) based on Customer’s use of a superseded or altered release of any code, document, service, product, or deliverable after Dell has recommended discontinuation, if the infringement would have been avoided by use of a current or unaltered release made available to Customer, (e) if Customer is in material breach of this Agreement, or (f) based on any Dell modifications made pursuant to instructions, designs, specifications or any other information provided by or on behalf of Customer, if any. If, as a result of a Claim or an injunction, Customer must stop using any portion of the Boomi Services (**“Infringing Services”**), Dell may at its expense and option either (i) obtain for Customer the right to continue using the Infringing Services, (ii) replace the Infringing Services with a functionally equivalent non-infringing Boomi Services, (iii) modify the Infringing Services so that they are non-infringing, or (iv) terminate the availability of the Infringing Services and refund the unused pro-rated portion of

any fees pre-paid by Customer allocable to such Infringing Services.

To the extent that Dell delivers any documentation, training materials, or other written materials or software to Customer for a fee under the Professional Services Addendum, such items will be treated as Boomi Services and will be within the scope of, and subject to the limits of, this Section. This Section states Dell's entire liability and its sole and exclusive obligations for a Claim.

10. **Limitation of Liability.** IN NO EVENT WILL CUSTOMER OR DELL OR ITS AFFILIATES BE LIABLE FOR (X) ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL LOSS OR DAMAGE OF ANY KIND, OR (Y) LOSS OF REVENUE, LOSS OF ACTUAL OR ANTICIPATED PROFITS, LOSS OF BUSINESS, LOSS OF CONTRACTS, LOSS OF GOODWILL OR REPUTATION, LOSS OF ANTICIPATED SAVINGS, LOSS OF, DAMAGE TO OR CORRUPTION OF DATA, HOWSOEVER ARISING, WHETHER SUCH LOSS OR DAMAGE WAS FORESEEABLE OR IN THE CONTEMPLATION OF THE PARTIES AND WHETHER ARISING IN OR FOR BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF STATUTORY DUTY, OR OTHERWISE EXCEPT FOR:
 11. ANY BREACH OF THE CUSTOMER CONDUCT SECTION OF THIS AGREEMENT AND ANY AMOUNT WHICH DELL IS LIABLE TO PAY TO A THIRD PARTY UNDER THE *INFRINGEMENT INDEMNITY* SECTION OF THIS AGREEMENT, OR
 12. ANY LIABILITY TO THE EXTENT LIABILITY MAY NOT BE EXCLUDED OR LIMITED AS A MATTER OF APPLICABLE LAW.

THE MAXIMUM AGGREGATE AND CUMULATIVE LIABILITY OF CUSTOMER AND DELL AND EACH OF THEIR AFFILIATES, FOR DAMAGES UNDER THIS AGREEMENT, WHETHER ARISING IN OR FOR BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF STATUTORY DUTY, OR OTHERWISE, WILL NOT EXCEED THE GREATER OF THE AMOUNT PAID AND/OR OWED FOR THE BOOMI SERVICES OR PROFESSIONAL SERVICES DURING THE TWELVE (12) MONTHS PRECEDING THE BREACH OR FIVE HUNDRED DOLLARS (\$500.00), EXCEPT FOR:

1. DELL'S EXPRESS OBLIGATIONS UNDER THE *INFRINGEMENT INDEMNITY* SECTION OF THIS AGREEMENT,
2. CUSTOMER'S BREACHES OF THE *CONDUCT, AND USE BY THIRD PARTIES* SECTIONS OF THIS AGREEMENT,
3. DELL'S COSTS OF COLLECTING DELINQUENT AMOUNTS THAT ARE NOT SUBJECT TO A GOOD FAITH DISPUTE, OR

4. ANY LIABILITY TO THE EXTENT LIABILITY MAY NOT BE EXCLUDED OR LIMITED AS A MATTER OF APPLICABLE LAW.

NOTHING HEREIN WAIVES OR LIMITS ANY CLAIM OF EITHER PARTY FOR VIOLATING THE INTELLECTUAL PROPERTY RIGHTS OF THE OTHER, INCLUDING BY USE OF INTELLECTUAL PROPERTY OUTSIDE OF APPLICABLE LICENSE SCOPE.

THE PARTIES AGREE THAT THESE LIMITATIONS OF LIABILITY ARE AGREED ALLOCATIONS OF RISK CONSTITUTING IN PART THE CONSIDERATION FOR DELL PROVIDING PRODUCTS AND SERVICES TO CUSTOMER, AND SUCH LIMITATIONS WILL APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY AND EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LIABILITIES OR FAILURES.

In no event may Customer bring any claim against a contractor, licensor, or supplier to Dell for a matter associated with performance of this contract, beyond the amounts and theories of liabilities permitted if such claim were asserted against Dell itself hereunder.

11. **Confidential Information.**

(a) **Definition.** “**Confidential Information**” means information or materials disclosed by one party (the “**Disclosing Party**”) to the other party (the “**Receiving Party**”) that are not generally available to the public and which, due to their character and nature, a reasonable person under like circumstances would treat as confidential, including, without limitation, financial, marketing, and pricing information, trade secrets, know-how, proprietary tools, knowledge and methodologies, the Boomi Services, the Software (in source code and/or object code form), information or benchmark test results regarding the functionality and performance of the Software, any Software license keys provided to Customer, and the terms and conditions of this Agreement.

Confidential Information will not include information or materials that (i) are generally known to the public, other than as a result of an unpermitted disclosure by the Receiving Party after the Effective Date (ii) were known to the Receiving Party without an obligation of confidentiality prior to receipt from the Disclosing Party; (iii) the Receiving Party lawfully received from a third-party without that third-party’s breach of agreement or obligation of trust; (iv) are or were independently developed by the Receiving Party without access to or use of the Disclosing

Party's Confidential Information; or (v) is transmitted or processed by Customer using Boomi Services and not sent by Customer for specific review by or discussion with personnel of Dell.

(b) **Obligations.** The Receiving Party will (i) not disclose the Disclosing Party's Confidential Information to any third-party, except as permitted in subsection (c) below and (ii) protect the Disclosing Party's Confidential Information from unauthorized use or disclosure by exercising at least the same degree of care it uses to protect its own similar information, but in no event less than a reasonable degree of care. The Receiving Party will promptly notify the Disclosing Party of any known unauthorized use or disclosure of the Disclosing Party's Confidential Information and will cooperate with the Disclosing Party in any litigation brought by the Disclosing Party against third parties to protect its proprietary rights. For the avoidance of doubt, this Section will apply to all disclosures of the parties' Confidential Information as of the Effective Date, whether or not specifically arising from a party's performance under this Agreement.

(c) **Permitted Disclosures.** Notwithstanding the foregoing, the Receiving Party may disclose the Disclosing Party's Confidential Information without the Disclosing Party's prior written consent to any of its Affiliates, directors, officers, employees, consultants, contractors or representatives (collectively, the "**Representatives**"), if they (i) have a "need to know" in order to carry out the purposes of this Agreement or to provide professional advice in connection with this Agreement, (ii) are legally bound to the Receiving Party to protect information such as the Confidential Information under terms at least as restrictive as those provided herein, and (iii) have been informed by the Receiving Party of the confidential nature of the Confidential Information and the requirements regarding restrictions on disclosure and use as set forth in this Section. The Receiving Party will be liable to the Disclosing Party for the acts or omissions of any Representatives to which it discloses Confidential Information which, if done by the Receiving Party, would breach this Agreement. It shall not breach this Section for the Receiving Party to disclose the Disclosing Party's Confidential Information as may be required by law, by tax or government authorities, or by legal process, provided that the Receiving Party provides prior notice of such disclosure to the Disclosing Party unless expressly prohibited from doing so by a court, arbitration panel or other legal authority of competent jurisdiction.

12. **Personal Data.**

(a) **Definitions.** For purposes of this Section, "**Personal Data**" means any information relating to an identified or identifiable natural person that is submitted

by Customer to the Boomi Services during this Agreement or which is received, accessed and/or processed by Dell in the capacity of “processor” acting on behalf of Customer, as “controller”, in connection with the performance of the Boomi Services under this Agreement. “**Privacy Laws**” means any applicable law regarding privacy, data protection, and/or the processing of Personal Data to which Dell and/or the Customer are subject and which is applicable to the parties’ data protection obligations under this Agreement, including if applicable the General Data Protection Regulation (EU) 2016/679.

(b) **Instructions.** Customer hereby (a) represents that it has the right to transfer the Personal Data to Dell, and (b) instructs Dell to process the Personal Data for the purposes of performing its obligations and complying with its rights under this Agreement and any applicable Orders. Dell will process the Personal Data only in accordance with Customer’s instructions detailed in this Section 12 and Customer’s configurations and administrative settings, which shall comprise Customer’s complete instructions regarding the processing of the Personal Data. Customer retains responsibility for all data that Customer integrates through the Boomi Services, and is responsible for complying with applicable Privacy Law regarding the lawfulness of the Processing of Personal Data including all activities requested hereunder by Customer, and, in particular, for ensuring that the data subjects (who the data pertains to) of any data transmitted by Customer have consented to the processing of the Personal Data by Dell. Dell will have no liability to Customer for any breach of this Agreement resulting from Dell’s compliance with Customer’s system configurations or instructions.

Customer acknowledges that Dell does not sell a data storage service, the Boomi Services generally include a number of controls including security features and functionality such as purge data settings, user role settings and support access settings. Customer is responsible for reviewing the default settings and onboarding materials, and for properly configuring the Boomi Services to fit Customer’s security and operational needs and should the Boomi Services be configured to move data from one point to another Customer is responsible for ensuring that Customer is rightfully integrating among connected systems, whether Customer transmits data outside of a particular cloud or system, outside of a particular geography, or otherwise.

(c) **Compliance.** Each party will comply with their respective obligations under the Privacy Laws in relation to the processing of Personal Data under this Agreement. Except as permitted herein or to the extent required by Privacy Laws or legal process, Dell will implement appropriate technical and organizational measures to ensure a level of security appropriate to the risk, including to prevent unauthorized

disclosure of or access to Personal Data by third parties, and will only store and process Personal Data as required to fulfill its obligations under this Agreement and any applicable SO's or Orders and/or as required by the Privacy Laws. Dell will notify Customer without undue delay after becoming aware of any disclosure of or access to the Personal Data by a third-party in breach of this Section and will reasonably cooperate with Customer to reasonably remediate the effects of such disclosure or access. Customer's exclusive remedy and Dell's sole obligation for any breach of this Section 12 will be for Dell to pay or reimburse Customer for the reasonable costs of notification, credit monitoring, and call center support, each to the extent made necessary by the breach and required by applicable law.

(d) **International Transfers & Subprocessors.** Customer authorizes Dell, in connection with the provision of the Boomi Services, or in the normal course of business, to make worldwide transfers of Personal Data to its "**Subprocessors**" (meaning any processor engaged by Dell, who agrees to receive from Dell, or from another Dell Subprocessor, Personal Data intended for processing activities to be carried out on behalf of the Customer under the terms of this Agreement and the written subcontract). When making such transfers, Dell will ensure appropriate agreements are in place with such Subprocessors to seek to safeguard the Personal Data transferred under or in connection with this Agreement. Where the provision of the Boomi Services involves the transfer of Personal Data from the EEA to countries outside the EEA (which are not subject to an adequacy decision under Privacy Laws), Dell further affirms to Customer that it has adequate agreements in place (both intra-group agreements with any Affiliates as well as with its Subprocessors which may have access to the Personal Data) incorporating the Standard Contractual Clauses. Customer agrees that Personal Data may be sent to Subprocessors as part of Dell's Support Services and therefore authorizes Dell, by means of general consent, to appoint and use Subprocessors to process the Personal Data in connection with the Services. Where Dell or its Boomi subsidiary, Boomi, appoints Subprocessors, there will be a contract with each Subprocessor that imposes appropriate obligations that are (i) relevant to the Services to be provided by that Subprocessor and (ii) materially equivalent to the obligations imposed under this Section 12. Subprocessors may include third parties or any Dell Affiliate. Dell will provide a list of Subprocessors that it engages to support the provision of the Services upon written request by the Customer or Dell will list such Subprocessors at a web site linked by Boomi's URL.

13. **Conduct.** Customer may not reverse engineer, decompile, disassemble, or attempt to discover or modify in any way the underlying source code of the Software, or any part thereof unless and to the extent such restrictions are

prohibited by applicable law. Customer may not (i) modify, translate, localize, adapt, rent, lease, loan, create or prepare derivative works of, or create a patent based on the Boomi Services, or any part thereof, (ii) resell, provide, make available to, or permit use of or access to the Boomi Service or associated access credentials, in whole or in part, by any third party, (iii) use the Boomi Services to create or enhance a competitive offering or for any purpose which is competitive to Dell, (iv) perform or fail to perform any other act which would result in a misappropriation or infringement of Dell's intellectual property rights in the Boomi Services. Each permitted copy of the Software made by Customer hereunder must contain all titles, trademarks, copyrights and restricted rights notices as in the original. In connection with the use of Boomi Services, Customer may not (v) attempt to use or gain unauthorized access to Dell's or to any third-party's networks or equipment; (vi) attempt to probe, scan or test the vulnerability of the Boomi Services, or a system, account or network of Dell or any Dell customers or suppliers; (vii) engage in fraudulent, offensive or illegal activity or intentionally engage in any activity that infringes the intellectual property rights or privacy rights of any individual or third party or transmit through the Boomi Service any data or information without the legal right to do so; (viii) transmit unsolicited bulk or commercial messages or intentionally distribute worms, Trojan horses, viruses, corrupted files or any similar items; (ix) restrict, inhibit, interfere or attempt to interfere with the ability of any other person, regardless of purpose or intent, to use or enjoy the Boomi Services or a user's network, or cause a performance degradation to any facilities used to provide the Boomi Services. If Customer purchases any managed services from Dell, Customer will not cause Dell to use anything for which Dell would need to obtain a license from such third-party in order to provide those managed services. Customer will cooperate with Dell's reasonable investigation of Boomi Services outages, security issues, and any suspected breach of this Section, and shall, at its expense, defend Dell and its Affiliates from any claim, suit, or action by a third party (a "**Third-Party Claim**") alleging harm caused by Customer's breach of this Section. Customer shall pay any judgments or settlements reached in connection with the Third-Party Claim and Dell's costs of responding to it.

14. **Boomi Flow Terms.** If Customer uses a Boomi Service in connection with creation and hosting of external-facing websites, Customer will comply with applicable law in any use of cookies or other tracking technologies on such websites. If Dell is required to take any action because of Customer or its Third-Party Users violating applicable law or third-party rights, Customer will fully cooperate with any legal duties or related instructions of Dell and will promptly remove any illegal or offensive content from Customer systems. Dell may also

disable the applicable content, or the Boomi Flow service (howsoever named) or any application interacting therewith, until the potential violation is resolved. A **“Non-Boomi Flow Application”** means a web-based or offline software application that is provided by Customer or a third-party and interoperates with the Boomi Flow service sold hereunder, including, for example, an application that is developed by or for Customer or is listed on a Marketplace, i.e., an online directory, catalog or marketplace of applications that interoperate with the Boomi Flow Services. Any acquisition by Customer of a Non-Boomi Flow Application, and any exchange of data between Customer and any non-Boomi Flow provider, is solely between Customer and the applicable non-Boomi Flow provider. Dell does not warrant or support Non-Boomi Flow Applications, nor is it responsible for any results or effects of Customer’s use of such applications. If Customer installs or enables a Non-Boomi Flow Application for use with a Boomi Flow Service, Customer grants Dell permission to allow the provider of that Non-Boomi Flow Application to access Customer data as required for the interoperation of that Non-Boomi Flow Application with the Boomi Flow Service. Boomi Flow Services may contain features designed to interoperate with Non-Boomi Flow Applications, for which Customer may be required to grant Dell access. If the provider of a Non-Boomi Flow Application ceases to make the Non-Boomi Flow Application available for interoperation with the corresponding Boomi Flow Service features on terms acceptable to Dell, Dell may cease providing those features without entitling Customer to any refund, credit, or other compensation.

15. **General.**

(a) **Governing Law and Venue.** This Agreement will be governed by and construed in accordance with the laws of the State of Texas (with regard to state law contract or tort matters) and Federal law with regard to US government procurement matters, without giving effect to any conflict of laws principles that would require the application of laws of a different state. The parties agree that neither the United Nations Convention on Contracts for the International Sale of Goods, nor the Uniform Computer Information Transaction Act (UCITA) will apply to this Agreement, regardless of the states in which the parties do business or are incorporated.

(b) **Assignment.** Except as otherwise set forth herein, Customer will not, in whole or part, assign or transfer any part of this Agreement, whether licenses or any other rights, interests or obligations, whether voluntarily, by contract, by operation of law or by merger (whether that party is the surviving or disappearing entity), stock or asset sale, consolidation, dissolution, through government action or order, or otherwise without the prior written consent of Dell. Any attempted transfer or

assignment by Customer that is not permitted by this Agreement will be null and void.

(c) **Severability.** If any provision of this Agreement, including but not limited to those that limit, disclaim or exclude warranties, remedies, or damages, will be held by a court of competent jurisdiction to be contrary to law, such provision will be enforced to the maximum extent permissible and the remaining provisions of this Agreement will remain in full force and effect. The parties agree: (1) they have relied on the damage and warranty limitations and exclusions set forth in this Agreement; (2) they acknowledge the terms represent the allocation of risk as set forth in the Agreement; and (3) they would not enter into this Agreement without such terms.

(d) **Use by U.S. Government.** The Software is a “commercial item” under FAR 12.201. Consistent with FAR section 12.212 and DFARS section 227.7202, any use, modification, reproduction, release, performance, display, disclosure or distribution of the Software or Documentation by the U.S. government is prohibited except as expressly permitted by the terms of this Agreement. In addition, when Customer is a U.S. government entity, the language in Subsection (ii) of the *Infringement Indemnity* Section of this Agreement will not be applicable.

(e) **Notices.** All notices provided hereunder will be in writing and addressed to the legal department of the respective party or to such other address as may be specified in an Order or in writing by either of the parties to the other in accordance with this Section. Except as may be expressly permitted herein, notices may be delivered personally, and sent via a nationally recognized courier or overnight delivery service. Any legal notice to Dell must be sent simultaneously to Boomi Legal by email to boomilegal@dell.com and mailed by first class mail, postage prepaid. All notices, requests, demands or communications will be deemed effective upon personal delivery or, if sent by mail, four (4) days following deposit in the mail in accordance with this paragraph, or if sent by email, the following business day.

(f) **Waiver.** Performance of any obligation required by a party hereunder may be waived only by a written waiver signed by an authorized representative of the other party, which waiver will be effective only with respect to the specific obligation described therein. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

(g) **Counterparts.** This Agreement and the applicable Order(s) may be executed

in one or more counterparts, including by facsimile, electronically, or via scanned copies, each of which will be deemed an original and will constitute one and the same instrument.

(h) **Force Majeure.** Each party will be excused from performance for any period during which, and to the extent that, it is prevented from performing any obligation or service as a result of causes beyond its reasonable control, including without limitation, acts of God, terrorism, strikes, lockouts, riots, acts of war, epidemics, communication line failures, and power failures, third-party created malware. For added certainty, this Section will not operate to change, delete, or modify any of the parties' obligations under this Agreement (e.g., payment), but rather only to excuse a delay in the performance of such obligations.

(i) **Equal Opportunity.** Dell is a federal contractor and Affirmative Action employer (M/F/D/V) as required by the Equal Opportunity clause C.F.R. § 60-741.5(a).

(j) **Headings.** Headings in this Agreement are for convenience only and do not affect the meaning or interpretation of this Agreement. This Agreement will not be construed either in favor of or against one party or the other, but rather in accordance with its fair meaning. When the term "including" is used in this Agreement it will be construed in each case to mean "including, but not limited to."

(k) **Entire Agreement.** This Agreement is intended by the parties as a final expression of their agreement with respect to the subject matter thereof and may not be contradicted by evidence of any prior or contemporaneous agreement unless such agreement is signed by both parties. This Agreement and the applicable Order and/or Service Order will constitute the complete and exclusive statement of the terms and conditions and no extrinsic evidence whatsoever may be introduced in any proceeding that may involve the Agreement. Each party acknowledges that in entering into the Agreement it has not relied on and will have no right or remedy in respect of, any statement, representation, assurance or warranty other than as expressly set out in the Agreement. In those jurisdictions where an original (non-faxed, non-electronic, or non-scanned) copy of an agreement or an original (non-electronic) signature on agreements is required by law or regulation, the parties hereby agree that, notwithstanding any such law or regulation, a faxed, electronic, or scanned copy of and a certified electronic signature on this Agreement or any Order or Service Order will be sufficient to create an enforceable and valid agreement. The terms of this Agreement will control over any conflicting terms and conditions contained in an Order or Service Order, except where this Agreement specifically allows for an Order or Service Order to supersede. Neither this Agreement, nor an Order or Service Order, may

be modified or amended except by a writing executed by a duly authorized representative of each party.

Professional Services Addendum

The following Professional Services Addendum (“Addendum”) is only applicable to purchases of Professional Services from Dell Federal Systems L.P. (“Dell”), as defined in the Parties’ Boomi Services Master Services Agreement – Federal Sales (“Agreement”); it does not apply to Customers who are purchasing only Boomi Services (as defined in the Agreement) – such as the Boomi AtomSphere service.

1. Definitions. Unless otherwise herein defined, capitalized terms used herein shall have the same meaning as in the Agreement.

“Activities” are consulting and/or training services to be performed by Dell pursuant to a Service Order. A “Day” is eight (8) hours. For a “Fixed Price SO,” Project Deliverables are provided for a set fee, regardless of the Time required to perform or create them. A “Project Deliverable” is a discrete task to be completed or item to be created as part of a Fixed Price SO. “Time” is the quantity of Days or hours stated in a T&M SO. A “Time and Materials SO” or “T&M SO” is the SO in which Activities are provided on a per-hour or per-Day basis. A “Workday” is a calendar day during which Dell performs Professional Services.

2. Process. (a) Purchase Orders. Except as otherwise stated in the SO, Customer’s PO for the Professional Services shall also include estimated travel and living expenses, as stated in the fees table of the SO, which shall be included as a separate line item on the PO. Additional Professional Services, however purchased (e.g. PO), are subject to the terms of this Agreement.

(b) Resources. The project team shall be assigned following Dell’s receipt of the SO executed by Customer and Customer’s PO (if required). The Professional Services shall start upon mutual agreement of the parties. Dell shall be responsible to Customer for the acts and omissions of its contractors (if any) in the course of their performance of Professional Services under the SO.

(c) Termination. This section shall supplement Section 6 of the Agreement, on Termination, with regard to Professional Services. In the event that a Service Order is terminated, such termination shall not affect any other pending Orders under the Agreement.

(d) Assumptions and Customer Obligations. Customer will:

- Commit a technical resource, as may be required, to provide Dell with the assistance required to perform the Activities or complete the Project Deliverables.
- Provide Dell consultants with adequate and appropriate accommodations at Customer’s site, as well as access to Customer’s servers, systems and data, as may be required, to

perform the Activities or complete the Project Deliverables. • Provide project team members with suitable business expertise, technical expertise and decision-making authority to ensure efficient project progress. • On request, provide the Dell project manager with applicable documentation of Customer's current business practices applicable to the Professional Services to be performed under the SO.

(e) Completion of Project Deliverables. This Section 2(e) applies only to Fixed Price SO's. Following the completion and delivery of the Project Deliverable(s), Dell will notify Customer in writing that the Project Deliverable(s) have been performed or created and delivered. Within 10 calendar days of the delivery of the Project Deliverable(s) to Customer (the "Completion Acknowledgement Period"), if Customer determines that the Project Deliverable(s) have not been completed in substantial conformance with their descriptions in the SO, it will so notify Dell in writing and describe each non-conformance ("Notice of Non-Conformance"). Upon Dell's receipt of a Notice of Non-Conformance, Dell will re-perform or re-create the non-conforming Deliverables and a new Completion Acknowledgment Period will begin upon delivery of the revised Deliverables. If Customer does not provide a Notice of Non-Conformance by the end of the Completion Acknowledgement Period, the Project Deliverables will be deemed completed. Nothing in this Section 2(e) will affect Customer's rights under Section 5 (Warranty).

3. Time. A T&M SO will contain the Time that Dell has estimated in good faith to be required to perform the Activities described in the T&M SO ("Estimated Time"). Dell shall use commercially reasonable efforts to complete the Activities within the Estimated Time; however, Dell does not represent or warrant that it can or shall do so. Dell shall promptly notify Customer if it determines that more Time shall be required to complete the planned Activities and shall not perform Activities beyond the Time without an executed amendment to the T&M SO. Following Customer's modification to the SO, Dell may reallocate the Time stated in a T&M SO among the various resources stated in the fees table of the SO, provided such reallocation does not exceed the Estimated Time set forth therein.

4. Fees and Expenses.

(a) Unless the SO indicates that Travel Expenses are included in the rate or otherwise not chargeable, Customer agrees to reimburse Dell for the travel and living expenses reasonably incurred in the performance of each SO ("Travel Expenses"). Travel Expenses are estimated in the fees table of the SO and, unless stated otherwise in the SO, will be subject to the requirements of the U.S. Government Federal Travel Regulations.

Customer's execution of a SO that includes Travel Expenses constitutes approval for Dell to incur and be reimbursed for Travel Expenses up to the amount of the estimated Travel Expenses in the SO. No Travel Expenses shall be charged for

Time designated as "Remote" in the SO.

(b) Dates Valid. The prices in a SO are valid for Activities performed within one (1) year of the date of Customer's execution of the SO.

(c) Normal Business Hours, Weekends, and Holidays. Unless otherwise agreed by the parties, Professional Services shall be performed Monday through Friday between the hours of 7:00 a.m. to 8:00 p.m. local time ("Normal Business Hours"), excluding weekends and holidays. Under a T&M SO, a Workday is eight (8) hours and equivalent to a Day; however, upon mutual agreement by the parties, Dell may work more than eight (8) hours in a Workday and may work four (4) ten-hour Workdays in a calendar week. For billing purposes under a T&M SO, a Workday on which Dell works ten (10) hours is equal to, and billable as, one and one quarter (1.25) Days; a week in which Dell works four (4) ten-hour Workdays is equal to, and billable as, five (5) Days.

Dell shall only perform Professional Services after Normal Business Hours or on weekend and holiday Workdays if authorized to do so by Customer in writing. Customer requests for Weekend and holiday Workdays must be scheduled at least fifteen (15) days in advance and be for a minimum of one (1) Day. Under a T&M SO, if Activities are performed after Normal Business Hours or on a weekend or Dell holiday Workday, one and one half (1.5) hours shall be charged for each hour outside of Normal Business Hours, one and one half (1.5) Days shall be charged for each weekend Workday on which Activities are performed and two (2) Days shall be charged for each holiday Workday on which Activities are performed.

5. Warranty.

(a) Performance. Dell warrants that the Professional Services shall be performed in a workmanlike, manner and with professional diligence and skill and that the Project Deliverables shall substantially conform to their descriptions in the Fixed Price SO and shall be consistent with applicable Dell product manuals or Documentation. As Customer's exclusive remedy and Dell's sole obligation for any and all breaches of the foregoing warranty, Dell shall, at its option and expense, either re-perform any nonconforming Professional Services reported to Dell, in writing, by Customer within thirty (30) days of the performance of the Professional Services or refund the fees paid for such nonconforming Professional Services.

(b) Right to Perform. Dell warrants that it has all necessary licenses and permits required to perform the Professional Services, Customer's sole and exclusive remedy, and Dell's entire liability for any breach of the warranty in the preceding sentence, shall be for Dell to perform its obligations under the INFRINGEMENT INDEMNITY Section of the Agreement.

THE EXPRESS WARRANTIES AND REMEDIES IN THIS SECTION 5 ARE THE ONLY WARRANTIES AND REMEDIES PROVIDED IN CONNECTION WITH THE SERVICES, DELIVERABLES AND ACTIVITIES COVERED BY THIS

ADDENDUM. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ALL OTHER WARRANTIES OR REMEDIES ARE EXCLUDED, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE, OR ANY WARRANTY ARISING FROM TRADE USAGE OR COURSE OF DEALING OR PERFORMANCE.

6. License to Service Materials. During Dell's performance of the Professional Services, if Dell creates any documentation, training materials, software scripts or advisory information (the "Materials"), such Materials are solely for use in connection with implementing the Boomi Services during the term of the Agreement and as paid for under Orders and SO's. Dell does not agree to create any intellectual property to be assigned to Customer, and Dell retains ownership of all know-how, ideas, techniques, documentation, and software scripts employed by Dell to help customer as provided in the SO. Upon Dell's receipt of payment for the Professional Services, Customer is granted a non-exclusive, non-sublicensable license to use the Materials, solely for internal business purposes in connection with the use of the Boomi Service during the Customer's paid subscription to it (for example, the AtomSphere service). Each party shall retain ownership of its own Confidential Information. No Customer intellectual property ownership rights are assigned to Dell hereunder and no Dell intellectual property ownership rights are assigned to Customer.

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 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.

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MAINTENANCE AND TECHNICAL SUPPORT. Subject to your payment of applicable 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.

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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@centrify.com

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

Priority Levels & Response Times

The Centrify Support team understands that you require a timely response to your requests. The following table shows the different issue priority levels, their descriptions, and the guaranteed response time. With Premium Support, you may report a critical issue at any time, night or day, and expect a Technical Support Engineer to begin working on your case based on the priority level of the case.

Priority Level	Standard	Premium
Level 1 Production System Down	4 Business Hours	2 Business Hours
Level 2 Development System Down	6 Business Hours	4 Business Hours
Level 3 Serious Software Problem	8 Business Hours	4 Business Hours
Level 4 General Usage Problem	24 Business Hours	24 Business Hours
	Hours	Hours
Level 5 Feature Request	24 Business Hours	24 Business Hours

Note: These are standard case response times and not case resolution times. A response means that we will contact you to 1) acknowledge receiving your issue report and 2) get any additional information that we will need in order to assist you.

Escalation Procedures

Every issue report is tracked from the time you contact us until we jointly agreed that the issue has been resolved. Based on the priority of an issue, Contractor through Centrify Support escalates customer cases through our organization to ensure your business-critical issues receive a quick resolution.

In general, if you are not satisfied with the responsiveness of our Support staff, the issue can be escalated to your Regional Sales Representative. If you are still not satisfied, the issue can be further escalated to the Vice President of Support.

Product Updates

Purchasing either Standard or Premium Support entitles you to product updates at no additional charge during the term and type of the maintenance contract for all Centrify products licensed and covered by maintenance.

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

www.centrify.com/support

Appendix C – List of Participating Dealers

August Schell Enterprises
51 Monroe Street
Suite 1802
Rockville, MD 20850
(301) 838-9470
POC: Bill Schell

Software Information Resource Corp (SIRC)
730 24th St NW, Suite #3
Washington, DC 20037
(202) 536-2800
POC: Travontii Montgomery

Markforged Products Only

Source Graphics
1530 North Harmony Circle
Anaheim, CA 92807
(714) 707-4664
POC: Christina Clement

GovSmart
706-C Forest Street
Charlottesville, VA 22903
(434) 326-5656
POC: Daniel Smith

Hawk Ridge Systems
575 Clyd Ave, Suite 420
Mountain View, CA 94043
(650) 446-3526
POC: Iris Chiu

Intellipeak Solutions
7600 Downstream Court
Fredericksburg, VA 22408
(202) 744-1262
POC: Phil Flores

Google Products Only

CDW
230 N. Milwaukee Ave
Vernon Hills, IL 60061
(703) 262-8076
POC: Shontina Verastegui

Appendix D – Authorized Price List

See Separate Attachment