

**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 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 2000) (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.

In Witness Whereof, the parties have caused this Agreement and the Support SOW to be executed by their duly authorized representatives as of the Effective Date.

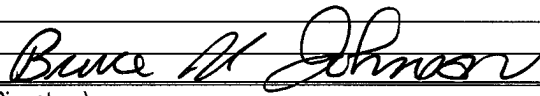
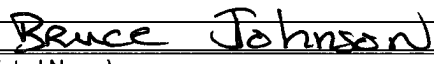
VORMETRIC, INC.		LICENSEE: _____, INC.
		
(Signature)		(Signature)
		
(Printed Name)		(Printed Name)
(Title) VP WW Sales		(Title)
(Date Signed) 5/9/13		(Date Signed)

Exhibit A

Services Schedule

This Exhibit to the Master Software License and Hardware Purchase Agreement (the "Agreement") describes the terms under which services will be provided to Licensee by Vormetric under any Statement of Work or otherwise.

Scope of Services. Subject to the terms and conditions of this Agreement, during the term of this Agreement, Vormetric shall provide to Licensee the Services and any deliverables ("Deliverables") described in a statement of work signed by Vormetric and Licensee (the "Statement of Work"). From time to time, the parties may add new Statements of Work, which, upon execution by both parties, will be subject to the terms and conditions of this Agreement.

Delivery. Vormetric shall use commercially reasonable efforts to complete the Services and deliver any Deliverables as described, and according to the schedule set forth, in a Statement of Work. Notwithstanding, any date set forth in a Statement of Work for the completion of any Deliverable or Services may be delayed if the delay relates to or will likely arise because Licensee is late in the performance of any of its obligations hereunder. If for any reason Vormetric cannot perform its obligations with respect to the Deliverables or Services in accordance with the schedule set forth in a Statement of Work, the parties will mutually agree upon a revised schedule. Services will be deemed delivered to the Licensee when Vormetric indicates that the Services have been performed.

Manner of Performance. Vormetric will retain the sole and exclusive right to control and direct the manner and means by which the Services are performed and may subcontract or assign any or all of its obligations and rights under this Agreement. Licensee shall provide, at no charge to Vormetric, office space, information, employees, services and equipment (such as copiers, fax machines, telephones and modems) as Vormetric reasonably requires to perform the Services.

Product Changes. If Licensee desires to change the scope of Services including, without limitation, the specifications of any Deliverable, Licensee shall notify Vormetric in writing of such change (the "Change Order"). The Change Order shall specify all such changes in the same detail as the original Services or specifications. As promptly as possible, but in no event more than sixty (60) days after receipt of the Change Order, Vormetric shall provide to Licensee a statement of any estimated fees and costs pursuant to the Change Order, and an estimate of when Vormetric could begin performing the Services subject to the changes. Within thirty (30) days thereafter, Licensee shall notify Vormetric of Licensee's acceptance or rejection of Vormetric's response to the Change Order and shall include a copy of the Change Order signed by an authorized officer of Licensee. If Licensee accepts Vormetric's response, Vormetric shall perform the Services including, without limitation, providing the Deliverables, as may be required by Licensee pursuant to the Change Order and this Agreement. Licensee's failure to deliver any such acceptance or rejection within such thirty (30) day period shall be deemed a rejection of Vormetric's response. Vormetric shall have no obligations with respect to any Change Order rejected, or not accepted, by Licensee.

Assistance. Licensee shall provide Vormetric with reasonable assistance, information, and materials so that Vormetric can effectively perform the Services. Vormetric shall be excused from performing the Services to the extent that Licensee delays providing Vormetric with such requested assistance, information, or materials.

Cancellation or Rescheduling. Licensee shall pay all fees, plus any non-cancellable costs incurred by Vormetric, associated with Services cancelled by Licensee within forty-five (45) days of the commencement date of such Services. If Licensee desires to reschedule such Services, Licensee shall pay all fees, plus any non-cancellable costs incurred by Vormetric, associated with such Services sought to be rescheduled before such Services are rescheduled.

Rights to Deliverables. Subject to the terms and conditions of this Agreement and the Statement of Work, Vormetric grants to Licensee a perpetual, non-exclusive, worldwide, non-transferable, non-sublicensable, royalty-free license to internally use the Deliverables. Subject to the foregoing, all Deliverables hereunder and all work products created or developed hereunder shall be the exclusive property of Vormetric. Any ideas, know-how, or techniques that may be developed by Vormetric, including any enhancements or modifications made to the Deliverables and work products created hereunder, shall be the property of Vormetric.

Disclaimer. EXCEPT AS SPECIFICALLY SET FORTH IN THE AGREEMENT OR STATEMENT OF WORK, ALL DELIVERABLES ARE PROVIDED AS IS, WITH ALL FAULTS, AND VORMETRIC DISCLAIMS ANY WARRANTIES, EXPRESS OR IMPLIED INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS, OR ANY WARRANTIES ARISING OUT OF CONDUCT OR INDUSTRY PRACTICE.

Exhibit B

Support Schedule

This Exhibit to the Master Software License and Hardware Purchase Agreement (the "Agreement") describes the terms under which technical support will be provided to Licensee by Vormetric.

Definitions.

All capitalized terms used in this Support Schedule shall have the terms given in the Agreement unless otherwise defined in this Section 1.

"Resolution" means a bug fix, correction, patch, workaround, or modified release of the Software or Documentation provided to Licensee by Vormetric to resolve a Failure.

Support Services. Vormetric will exercise commercially reasonable efforts to provide the support services described in this Exhibit (the "Support Services"). **Vormetric will have no obligation under this Support Schedule if any amounts owed by Licensee to Vormetric are past due. In addition, Vormetric will have no obligation under this Support Schedule with respect to any release of the Software which is not the current release or the immediately preceding release.** Vormetric will have no responsibility or obligations under this Agreement with respect to Failures resulting from or related to (i) improper installation; (ii) modification by anyone other than Vormetric; (iii) use in a manner other than as authorized under this Agreement or as required by the Documentation; (iv) use of the Software or Appliance with other software, hardware, or telecommunication interfaces not meeting or not maintained in accordance with Vormetric's specifications as described in the Documentation; (v) operation or maintenance in environmental conditions outside the parameters designated in the Documentation or elsewhere; (vi) accident, unusual physical, electrical or electromagnetic stress, neglect, or misuse; (vii) extreme power surge or failure, or electromagnetic field; or (viii) use of any release of the Software other than the **current release or the immediately preceding release**. In addition, Vormetric shall have no obligation to provide any technical support under this Agreement or otherwise in connection with any Appliance or Software that is not in a live production environment or in connection with any inability of the Software or Appliance to operate substantially in accordance with the Documentation which is not reproducible. To the extent Vormetric reasonably determines that any Failure is caused other than by the Software or the Appliance, Vormetric may charge Licensee Vormetric's then current hourly fees and costs associated with diagnosing and repairing such Failure.

Designated Support Contacts and Fees. Licensee may designate no more than one (1) primary contact, and no more than two (2) secondary contacts, as the sole Designated Support Contacts, as follows:

Designated Primary Support Contact	Phone	Email
1.		
Designated Secondary Support Contacts		
1.		
2.		

Blank.

Support Option. If Licensee desires Support Services, one of the following Support Services options must be specified on the Order Form and/or Licensee's valid purchase order:

OPTION 1 Premium Annual Support	OPTION 2 Standard Annual Support
Telephone Support: 24 hours per day, 7 days per week, 365 days per year.	Telephone Support: 5 days per week, Vormetric holidays excepted, 9:00 a.m. to 5:00 p.m., Vormetric time – Pacific time zone.

Support Service Fees Due 1st Year: 22% of price paid by Licensee to Vormetric for Agent Software and Appliances as delineated in Order Form	Support Service Fees Due 1st Year: 18% of price paid by Licensee to Vormetric for Agent Software and Appliances as delineated in Order Form
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Installation. Licensee will be responsible for installing and implementing all Failure corrections, Updates and Appliance replacements. Licensee understands that failure to incorporate Failure corrections and Updates may cause subsequent Failure corrections and Updates to be unusable including, without limitation, any Updates provided to all licensees under Section 0(3) of the Agreement. Moreover, proper installation of the Appliance is required for proper functioning of the Software.

Response and Resolution. Vormetric will use reasonable commercial efforts to satisfy the following response times and Resolution efforts:

Severity Level	Response Time to Notice of Failure*	Resolution Effort
Level 1: All use of Software and Appliance on a production platform is lost.	<u>Four (4)</u> Hours	Continuous efforts by both parties.
Level 2: Use of the Software or Appliance on a production platform is severely degraded and/or access to data is impeded with no work around.	<u>Four (4)</u> Hours	<u>Continuous effort by both parties during business hours.</u>
Level 3: Licensed Software or Appliance on a production platform causes or results in substandard or erratic performance with no work around.	One (1) Day	Next maintenance release.
Level 4: Minor problem; or when any of the above categories of Failures has been addressed with a workaround.	<u>Five (5)</u> Days	<u>Next update at Vormetric's discretion.</u>
Level 5: Failure is cosmetic in nature and does not result in reduced performance.	<u>Five (5)</u> Days	<u>Next update at Vormetric's discretion.</u>

The determination of the level of severity will be made by Vormetric in consultation with Licensee. In certain instances Licensee and Vormetric may determine that Resolution of a Failure may be expedited if Vormetric is given remote access to Licensee's live environment. In such case, in Licensee's sole discretion, Licensee may provide remote access to Vormetric, subject to Vormetric's execution of Licensee's security agreements and compliance with Licensee's policies. Notwithstanding any provision to the contrary in any security agreement or Licensee policy, however, Vormetric shall have no responsibility for any adverse impact to Licensee's computer network resulting from any actions of Vormetric taken while having access to such network.

Term. The term of this Support Schedule will begin on the Effective Date and will extend for an initial period of twelve (12) months. This Support Schedule will then extend for successive renewal terms of twelve (12) months each if Licensee pays the invoice or issues a Purchase Order, accompanied by proper payment, for support services for the then subsequent renewal term prior to the expiration of the then-current term.

Necessity of Installation. VORMETRIC WILL HAVE NO LIABILITY TO LICENSEE UNDER THIS SUPPORT SCHEDULE IF LICENSEE NEGLECTS TO INSTALL ANY FAILURE CORRECTION DELIVERED TO LICENSEE, OR ANY UPDATE OR RELEASE OF THE SOFTWARE MADE GENERALLY AVAILABLE AFTER THE EFFECTIVE DATE.

Fee Adjustments. Unless agreed by the parties in advance and evidenced by a writing executed by authorized signatories of each party, the support fees for subsequent years will be based on Vormetric's then published price list including adjustments for additional copies of Agent Software determined following an Audit by Vormetric as further described in the Agreement. Vormetric will notify Licensee thirty (30) days in advance of the expiration of each Term of any increase in support fees. If Licensee does not agree to the support fee increase by issuing an Order Form prior to expiration of the current term, this Exhibit B will not renew and Vormetric shall have no further obligation to provide any services under this Support Schedule.

Discontinuation of Annual Support. If subsequent to the first year of support services under this Agreement, Licensee discontinues support on a particular product order for a period of more than three (3) months and then seeks to reinstate the support services hereunder with respect to such Software and/or Appliance and to receive any Updates released during such elapsed period, then Licensee shall pay the Support Services fees that would have been due under the terms of this Agreement for the elapsed period plus a delinquent renewal fee of one and one-half percent (1-1/2%) per month of delinquency, up to a maximum of 25% of the list value of such Support Services.

Invoices. Subsequent to the first year of this Support Schedule, Vormetric will invoice Licensee annually in advance for support fees due under this Agreement. Vormetric will invoice Licensee for additional support service fees relating to new installation of Software and Appliances furnished to Licensee after the beginning of the annual support service period on a pro-rated basis for the remainder of such annual period.

Order of Precedence. In the event of any conflict between the terms of this Exhibit and the terms of any of the Agreement, the terms of this Exhibit shall control. In the event of any conflict between the terms of this Exhibit and the terms of Statement of Work, the terms of this Support Schedule shall control.

* Response time does not denote Resolution time



MASTER SOFTWARE LICENSE AND HARDWARE PURCHASE AGREEMENT

THIS MASTER SOFTWARE LICENSE AND HARDWARE PURCHASE AGREEMENT, together with all of the Schedules hereto ("Agreement") is made as of the ____ day of ____, 201__ ("Effective Date") by and between Vormetric, Inc. ("Vormetric"), a Delaware corporation with its principal place of business at 2545 North First Street, San Jose, CA 95131, and _____, ("Licensee") a _____ corporation with its principal place of business at _____.

AGREEMENT:

DEFINITIONS

"Appliance" means the Vormetric Data Security Manager Server hardware.

"Appliance Software" means the software installed on the Appliance in executable code.

"Designated Operating System" means that computer operating system specified in the Order Form.

"Designated Support Contact" means the individual(s) within Licensee's organization, as listed on the Support Schedule, who will be principally responsible for interfacing with Vormetric's support personnel.

"Documentation" means the user documentation, release notes, and installation guides provided by Vormetric for the Appliance and the Software.

"Failure" means a reproducible defect in the Software or Appliance that causes the Appliance or the Software to fail to operate substantially in accordance with the Documentation and that is reported to Vormetric by a Designated Support Contact.

"Hosting Environment" means Licensee providing to unaffiliated third parties access to the Agent Software including, without limitation, in Licensee's capacity as a service bureau or an application service provider, in connection with Licensee providing application services to Licensee's third party licensees, or in connection with Licensee processing third party data for a fee.

"Order Form" means each Date Security Manager Hardware, Software and Services Quotation and Order Form, supplied by Vormetric, that has been signed by Licensee and Vormetric, that specifies, at a minimum, the number of licenses of the Agent Software being purchased hereunder, the number of units of Appliances being purchased, the Software license fees, the Appliance pricing, the Support Services fees (if purchased), and the effective date of such Order Form.

"Agent Software" means the thin host-installed Vormetric Data Security software in executable code.

"Replacement Appliance" means (i) an Appliance, which can reasonably be installed at the Licensee location, or a pre-tested Appliance that resides at Licensee's location to replace a nonfunctioning Appliance, or (ii) is connected to Licensee's environment but is disengaged and cannot be turned on unless permission to engage the Appliance is granted by Vormetric.

"Services" means the services to be performed by Vormetric under a Statement of Work, under the terms of the service schedule attached as Exhibit A, or under the terms of this Agreement.

"Software" means any or all of the Agent Software and Appliance Software, and all updates, upgrades, new versions, new releases, or error corrections that Vormetric may offer to the Licensee or that Licensee is authorized to receive pursuant to this Agreement or, if applicable, the Support Schedule.

"Support Schedule" means the schedule attached as Exhibit B.

"Update" means any updates or enhancements to the Software that Vormetric provides to Licensees that receive continuing support services. Updates are releases generally designated by a number to the right (minor, maintenance) of the first decimal point of the release number for the Software and are provided solely to Licensee so long as no amounts owed by Licensee to Vormetric are past due. Error corrections and Updates provided by Vormetric are subject to the terms and conditions of this Agreement.

LICENSE GRANT

Appliance Software. Each Appliance that Licensee purchases from Vormetric shall include one (1) machine executable copy of the object code of the Appliance Software. Subject to Licensee's timely payment of the applicable license fee in accordance with the terms of this Agreement, Vormetric grants Licensee a worldwide, non-exclusive, perpetual and

non-transferable (except as provided in Section 0 ("General")) license to use each copy of the Appliance Software on the Appliance on which such Appliance Software resides.

Agent Software. Each Agent Software license that Licensee purchases from Vormetric will allow Licensee to make one (1) machine executable copy of the object code of the Agent Software from the master copy. Subject to Licensee's timely payment of the applicable license fee in accordance with the terms of this Agreement, Vormetric grants Licensee a worldwide, non-exclusive, and non-transferable (except as provided in Section 0 ("General")) license to reproduce, install and use the number of copies of the Agent Software for which licenses have been purchased by Licensee under this Agreement (as provided on the Order Form(s)). Licensee may reproduce, install and use additional copies of the Agent Software subject to the prior written agreement of Vormetric and Licensee in the form of a mutually executed Order Form and the payment of the applicable license fees by Licensee.

Right to Copy. Licensee may also make one copy of the Software solely for archival or emergency back-up purposes. All copies of the Software must contain all proprietary notices that were included on the original master copy of the Software delivered to Licensee or as subsequently provided in the form of an error correction, Update, or new release. Licensee must provide notice to Vormetric of the number of copies of the Software the Licensee has made upon Vormetric's written request, no more frequently than annual.

Virtual Sessions. For each Agent Software license Licensee purchases and provided Licensee has paid the applicable virtual license fee, Licensee may operate no more than one (1) real, or one (1) virtual, session of the Agent Software. Provided that Licensee is not in breach of this Agreement, Licensee may purchase additional licenses to generate virtual sessions of a copy of the Agent Software at such price as may be in effect from time to time.

CERTIFICATION Within fifteen (15) days following the end of each unique twelve (12) month period, if requested by Vormetric, Licensee agrees to provide Vormetric with a download of the configuration logs indicating the configuration of each appliance, the guard points enabled, and the number of licenses in use, from the Appliance for the prior twelve (12) month period, and a statement, certified to be accurate by an authorized signatory of Licensee, that the Licensee is in compliance with the limitations on the number of users and other information set forth in the Order Form.

AUDIT Vormetric reserves the right to audit Licensee's use of the Software to confirm that each copy of the Software in use by Licensee is authorized under this Agreement. Any such audit will be performed no more frequently than once every twelve (12) months by Vormetric's employees or Vormetric's certified public accountant during Licensee's normal business

hours upon reasonable prior written notice and subject to Licensee's then-current reasonable procedures regarding access and security. Licensee shall pay to Vormetric any amount disclosed by the audit to be due and owing. Any such audit shall be at Vormetric's expense, but if such audit discloses an underpayment by Licensee of more than five percent (5%) for any year, Licensee shall reimburse Vormetric for the cost of the audit.

DELIVERY OF SOFTWARE AND APPLIANCES Vormetric shall ship the initial Appliance units (and associated Appliance Software), and all other ancillary system components listed in the initial Order Form with the Appliance, no later than five (5) business days after receiving a valid purchase order from Licensee. Vormetric shall make available for electronic download by Licensee the master copy of the Agent Software, or deliver it with the Appliance, as the parties shall agree. Thereafter, Vormetric agrees to ship to Licensee all additional Appliance units and other ancillary system components within ten (10) business days after receipt of a valid Licensee purchase order. Shipment of all Appliance units, other ancillary system components and the master copy of the Agent Software under this Agreement will be FOB, Vormetric's facility. Vormetric agrees to conspicuously label each shipment with the applicable Licensee purchase order number. Hardware items will be deemed received by Licensee upon the earlier of Licensee's actual receipt or five business days after submission by Vormetric to a common carrier at Vormetric's facility and such common carrier's confirmation of delivery of such hardware items.

USE AND RESTRICTIONS Except as specifically set forth in Section 0, and subject to the limitations set forth in such section, Licensee may use the Software only as described in this Agreement and only for Licensee's own internal operations and data security management. Except as expressly authorized herein, Licensee shall not cause or permit any of the following: (i) translating, transmitting, modifying, or copying the Software; (ii) exceeding the maximum number of Agent Software licenses defined in the Order Form, without first receiving written approval from Vormetric; (iii) exceed the number of virtual sessions, as described in Section 0; (iv) use of the Agent Software on operating systems or technology platforms other than those designated on the Order Form; (v) making copies of the Appliance Software, except as may be specifically permitted under this Agreement or Order Form for archive or back-up purposes; (vi) distributing, sublicensing, renting, or transferring the Software to any third party; (vii) except as otherwise specifically provided in this Agreement, using the Appliance or the Software in a Hosting Environment; or (viii) removing, deleting, or altering any copyright, trademark, or proprietary notices, labels, or marks on the Software, Hardware, or Documentation.

HOSTING RIGHT Licensee may use the Software in a Hosting Environment, subject to the terms of this Agreement, only if

Licensee's core business is providing hosting services to unaffiliated third parties and only if so indicated on the initial Order Form under which this Agreement is delivered. Licensee shall take such actions as are necessary to obligate any Licensee customer to terms and conditions which are at least as protective of Vormetric's rights in the Software and the Appliance including, without limitation, the terms and conditions set forth in Sections 0 (without regard to any right to host), 0, 0, 0, 0, 0, 0, 0, 0, and 0 of this Agreement. Licensee guarantees performance by any Licensee customer of any such agreement. Licensee shall have no right to distribute any Software including, without limitation, any Agent Software, to any third party or install any such Software on any server or other computer hardware outside of the server and Appliance which is used in Licensee's Hosting Environment, except for one copy for back-up purposes. VORMETRIC DISCLAIMS ANY LIABILITY, AND SHALL HAVE NO RESPONSIBILITY, ARISING OUT OF ANY FAILURE OF THE SOFTWARE OR APPLIANCE TO OPERATE AS A RESULT OF ANY HARDWARE OR TECHNOLOGY OTHER THAN THE SOFTWARE OR APPLIANCE INCLUDING, WITHOUT LIMITATION, ANY FAILURE OF DATA TO BE PROPERLY PROCESSED OR TRANSFERRED TO, IN OR THROUGH LICENSEE'S COMPUTER ENVIRONMENT OR ANY FAILURE OF ANY TRANSMISSION HARDWARE, TECHNOLOGY, OR SYSTEM USED BY LICENSEE OR ANY LICENSEE CUSTOMER. LICENSEE SHALL BE SOLELY RESPONSIBLE FOR THE CHOICE OF ANY HARDWARE OR TECHNOLOGY USED IN THE HOSTING ENVIRONMENT IN WHICH THE SOFTWARE MAY BE ACCESSED. VORMETRIC SHALL HAVE NO LIABILITY FOR, AND LICENSEE SHALL DEFEND, INDEMNIFY, AND HOLD VORMETRIC HARMLESS FROM AND AGAINST, ANY SHORTFALL IN PERFORMANCE OF THE APPLIANCE, SOFTWARE, OTHER HARDWARE OR TECHNOLOGY, OR FOR ANY INFRINGEMENT OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS, AS A RESULT OF THE USE OF THE APPLIANCE OR THE SOFTWARE IN A HOSTING ENVIRONMENT UNLESS THE SOFTWARE OR THE APPLIANCE WAS THE SOLE CAUSE OF ANY SUCH SHORTFALL OR INFRINGEMENT, AND THEN ONLY TO THE EXTENT EXPRESSLY PROVIDED IN THIS AGREEMENT. LICENSEE SHALL DEFEND, INDEMNIFY, AND HOLD VORMETRIC HARMLESS FROM AND AGAINST ANY COSTS, CLAIMS, OR LIABILITIES ARISING OUT OF ANY AGREEMENT BETWEEN LICENSEE AND ANY THIRD PARTY. NO PROVISION OF ANY AGREEMENT BETWEEN LICENSEE AND ANY THIRD PARTY SHALL BE BINDING ON VORMETRIC.

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granted to Licensee.

CONFIGURATION The parties acknowledge that use of the Software allows Vormetric or Licensee, among other things, to configure the Software for Licensee's computing environment, and create security policies to protect confidential and sensitive Licensee information and other data.

FEES The fees for the Appliance purchased, Software licensed, and Services and Support provided, under this Agreement or any schedule or exhibit attached to this Agreement will be as set forth in the Order Form. Payments are due and payable thirty (30) days after receipt of Vormetric's invoice. Amounts outstanding past the due date may be assessed a finance charge of one and one-half percent (1-1/2%) per month, or, if lower, the highest rate permitted by law. Fees for copies of Agent Software determined to be owing as a result of the Audit described in Section 0 shall be charged at the rate set forth in Vormetric's then price list or, if applicable, the rate at which Licensee paid for identical licenses in similar quantities in the most recent twelve (12) month period.

EXPENSES When, at Licensee's request, Vormetric provides on-site Service, or Service where travel is required, Licensee will pay the travel, living, and out-of-pocket expenses approved in advance by Licensee as incurred by Vormetric in conformance with Licensee's travel policy, provided such travel policy is provided to Vormetric within a reasonable period of time prior to initial such travel by Vormetric personnel. Licensee's written execution, approval or acceptance of an Order Form or Statement of Work presenting such Services shall be deemed approval by Licensee of (a.) the nature of such expenses, and (b.) if cost estimates are provided, the cost of such expenses. Such expenses may be invoiced to Licensee either, at Vormetric's option, on a monthly basis or along with invoices for Support fees due hereunder. Vormetric will submit such expenses on expense report forms, accompanied by supporting documentation acceptable to Licensee. No reimbursement will be made for any expenses submitted more than ninety (90) days after completion of the travel. Travel expenses will include personnel time at the applicable hourly rate from "gate to gate" between the departing airport and the arrival airport, provided Vormetric personnel spend time on Services defined on the Order Form or Statement of Work.

TAXES Any and all sales, use and other taxes of any kind, including any VAT and customs levies or charges (other than corporate income taxes payable by Vormetric based on or due as a result of any amounts paid to Vormetric hereunder) shall be paid by Licensee. In connection therewith, Licensee hereby agrees to indemnify and hold harmless Vormetric from and against the amount of any tax, interest and penalties (other than corporate income taxes payable by Vormetric based on or due as a result of any amounts paid to Vormetric hereunder) in the event that a given jurisdiction successfully asserts such tax

in connection with the sale for the services covered by this Agreement.

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REVERSE ENGINEERING To the extent permitted by applicable law, Licensee shall not, nor shall Licensee assist any third party to, reverse engineer, decompile, disassemble or in any other manner attempt to derive the source code of any component of the Software for any purpose. Licensee shall notify Vormetric if Licensee becomes aware of any person or entity attempting to reverse engineer, reverse compile, or disassemble any of the Software.

CONFIDENTIALITY

Definition. For purposes of this Agreement, "Confidential Information" shall mean the source code of the Software, the terms of this Agreement, Licensee's security policies and technical infrastructure, pricing information, product roadmaps, the terms of this Agreement, and all nonpublic information, whether in oral, written or other tangible form that the party disclosing the information (the "Discloser") designates as being confidential or which, under the circumstances surrounding disclosure, the receiving party (the "Recipient") knows or has reason to know should be treated as confidential, whether or not disclosed prior to or after the date of this Agreement. As against Licensee, "Confidential Information" shall also include, without limitation, the results of any substance testing of any Vormetric employee or contractor, and any biometric or other personal data pertaining to any such employee or contractor.

Nondisclosure. Recipient agrees not to use, disseminate, or in any way disclose any Confidential Information of Discloser to any person, firm or business, except to the extent necessary for the performance of Recipient's obligations hereunder, and for any other purpose Discloser may hereafter authorize in writing. Recipient agrees to treat all Confidential Information of Discloser with the same degree of care as Recipient accords to Recipient's own Confidential Information, but in no case less than reasonable care. Recipient agrees to disclose Confidential Information of Discloser only to those of Recipient's employees and independent contractors who need to know such information ("Authorized Parties"), and Recipient certifies that Recipient's employees and independent contractors have previously agreed in writing, either as a condition to employment or in order to obtain the Confidential Information of Discloser, to be bound by terms and conditions substantially similar to those terms and conditions applicable to Recipient under this Agreement. Recipient will take all reasonable measures to ensure that no unauthorized person shall have access to the Proprietary Information and that all Authorized Parties having

access refrain from making any unauthorized disclosure in violation of this Agreement. Recipient shall comply with all applicable federal and state laws, rules and regulations protecting the Proprietary Information and privacy rights of the Discloser, its customers and suppliers, and shall be responsible for any failure by the Authorized Parties to so comply. Recipient shall immediately give notice to Discloser of any unauthorized use or disclosure of Discloser's Confidential Information. Recipient agrees to assist Discloser in remedying any such unauthorized use or disclosure by Recipient or any of its employees or independent contractors of Discloser's Confidential Information but in no event shall any Failure constitute a breach of this Section 0.

Exclusions. The obligations of Recipient under this Section with respect to any portion of the Confidential Information of Discloser, shall not apply to such portion that Recipient can document: (i) was in the public domain at or subsequent to the time such portion was communicated to Recipient by Discloser through no fault of Recipient, or (ii) was developed by employees or agents of Recipient independently of and without reference to any Confidential Information of Discloser. A disclosure of Confidential Information, either (x) in response to a valid order by a court or other governmental body or (y) otherwise required by law, shall not be considered to be a breach of this Agreement by Recipient or a waiver of confidentiality for other purposes; provided, however, Recipient shall provide prompt prior written notice thereof to Discloser to enable Discloser to seek a protective order or otherwise prevent or limit such disclosure.

Specific Performance. The parties acknowledge that it will be impossible to measure in money the damage to the parties hereto of any failure to comply with the obligations of this Section 0, that every such restriction and obligation is material, and that in the event of any such failure, the parties will not have an adequate remedy at law or in damages. Therefore, each party consents to the non-breaching party seeking an injunction or the enforcement of other equitable remedies against it at the suit of an aggrieved party, without bond or other security, to compel performance of all of the terms of this Article 0, and waives any defenses to an equitable remedy, including without limitation the defenses of failure of consideration, breach of any other provision of this Agreement, and availability of relief in damages. The parties in no way waive their rights to contest any action on the merits or pursue any other remedy which might be available to such party.

TECHNICAL SUPPORT; PROFESSIONAL SERVICES

Technical support services will be available to Licensee pursuant to the terms of the Support Schedule, if any, between the parties, provided that Licensee is current with all applicable Support Schedule fees. Services will be available to Licensee pursuant to the terms of the Services Agreement, if any, between the parties.

PRODUCT WARRANTY Vormetric represents and warrants that, for ninety (90) days following Licensee's initial installation of the initial copy of the Agent Software in Licensee's production environment, the Software will perform substantially in accordance with the Documentation when operated on the Designated Operating System. Subject to the foregoing, Vormetric does not warrant that the Software will meet Licensee's requirements or that the operation of the Software will be uninterrupted or error-free, or that all Software errors will be corrected. Furthermore, the Software is not intended as a comprehensive solution to information security and may not be effective against all intrusions, viruses, worms, or other malicious code. Vormetric further represents and warrants that the Appliance will perform substantially in accordance with the Documentation and be free of defects in materials and workmanship for a period of ninety (90) days following installation of such Appliance.

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Limitations. The warranties above shall not apply to Software or Appliances that have been (i) improperly installed, (ii) modified by anyone other than Vormetric, (iii) used in a manner other than as authorized under this Agreement or as required by the Documentation, (iv) used with other software, hardware, or telecommunication interfaces not meeting or not maintained in accordance with Vormetric's specifications as described in the Documentation; (v) operated or maintained in environmental conditions outside the parameters designated in the Documentation or elsewhere; (vi) subjected to accident, unusual physical, electrical or electromagnetic stress, neglect, or misuse; or (vii) subjected to extreme power surge or failure, or electromagnetic field. Additionally, Vormetric shall have no obligation for any errors in performance of the Software or the Appliance that are not reproducible by Vormetric in good faith. Any claim submitted under the warranty must be submitted in writing to Vormetric within the specified warranty period set forth in Section 0. Licensee shall give Vormetric prompt written notice of such noncompliance discovered through use of the Software and Appliance in a production environment, together with any available details that may reasonably assist Vormetric to reproduce the noncompliance and effect a cure.

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LICENSEE INDEMNIFICATION Licensee shall indemnify, defend and hold Vormetric harmless from and against any and all costs, claims, or liability, including, without limitation, reasonable attorney fees, resulting from any third party claim based on Licensee's use of the Appliance or Software contrary to the Documentation.

PRODUCT RESALE Licensee understands that the Software is not transferable except under the terms of this Agreement. Licensee further understands that any transferee of the Appliance may be able to discover such attributes and configurations of Licensee's computing environment sufficient to enable the transferee or any third party to access Licensee's computing environment or Confidential Information. Licensee shall defend, indemnify, and hold harmless Vormetric from and against any cost, claim, or liability, including attorneys fees and court costs, arising out of or relating to any resale or transfer by Licensee of the Appliance or Software. VORMETRIC SHALL HAVE NO LIABILITY TO LICENSEE OR ANY THIRD PARTY ARISING OUT OF OR RELATING TO ANY RESALE OR TRANSFER BY LICENSEE OF THE APPLIANCE OR SOFTWARE.

LIMITATION OF LIABILITY EXCEPT FOR CLAIMS INVOLVING CONFIDENTIALITY OR INFRINGEMENT, NEITHER PARTY'S AGGREGATE LIABILITY IN CONNECTION WITH ANY CLAIMS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE USE OF THE APPLIANCE OR SOFTWARE SHALL BE MORE THAN THE LESSER AMOUNT OF (1.) THE LICENSE FEES ACTUALLY PAID BY LICENSEE UNDER THIS AGREEMENT, PLUS THE AMOUNT OF SUPPORT FEES PAID DURING THE FIRST YEAR OF THIS AGREEMENT, OR (2.) ONE MILLION DOLLARS (\$1,000,000). THIS LIMIT, WHICH INCLUDES ALL COSTS AND FEES ARISING OUT OF ANY SUCH CLAIM, SHALL APPLY TO ANY AND ALL CLAIMS REGARDLESS OF THE LEGAL THEORY ON WHICH THEY ARE BASED. NEITHER VORMETRIC (NOR VORMETRIC'S LICENSORS) SHALL BE LIABLE UNDER THIS AGREEMENT FOR LOST PROFITS OR FOR CONSEQUENTIAL, SPECIAL, INDIRECT, INCIDENTAL, OR EXEMPLARY DAMAGES, REGARDLESS OF THE LEGAL THEORY ON WHICH THEY ARE BASED, EVEN IF VORMETRIC HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING LIMITATIONS OF LIABILITY ARE INDEPENDENT OF ANY EXCLUSIVE REMEDIES FOR BREACH OF WARRANTY SET FORTH IN THIS AGREEMENT AND WILL APPLY EVEN IF THE ABOVE STATED WARRANTY FAILS OF ITS ESSENTIAL PURPOSE. IN ADDITION, VORMETRIC WILL HAVE NO LIABILITY TO LICENSEE UNDER ANY OF SECTIONS 0 OR 0 OF THIS AGREEMENT, OR UNDER THE SUPPORT SCHEDULE, IF LICENSEE NEGLECTS TO INSTALL ANY FAILURE CORRECTION SOFTWARE DELIVERED TO LICENSEE, OR ANY UPDATE OR RELEASE OF THE SOFTWARE MADE GENERALLY AVAILABLE AFTER THE EFFECTIVE DATE. For purposes of clarification,

the foregoing limitations will apply to any obligation of Vormetric, if any, which may be deemed to apply under Section 0 ("Indemnification and Infringements"), to indemnify or hold harmless Licensee from any internal costs incurred by Licensee (i) for loss of time or profit as a result of defense of the third party claim, (ii) loss of use of the Appliances or Software (and loss of time or profit attributable thereto), or (iii) associated with procuring or installing third party replacement products. EACH PARTY ACKNOWLEDGES THAT THE FEES SET FORTH IN THIS AGREEMENT REFLECT THE ALLOCATION OF RISK NEGOTIATED BY THE PARTIES AND SET FORTH IN THIS AGREEMENT AND THAT SUCH PARTY WOULD NOT ENTER INTO THIS AGREEMENT WITHOUT THESE LIMITATIONS OF LIABILITY.

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with only those rights set forth herein. Vormetric is Vormetric, Inc. at 2545 North First Street, San Jose, CA 95131.

TERM AND TERMINATION

Term. This Agreement is effective on the Effective Date and remains in effect until terminated as set forth herein.

Termination On Material Breach. This Agreement may be terminated by either party at any time if (i) the other party is notified in writing that it is in material breach of the terms or conditions of this Agreement; and (ii) such other party fails to remedy such breach within thirty (30) days following such notice or three (3) days following such notice if the breach is a failure by Licensee to pay any fees required under Section 0.

Termination on Financial Difficulty. To the extent allowed by law, Vormetric may terminate this Agreement effective immediately upon written notice to Licensee if Licensee (a) files a voluntary petition in bankruptcy or otherwise seeks protection under any law for the protection of debtors; (b) has a proceeding instituted against it under any bankruptcy law that is not dismissed within sixty (60) days; (c) is adjudged as bankrupt; (d) has a court assume jurisdiction of its assets under a reorganization act; (e) has a trustee or receiver appointed by a court for all or a substantial portion of its assets; (f) suspends or ceases to do business if the obligations under this Agreement are not otherwise assumed; or (g) makes an assignment of its assets for the benefit of its creditors. This Agreement is an executory contract. In the event of Licensee's bankruptcy, this Agreement shall be accepted or rejected within a reasonable time, but in no event in less than sixty (60) days from the filing of the bankruptcy petition.

ACTIONS ON TERMINATION Upon termination of this Agreement, except as expressly provided herein, and in addition to all other rights and obligations each party may have under this Agreement (a) the rights and licenses granted to Licensee pursuant to this Agreement automatically terminate, and (b) Licensee shall, within ten (10) days, ship to Vormetric or destroy (including purging from any system or storage media) all items in its possession proprietary to Vormetric, including but not limited to all Software and the Appliance, and an officer of Licensee shall certify in writing to Vormetric that the Appliance, and all Software and other confidential information of Vormetric have been returned to Vormetric or destroyed. Sections 0 ("Audit"), 0 ("Title and Ownership"), 0 ("Fees"), 0 ("Taxes"), 0 ("Reverse Engineering"), 0 ("Confidentiality"), 0 ("Disclaimer"), 0 ("Indemnification and Infringements"), 0 ("Limitation of Liability"), 0 ("Compliance with Laws"), 0 ("Term and Termination"), 0 ("Actions on Termination"), and 0 ("General") will survive termination of this Agreement.

GENERAL

Choice of Law. This Agreement shall be governed by the laws of the State of California, without reference to its conflict of laws principles, or the United Nations Convention on Contracts for the International Sale of Goods. The Uniform Computer Information Transactions Act or any version thereof, adopted by any State in any form ("UCITA"), shall not apply to this Agreement and, to the extent that UCITA is applicable, the parties agree to opt-out of the applicability of UCITA pursuant to the opt-out provision(s) contained therein.

Entire Agreement. This License Agreement, together with any Order Forms, constitutes the entire and complete agreement of the parties with respect to the terms hereof. No acceptance of any purchase order from Licensee, or delivery of any goods or services, shall constitute acceptance by Vormetric of the terms of any purchase order or other document from Licensee. No additional, inconsistent, or conflicting clauses in any purchase order, release, or other written correspondence from either party, shall be deemed to be included in these terms and conditions and shall be of no effect, even if later in time than this form, unless the parties agree otherwise in a writing specifically referring to this form, specifically stating that such writing is modifying this form, and executed by authorized signatories of each party. These terms and conditions supersede any usage of trade and control all course of dealing between Licensee and Vormetric. This Agreement replaces and supersedes any prior written or verbal agreements, understandings, communications or representations.

Notice. Any notice required or permitted to be given under this Agreement shall be in writing and shall be deemed given and received on the earlier of when actually received or three (3) business days upon deposit with the United States Mail with delivery confirmation, postage prepaid, or (or for notices given across national boundaries, by Federal Express, DHL, or other comparable delivery service, delivery prepaid), or for notices sent within the continental United States, the next business day if sent by overnight Federal Express or other nationally recognized overnight courier, and addressed to Vormetric Legal at the business address of the party as shown on the initial paragraph of this Agreement or to such other address as the party may request by written notice. When notice is required to be given within a specified time, the notice shall be timely given if it is deposited in the mail or with a courier or transmitted within the specified time, but time periods that begin with the delivery of the notice shall not begin to run until the notice is received or deemed to have been received as provided above. Each party shall make an ordinary, good faith effort to ensure that the person to be given notice actually receives the notice. A party giving notice of a default under this Agreement shall deliver a copy of the notice to the recipient's attorney indicated below, at the same time and in the same or an equivalent manner. A party that has failed to ensure that

the other parties to this Agreement have a current address, fax number, telephone number, and electronic mail address for the party and if desired, the party's attorney, for the purpose of giving notice waives any right to complain about the inadequacy of any notice given in accordance with this Section 0.

Severability. If any provision of this Agreement is held invalid, the remainder of this Agreement shall continue in full force and effect, and the clause held invalid shall be modified to effect the original intent of the parties, and convey the economic benefits originally intended to be conveyed.

Assignment. Licensee may not assign this Agreement or sublicense the Software without the prior written consent of Vormetric, which shall not be unreasonably withheld or delayed, and any prohibited assignment or sublicense shall be null and void. Notwithstanding the foregoing, consent shall not be required in the context of an acquisition of either party, by asset sale, merger, change of control or operation of law.

Waiver. The failure by a party to exercise any right hereunder shall not operate as a waiver of such party's right to exercise such right or any other right in the future.

Force Majeur. Except for Licensee's obligation to pay Vormetric, neither party shall be liable for any failure to perform due to causes beyond its reasonable control. Any deadline or time within which a party must perform under this Agreement shall automatically be extended upon the occurrence of any such cause for a period equal to the time lost because of such event, but not for more than 90 days. If such cause continues for more than 90 days, then the party not otherwise in breach of contract as a result of the cause, or either party if both are otherwise in breach of contract as a result of the cause, may terminate this Agreement upon written notice to the other.

Amounts Not in Dispute. Each party shall promptly pay the entire portion of all amounts that the party does not reasonably and in good faith dispute. A party that has not paid all undisputed amounts shall not bring or continue any claim against, or continue to assert any defense or counterclaim in connection with any collection proceeding by the party to whom such amounts are owed.

Construction of Agreement. The parties have negotiated the terms of this Agreement, and no provision of this Agreement shall be construed against either party as the drafter thereof.

Counterparts. This Agreement may be executed in counterparts, each of which will be deemed an original and collectively will constitute one instrument. A copy of this Agreement bearing an original signature and delivered by facsimile transmission or by electronic mail in portable

document format (*i.e.*, PDF) shall be deemed an original for purposes of evidencing execution of this Agreement

Amendments, Waivers, and Consents. The parties shall not amend or waive any provision of this Agreement except in a writing signed by the parties. No waiver or consent shall be binding except in a writing signed by the party making the waiver or giving the consent. No course of dealing between the parties shall constitute an amendment of this Agreement.