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# APC by Schneider Electric EULA

## Schneider Electric Software License Agreement

This software license agreement (the "Agreement") is between Schneider Electric as the "licensor" SCHNEIDER ELECTRIC and you (hereafter referred to as "Customer") for the SCHNEIDER ELECTRIC Schneider Electric software (hereafter referred to as "The Software") accompanying this Agreement.

By executing this Agreement, you represent that you have been authorized to accept these terms on behalf of Customer (the entity on whose behalf you represent that you are authorized to act).

If you accept these terms as a representative of an entity on whose behalf you are authorized to act, you may use The Software only on behalf of such entity.

SCHNEIDER ELECTRIC

Installation or use of The Software in violation of the terms of this Agreement is a violation of U.S. and international copyright laws and conventions.

The Software shall not incorporate, include or have any dependency on any open source or third-party software unless Licensor has provided Customer with a list of such open source and third-party software that includes the intended use of such open source and third-party software and the applicable license terms in advance for Customer's prior written approval. If third-party software is provided with The Software and approved by Customer as set forth above, that third-party software is not subject to the terms of this Agreement. The license agreement of that third-party software defines the responsibilities of the Customer and SCHNEIDER ELECTRIC with regard to that software. Notwithstanding, to the extent permissible, SCHNEIDER ELECTRIC hereby assigns to Customer any warranties made to SCHNEIDER ELECTRIC by any third-party licensors of software provided with The Software.

### 1. Grant of License

SCHNEIDER ELECTRIC hereby agrees to grant and Customer agrees to accept a non-exclusive and nontransferable license to use The Software, subject to the terms and conditions of this Agreement. The Software is owned and copyrighted by American Power Conversion Corporation or its suppliers. The license confers no ownership of or title to The Software and does not constitute a sale of any right in The Software to Customer. SCHNEIDER ELECTRIC retains all proprietary rights and title to The Software and any modifications.

### 2. Right to Use

The Software is licensed for use only by the number of users and/or on the number of computers described in this "Right to Use" section of this Agreement or in any related invoice.

Customer may use The Software in one of the following ways:

- \* Delivered as virtual machine software image, run and physical servers or virtual machine host that meet hardware requirements of operations.

In some cases, some additional software may be delivered with The Software, but in a disabled form, and may require the purchase of a separate license key to be activated. Such additional software is then licensed for use under the terms of this agreement only if a license key is purchased and subsequently used to activate the additional software. For the avoidance of doubt, SCHNEIDER ELECTRIC shall provide all appropriate license keys to all software included in the software package evaluated by Customer.

### 3. Upgrade Policy

SCHNEIDER ELECTRIC may create upgrades to, and/or other versions of, the Product from time to time. At its sole discretion, SCHNEIDER ELECTRIC may choose to make such upgrades or other versions available to Customer upon payment of any applicable fees. If Customer agrees to use such upgrades or other versions of the Product, it agrees to do so in accordance with the terms of this License.

### 4. Right to Copy

Customer may make copies of The Software for the following purposes only:

\* Customer may make one copy of The Software for disaster recovery, archival, and backup purposes.

\* Customer may make additional copies of The Software and documentation only when essential for the authorized and intended use of The Software as described in this agreement and/or in the documentation accompanying The Software.

Any and all copies, including any archival copy, must include the SCHNEIDER ELECTRIC copyright notice and any other proprietary notices that are included with The Software, and are fully subject to the terms of this Agreement.

Customer may not redistribute The Software or make copies with the intent to redistribute.

### 5. Restrictions

The customer is not permitted to do any of the following:

\* Disassemble, decompile, reverse engineer, or otherwise attempt to extract or create the source code from The Software.

\* Create derivative works of The Software or any portion thereof. Publish or provide any results of benchmark tests run on The Software to a third party without the prior written consent of SCHNEIDER ELECTRIC.

\* Rent, lease, grant a security interest in, or otherwise convey or transfer any of your rights to or license in The Software, or remove or alter any trademark, logo, copyright or other proprietary notices, legends, symbols or labels in The Software without the express written approval of SCHNEIDER ELECTRIC.

\* Use The Software for commercial time sharing, outsourcing environment, rental, or service bureau use or as an application service provider.

\* Use any portion of The Software as a component or a base for products or services prepared for commercial sale, sublicense, lease, access, or distribution outside your organization, except as agreed upon by the parties or authorize by SCHNEIDER ELECTRIC.

### 6. Equitable Relief

### 7. Duration and Termination of This Agreement

This license shall continue for the duration of the Proof of Concept, as defined in the PSA entered into as of \_\_\_\_\_, by and between \_\_\_\_\_ and SCHNEIDER ELECTRIC. SCHNEIDER ELECTRIC 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. Customer can terminate the Agreement at any time by destroying or returning to SCHNEIDER ELECTRIC all copies of The Software and documentation.

### 8. Limited Warranty

The SCHNEIDER ELECTRIC limited warranty for The Software is for a period of ninety (90) days from the time the customer receives The Software. SCHNEIDER ELECTRIC warrants during the limited warranty period that The Software will function substantially as described in the accompanying software user documentation, including online help, and that any medium upon which The Software is delivered will be free from defects in material and workmanship when given normal, proper and intended usage. This warranty does not apply in any of the following circumstances: \* If The Software is used on a machine or operating system other than the machines and versions of operating systems specified in the documentation. \* If The Software is subjected to misuse, neglect, accident, or exposure to environmental conditions beyond those specified in the documentation. \* If a version of The Software is used that does not include all updates available from SCHNEIDER ELECTRIC. \* If The Software has been modified by Customer. SCHNEIDER ELECTRIC does not warrant that use of The Software will be uninterrupted or error free, that program errors will be corrected, that The Software is free from viruses or other malware, that The Software is compatible with any particular hardware or software platform, or that The Software will meet Customer's requirements. SCHNEIDER ELECTRIC's sole responsibility and Customer's sole remedy under this warranty is, at SCHNEIDER ELECTRIC's option, to repair or replace all

or any portions of The Software, or to refund any license fee paid. This limited warranty is valid only if SCHNEIDER ELECTRIC receives written notice within the ninety-day warranty period.

## **9. Limitation of Liability**

EXCEPT AS EXPRESSLY SET FORTH IN SECTION 8 HEREIN ENTITLED "LIMITED WARRANTY", SCHNEIDER ELECTRIC'S INDEMNIFICATION OBLIGATIONS, CUSTOMER'S INDEMNIFICATION OBLIGATIONS AND EITHER PARTY'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS HEREUNDER, (i) NEITHER PARTY SHALL HAVE LIABILITY TO THE OTHER PARTY OR ANY THIRD PARTY FOR THE SUBJECT MATTER OF THIS AGREEMENT, INCLUDING ANY LIABILITY FOR NEGLIGENCE; (ii) NEITHER PARTY MAKES OR RECEIVES ANY WARRANTIES, EXPRESS, IMPLIED, STATUTORY, OR IN ANY OTHER PROVISION OF THIS AGREEMENT OR ANY OTHER COMMUNICATION; AND (iii) SCHNEIDER ELECTRIC SPECIFICALLY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NONINFRINGEMENT THE ENTIRE RISK AS TO THE RESULTS AND PERFORMANCE OF THE SOFTWARE IS ASSUMED BY CUSTOMER. FURTHERMORE, SCHNEIDER ELECTRIC DOES NOT WARRANT OR MAKE ANY REPRESENTATION REGARDING THE USE OR THE RESULTS OF THE USE OF THE SOFTWARE OR RELATED DOCUMENTATION IN TERMS OF THEIR CORRECTNESS, ACCURACY, QUALITY, RELIABILITY, APPROPRIATENESS FOR A PARTICULAR TASK OR APPLICATION, CURRENTNESS, OR OTHERWISE. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, MULTIPLE OR PUNITIVE, INCIDENTAL DAMAGES, ARISING OUT OF, OR CONNECTED IN ANY WAY WITH USE OF OR INABILITY TO USE THE SOFTWARE, OR FOR ANY CLAIM BY ANY OTHER PARTY EVEN IF SCHNEIDER ELECTRIC HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH POTENTIAL LOSS OR DAMAGE. SPECIFICALLY, NEITHER PARTY IS LIABLE FOR ANY COSTS, SUCH AS LOST PROFITS OR REVENUE, LOSS OF EQUIPMENT, LOSS OF USE OF EQUIPMENT, LOSS OF SOFTWARE, LOSS OF DATA, COSTS OF SUBSTITUTES, CLAIMS BY THIRD PARTIES, OR OTHERWISE. SOME STATES OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MIGHT NOT APPLY TO YOU. HOWEVER, TO THE FULL EXTENT PERMITTED BY APPLICABLE LAW, THE DURATION OF STATUTORILY REQUIRED WARRANTIES, IF ANY, SHALL BE LIMITED TO THE WARRANTY PERIOD OF 90 DAYS. NO DEALER, AGENT, EMPLOYEE, OR CUSTOMER OF SCHNEIDER ELECTRIC IS AUTHORIZED TO MAKE ANY MODIFICATIONS, EXTENSIONS, OR ADDITIONS TO THIS LIMITED WARRANTY. Except for SCHNEIDER ELECTRIC's indemnification obligations, or either party's breach of its confidentiality obligations hereunder, the cumulative liability of each party for all claims relating to this Agreement shall not exceed the total amount of any and all license fees paid to SCHNEIDER ELECTRIC by Customer for The Software or, if no separate license fee was required, the replacement of The Software.

## **10. No Warranty Under Hazardous, High-Risk, or Life-Threatening Conditions**

The Software is not fault-tolerant and is not designed, manufactured or intended for use or resale as control equipment in hazardous environments requiring failsafe performance, such as in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, direct life support machines, or weapons systems, in which the failure of The Software could lead directly to death, personal injury, or severe physical or environmental damage. Accordingly, SCHNEIDER ELECTRIC and its suppliers specifically disclaim any express or implied warranty of fitness for such hazardous, high-risk, or life-threatening activities.

## **11. Confidentiality**

Each party acknowledges that in the course of performance of its obligations pursuant to this Agreement, such party, may obtain confidential and/or proprietary information of the other party. "Confidential Information" includes: information relating to development plans, costs, finances, marketing plans, equipment configurations, data, access or security codes or procedures utilized or acquired, business opportunities, names of customers, research, and development; any information designated as confidential in writing or identified as confidential at the time of disclosure if such disclosure is verbal or visual; any information disclosed that a reasonable person under similar circumstances would understand to be confidential or proprietary; and any copies of the prior categories or excerpts included in other materials created by the recipient party. Notwithstanding the termination or expiration of this Agreement, the obligations of the recipient party, with respect to the Confidential Information of disclosing party, shall be in full force and effect as follows: (i) in the case of any information or materials that constitute a trade secret within the meaning of applicable law, for as long as such information and materials remain as a trade secret, or (ii) in the case of any other information or materials, for a term of three (3) years from the date of receipt of the Confidential Information. The recipient party shall use the same means it uses to protect its own confidential and proprietary information, but in any event not less than reasonable means to prevent the disclosure and to protect the

confidentiality of the Confidential Information. Further, the recipient party shall only use the Confidential Information for the purposes of this Agreement, and shall not disclose the Confidential Information without the prior written consent of the other party. This provision shall not apply to Confidential Information which is (i) already known by the recipient party without an obligation of confidentiality, (ii) publicly known or becomes publicly known through no unauthorized act of the recipient party, (iii) rightfully received from a third party (other than an affiliate or customer of the party owning the Confidential Information) without an obligation of confidentiality, (iv) disclosed without similar restrictions by the disclosing party to a third party (other than an affiliate or customer of the party owning the Confidential Information), (v) approved by the party owning the Confidential Information, in writing, for disclosure, or (vi) independently developed by the recipient party without the use of the disclosing party's Confidential Information. The recipient party shall promptly notify the disclosing party in writing in the event that the recipient party becomes legally compelled in a judicial, administrative or governmental proceeding to disclose any of the Confidential Information so that the disclosing party, at its expense, may seek a protective order or other appropriate remedy and/or waive compliance with the confidentiality obligations herein.

## **12. Transfer Restrictions**

This agreement, the license granted hereunder, The Software and any modifications thereto may not be assigned or in any way transferred without the prior written consent of SCHNEIDER ELECTRIC.

## **13. Language and Jurisdiction of the Agreement**

The original of this agreement has been written in English. The parties hereto waive any statute, law, or regulation that might provide an alternative law or forum or to have this agreement written in any language other than English. Any translation of this agreement to a language other than English is provided only for the convenience of Customer and is not the legally binding version of the agreement. The terms of this agreement shall be construed in accordance with the substantive federal laws of the United States of America, without giving effect to the principles of conflict or choice of law of such state. SCHNEIDER ELECTRIC and Customer exclude the United Nations Convention on Contracts for the International Sale of Goods from this agreement.

## **14. U.S. Government Restricted Rights Legend**

The Software and documentation are "commercial items" as that term is defined in 48 C.F.R. 2.101 (October 1995) consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 227.7202-1, 227.7202-3 and 227.7202-4 (June 1995). If Customer is the U.S. Government or any agency or department thereof, The Software and documentation are licensed only as a commercial item, and with only those rights as are granted to all other end users pursuant to the terms and conditions of this agreement. Licensor is American Power Conversion Corporation, P.O. Box 278, 132 Fairgrounds Rd., West Kingston, RI 02892, U.S.A.

## **15. Export Controls**

None of The Software or underlying information or technology may be downloaded or otherwise exported or re-exported to any of the following:

- \* Into (or to a national or resident of) any country to which the U.S. has embargoed goods.
- \* To anyone on the U.S. Treasury Department's list of Specially Designated Nationals.
- \* To anyone on the U.S. Commerce Department's Table of Denial Orders.

By downloading or using The Software, Customer agrees to the foregoing and represents and warrants that it is not located in, under the control of, or a national or resident of any such country or on any such list.

Customer is responsible for complying with any local laws in its jurisdiction that might impact its right to import, export or use The Software, and represents that it has complied with any regulations or registration procedures required by applicable law to make this license enforceable.

## **16. Indemnification**

- a. SCHNEIDER ELECTRIC agrees to indemnify, defend and hold Customer, its Affiliates, officers, agents and employees, harmless from any claim, action, proceeding, liability, loss, damage, cost or expense (including, without limitation, attorney's fees) arising from or related to claims that The Software infringes any third party right, provided that Customer has not modified The Software without SCHNEIDER ELECTRIC's authorization. Should Customer's use, or use by its distributors, resellers, subcontractors or customers, of The Software be enjoined, be threatened by injunction, or be the subject of any legal proceeding, SCHNEIDER ELECTRIC shall, at its sole cost and expense, either (a) substitute fully equivalent non-infringing software acceptable to Customer; (b) modify The Software so that it no longer infringes but remains fully equivalent in functionality; (c) obtain for Customer, the right to continue using the The Software; or (d) if none of the foregoing is possible, refund all amounts paid for the infringing software.

## **17. Survival**

Neither the expiration nor termination of this Agreement shall terminate the obligations and rights of the parties pursuant to provisions of the Agreement which by their terms are intended to survive or be perpetual or irrevocable. Such provisions shall survive the expiration or termination of this Agreement.

## **ACRONIS EULA**

**Due to the Size of this Document, it is Maintained in a Separate File.  
Contact Promark for a Copy.**

# APPDYNAMICS EULA

## APPDYNAMICS, INC. END USER LICENSE TERMS

### 1. SOFTWARE LICENSE.

**1.1 LICENSE GRANT.** AppDynamics, Inc. ("AppDynamics") hereby grants to the Ordering Activity (defined as an entity authorized to order under GSA contracts as set forth in GSA ORDER 4800.2G ADM, "Licensee"), during the License Term (as defined below), a non-exclusive, non-transferable, non-sublicensable right and license to use the software-as-a-service and/or on-premise version of AppDynamics' application intelligence software product(s) (the "Software") designated in, and for the quantity of units in, the Government Order (the "Order") for internal business purposes only, subject to the terms hereof and solely within the scope of the following applicable components: application server agents and machine agents and one controller (or, in the case of Evaluation Use, as indicated in Section 1.3). AppDynamics Test&Dev Edition licenses shall only be used in test-only non-production environments. For purposes hereof, the "License Term" begins on the date AppDynamics delivers the Software license keys to Licensee and extends for the period specified in the applicable Order.

**1.2 RESTRICTIONS ON USE.** Except as otherwise expressly provided herein, Licensee shall not (and shall not permit any third party to): (a) sublicense, sell, resell, transfer, assign, distribute, share, lease, rent, make any external commercial use of, outsource, use on a timeshare or service bureau, or use in an application service provider or managed service provider environment, or otherwise generate income from the Software; (b) copy the Software onto any public or distributed network, except for an internal and secure cloud computing environment; (c) cause the decompiling, disassembly, or reverse engineering of any portion of the Software, or attempt to discover any source code or other operational mechanisms of the Software; (d) modify, adapt, translate or create derivative works based on all or any part of the Software; (e) use any Third Party Software (as defined below) other than with the Software as provided; (f) modify any proprietary rights notices that appear in the Software or components thereof; (g) publish the results of any benchmarking tests run on any Third Party Software; (h) use the Software or Third Party Software as parts, components, or assemblies in or for the planning, construction, maintenance, or operation of a nuclear facility or (i) use any Software in violation of any applicable laws and regulations (including any export laws, restrictions, national security controls and regulations) or outside of the license scope set forth in Section 1.1. Licensee shall not export or re-export any Software or technical data or any copy, portions or direct product thereof (i) in violation of any such laws and regulations, (ii) without all required authorization into Cuba, Libya, North Korea, Iran, Iraq, or Rwanda or any other Group D:1 or E:2 country (or to a national or resident thereof) specified in the then current Supplement No. 1 to part 740 of the U.S. Export Administration Regulations (or any successor supplement or regulations) or (iii) to anyone on the U.S.

Treasury Department's list of Specially Designated Nationals or the U.S. Commerce Department's Table of Denial Orders. Licensee shall, at its own expense, obtain all necessary customs, import, or other governmental authorizations and approvals.

**1.3 EVALUATION USE.** If Licensee accessed the Software pursuant to a no-fee evaluation ("Evaluation Use"), then the License Term is for the period enabled by the license key for the Software provided by AppDynamics. AppDynamics shall have the right to downgrade, limit or otherwise modify the Software provided for Evaluation Use at any time without notice, and no warranty, indemnity, Maintenance or Support obligations of AppDynamics will apply to Evaluation Use. Licensee may use the number and type of licenses indicated by AppDynamics in writing prior to Licensee downloading or accessing the Software, which will be enabled by Licensee's specific license key. AppDynamics has the right to immediately revoke and terminate any Evaluation Use at any time. Licensee represents and warrants that: (i) Licensee has not previously evaluated the Software, and (ii) Licensee will not attempt to, by any means, evaluate the Software again without payment.

**1.4 UNAUTHORIZED USE.** Licensee shall notify AppDynamics promptly of any unauthorized use of any password or account or any other known or suspected breach of security or misuse of the Software. Licensee is responsible for use of the Software by any and all employees or other users that it allows to access the Software.

**1.5 SUPPORT AND MAINTENANCE.** "Support" is defined as the responsibilities with respect to the Software as set forth in Exhibit A (Enterprise Support). "Maintenance" means the provision of error corrections and bug fixes for the Software, as well as new releases, updates, product extensions and enhancements made generally commercially available by AppDynamics in its sole discretion. Subject to Licensee's Order, AppDynamics will (a) provide Maintenance and Support for the Software in accordance with Exhibit A (Enterprise Support), and (b) solely if Licensee has purchased access to the software-as-a-service version of the Software, make the Software available to Licensee in accordance with Exhibit B (Availability and Security). For annual or multi-year licenses for the Software (as set forth in an Order, "Subscription Licenses"), the fees for Enterprise Support are included in the fees for the Software set forth in the Order. For perpetual licenses, (i) Licensee shall be subject to the applicable fees for support and maintenance ("Maintenance and Support Fees") upon execution of the Order, and (ii) subject to payment of the Maintenance and Support Fees, AppDynamics will provide Enterprise Support for the Maintenance and Support period set forth in the Order, as may be renewed at any time for successive terms by execution of an Order ("Maintenance and Support Term"). If Maintenance and Support terminates with respect to any perpetual licenses, and Licensee is in good standing under the terms herein, then Licensee may reinstate Maintenance and Support on payment of the cumulative Maintenance and Support Fees



applicable for the period during which Maintenance and Support lapsed, plus Maintenance and Support Fees for the reinstated Maintenance and Support Term.

**1.6 SERVICES.** AppDynamics shall use commercially reasonable efforts to provide training, enablement and/or other services set forth in an Order ("Services"). Licensee agrees to provide reasonable cooperation and information as necessary to permit AppDynamics to perform Services. Services will be invoiced after they are performed, but if any Services are not delivered within twelve (12) months after the date they are ordered, then the Order will be automatically reduced by the unfulfilled quantity of Services.

## **2. FEES.**

Payment terms for the Software and any Services pursuant to the terms hereof will be set forth in an Order. Fees do not include any customization of the Software (nor support for any such customizations, unless otherwise agreed in writing). During the term hereof: (i) if Licensee's security requirements included in an Order are met, AppDynamics or its designated agent may audit Licensee's facilities and records to verify Licensee's compliance with the terms hereof. Any such audit will take place only during Licensee's normal business hours contingent upon prior written notice and adherence to any security measures the Licensee deems appropriate, including any requirements for personnel to be cleared prior to accessing sensitive facilities. Licensee will be provided written notice of any non-compliance, including the number of underreported units of Software or services; or (ii) if Licensee's security requirements are not met and upon AppDynamics' request, Licensee will run a self-assessment with tools provided by and at the direction of AppDynamics to verify Licensee's compliance with the terms hereof.

## **3. CONFIDENTIALITY**

**3.1 SCOPE AND RESTRICTIONS.** "Confidential Information" means all information of a party ("Disclosing Party") disclosed to the other party ("Receiving Party") that is designated in writing or identified as confidential at the time of disclosure or should be reasonably known by the Receiving Party to be confidential due to the nature of the information disclosed and the circumstances surrounding the disclosure. Any technical or other documentation relating to the Software, logins, passwords and other access codes and any and all information regarding AppDynamics' business, products and services are the Confidential Information of AppDynamics. AppDynamics recognizes that federal agencies are subject to the Freedom of Information Act (5 USC 552) and some information may be released despite being characterized as "confidential" by AppDynamics. The Receiving Party will: (i) not use the Disclosing Party's Confidential Information for any purpose outside of the terms herein; (ii) not disclose such Confidential Information to any person or entity, other than its affiliates, employees, consultants, agents and professional advisers who have a "need to know" for the Receiving Party to exercise its rights or perform its obligations hereunder, provided that

such employees, consultants, and agents are bound by agreements or, in the case of professional advisers, ethical duties respecting such Confidential Information in accordance with the terms of this Section 3; and (iii) use reasonable measures to protect the confidentiality of such Confidential Information. If the Receiving Party is required by applicable law or court order to make any disclosure of such Confidential Information, it will first give written notice of such requirement to the Disclosing Party, and, to the extent within its control, permit the Disclosing Party to intervene in any relevant proceedings to protect its interests in its Confidential Information, and provide full cooperation to the Disclosing Party in seeking to obtain such protection. Further, this Section 3 will not apply to information that the Receiving Party can document: (i) was rightfully in its possession or known to it prior to receipt; (ii) is or has become public knowledge or publicly available through no fault of the Receiving Party; (iii) is rightfully obtained by the Receiving Party from a third party without breach of any confidentiality obligation; or (iv) is independently developed by employees of the Receiving Party who had no access to such information.

**4. PROPRIETARY RIGHTS.** AppDynamics and its suppliers own and shall retain all proprietary rights, including all copyright, patent, trade secret, trademark and all other intellectual property rights, in and to the Software and the results of any Services. Licensee acknowledges that the rights granted herein do not provide Licensee with title to or ownership of the Software. Certain "free" or "open source" based software (the "FOSS Software") and third party software (the "Third Party Software") is shipped with the Software but is not considered part of the Software hereunder. With respect to Third Party Software included with the Software, such Third Party Software suppliers are third party beneficiaries of this Agreement. A list of the FOSS Software is included with the on-premise version of the Software. The Software and Third Party Software may only be used by Licensee as prescribed by the AppDynamics documentation published by AppDynamics (the "Documentation").

**5. TERM AND TERMINATION.** The initial term begins on the Effective Date and extends for the period specified in the Order (or if the Software is provided for Evaluation Use, for the Term specified in Section 1.3 hereof) (unless earlier terminated, the "Term"). Termination of the terms hereof 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: AppDynamics may request cancellation or termination of the terms hereof if such remedy is ordered by a United States Federal Court or if such remedy is granted to it after conclusion of the following Contracts Disputes Act dispute resolutions process: any disputes relating to the terms hereof shall be resolved in accordance with the FAR, and the Contract Disputes Act, 41 U.S.C. §§ 7101-7109. Licensee expressly acknowledges that a contractor, on behalf of AppDynamics, shall have standing to bring such claim under the Contract Disputes Act.

**6.** Upon expiration or termination for any reason, (i) with respect to Subscription Licenses, Licensee shall

cease any further use of and destroy any copies of the Software and Documentation within Licensee's possession and control and (ii) each Receiving Party will return or destroy, at the Disclosing Party's option, the Disclosing Party's Confidential Information in the Receiving Party's possession or control. All fees that have accrued as of such expiration or termination, and Sections 1.2, 1.3, 2, 3, 4, 5, 6, 7.2 and 8 through 12, will survive any expiration or termination hereof.

## 7. WARRANTIES.

**7.1 LIMITED WARRANTY.** AppDynamics warrants that (a) with respect to software-as-a-service Software licenses, during the License Term, or (b) with respect to on-premise Software licenses, during the first thirty (30) days following the date the Software is purchased, the Software will, in all material respects, conform to the functionality described in the then-current Documentation for the applicable Software version. Licensee's sole and exclusive remedy (in addition to any other remedies available to Licensee under the law), for a breach of this warranty shall be that AppDynamics shall be required to use commercially reasonable efforts to modify the Software to conform in all material respects to the Documentation, and if AppDynamics is unable to materially restore such functionality within thirty (30) days from the date of written notice of such breach, Licensee shall be entitled to terminate the Order upon written notice and receive a pro-rata refund of the Software license fees (or Maintenance and Support Fees, for perpetual licenses) that have been paid in advance for the remainder of the License Term for the applicable Software (beginning on the date of termination).

**7.2 WARRANTY DISCLAIMER.** EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 6, ALL SOFTWARE, DOCUMENTATION, MAINTENANCE AND SUPPORT AND SERVICES ARE PROVIDED "AS IS" AND APPDYNAMICS AND ITS SUPPLIERS EXPRESSLY DISCLAIM ANY AND ALL OTHER REPRESENTATIONS AND WARRANTIES, EITHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE WITH RESPECT THERETO, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, OR THE CONTINUOUS, UNINTERRUPTED, ERROR-FREE, VIRUS-FREE, OR SECURE ACCESS TO OR OPERATION OF THE SOFTWARE. APPDYNAMICS EXPRESSLY DISCLAIMS ANY WARRANTY AS TO THE ACCURACY OR COMPLETENESS OF ANY INFORMATION OR DATA ACCESSED OR USED IN CONNECTION WITH THE SOFTWARE, DOCUMENTATION, MAINTENANCE AND SUPPORT, OR SERVICES.

## 8. LIMITATION OF LIABILITY.

**8.1 EXCEPT FOR LIABILITY ARISING OUT OF LICENSEE'S BREACH OF SECTION 1.2 (RESTRICTIONS ON USE) OR EITHER PARTY'S BREACH OF SECTION 3 (CONFIDENTIALITY), IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR**

**CONSEQUENTIAL DAMAGES, INCLUDING DAMAGES FOR LOSS OF REVENUES OR PROFITS, LOSS OF USE, BUSINESS INTERRUPTION, OR LOSS OF DATA, WHETHER IN AN ACTION IN CONTRACT OR TORT, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**

**8.2 EXCEPT FOR LIABILITY ARISING OUT OF END USER'S BREACH OF SECTION 1.2 (RESTRICTIONS ON USE), EITHER PARTY'S BREACH OF SECTION 3 (CONFIDENTIALITY) OR EACH PARTY'S INDEMNIFICATION OBLIGATIONS HEREUNDER NEITHER PARTY'S LIABILITY FOR ANY DAMAGES (WHETHER FOR BREACH OF CONTRACT, MISREPRESENTATIONS, NEGLIGENCE, STRICT LIABILITY, OTHER TORTS OR OTHERWISE) SHALL EXCEED AN AMOUNT EQUAL TO THE TOTAL FEES PAID (PLUS FEES PAYABLE) TO APPDYNAMICS DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE CLAIM GIVING RISE TO SUCH DAMAGES. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY, BUT THIS CLAUSE SHALL NOT IMPAIR THE LICENSEE'S RIGHT TO RECOVER FOR FRAUD OR CRIMES ARISING OUT OF OR RELATED TO THE TERMS HEREOF UNDER ANY FEDERAL FRAUD STATUTE, INCLUDING THE FALSE CLAIMS ACT, 31 U.S.C. §§ 3729-3733.**

**9. FORCE MAJEURE.** Neither party hereto will be liable for defaults or delays due to acts of God, or the public enemy, acts or demands of any government or governmental agency, fires, earthquakes, floods, accidents, or other unforeseeable causes beyond its control and not due to its fault or negligence.

**10. DATA COLLECTION.** AppDynamics' application server and machine software agents (the "Agents") collect metrics that relate to the performance, health and resource of an application, its components (transactions, code libraries) and related infrastructure (nodes, tiers) that service those components. In addition, AppDynamics may collect metrics on Licensees' activities, such as web pages visited, length of visit, and which features of the Software an Licensee uses. Licensee will not configure the Software to collect any personally-identifiable information or payment information ("Personal Data") without AppDynamics' prior written approval.

**11. US GOVERNMENT MATTERS.** The Software and Documentation are commercial computer software and commercial computer software documentation developed exclusively at private expense. Any use, duplication, and disclosure by civilian agencies of the U.S. Government shall not exceed those minimum rights set forth in FAR 52.227-19(c) or successor regulations. Use, duplication, and disclosure by U.S. Department of Defense agencies is subject solely to the license terms and conditions herein, as stated in DFARS 227.7202 or successor regulations. U.S. Government rights shall apply only to the specific agency and program for which the software is obtained. Contractor/Licenser: AppDynamics. Copyright 2014 AppDynamics.

## 12. GENERAL.

**12.1** The validity, interpretation and enforcement of these terms 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 the terms hereof, and the governing law will remain as if such law or regulation had not been enacted. AppDynamics reserves the right to perform its obligations from locations and/or through use of affiliates and subcontractors, worldwide, provided that AppDynamics will be responsible for such parties.

**EXHIBIT A**  
**ENTERPRISE SUPPORT**

**GENERAL REQUIREMENTS.** AppDynamics will provide access to a ticketing system and email address (help@appdynamics.com), which will be available twenty-four (24) hours per day, seven (7) days per week. The email account will be maintained by qualified support specialists, who shall use commercially reasonable efforts to answer questions and resolve problems regarding the Software.

**HOURS OF OPERATION.** Support is available (24) hours per day, seven (7) days per week.

**ERROR CLASSIFICATION.** Any reported errors are classified in the following manner, in each case when caused by the Software:

Error Classification	Criteria
Urgent	Licensee production application is down or there is a major malfunction, resulting in a business revenue loss and impacting the Licensee application functionality for a majority of users.
High	Critical loss of Licensee application functionality or performance, impacting the application functionality for a high number of users.
Normal	Moderate loss of Licensee application functionality or performance, impacting multiple users.
Low	Minor loss of Licensee application functionality or product feature in question.

**ERROR DEFINITION.** An "error" means a reproducible malfunction in the Software that is reported by Licensee through AppDynamics' ticketing system that prevents the Software from performing in accordance with the operating specifications described in the then-current Documentation

**AUTHORIZED SUPPORT CONTACTS.** Maintenance and Support will be provided solely to Licensee's authorized support contacts. Licensee's Order Form may indicate a maximum number of authorized support contacts for Licensee's service level. Licensee will be asked to designate its authorized support contacts, including its primary email address.

**LICENSEE'S OBLIGATION TO ASSIST.** If Licensee reports a purported error to AppDynamics, AppDynamics' ticketing system will request the following minimum information:

- A general description of the operating environment
- A list of all hardware components, operating systems and networks
- A reproducible test case
- Any log files, trace and systems files

Licensee's failure to provide this information may prevent AppDynamics from or significantly delay AppDynamics' ability to identify and fix the reported error, and AppDynamics' time to respond to any error will begin when AppDynamics has received all requested information from the Licensee and is able to reproduce the error.

**DEFECT RESOLUTION.** If AppDynamics determines there is a defect in the Software, AppDynamics may, at its sole option, repair that defect in the version of the Software that Licensee is currently using or instruct Licensee to install a newer version of the Software with that defect repaired. AppDynamics reserves the right to provide Licensee with a workaround in lieu of fixing a defect.

**SOFTWARE UPDATES AND UPGRADES.** Licensee receives access to Maintenance.

**RESPONSE TIME.** AppDynamics shall use commercially reasonable efforts to respond to error tickets in accordance with the tables set forth below. AppDynamics will use reasonable means to repair the error and keep Licensee informed of progress. AppDynamics makes no representations as to when a full resolution of the error may be made.

Error	Initial and gement	Response Acknowled-	Manager Escalation	VP Escalation	Email Status Updates for Open Tickets
Urgent	4 Hours	1 Business Day	1 Week	1 Week	Daily
High	12 Hours	1 Week	1 Week	2 Weeks	Weekly
Normal	1 Business Day	Quarterly Review for All Open Tickets	None	None	None
Low	2 Business Days	Semi-Annual Review for All Open Tickets	None	None	None

**END OF LIFE POLICY:** Support is provided for the Software version 3.5 and later. The AppDynamics end-of-life ("EOL") policy is as follows:

- "Mainstream Support": support calls are accepted and the version is maintained with bug fix releases and patches.
- "Extended Support": support calls are accepted however the version is not maintained.
- "Out of Support": no support calls are accepted and the version is not maintained.

AppDynamics provides Extended Support for a period of 24 months after a Software version's release. AppDynamics provides Mainstream Support for a period of 12 months after a version's release. For example, if version 4.0 was released in December of 2014, Mainstream Support would be provided until December of 2015. Extended Support would be provided until December of 2016. The Software version 4.0 would be Out of Support beginning in January of 2017. For clarity, Support is version-based; if End User upgraded to version 5.0 in January of 2017 when version 5.0 was released, Mainstream Support would be provided for version 5.0 beginning in January of 2017. AppDynamics does not provide Maintenance or Support for any customized software (or components thereof).

For third party software or technology used by Licensee with the Software but not included with the Software (a "Platform", such as Java Virtual Machines), AppDynamics will follow the EOL support timeline announced by the third party vendor of such Platform. AppDynamics will drop support for an EOL'd Platform version when the Platform vendor stops supporting that Platform version.

**EXHIBIT B**  
**AVAILABILITY AND SECURITY**

The terms set forth in this Exhibit B apply only if Licensee has purchased access to the online software-as-a-service ("SaaS") version of the Software, as indicated on the Order.

**AVAILABILITY.**

AppDynamics will use commercially reasonable efforts to (a) provide bandwidth sufficient for Licensee's use of the Software provided hereunder and (b) operate and manage the Software with a ninety-nine and one-half percent (99.5%) uptime goal (the "Availability SLA"), excluding situations identified as "Excluded" below. For purposes of the Availability SLA, the AppDynamics network extends to, includes and terminates at the data center located router that provides the outside interface of each of AppDynamics' WAN connections to its backbone providers (the "AppDynamics Network").

"Excluded" means any outage that results from any of the following:

- a. Any Maintenance performed by AppDynamics during AppDynamics' standard Maintenance windows. AppDynamics will notify Licensee within forty-eight (48) hours of any standard Maintenance and within twenty-four (24) hours for other non-standard emergency Maintenance (collectively referred to herein as "Scheduled Maintenance").
- b. Licensee's information content or application programming, or the acts or omissions of Licensee or its agents, including, without limitation, the following:
  1. Licensee's use of any programs not supplied by AppDynamics;
  2. Licensee's failure to provide AppDynamics with reasonable advance prior notice of any pending unusual large deployments of new nodes (i.e., adding over ten (10) percent total nodes in less than twenty-four (24) hours);
  3. Licensee's implementation of any significant configuration changes, including changes that lead to a greater than thirty percent (30%) change in a one week period or greater than fifty percent (50%) change in a one month period in the number of key objects in the system including but not limited to metrics, snapshots, nodes, events and business transactions;
  4. Any misconfiguration by Licensee (as determined in AppDynamics' sole discretion), including configuration errors or unintended usage of the Software; and
  5. Licensee's failure to upgrade the AppDynamics Agents to keep the Agent versions within six (6) months of the controller version.
- c. Force majeure or other circumstances beyond AppDynamics' reasonable control that could not be avoided by its exercise of due care.
- d. Failures of the Internet backbone itself and the network by which Licensee connects to the Internet backbone or any other network unavailability outside of the AppDynamics Network.
- e. Any window of time when Licensee agrees that Software availability/unavailability will not be monitored or counted.
- f. Any problems resulting from Licensee combining or merging the Software with any hardware or software not supplied by AppDynamics or not identified by AppDynamics in the Documentation as being compatible with the Software.
- g. Licensee's or any third party's use of the Software in an unauthorized or unlawful manner.

**Remedies for Excessive Downtime:**

In the event the availability of the Software falls below the Availability SLA in a given calendar quarter, AppDynamics will pay Licensee a service credit ("Service Credit") equal to the percentage of the fees set forth in the table below corresponding to the actual Availability of the Software during the applicable calendar quarter (on pro-rated basis for annual fees). Such Service Credit will be issued as a credit against any fees owed by Licensee for the next calendar quarter of the Term, or, if Licensee does not owe any additional fees, then AppDynamics will pay Licensee the amount of the applicable Service Credit within thirty (30) days after the end of the calendar quarter in which such credit accrued. To receive Service Credits, Licensee must submit a written request to AppDynamics (to customersuccess@appdynamics.com with a copy to legal@appdynamics.com) within 15 days after the end of the quarter in which the Software was unavailable, or Licensee's right to receive Service Credits with respect to such unavailability will be waived. The remedies stated in this section are Licensee's sole and exclusive remedies (in addition to any remedies available to Licensee under the law) and AppDynamics' sole and exclusive obligations for service interruption or unavailability.

System availability is measured by the following formula:  $x = (n - y) * 100 / n$

(1) "x" is the uptime percentage; "n" is the total number of hours in the given calendar quarter minus scheduled downtime; and "y" is the total number of downtime hours in the given calendar quarter.

(2) Specifically excluded from "n and "y" in this calculation are the Excluded situations described above and scheduled upgrade and maintenance windows.

Software Availability	Percentage of Quarterly Software Fees Credited
> 99.5%	0%
95.0% - < 99.5%	5% (max of \$280)
90.0% - < 95.0%	10% (max of \$560)
80.0% - < 90.0%	20% (max of \$840)
70.0% - < 80.0%	30% (max of \$1120)
60.0% - < 70.0%	40% (max of \$1400)
< 50%	50% (max of \$2800)

**SECURITY INFORMATION.**

**Licensee Account Login:** For Software user interface access, AppDynamics uses TLS 1.0 with AES 256 bit encryption, terminated at the server to ensure end-to-end security over the wire. AppDynamics will also restrict user interface access to Licensee corporate networks for additional security, except as otherwise requested by Licensee.

**Hosting:** The platform (servers, infrastructure and storage) for the Software is and will remain hosted in one of the largest Tier III data centers in North America, specifically designed and constructed to deliver world-class physical security, power availability, infrastructure flexibility and growth capacity. AppDynamics' data center provider is and will remain SSAE 16 compliant, meaning it has been fully independently audited to verify the validity and functionality of its control activities and processes.

Every server for the Software is and will remain operated in a fully redundant fail-over pair to ensure high availability. Data is and will remain backed up nightly, stored redundantly and will be restored rapidly in case of failure. AppDynamics also provides an off-site backup service, which is available at an additional cost.

Security updates and patches are actively evaluated by engineers and will be deployed based upon the security risks and stability benefits they offer to the Software and Licensees.

**Data Access:** Access to the Software platform infrastructure and data is and will be secured by multiple authentication methods including RSA and DSA key pairs, passwords, and network access control lists. Infrastructure and data access is and will remain restricted to AppDynamics; employees and contractors subject to confidentiality agreements. For more information on use of data, please see AppDynamics' Privacy Policy located at <http://www.appdynamics.com/privacy-policy>.

System and network activity for the Software are and will remain actively monitored by a team of engineers 24/7. Failed authentication attempts are audited and engineers will be paged immediately so that any possible intrusion or threat can be investigated promptly. Standard firewall policies are and will remain deployed to block all access except to ports required for Software and Agent communication.

**Data Communication:** Agents will typically push data using one-way HTTP or HTTPS connections to a single host (known as a controller), which has been allocated to one or more Licensee accounts. AppDynamics also offers dedicated controllers for Licensees that require their data to be isolated (this may require payment of an additional fee).

For added security, Agents can be configured to send data using encrypted transmission by simply selecting HTTPS port 443 and setting "controller-ssl-enabled" to true in Agent configuration. Agents also have built in support for outbound HTTP proxies for Licensees using these security mechanisms.

AppDynamics uses random staggering on Agent data communication to the Software platform so traffic is spread evenly to minimize bursts and spikes of network traffic from Licensee's data center to the Software platform.

**Terms and Conditions:** NCS is pleased to provide these Services in accordance with this Service Description and the terms and conditions of the NCS Customer Master Services Agreement or Customer's separate signed agreement with NCS, as applicable. When NCS repairs the Customer Computer Device, the Customer understand and agree that NCS may replace original parts with new or used parts from the original manufacturer, or a different one. Replacement parts will be functionally equivalent to the original parts. When shipping components only; NCS will not provide Customer specified production release components for replacement; Customer will receive components in original manufacturer received condition unless otherwise stated in customer agreement. In our discretion, NCS may designate an affiliated company or contract with a third party to complete repairs on the Computer Device. If NCS decide that it is necessary to replace the Computer Device rather than repair it, the Customer will receive a Computer Device equivalent to or upgraded to the Computer Device the Customer originally purchased from us, as determined by us in our sole and reasonable discretion.

***Support Does Not Include:***

- Any Computer Device located outside of the United States (the fifty (50) states and the District of Columbia).
- Accessories, supply items, operating supplies, peripherals or parts such as batteries, frames, and covers.
- Media replacement for software NCS no longer ships with new Systems.
- Media replacement on non-NCS branded / manufactured software (i.e. Microsoft Office)
- Hardware or software support for Customer Factory Integration ("CFI") products.
- Hardware or software support for non-NCS peripherals.
- Preventative maintenance.
- Installation, de-installation, or relocation services.
- Repairs necessitated by software problems, or as a result of alteration, adjustment, or repair by anyone other than NCS (or its authorized representatives).
- Support for equipment damaged by misuse, accident, abuse of Supported System or components (such as, but not limited to, use of incorrect line voltages, use of incorrect fuses, use of incompatible devices or accessories, improper or insufficient ventilation, or failure to follow operating instructions), modification, unsuitable physical or operating environment, improper maintenance by Customer (or Customer's agent), moving the Supported System, removal or alteration of equipment or parts identification labels, or failure caused by a product for which NCS is not responsible.
- Support for damage resulting from an act of God such as, but not limited to, lightning, flooding, tornado, earthquakes, and hurricanes.
- Any activities or services not expressly described in this Service Description.
- Please read this Service Description carefully and note that NCS reserves the right to change or modify any of the terms and conditions set forth in this Service Description at any time, and to determine whether and when any such changes apply to both existing and future Customers.



## NCS Limited Battery Warranty Statement:

NCS Technologies, Inc. warrants to the original purchaser that the notebook Lithium-Ion battery pack is free from defects in material and/or workmanship for a period of one (1) year from the date of delivery. A battery shall also qualify for replacement under warranty if at any time during the warranty period it is unable to hold more than 50% of its original charge capacity. Shipping costs back to NCS must be prepaid by the original purchaser, but there is no charge for the inspection or return shipping of the battery or its replacement. If, upon inspection, NCS determines that the battery is defective in materials or workmanship, a new or refurbished replacement battery shall be provided. The replacement battery is warranted for the remainder of the original warranty or for thirty (30) days from the date of shipment, whichever is longer. The original purchaser must promptly notify NCS in writing if there is a defect in material or workmanship. Written notice in all events must be received by NCS before expiration of the warranty period.

**This warranty is not transferable.**

### *Support Does Not Include:*

- Hardware or software support for Customer Factory Integration ("CFI") products.
- Preventative maintenance.
- Installation, de-installation, or relocation services.
- Repairs necessitated by software problems, or as a result of alteration, adjustment, or repair by anyone other than NCS (or its authorized representatives).
- Support for equipment damaged by misuse, accident, abuse of Supported System or components (such as, but not limited to, use of incorrect line voltages, use of incorrect fuses, use of incompatible devices or accessories, improper or insufficient ventilation, or failure to follow operating instructions), modification, unsuitable physical or operating environment, improper maintenance by Customer (or Customer's agent), moving the Supported System, removal or alteration of equipment or parts identification labels, or failure caused by a product for which NCS is not responsible.
- Support for damage resulting from an act of God such as, but not limited to, lightning, flooding, tornado, earthquakes, and hurricanes.
- Any activities or services not expressly described in this Statement.
- Please read this Statement carefully and note that NCS reserves the right to change or modify any of the terms and conditions set forth in this Statement at any time, and to determine whether and when any such changes apply to both existing and future Customers.

NCS' and its suppliers' liability for failure to repair the NCS PC product to conform to the warranty after a reasonable number of attempts will be limited to a replacement of the NCS PC product or, at NCS' option, to a refund not to exceed the purchase price of the NCS PC product. These remedies are the original purchaser's exclusive remedies for breach of warranty. Under no circumstances shall NCS or its suppliers be liable for any special, incidental, or consequential damages based upon breach of warranty, breach of contract, negligence, strict liability, or any other legal theory. Such damages include, but are not limited to, loss of profits, loss of revenue, loss of data, loss of use of the NCS PC product or any associated equipment, cost of capital, cost of substitute or replacement equipment, facilities or services, down time, original purchaser's time, the claims of third parties, including customers, and injury to property.

### **DISCLAIMER OF WARRANTIES**

THE WARRANTY STATED ABOVE IS THE ONLY WARRANTY APPLICABLE TO THIS PRODUCT. ALL OTHER WARRANTIES, EXPRESS OR IMPLIED (INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE), ARE HEREBY DISCLAIMED. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY NCS, ITS AGENTS OR EMPLOYEES SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF THIS WARRANTY.

Some states do not allow limitations on how long an implied warranty lasts, so the above limitation may not apply to the Customer. Some states do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation or exclusion may not apply to the Customer. This Warranty gives the Customer specific legal rights, and the Customer may also have other rights that vary from state to state.

IN THE EVENT OF INCONSISTENCY BETWEEN ANY TERMS OF THIS CONTRACT AND ANY TRANSLATION THEREOF INTO ANOTHER LANGUAGE, THE ENGLISH LANGUAGE VERSION SHALL PREVAIL.

THIS DISCLAIMER OF WARRANTIES AND LIMITED WARRANTY ARE GOVERNED BY THE LAWS OF THE COMMONWEALTH OF VIRGINIA.

## 1. Overview

Arcserve support for arcserve products consists of operational assistance and technical support provided by Arcserve support team, in its reasonable judgment, during the term of Arcserve support procured by you. Arcserve will supply its software licenses for customers, who have valid support contract with Arcserve support with Upgrades that are made generally available ("GA") by Arcserve, together with any additional related Documentation.

Support is offered for GA Arcserve products unless arcserve specifically designates that software as not eligible for support or the software is licensed by Arcserve on an "as is" basis without warranties. You are only eligible to receive Arcserve support if you remain current on all applicable licensing and maintenance fees due and payable to Arcserve and are otherwise compliant with your applicable contractual obligations to Arcserve.

This Arcserve Support Policy and Terms is a policy only and may be updated or modified by Arcserve from time to time, in its sole discretion. Your continued use of the Support constitutes your acceptance thereof. The terms and conditions governing your use of the Support and any arcserve-proprietary software, Appliance or Documentation is subject to the applicable license agreement between you and arcserve.

Technical support will be performed in a timely and professional manner by qualified support engineers familiar with the arcserve products which includes:

- For all incidents, direct access to technical support and the ability to open and manage support incidents online through <https://arcserve.zendesk.com> or by seeking assistance via online chat or by telephone.
- 24x7x365 telephone support for Severity 1 incidents for software only issues.
- 24x7x365 access to <https://arcserve.zendesk.com> for online technical support and access to software product and Documentation, downloads, Fixes, Service Packs, patch downloads, user groups, user forums, FAQs, webcast recordings, usage tips, technical updates, as such are made available by Arcserve.
- Interactive remote diagnostic support allowing technical support engineers to troubleshoot an incident securely through a real-time browser-based remote control feature.
- Upgrades for the arcserve product software if and when Arcserve makes them GA. Any arcserve product provided is subject to the same usage limitations and restrictions as the arcserve product originally licensed to you by Arcserve.

Defined terms used in this policy include the following:

"Appliance" means hardware that is bundled with and operates the arcserve software licensed and pre-installed on the hardware.

"Arcserve Support" or "Support" means maintenance and support for arcserve products in addition to warranty support.

"Documentation" means specifications, user documentation, products guides and technical manuals and guides provided by Arcserve with arcserve software.

"Fix" means any change that Arcserve makes to the software, including changes made for purposes of maintaining system compatibility, error correction, improved operation and security and workarounds that establish or help to restore material conformity to the specifications in the Documentation for that software. A "Fix" is generally an interim solution for a specific customer problem, and is typically provided through a targeted point patch or hot fix. A "Fix" may also include any recommendations or advice provided to you including recommendations that you migrate to a current Version or Release, consideration of the incident in developing a future Version or Release of the software, or other steps to close an open incident in accordance with Arcserve support processes.

"Release" means a release of an arcserve product, which may contain minor new software product functionality, code, or compatibility and incorporates all previous Service Packs and Fixes (if any exist) since the last Version. Typically, a Release requires a new installation, rather than an overlay to the already installed software. Unless otherwise specified by Arcserve for a particular product, a Release is tied to the preceding Version and is designated by a number to the right of the decimal point such as 1.1, 1.2, 1.3, etc.

"Self-Service Support" means access to self-help tools provided on arcserve online support, such as software product compatibility information, previously published Fixes, Workarounds, knowledge documents and other arcserve software product solutions.

"Service Pack" means a set of cumulative Fixes for a particular Version or Release of the software, and typically does not contain new features or functionality. A Service Pack will be available as a download from arcserve online support. It is generally installed as a software product overlay (also known as a patch). Service Pack nomenclature is tied to the related Version or Release. For example, a Service Pack relating to Version 1.0 would be designated as 1.0 SP 1, 1.0 SP 2, etc., and a Service Pack for Release 2.1 would be designated as 2.1 SP1, 2.1 SP2, etc.

"Upgrades" software upgrades for Documentation revisions, error corrections, and product enhancements, Service Packs, Versions and Releases for the arcserve product for which arcserve support is provided.

"Version" means a release of an arcserve product that contains major changes in software product functionality, code, or compatibility and incorporates the previous Release (if one has occurred), Fixes and Service Packs (if they have occurred). Typically, a Version requires a new installation, rather than an overlay to the already installed software. Unless otherwise specified by Arcserve for a particular product, a Version is designated by the number to the left of the decimal point such as 1.0, 2.0, 3.0, etc.

"Workaround" means an interim resolution of an incident/problem and may include specific modifications to the software to address critical problems (sometimes also called "hot fixes"). In some cases, the incident addressed by the Workaround will be permanently resolved when you install the next Upgrade; the Workaround itself may be considered final if it materially reduces the impact of an error or defect.

**2. Service Level Objectives**

Arcserve will use reasonable efforts to meet the service level objectives stated in the Service Level Objectives table below with regard to remedial software support and will provide ongoing efforts to resolve Severity 1 support incidents. All incidents can be submitted to Arcserve on a 24 hours per day, 7 days per week, 365 days per year basis. Due to the complexities of technical environments, the table represents an estimate of response times only and actual response times may vary.

**Severity Level Descriptions**

"Severity 1" means "System Down" or a product-inoperative condition impacting a production environment for which no Workaround is immediately available, such as (i) production server or other mission critical systems are down; (ii) a substantial portion of mission-critical data is at a significant risk of loss or corruption; (iii) a substantial loss of service; (iv) business operations have been severely disrupted; or (v) an incident in which the software causes catastrophic network or system failure or that compromises overall system integrity or data integrity when the software is installed or when it is in operation (i.e. system crash, loss or corruption of data, or loss of system security) and significantly impacts ongoing operations in a production environment.

"Severity 2" means a high-impact business condition possibly endangering a production environment. The software may operate but is severely restricted.

"Severity 3" means a low-impact business condition with a majority of software functions still usable; however, some circumvention may be required to provide service.

"Severity 4" means (i) a minor problem or question that does not affect the software function, (ii) an error in software product Documentation that has no significant effect on operations; or (iii) a suggestion for new features or software product enhancement.

Service Level Objectives	
Incident Severity	Initial Response Time
1	1 hour
2	2 business hours**
3	4 business hours**
4	1 business day**

\*\* During normal business hours based on the time an incident is initially submitted online, through chat or telephonically.

**Chat Support:** Chat support is provided to all customers who are entitled to support and will be available during normal business hours of the respective countries. This is to help customers get preliminary level support on queries and product related incidents. At any point in time during the Chat session, if deemed necessary can open a support ticket for an engineer to contact you and work with you for further troubleshooting.

### 3. Supported Software

Arcserve Support is provided for the latest Version or Release of the software made GA by Arcserve. At arcserve's sole discretion support may be provided for one previous Version or Release ("GA-1") for an arcserve product that has not reached End of Service ("EOS") as set forth in Section 6 below.

### 4. Supported Appliance Hardware

So long as you remain active on Arcserve Support for the Appliance's software component, arcserve will take your initial request for assistance and provide limited support assistance by telephone for the Appliance. Arcserve has no obligation to support any modifications to the Appliance not performed by arcserve or arcserve's agents, or if the Appliance is not used in accordance with the Documentation. Arcserve has no obligation to replace Appliance or provide additional appliances if future Service Packs, Versions or Releases require appliances other than the originally procured Appliance in order to function according to the applicable Documentation. Arcserve recommends that you refresh your Appliance every three years to help maintain suitable processor performance.

### 5. Customer Responsibilities

In order to receive Arcserve Support, you must maintain a supported environment, which includes the current Versions and Releases and Service Packs of arcserve product. All computer hardware, operating systems, and third party software associated with the affected arcserve product must be maintained on the latest releases and version levels from the manufacturer that arcserve designates as compatible with the arcserve product.

In order to receive arcserve support, you must provide the following:

- Site identification number,
- Appliance serial number
- Incident severity level (determined in accordance with arcserve's incident Severity Level Descriptions above)
- Software/Release/Version/Service Pack
- Operating system/version, platform,
- Description of the problem or incident,
- Log files/test case, memory dumps, and file listings as required.
- Name(s) and contact information, including email addresses and telephone numbers, for technical personnel who are familiar with the problem or incident and your environment.
- Diagnostic routines if provided by arcserve and inform arcserve of the results.

In order to maintain an incident at Severity 1 status, arcserve may require that you make a technical contact continuously available to arcserve to provide further documentation and other information pertinent to the incident, as well as perform resolution testing and other activities necessary for Arcserve to provide continuous efforts in progressing the incident. If you are unable to provide such a resource, arcserve may reduce the severity level of the incident.

### 6. Technical Support Limitations

On-site maintenance and support services are not within the scope of Arcserve Support.

Arcserve shall not be obligated to provide technical support for non-arcserve product, arcserve product that is not used in accordance with the product Documentation, modifications to the arcserve product, any code not part of the base arcserve product, product functionality or problems associated with software products running on unsupported hardware, operating systems, or third party software.

Arcserve shall not be responsible for any changes in your hardware or operating environment that may be necessary as a result of a Workaround or Fix. You acknowledge that any changes you elect to make to your operating environment may detrimentally affect the performance of arcserve product and, despite the technical support to be provided hereunder, Arcserve shall not be responsible for such effects upon, or any resulting degradation in performance of, the arcserve product. Arcserve is not required to provide technical support if you do not perform your responsibilities as stated herein.

Consulting services are not provided as part of Arcserve Support. Arcserve Support does not include performing deployments, installations or roll-outs.

## 7. Hardware Onsite Support

Onsite support programs are available in 1-year and 3-year increments and pricing is determined by a combination of system price, warranty type, and length of coverage.

Coverage excludes software-related failures, acts of nature such as electrical storms, floods or fire, acts of war and terrorism, criminal acts, and the user's damage or negligence.

Help Desk troubleshooting and diagnostics is required to identify the failure and determine the appropriate actions and service components needed onsite prior to dispatching a technician. The Help Desk will then coordinate the components and the field engineer to perform the onsite repair within the terms of the program. Onsite Support is hardware replacement only and does not include onsite troubleshooting or any software services.

For 4-Hour Response support, a "Spares Kit" is required on premises to meet the support coverage timeframe. For "Next Business Day" support, the diagnosis must be complete by 3:00 p.m. local time or the next business day becomes the day following.

### Domestic Onsite Support

#### 24x7 – Next Business Day (NBD)

- All calls can be logged with arcserve on a 24 hours per day, 7 days per week, 365 days per year basis. Arcserve will use reasonable efforts to meet the service level objectives stated in the Service Level Objectives above. This is during normal business hours, as published on "Arcserve Support Online".
- If a customer is facing a Severity 1 situation outside of normal business hours for their location, they would follow the normal process for submitting the support request. However please note that after normal business hours the support for severity 1 tickets will be English Only.
- Once diagnosis is complete and components are onsite, a technician is dispatched next business day.
- Components are supplied through the standard warranty of our partner and shipped overnight from the headquarters of our partner.
- Onsite repairs occur during the coverage hours between 8:00 a.m. to 5:00 p.m. local time, Monday through Friday; any onsite requirements outside of coverage hours or on holidays are handled at established time and materials rates.
- Observed holidays include New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving and the day after, Christmas Eve and Christmas Day.

#### 24x7 – 4-Hour Response

- All calls can be logged with arcserve on a 24 hours per day, 7 days per week, 365 days per year basis. Arcserve will use reasonable efforts to meet the service level objectives stated in the Service Level Objectives above. This is during normal business hours, as published on "Arcserve Support Online".
- If a customer is facing a Severity 1 situation outside of normal business hours for their location, they would follow the normal process for submitting the support request. However please note that after normal business hours the support for severity 1 tickets will be English Only.
- A "Spares Kit" must be purchased with this warranty and components must be onsite prior to dispatching a technician.
- A technician will be onsite within 4 hours of diagnosis as long as proper components are onsite within the spare part kit.
- Onsite support that requires components not in the "Spares Kit" reverts to "Next Business Day" Support once the replacement components arrive on premises.

### International Onsite Support

"Next Business Day" coverage is available in most major cities in unrestricted countries worldwide; 4-hour coverage is available in most major cities except remote areas where it would be impractical. New locations and service-level enhancements are added frequently. Contact your arcserve account manager for comprehensive, up-to-date international coverage.

Regardless of the support program selected, response times go into effect once the replacement component arrives on premises. The lead time for expediting components internationally from US headquarters of our partner must take into account time in transit, customs clearance, and time en route to its destination.

**24x7 – Next Business Day**

- All calls can be logged with arcserve on a 24 hours per day, 7 days per week, 365 days per year basis. Arcserve will use reasonable efforts to meet the service level objectives stated in the Service Level Objectives above. This is during normal business hours, as published on "Arcserve Support Online".
- If a customer is facing a Severity 1 situation outside of normal business hours for their location, they would follow the normal process for submitting the support request. However please note that after normal business hours the support for severity 1 tickets will be English Only.
- Once diagnosis is complete and components are onsite, a technician is sent out next business day.
- Components are supplied through the standard warranty of our support partner and shipped overnight from their headquarters in the United States.
- Onsite repairs occur during the coverage hours between 8:00 a.m. to 5:00 p.m. local time, Monday through Friday; any onsite requirements outside of coverage hours or on recognized holidays are handled at established time and materials rates.
- Observed holidays include New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving and the day after, Christmas Eve and Christmas Day.

**24x7 – 4-Hour Response**

- All calls can be logged with arcserve on a 24 hours per day, 7 days per week, 365 days per year basis. Arcserve will use reasonable efforts to meet the service level objectives stated in the Service Level Objectives above. This is during normal business hours, as published on Arcserve Support Online.
- If a customer is facing a Severity 1 situation outside of normal business hours for their location, they would follow the normal process for submitting the support request. However please note that after normal business hours the support for severity 1 tickets will be English Only.
- A "Spares Kit" must be purchased with this warranty and components must be onsite prior to dispatching a technician.
- A technician will be onsite within 4 hours of diagnosis as long as proper components are onsite within the spare part kit. Onsite Support that requires components not in the "Spares Kit" reverts to "Next Business Day" Support once the replacement components arrive on premises.

**Onsite Support Process**

Prior to calling for hardware support, the user will need to locate the failed system's serial number to provide to Help Desk personnel to identify the system and its components and verify the level of Support coverage. This allows a quicker and more effective diagnosis. The user will also need to provide the site name, address, telephone number, the site contact name, and they should be prepared to provide a brief description of the problem.

**Help Desk**

Arcserve onsite hardware support partner will open a ticket and work with the user to troubleshoot the issue.

Once a diagnosis our support partner will make arrangements to send replacement components and dispatch a technician. Replacement components are shipped from the headquarters of our partner in America unless inventory is in forward stocking locations.

Our support partner will issue an RMA and produce the return shipping label for defective component(s)/system after the repair is complete. The site contact will be regularly updated on the progress of the service call until the problem is resolved, generally by telephone unless a printed report by email or fax is requested. In most cases our support partner covers the cost of overnight shipping, duties and taxes.

**8. End of Service Policy**

In accordance with this policy, arcserve decides, at its sole discretion, when an arcserve product Version or Release will be designated "end of service" ("EOS") and what the end of service date ("EOS Date") will be. Arcserve may also decide to withdraw support for a particular operating system, platform, application or database by following the EOS process. When a Version or Release reaches its EOS Date, new development and provision of new Service Packs or Fixes will not be provided for the EOS Version or Release and arcserve support will cease. Previously published Service Packs and Fixes for the EOS Version or Release will continue to be available as part of Self-Service support.

Arcserve will use reasonable efforts to provide licensees with a minimum of twelve (12) months' notice prior to the EOS Date of a Version or Release. If a third party withdraws support for an operating system, platform, application or database, arcserve may not be able to provide a longer period of EOS notice than that provided by the third party. Notifications of software product status may include upgrade or migration path information.

#### **9. Appliance Warranty/RMA Policy**

**Appliance Warranty Coverage:** Arcserve warrants to you that for all Appliances licensed by you from arcserve shall be delivered product in good working order free from defects in workmanship. In the case of product arriving in non-conforming condition, arcserve agrees to repair or replace said product as per the time periods specified in Exhibit B.

**Warranty Period:** All warranty periods shall begin from the date a product is invoiced unless otherwise stipulated.

**Exclusive Remedy:** You and your exclusive remedy and arcserve's sole liability is that arcserve will remedy, repair or replace any Appliance that fails during the Warranty Period. You agree that parts utilized in warranty services may be remanufactured and/or refurbished.

**Limitations:** The above warranties extend only to you and are contingent upon proper use of the Appliances as set forth in the Appliance Documentation and usage manual(s). The warranties will not apply to any failure caused by: (i) unusual physical, electrical or electromagnetic stress, in each case beyond the specifications provided in the Appliance documentation; neglect; misuse; fluctuations in electrical power beyond specifications; failure of air conditioning or humidity control; (ii) any equipment of software used with the Appliance that is not furnished by arcserve or authorized in writing to be used by arcserve; or (iii) installation, alteration or repair of the Appliance by anyone other than arcserve or as authorized in writing by arcserve.

**RMA Process:** Under no circumstances shall you return any allegedly non-conforming Appliance to arcserve except pursuant to a written Return Merchandise Authorization (RMA) issued by arcserve.

#### **10. Stabilization Policy**

An arcserve product becomes stabilized when no future enhancements, Versions, Releases, development or Service Packs are planned, but all other arcserve support features remain in effect, including Self-Service Support. Features and functionality are frozen at the current Version or Release level. You will receive notice that an arcserve product Version or Release has become stabilized. Notifications of software product status may include upgrade or migration path information. As this is generally the phase preceding an EOL phase, you may be offered the opportunity to license an alternate arcserve product which provides similar or, in some cases, enhanced functionality.

#### **11. Appliance End of Life Policy**

Arcserve decides, at its sole discretion, when an arcserve product will be designated EOL and what the end of life date ("EOL Date") will be. When an arcserve product reaches its EOL Date, no future development, Upgrades, Service Packs or Fixes and Firmware, will be provided for any Version or Release of the arcserve product and arcserve support for the arcserve product will cease. However, after the EOL Date, Arcserve will continue to provide Self-Service Support for the remaining agreed upon maintenance period.

#### **12. Notifications**

Any notifications described herein may be provided to you by your arcserve representative; by letter, fax or email, and/or by posting on online support.

**Exhibit A****Arcserve Warranty Service Policy**

Arcserve will provide either a one (1) year or three (3) year limited warranty on the Appliance hardware products beginning on the invoice date.

**Technical Support**

The Technical Support department is open Monday through Friday with a "follow the sun" methodology and can be contacted via the support contact details in the arcserve.com web site. Arcserve will work with Customer to troubleshoot and diagnose Appliance product issues.

**Four Types of Hardware Support**Warranty Depot Repair

Under warranty depot repair, Appliance product(s) are shipped to Arcserve

On-Site Repair

On-site repair is available upon request for an additional charge.

RMA Information

A valid RMA number is required to return any product to Arcserve. To obtain an RMA, Customer shall contact arcserve's Technical Support department. Arcserve reserves the right to use re-manufactured or refurbished product to replace defective products. In the event an Appliance product has become end of life and is no longer available Arcserve will work with Customer to choose a mutually agreed upon replacement.

Ship all RMA's to:

Arcserve Support  
Attn: RMA (RMA number)  
Address TBD  
City, State, Zip Code

- The RMA number must be clearly marked on the outside of the packaging.
- All RMAs must be shipped using adequate packaging. Customer will contact arcserve support, if needed, for guidance on proper packaging.
- All RMAs should be shipped using a reputable carrier that offers package tracking and insurance.
- Any shipping damage or lost RMAs will be the responsibility of Customer.

Information for RMA Request:

- Product Serial number (this is typically a 12 digit number found on the back on the Product)
- Customer contact name, phone number, email
- Description of problem and any troubleshooting already performed
- Level of service requested (part to be replaced, full system replacement, etc.)
- Shipping service requested (if expedited, to what level)
- Shipping address

Defective parts return

- Must be received within 15 days of RMA issuance.
- All defective parts returned after 30 days are subject to a re-stocking fee
- After 45 days the product is no longer returnable for credit.

Turnaround Time



Note: All times are estimates and are not guaranteed. Times vary based on parts availability and the extent of the problem. Estimates represent repair time in business days and do not include shipping time.

- DOA Systems (3 – 5 days)
- Warranty Repair Systems (5 – 10 days)

#### Modified Components

Modifying a component voids the warranty with the manufacturer of that component. In the event Arcserve is requested to modify a component Customer assumes the responsibility to replace the modified component should it fail.

#### Shipping Charges

In the event an RMA is needed for a defective Appliance product, Arcserve will cover the cost for domestic UPS ground shipping to Customer or End User. All inbound domestic and international shipping and outbound international shipping is the responsibility of Customer. Expedited shipping is available for an additional charge. In the event an Appliance product is returned and is deemed non-defective, warranty denied, or not authorized, there will be a charge to ship the Appliance product back to Customer. The cost of shipping will vary based on the returned item.

#### Shipping Damage

Arcserve provides transportation insurance for all shipments. If an item is damaged in shipping it is the responsibility of Customer to notify Arcserve of the shipping damage immediately. All original packaging must be retained for proper inspection in the claims process. Failure to retain original packaging or to contact Arcserve within 7 days of receipt of Product(s) may result in a denied claim. If a 3rd party shipping company is used, it is the responsibility of the 3rd party to handle the claims process and replacement product.

#### DOA Coverage

A Product is considered DOA if within the first 30 days of the Warranty any Appliance product or workmanship defects are present in the Appliance product supplied by Arcserve. Arcserve will cover the cost of domestic shipping to and from Customer or End User via the original ship method. (Definition of DOA: Any unit that will not boot up. All other issues upon receipt of unit are not considered DOA.)

#### North American On-site Appliance Warranty

On-site Appliance warranty is available for purchase on every Appliance product. This on-site warranty is provided through third party contract. Coverage includes phone support to diagnose any issues and on-site Appliance hardware replacement only. Customer will contact their arcserve account manager for on-site warranty options and pricing.

#### Warranty Exclusions

While Arcserve provides a complete and comprehensive warranty there are items and special circumstances that are not covered by arcserve's warranty. Arcserve is not responsible for lost data on storage media such as hard drives, tape devices, and disk on modules. Any damage done due to these added components, is not covered by arcserve's warranty.

#### Items not covered:

- Components not provided by Arcserve
- Customer Supplied Product installed by Arcserve
- Products damaged by accident, misuse, abuse, improper handling, or environmental conditions
- Products that have been physically damaged, written on, or altered/reworked in any way
- Products that have been defaced or had their labels or serial tags removed
- Products that show evidence of tampering
- External components such as keyboards, mice, cables

#### Out of Warranty Repair

Out of Warranty Product(s) are not covered by Arcserve

## **Channel End User Terms: Software**

### **1. INTRODUCTION**

1.1 By executing these Channel End User Terms in writing, purchasing or using the , the end user ("End User" or "Customer") agrees to these Channel End User Terms for Arcserve Software ("Software Terms"). Customer understands and agrees that Customer's right to use the Arcserve Software, ordered by Customer and submitted to Arcserve by an Authorized Arcserve Partner, is subject to Customer's compliance with this Agreement. The Software Terms will be the version that is in effect at the time that Arcserve receives an order from an Authorized Arcserve Partner.

### **2. DEFINITIONS**

2.1 "Access" means use of Arcserve Software remotely by an Authorized End User.

2.2 "Affiliate" with respect to Customer means any legal entity in which the Customer directly or indirectly Controls.

2.3 "Agreement" means these Software Terms and the License Metric for the applicable Arcserve Software, and any document incorporated expressly therein by reference.

2.4 "Authorized End Users" means Customer, Ordering Agency, Affiliate and their employees and independent contractors (but excluding any outsourcer facilities management providers, managed service provider, or application service provider) that are bound by terms and condition no less restrictive than those contained herein and are acting on behalf of Customer and not a third party.

2.5 "Authorized Use Limitation" means the quantity of the Arcserve Software authorized by Arcserve in accordance with the License Metric specified in the order between Arcserve and the Authorized Arcserve Partner.

2.6 "Authorized Arcserve Partner" means an entity having a valid, current authorization from Arcserve to market, offer and resell to Customer the right to use the Arcserve Software. Customer may find information regarding authorized Arcserve Partners here: [www.ca.com/partners](http://www.ca.com/partners).

2.7 "Arcserve Software" means the computer software programs, either provided individually or packaged as a software appliance, made generally available, including all Versions, Releases, provided as part of Support if applicable.

2.8 2.4 "Confidential Information" means any information, maintained in confidence by the disclosing Party, communicated in written or oral form, marked as proprietary, confidential or otherwise so identified, that is exempt from disclosure under the Freedom of Information Act (FOIA), 5 U.S.C. §552(b) under one or more exemptions to that Act, and/or any information that by its form, nature, content or mode of transmission would to a reasonable recipient be deemed confidential or proprietary, including, without limitation, Arcserve Offerings, Documentation, and any benchmark data and results produced.

- 2.9 "Control" means ownership or control of greater than fifty percent (50%) of an entity's shares or control of the board of such entity by force of law or contract, or the equivalent.
- 2.10 "Distributed" means the Arcserve Software designated as distributed that is generally used for independent usage across individuals systems or hardware based on the Licensed Metric in a decentralized form of computing.
- 2.11 "Documentation" means the documentation, technical product specifications and/or user manuals, published by Arcserve or any entity within a Arcserve group of companies (each a Arcserve entity) that is made generally available with Arcserve Software.
- 2.12 "License Metric" means the specific criteria published or maintained by Arcserve for measuring the usage of the Arcserve Software (such as MIPS, CPUs, tiers, servers, or users).
- 2.13 "Mainframe" means Arcserve Software designated as mainframe that is generally used for a large capacity processor that provides links to users through less powerful devices such as workstations or terminals based on the Licensed Metric in a centralized form of computing.
- 2.14 "Maintenance" means the provision of new Releases made available while on active Support or new Versions if applicable to the generally available Arcserve Software licensed by Customer.
- 2.15 "Parties" means individually and or collectively Arcserve and or the Customer.
- 2.16 "Perpetual License" means a license to use Arcserve Software for an indefinite period subject to compliance with the Agreement.
- 2.17 "Release" means a general available release of a Arcserve Software which may contain minor new software product functionality, code, or compatibility and incorporates all previous fixes (if any exist) since the last Version. Typically, a Release requires a new installation, rather than an overlay to the already installed software. Unless otherwise specified by Arcserve for a particular product, a Release is tied to the preceding Version and is typically designated by a number to the right of the decimal point such as 1.1, 1.2, 1.3, etc.
- 2.18 "Subscription" or "UMF" (Usage and Maintenance Fee) license means a license to use Arcserve Software for a specific period of time which shall include Support unless otherwise specified by Arcserve in its order with the Authorized Arcserve Partner.
- 2.19 "Support" means the provision of technical support and Maintenance provided for a particular Arcserve Software as specified in the Authorized Arcserve Partner's order with Arcserve.
- 2.20 "Term" means the period for which Customer is authorized to use the Arcserve Software as specified in Arcserve's order with Customer's chosen Authorized Arcserve Partner.
- 2.21 "Territory" is the location where Customer is authorized to install the Arcserve Software as specified in the Authorized Arcserve Partner's order with Arcserve.

2.22 "Version" means a release of a Arcserve Software that contains major changes in software product functionality, code, or compatibility and incorporates the previous release (if one has occurred), fixes and service Packs (if they have occurred). Typically, a Version requires a new installation, rather than an overlay to the already installed software. Unless otherwise specified by Arcserve for a particular product, a Version is designated by the number to the left of the decimal point such as 1.0, 2.0, 3.0, etc.

### **3. ORDERING AND DELIVERY**

12.1 3.1 Customer agrees that its authorization to use any Arcserve Software is based upon, and subject to, the order made on its behalf to Arcserve by an Authorized Arcserve Partner and that Customer shall not make use of a Arcserve Software beyond the scope authorized by Arcserve as part of such order, including without limitation, the License Metric. Arcserve will deliver or make available a Arcserve Software to Customer only upon, and in accordance with, Arcserve's execution of an order with the Authorized Arcserve Partner. Unless expressly required by U.S. Federal law in subcontracts for commercial information technology, neither an Authorized End User issued purchase order, nor the terms of an order between Ordering Activity and the Authorized Arcserve Partner shall modify the terms of the documents indicated herein.

3.2 The Arcserve Software will be delivered by Arcserve to Customer either by electronic delivery (ESD) or in tangible media carriage paid to (CPT), as defined in INCOTERMS 2010, from Arcserve's shipping point. Arcserve agrees to be responsible for all customs duties and clearances and title to any Arcserve hardware if included will pass upon point of delivery to carrier at Arcserve's shipping location.

### **4. CONFIDENTIAL INFORMATION**

4.1 The Parties agree that when receiving Confidential Information from the disclosing Party, that the receiving Party shall hold it in confidence and shall not disclose or use such information except as permitted under the Agreement. The receiving Party shall treat the disclosing Party's Confidential Information confidentially and in the same manner as it treats its own proprietary and/or confidential information, which shall not be less than a reasonable standard of care, and the receiving Party shall use Confidential Information only for the purposes described in the Agreement. Confidential Information may be disclosed to receiving Party's Authorized End Users (Ordering Agencies), employees, agents, financial advisors, contractors, consultants, and attorneys on a need-to know basis and the receiving Party shall ensure that such persons maintain such Confidential Information pursuant to the terms of the Agreement.

4.2 The receiving Party shall be permitted to disclose Confidential Information in connection with a judicial or administrative proceeding to the extent that such disclosure is required under applicable law or court order, provided that the receiving Party shall, where reasonably possible, give the disclosing Party prompt and timely written notice of any such proceeding and shall offer reasonable cooperation in any effort of the disclosing Party to obtain a protective order.

4.3 For the purposes of the Agreement, Confidential Information shall exclude: (i) information which the receiving Party has been authorized in writing by the disclosing Party to disclose without restriction; (ii) information which was rightfully in the receiving Party's possession or rightfully known to it prior to receipt of such information from the disclosing Party; (iii) information which was rightfully disclosed to the receiving Party by a third Party having proper possession of such information, without restriction; (iv) information which is part of or enters the public domain without any breach of the obligations of confidentiality by the receiving Party; and (v) information which is independently developed by the receiving Party without use or reference to the disclosing Party's Confidential Information.

4.4 Nothing in the Agreement will (i) preclude Arcserve from using the ideas, concepts and know-how which are developed in the course of providing any Arcserve Software to Customer or (ii) be deemed to limit Arcserve's rights to provide similar Arcserve Software to other customers. Customer agrees that Arcserve may use any feedback provided by Customer related to any Arcserve Software for any Arcserve business purpose, without requiring consent including reproduction and preparation of derivative works based upon such feedback, as well as distribution of such derivative works.

4.5 The receiving Party agrees, upon request of the disclosing party, to return to the disclosing Party all Confidential Information in its possession or certify the destruction thereof.

4.6. For Arcserve Software (including code) and Documentation, the material terms of the Agreement, and Customer's and/or Arcserve's Confidential Information expressly designated in writing as perpetually confidential, the obligations of this section are perpetual and shall survive termination. For all other Confidential Information, the foregoing obligations shall extend for five (5) years from the date of initial disclosure.

4.7 An Ordering Activity shall also be permitted to disclose Confidential Information when required under the Freedom of Information Act, 5 U.S.C. § 552, and retains the discretion to determine whether Confidential Information falls within any exemptions to disclosure under that statute. Additionally, Arcserve recognizes that courts of competent jurisdiction may require certain information to be released.

## **5. TITLE**

5.1. Arcserve retains all right, title, copyright, patent, trademark, trade secret and all other proprietary interests to all Arcserve Software and any derivatives thereof. No title, copyright, patent, trademark, trade secret or other right of intellectual property not expressly granted under the Agreement is exchanged between the Parties.

## **6. SOFTWARE OFFERING & OBLIGATIONS**

6.1. Arcserve grants the Customer a limited, non-exclusive, non-transferable license, for the Term:

6.1.1.1.1. install and deploy the Arcserve Software in the Territory up to the Authorized Use Limitation.

6.1.1.1.2. permit its Authorized End Users Access to the Arcserve Software for Customer's and Affiliates' internal business wherever located.

6.1.1.1.3. make a reasonable number of copies of the Arcserve Software for disaster recovery "cold standby", backup and archival purposes. Use of such copies is limited to testing Customer's disaster recovery procedures and effectiveness and as is necessary during any reasonable period subsequent to the occurrence of an actual disaster during which Customer cannot operate the Arcserve Software.

6.1.1.1.4. relocate Arcserve Software to a new Customer location within the Territory upon prior written notice.

6.2. The specifications and specified operating environment information of the Arcserve Software may be found in the Documentation accompanying the Arcserve Software, if available (e.g., a user manual, user guide, or readme.txt or notice.txt file).

6.3. Upon request by Arcserve, Customer agrees to provide records reasonably requested by Arcserve to verify its compliance with the Authorized Use Limitation during the period in which Customer is licensed to use the Arcserve Software and for a period of twelve (12) months after expiration including certified copies of statements or records as applicable as long as Arcserve is in compliance with licensee's security requirements, as provided to Arcserve by Licensee/Customer. Such reports will be based on the License Metric for the Arcserve Software ordered for Customer, as specified in the Authorized Arcserve Partner's order with Arcserve.

6.4. The grant of license is contingent upon Customer's compliance with the following obligations set out under this provision: Customer agrees, that it shall not: (i) access or use any portion of the Arcserve Software not expressly authorized by Arcserve in its order with the Authorized Arcserve Partner or the Documentation of the Arcserve Software; (ii) cause or permit de-compilation, reverse engineering, or otherwise translate all or any portion of the Arcserve Software; (iii) modify, unbundle, or create derivative works of the Arcserve Software and/or Documentation; (iv) rent, sell, lease, assign, transfer or sublicense the Arcserve Software or use the Arcserve Software to provide hosting, service bureau, on demand or outsourcing services for the benefit of a third party; (v) remove any proprietary notices, labels, or marks on or in any copy of the Arcserve Software or Documentation; (vi) use the Arcserve Software beyond the Authorized Use Limitation.

6.5. Arcserve reserves the right, on notice to the Customer, to conduct an audit remotely or onsite of Customer and/or its Affiliates facilities to verify Customer's compliance with the terms of the Agreement as long as Arcserve is in compliance with licensee's security requirements, as provided to Arcserve by Licensee/Customer. Arcserve agrees that such audit shall be conducted during regular business hours at Customer's offices and Arcserve shall endeavor to conduct such audit so as not to interfere unreasonably with Customer's activities and/or use an independent third party to conduct the audit subject to terms of non-disclosure if required. Arcserve also agrees to comply with all of Customer's security requirements before accessing Customer's site.

6.6. All rights not specifically granted hereunder are expressly reserved.

## **7. SUPPORT OFFERING**

7.1 If Support is purchased by Customer, Arcserve will provide Customer with technical support for the Arcserve Software, according to the Support specified in the Authorized Arcserve Partner's order with Arcserve, to operate according to the Documentation, help desk support and Maintenance for the Arcserve Software based on Support guidelines as described on <http://www.support.ca.com>. 7.2 In order to initiate an issue, Customer will provide Arcserve sufficient information so that Arcserve can provide assistance to Customer in a timely manner.

7.3 Arcserve will provide a minimum of twelve months prior written notice to Customer if Arcserve ceases to provide new Versions or Releases for a Arcserve Software product.

7.4 Arcserve will renew Support for the Arcserve Software upon its acceptance of an order with an Authorized Arcserve Partner for such Support.

## **8. THIRD PARTY TERMS**

In the event that the Arcserve Software contains third-party software components, additional terms, notices and/or information that may be applicable to such third-party software components may be found in the Documentation accompanying the Arcserve Software (e.g., a user manual, user guide, or readme.txt or notice.txt file) The parties acknowledge that the terms of this agreement do not apply to such third party technology. The applicability of any third party technology license agreement specified in the program documentation or readme files or notice files that may be delivered to you with any Arcserve component shall be determined solely between you and the third party licensor. Arcserve shall have no liability to you or to any other party arising out of such third party license agreement.

## **9. WARRANTY**

9.1 For Distributed Software. Arcserve warrants that the Arcserve Software will operate materially in accordance with the applicable specifications set forth within the Documentation for a period of ninety (90) days after delivery of the Arcserve Software to Customer subject to Customer's compliance with the Agreement.

9.2 For Mainframe Software. Arcserve warrants that the Mainframe Software will operate materially in accordance with the applicable specifications set forth within the Documentation for the Term, subject to Customer's compliance with the Agreement.

## **10. PERFORMANCE WARRANTY REMEDY**

10.1. If Arcserve has breached either warranty set forth in the section entitled: Performance Warranty, Customer's remedy is for Arcserve to, in consultation with Customer, to either (i) use reasonable efforts consistent with industry standards to cure the defect, or (ii) replace the Arcserve Software(s) with one that materially complies with the Documentation, or (iii) terminate the license and provide a pro-rata refund to the Authorized Arcserve Partner of the license fees paid and or Support fees. If option (iii)

applies, the pro-rata refund shall be calculated on the number of months left remaining on the Term of the applicable Transaction Document or if the Arcserve Software is licensed under a Perpetual License, using (only for purposes of a refund calculation) an amortization schedule of three (3) years.

10.2. Warranty remedies are conditioned upon (i) any error or defect complained of is reasonably reproducible by Arcserve, (ii) the Arcserve Software is not modified and is being used in accordance with Arcserve Documentation, and (iii) the breach is not attributable in whole or in part to any non-Arcserve product(s) or service(s).

**10.3. THE ABOVE WARRANTIES ARE THE SOLE WARRANTIES PROVIDED BY ARCSERVE. NO OTHER WARRANTIES, INCLUDING THAT THE ARCSERVE SOFTWARE IS ERROR FREE, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT, OR SUITABILITY AND/OR THE WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE ARE MADE BY ARCSERVE OR ITS SUPPLIERS.**

#### **11. INDEMNIFICATION**

11.1. Arcserve will indemnify, defend and hold harmless Customer's use of the specific Arcserve Software licensed or purchased by Customer under this Agreement infringes any valid US patent or copyright within the jurisdictions where Customer is authorized to use the Arcserve Software at the time of delivery. Arcserve may, at its option and expense: (i) procure for Customer the right to continue to use the Arcserve Software; (ii) repair, modify or replace the Arcserve Software so that it is no longer infringing; or (iii) provide a prorated refund to the Authorized Arcserve Partner of the fees paid for the Arcserve Software which gave rise to the indemnity calculated against the remainder of the Term from the date it is established that Arcserve is notified of the third Party claim. For Arcserve Software licensed on a perpetual basis, an amortization schedule of three (3) years shall be used for the basis of the refund calculation. 12.2 Arcserve shall have no liability: (i) in the event the allegation of infringement is a result of a modification of the Arcserve Software except a modification by Arcserve, (ii) if the Arcserve Software is not being used in accordance with Arcserve's specifications, related documentation and guidelines, (iii) if the alleged infringement would be avoided or otherwise eliminated by the use of a Arcserve published update or patch, (iv) if the alleged infringement is a result of use of the Arcserve Software in combination with any third party product. The indemnifications contained herein shall not apply and Arcserve shall have no liability in relation to any Arcserve Software produced by Arcserve at the specific direction of Customer. THE FOREGOING PROVISIONS STATE THE ENTIRE LIABILITY AND OBLIGATIONS OF Arcserve REGARDING CLAIMS OF INFRINGEMENT, AND THE EXCLUSIVE REMEDY AVAILABLE TO CUSTOMER WITH RESPECT TO ANY ACTUAL OR ALLEGED INFRINGEMENT OR MISAPPROPRIATION OF ANY INTELLECTUAL PROPERTY OR OTHER PROPRIETARY RIGHTS.

11.2.

11.3.

11.4. The above indemnities are contingent upon Customer providing prompt notice of any claim of infringement and assistance in the defense thereof. Arcserve will be given an opportunity to intervene in any suit or claim filed against the Customer, at his own expense, through counsel of his 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.

## **12. LIMITATION OF LIABILITY**

EXCEPT IN THE CASE OF A BREACH OF TITLE, INFRINGEMENT OF ARCSERVE'S INTELLECTUAL PROPERTY RIGHTS OR CONFIDENTIALITY, OR OF THIRD PARTY CLAIMS ARISING UNDER THE INDEMNIFICATION SECTION, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW NEITHER PARTY (SHALL BE LIABLE FOR A) ANY INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL, OR PUNITIVE DAMAGES OF ANY NATURE, INCLUDING, BUT NOT NECESSARILY LIMITED TO, LOSS OF PROFIT, DAMAGES RELATING TO MONIES SAVED OR FEES GENERATED AND OR ANY LOSS OF DATA BY USE OF ANY ARCSERVE SOFTWARE, REGARDLESS OF WHETHER A PARTY WAS APPRISED OF THE POTENTIAL FOR SUCH DAMAGES; AND B) IN NO EVENT WILL A PARTY'S LIABILITY, EXCEED THE FEES PAID AND OR OWED TO ARCSERVE FOR THE THEN CURRENT INITIAL OR RENEWAL TERM FOR WHICH THE CUSTOMER HAS PROCURED THE ARCSERVE SOFTWARE. The foregoing exclusion/limitation shall not apply to (1) fraud; (2) to express remedies provided under any FAR, GSAR or Schedule 70 solicitation clauses incorporated into this contract, including without limitation the GSAR 552.215-72 Price Adjustment – Failure to Provide Accurate Information (August 1997) or GSAR 552.238-75 Price Reductions (May 2004) Alternate I (May 2003); or (3) for any other matter for which liability cannot be excluded by law.

## **13. TERM & TERMINATION**

13.1. This Agreement shall continue in effect unless otherwise terminated in accordance with this section.

13.2. When the end user is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be made as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Arcserve 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.

13.3. Termination does not release either Party from any liability which, at the time of such termination, had already accrued to the other Party or which is attributable to a period prior to such termination, nor preclude either Party from pursuing any rights or remedies it may have under law or in equity with respect to any breach of this Agreement.

## **14. DISPUTE RESOLUTION**

When the end user is an instrumentality of the US Government, this is a contract with the US Government and is subject to Federal law of the United States, including the Federal Acquisition Regulation. Venue and jurisdiction of any disputes are determined by the applicable federal statute (Federal Tort Claims Act, Contract Disputes Act, etc.).

## **15. GENERAL TERMS**

15.1. **Amendments.** The terms of the Agreement may only be amended by mutual written agreement of the Parties.

15.2. **Force Majeure.** Except for payment obligations and obligations pertaining to non-disclosure, notwithstanding any contrary provision in the Agreement, neither Party will be liable for any action taken, or any failure to take any action required to be taken, in the event and to the extent that the taking of such action or such failure arises out of causes beyond a Party's control, including, without limitation, war, civil commotion, act of God, strike or other stoppage of labor, any law, decree, regulation or order of any government or governmental body (including any court or tribunal).

15.3. **Independent Contractors.** The Parties expressly agree that the relationship between them is that of customer-independent contractor.

15.4. **Customer Data.** If Customer transfers any personal data to Arcserve as a requirement pursuant to any Arcserve Software, then Customer represents that (i) it is duly authorized to provide personal data to Arcserve and it does so lawfully in compliance with relevant legislation, (ii) Arcserve and any entity within the Arcserve group of companies (each a "Arcserve entity") or its subcontractors can process such data for the purposes of performing its obligations and (iii) Arcserve may disclose such data to any Arcserve entity and its subcontractors for this purpose and may transfer such data to countries outside of the country of origin. Arcserve, Inc. is Safe Harbour certified and the Arcserve Entities have committed to comply with relevant data protection/privacy legislation. The foregoing notwithstanding Arcserve must be in compliance with licensee's security requirements.

15.5. **Assignment.** If Arcserve assigns or sells or otherwise transfers its rights to a business or product line or substantially all of its assets and provided such Party agrees to perform the obligations under the Agreement, then Arcserve may transfer its rights and obligations under the Agreement upon written notice to Customer. Licensee may assign this Agreement only if Licensee complies with Arcserve's then prevailing policies respecting assignment of licenses, which includes a requirement that the scope of use of the Product not be expanded beyond the business of Licensee and the business of Licensee's majority-owned subsidiaries. Assignment by Arcserve is subject to FAR 42.12 "Novation and Change-of-Name Agreements" (Sep. 2013). . The Agreement shall be binding on the Parties hereto and their respective successors and assigns.

15.6. **Import Export.** Customer acknowledges that the Arcserve Software is subject to control under U.S. law, including the Export Administration Regulations (15 CFR 730-774) and agrees to comply with all applicable import and export laws and regulations. Customer agrees that the Arcserve Software will not be exported, re-exported or transferred in violation of U.S. law or used for any purpose connected with chemical, biological or nuclear weapons or missile applications, nor be transferred or resold, if Customer has knowledge or reason to know that the Arcserve Software is intended or likely to be used for such purpose.

15.7 **Maintenance Reinstatement Fees.** If Authorized End User fails to pay the applicable maintenance fee, then Licensee may reinstate maintenance thereafter by paying to Arcserve a fee equal to 100% of Arcserve's then prevailing maintenance fee under the GSA Schedule contract for each year for which the maintenance fee has not been paid.

15.7. **Announcements.** Neither Party may issue press releases relating to the Agreement without approving the content with the other Party. 15.8. **Counterparts.** This Agreement, as applicable, may be signed in any number of counterparts by the Parties and each part shall be considered part of the whole and valid, legally binding document.

15.9. **Notice.** All notices hereunder shall be delivered to the other Party identified in the Agreement either personally, via certified mail, facsimile or overnight courier. If delivered personally, notice shall be deemed effective when delivered; if delivered via facsimile, notice shall be deemed effective upon electronic confirmation; and if delivered via certified mail or overnight courier, notice shall be deemed effective upon confirmation of delivery.

15.10. **Headings.** The section headings used herein are for information purposes only and shall not affect the interpretation of any provision of this Agreement.

15.11. **Validity.** In the event any term or provision of the Agreement shall be held to be invalid, the same shall not affect in any respect whatsoever the validity of the remainder of the Agreement.

15.12. **Third Parties.** This Agreement shall not create any rights in favor of, or any obligations owed by, any third party. The Parties agree that any action arising from this Agreement shall solely be brought by Customer or Arcserve.

15.13. **Choice of Law.** The Agreement shall be governed by United States Federal Law.

15.14. **Survival.** Sections pertaining to Confidentiality, Title, Limitation of Liability, Termination, and Import Export shall survive termination of this Agreement.

15.15. **Entire Agreement.** The Agreement and all documents incorporated by reference therein shall comprise the entire agreement as pertaining to the subject matter thereof and all other prior representations, proposals, and other such information exchanged by the Parties concerning the subject matter is superseded in their entirety by the Agreement. Any conflict or inconsistency among or between the terms and conditions of the documents comprising the Agreement shall be resolved according to the following order of precedence, in the order of the greatest control to the least: (1) U.S. Federal law, (2) this License Agreement.

Notwithstanding the foregoing, unless expressly required by U.S. Federal law in subcontracts for commercial information technology, neither an Authorized End User issued purchase order, nor the terms of an order between Authorized End User and the Authorized Arcserve Partner or Prime Contractor, shall modify the terms of the documents indicated herein.

# ATAKAMA EULA

## ARTICLE 1. THE SOFTWARE

**1.01. “Software” Defined.** The term “Software” as used in this agreement shall mean all computer programs licensed under this Agreement, including all related files, documentation, and other materials, whether in whole or in part, including any and all modifications, derivative works, and copies of the foregoing, regardless of the form or media in or on which they may exist.

## ARTICLE 2. LICENSE GRANT AND LIMITATIONS

**2.01. Grant of License.** Licensor hereby grants, and Subscriber hereby accepts, a nontransferable, non-exclusive, worldwide, and royalty-free license to use the Software, subject to the conditions and for the period specified in this Agreement.

**2.02. Use of Software.** Subscriber agrees to use the Software for its sole and exclusive benefit *and* internal purposes.

**2.03. Copies.** Except as provided in this Agreement, Subscriber shall not copy any portion of the Software. Subscriber may make one copy (“backup copy”) of the computer program portion of the Software for archival purposes, and may *modify or adapt the Software or convert it to a different language or configuration*: and may make an additional copy of the Software for use in adapting, modifying, or converting it as authorized herein.

**2.04. Subscriber’s Responsibilities.** Subscriber shall be exclusively responsible for the supervision, management, and control of its use of the Software, including, but not limited to:

1. Assuring proper configuration of equipment or devices;
2. Establishing adequate operating methods; and
3. Implementing procedures sufficient to satisfy its obligations for security under this Agreement, including appropriate action between it and its employees to prevent misuse, unauthorized copying, modification, or disclosure of the Software.

**2.05. License Period.** The license granted in this Agreement shall remain in force for a minimum of one year and may be renewed for a one year period on the anniversary of the effective date by exercising an option, or by both parties executing a purchase order in writing.

**2.06. Modifications or Adaptations.** Subscriber may modify the Software for its own use and merge it into other material to form revised materials, provided that upon termination of the license granted in this Agreement, the licensed materials shall be deleted from the revised materials and destroyed. Any such revised materials shall be used strictly in accordance with the terms of this Agreement.

**2.07. Supply of Updated Version of Software.** Licensor shall notify Subscriber when an updated version of the computer program portion of the Software has been designed and is available for distribution and, if Subscriber is current in all payments required under this Agreement, shall supply a copy of the updated version to Subscriber.

## ARTICLE 3. PROPERTY RIGHTS

### 3.01. Ownership Rights to Software.

(a) Subscriber acknowledges and agrees that the Software is the confidential and proprietary property of Licensor, and except to the extent expressly authorized in this Agreement, Subscriber receives no rights to and will not sell, assign, lease, market, transfer, encumber or otherwise suffer to exist any lien or security interest on, nor allow any third person, firm, company, or other entity to copy, reproduce or disclose the Software, whether in whole, in part, or in any manner whatsoever.

(b) Ownership of derivative works should be as set forth in the copyright statute, 17 U.S.C. § 103 and the FAR clause at 52.227-14, but at a minimum, the Ordering Activity shall receive unlimited rights to use such derivative works at no further cost. In no event shall any support, maintenance, services or Software provided to Subscriber by Licensor pursuant to this Agreement be deemed to be based on any “work made for hire” agreement between the Parties.

**3.02. Nondisclosure of Software.** Subscriber acknowledges that the Software is the confidential and proprietary property of Licensor. Subscriber agrees not to sell, rent, license, distribute, transfer, or, directly or indirectly, disclose or permit the sale, rental, licensing, distribution, transfer, or disclosure of the Software or its contents to any other party, and to use its best efforts to prevent inadvertent disclosure of the Software to any third party, either during the term of this Agreement or thereafter.

**3.03. Security.** Subscriber agrees to keep the Software in a secure place, under access and use restrictions designed to prevent disclosure of the Software to unauthorized persons and not less strict than those applicable to Subscriber's own trade secrets.

**3.04. Degree of Care.** Subscriber further agrees to instruct its personnel to keep the Software confidential by using the same care and discretion that they use with other data designated by Subscriber as confidential.

**3.05. Disclosure May Constitute Breach.** Subscriber agrees that any disclosure of the Software to a third party may constitute a material breach of this Agreement pursuant to the Contract Disputes Act.

**3.06. Reserved.**

**3.07. Copyright or Other Marks.** Subscriber agrees not to remove, deface, or destroy any copyright, patent notice, trademark, service mark, other proprietary markings, or confidential legends placed on or within the Software.

#### **ARTICLE 4. PAYMENT**

**4.01. Services Payment.** In payment for the services supporting the Software licensed under this Agreement, Subscriber shall pay Licensor the annual fee as set out in the Order Form in accordance with the GSA Schedule Pricelist.

**4.02. Payment of Taxes.** Vendor shall state separately on invoices taxes excluded from the fees, and the Licensor 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.

**4.03. Renewal License Fee.** This license may be renewed by exercising an option, or by both parties executing a purchase order in writing. Subscriber shall pay Licensor a renewal license fee as described in the Order Form in accordance with the GSA Schedule pricelist.

**4.04. Reserved.**

#### **ARTICLE 5. DELIVERY, INSTALLATION, AND TRAINING**

**5.01. Delivery of Software.** Licensor shall deliver the Software to Subscriber by *link*.

**5.02. Acceptance.** The Software shall be deemed to have been accepted by Subscriber upon delivery. If the Software is deemed unacceptable, Subscriber shall return the Software without change with a report detailing the reasons for its unacceptability.

**5.03. Implementation.** Licensor shall provide Subscriber with a web-based implementation and training session as described in the Order Form. Subscriber can opt for onsite implementation and training and will be responsible for mutually-agreed upon travel costs and expenses in accordance with Federal Travel Regulation (FTR)/Joint Travel Regulations (JTR), as applicable.

**5.04. Additional Technical Support.** Licensor shall provide additional technical support services to Subscriber on request and as available at the rates specified in the Order Form.

**5.05. Correction of Software Problems.** Upon discovery of any coding error in the computer program portion of the Software that prevents it from performing substantially in accordance with the published specifications for the Software, Subscriber shall notify Licensor and provide supporting data, including printouts showing the claimed defective performance. Upon review and acceptance of the defined coding error, Licensor shall either:

1. Devise and deliver to Subscriber programming or procedural instructions designed to avoid the claimed error; or
2. Upon receipt by Licensor of the original version of the computer program portion of the Software, provide and deliver to Subscriber a completely updated version designed to avoid the claimed error.

#### **ARTICLE 6. WARRANTY, INDEMNIFICATION AND LIMITATION OF LIABILITY**

**6.01. Warranty.** Licensor warrants to Subscriber that the Software, in unmodified form and when used as authorized by this Agreement, will perform materially in accordance the Specifications for the term of this Agreement ("Warranty Period"). If during the Warranty Period, Subscriber demonstrates to Licensor that the Software does not perform materially in accordance with its Specifications ("Defect"), then Licensor, within 30 days of receiving written notice of such a Defect, shall respond to Subscriber with either (a) a statement that Licensor has in good faith and using reasonable efforts not yet been able to duplicate the alleged Defect, or

(b) a plan indicating whether Licensor intends, at its option and expense, to: (1) use commercially reasonable efforts to correct the Defect, or (2) provide Subscriber with replacement Software of equivalent or greater functionality. If Licensor determines that neither of the preceding options is commercially feasible, then Licensor shall return to Subscriber any license fees paid for the Software in question, and in that event, any licenses granted by Licensor to Subscriber for the Software shall terminate.

#### **6.02. Warranty Disclaimer.**

**THE PROVISIONS OF THIS ARTICLE 6 STATE THE SOLE AND EXCLUSIVE REMEDIES AVAILABLE TO LICENSEE, AND LICENSOR'S SOLE AND EXCLUSIVE LIABILITY, FOR ANY PERFORMANCE OR NONPERFORMANCE OF THE SOFTWARE. LICENSOR DISCLAIMS ALL OTHER WARRANTIES, INCLUDING ALL EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, TITLE, NONINFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE.**

**6.03. Indemnification by Licensor.** (a) Except as otherwise provided, Licensor, at its own expense, will have the right to intervene to defend, indemnify, and hold Subscriber harmless from any claim made or threatened or any suit or proceeding brought against Subscriber insofar as it is based on an allegation that any Software furnished to Subscriber under this Agreement infringes any copyright or patent in existence on the date the Software was initially provided to Subscriber, but only if Subscriber does all of the following:

1. Notifies Licensor of that action in writing within a reasonable period of time (such that Licensor suffers no prejudice to its rights);
2. Gives Licensor the right to control and direct the defense and settlement of that action;
3. Makes no compromise, settlement, or admission of liability; and
4. Provides reasonable assistance and cooperates in the defense of that action at Licensor's expense.

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. Subject to the limitations set forth in this Article 6, Licensor shall pay any resulting damages, costs and expenses finally awarded to a third party, including but not limited to reasonable legal fees. Licensor will have no responsibility for the settlement of any claim, suit, or proceeding made by Subscriber without Licensor's prior written approval.

(b) If any Software is held to infringe and the use of that Software is enjoined, Licensor, at its expense, will do one of the following:

1. Procure for Subscriber the right to continue using the infringing or potentially infringing Software;
2. Replace the infringing or potentially infringing Software with non-infringing Software; or
3. Modify the infringing or potentially infringing Software so that it become non-infringing.

If none of the foregoing remedies are commercially feasible, then Licensor will return to Subscriber any license fees paid for that Software, and upon such a return, any licenses granted to Subscriber for that Software shall terminate immediately.

(c) Licensor's obligations as stated in this Section will not apply to any claim, suit or proceeding to the extent it is based on any of the following:

1. Any modification of the Software other than by Licensor or the combination of the Software with non-Licensor hardware or software, if the claim, suit or proceeding would have been avoided if the Software had not been so modified or combined;
2. Subscriber's use of other than the latest release of the Software if Subscriber is informed that a claim, suit or proceeding can be avoided by use of the latest release;
3. Any use of the Software not authorized by this Agreement; or
4. A modification or derivative work made by Licensor based on Subscriber's instructions, designs or specifications.

(d) This Section 6.03 sets forth the entire obligation of Licensor, and Subscriber's exclusive remedy, for the actual or alleged infringement by any Software of any patent, copyright, trade secret or other intellectual property right of any person or entity.

#### **6.04. Reserved.**

#### **6.05. Limitation of Liability.**

IN NO EVENT WILL EITHER PARTY BE LIABLE TO EACH OTHER OR TO ANY THIRD PARTY FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL OR SPECIAL DAMAGES, EVEN IF THE PARTY TO BE CHARGED HAS

BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL LICENSOR'S TOTAL LIABILITY UNDER ANY OR ALL PROVISIONS OF THIS AGREEMENT FOR ALL CAUSES OF ACTION ON A CUMULATIVE BASIS EXCEED THE PAYMENTS ACTUALLY MADE TO LICENSOR UNDER THIS AGREEMENT FOR ALL SOFTWARE OR SERVICES OR SUPPORT OR MAINTENANCE RESULTING IN LIABILITY OR OBLIGATIONS ON LICENSOR'S PART. NOTWITHSTANDING THE FOREGOING, WITH REGARD TO LICENSOR'S LIABILITY UNDER THIS SECTION, LICENSOR'S TOTAL LIABILITY SHALL NOT EXCEED SUCH PAYMENTS.

## **ARTICLE 7. TERMINATION**

**7.01. 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 brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Licensor shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer.

**7.02. Reserved.**

**7.03. Effect of Termination.** Subscriber agrees that immediately upon the operation of Section 7.01, whether or not it receives notice of termination, it shall immediately destroy all copies of the Software and certify that fact to Licensor. Upon termination of the license granted hereunder, Licensor's obligations under this Agreement shall cease.

## **ARTICLE 8. GENERAL TERMS AND CONDITIONS**

**8.01. Notices.** Unless otherwise provided in this Agreement, any notice required or permitted by this Agreement to be given to either party shall be deemed to have been duly given if in writing and delivered personally or mailed by first-class, registered, or certified mail, postage prepaid and addressed the respective address of Subscriber or Licensor in the Order Form.

**8.02. Assignment of Contract.** The parties shall not assign or otherwise transfer its rights under this Agreement, including the license granted hereunder, or the Software obtained pursuant to this Agreement without the prior written consent of the other party. Any attempt to make such an assignment without consent shall be void.

**8.03. Amendments.** Licensor and Subscriber agree that this Agreement can be modified only by a written agreement duly executed by persons authorized to execute agreements on their behalf.

**8.04. Nonwaiver.** Licensor and Subscriber agree that no failure to exercise, and no delay in exercising any right, power, or privilege hereunder on the part of either party shall operate as a waiver of any right, power, or privilege. Licensor and Subscriber further agree that no single or partial exercise of any right, power, or privilege hereunder shall preclude its further exercise.

**8.05. Reserved.**

**8.06. Severability.** If any part of this Agreement is adjudged by any court of competent jurisdiction to be invalid, that judgment shall not affect or nullify the remainder of this Agreement, and the effect shall be confined to the part immediately involved in the controversy adjudged.

**8.07. Reserved.**

**8.08. Governing Law.** This Agreement shall be deemed to have been made in, and shall be construed pursuant to, the Federal laws of the United States.

**8.09. Entire Agreement.** If purchases are made through a reseller, this Agreement is the complete and exclusive statement of the mutual understanding of Licensor and Customer as it relates to the licensing of the software and supersedes and cancels all previous written and oral agreements and communications between Licensor and Customer relating to the subject matter of this Agreement. Nothing in this Agreement modifies any terms and conditions between the Customer and any prime contractor under which the Licensor's Products were ordered. If purchases are made directly with the original manufacturer, this Agreement, together with the underlying GSA Schedule Contract, Schedule Pricelist, and Purchase Order(s), sets forth the entire agreement and understanding of the Parties relating to the object hereof and merges all prior discussions and agreements of the matter hereof between them.

**8.10. Effect of Subscriber Purchase Order.** In the event of any conflict between this Agreement and the terms and conditions of any purchase order or similar document pursuant to which Subscriber acquired the license granted by this Agreement, the terms and conditions of the purchase order shall control.



# **BELKIN WARRANTY**

## WARRANTY AND SUPPORT INFORMATION

### IMPORTANT! PLEASE RETAIN PROOF OF PURCHASE AND PRODUCT WARRANTY INFORMATION

BELKIN KVM PRODUCTS AND ACCESSORIES LIMITED

#### WARRANTY (Americas)

**This warranty is provided to you by Belkin International, Inc., or one of its subsidiaries or affiliates (“Belkin”)**

#### IMPORTANT NOTICE REGARDING YOUR RIGHTS

The benefits we give in this manufacturer's warranty are **additional to** any rights and remedies that you may have under local laws. Nothing in this warranty limits or affects your legal rights.

This manufacturer's warranty is governed by the laws of the country in which you purchased your Belkin product. In many countries, users have rights under local laws. Those rights may differ between countries, states and provinces, and often cannot be excluded.

This manufacturer's warranty is not intended to:

- change or exclude any rights under local law that cannot be lawfully changed or excluded; or
- limit or exclude any right you have against the person who sold the Belkin product to you if that person has breached their sales contract with you.

#### WHAT DOES THIS WARRANTY COVER?

Belkin warrants that the product hardware and any software media (i.e., media on which the product software is provided) will be free from defects in materials and workmanship under normal use during the Warranty Periods described below. This means that the product won't be defective, and that it will look and work as advertised during the relevant period.

This warranty does not apply to products purchased from a source other than Belkin or a Belkin Authorized Reseller.

#### How long is the product warranted?

Belkin warrants that the hardware in this Belkin product, and any associated software media, will be free from defects in materials and workmanship under normal use during the Warranty Period. The Warranty Period begins on the date the product was purchased by the original end-user purchaser and lasts for the period set out in the table below for the product purchased:

Product Type	Warranty Period
Desktop KVM products	36 months
Console and Rack Mount KVM Products	36 months
Secure KVM Products	36 months

All KVM Accessories	36 months
Secure KVM Extended Warranty - 1 Year*	12 months additional standard warranty past 36 original months
Secure KVM Extended Warranty – 2 Year*	24 months additional standard warranty past original 36 months
Software media (if provided with the product)	90 days

\* For purposes of this warranty, Extended Warranty means that Belkin will honor the standard warranty of a Secure KVM product for an additional 1 or 2 years (depending on which Extended Warranty you purchased) at a cost reflected as a sold Extended Warranty SKU attached to the sold Secure KVM Product SKU serial number. An extended warranty purchase does not alter the type of warranty of the given Secure KVM, but it extends the warranty per the standard warranty terms and conditions for the additional period of time purchased. If Belkin ceases to manufacture the product under Extended Warranty as notified on the product support web page at [www.belkin.com](http://www.belkin.com), Belkin will continue to honor the Extended Warranty until the end of the Extended Warranty term by repairing or replacing any defective product and, if the obsolete product is defective and replacement units are no longer available, Belkin will replace the obsolete product with a current generation product that most closely matches the warranted product.

A claim under this warranty is only eligible if it is made within the Warranty Period and if the purchaser makes the claim with a valid serial number.

### What isn't covered?

Belkin does not give any warranty:

- in relation to software or services, provided by Belkin or any third party, included in or with the product;
- that the product, software or services will always operate uninterrupted or error free;
- that the product, software or services, or any equipment, system or network on which the product, software or services are used are 100% secure and cannot be hacked; or
- that a third party service the product needs will always be available.

**Note:** Although Belkin does not make these promises in this warranty, you may have additional rights under local laws.

### Will this warranty always apply?

This warranty does not apply if:

- the product has been tampered with or the assembly seal has been removed or damaged;
- the product has been altered or modified by someone other than Belkin;
- the product damage was caused by use with non-Belkin products
- the warranty claim was made fraudulently or by misrepresentation;
- the product was not installed, operated, repaired, or maintained in accordance with Belkin's instructions;
- the product has been subjected to abnormal physical or electrical stress, misuse, negligence, or accident;

- damage to the product is cosmetic, including scratches and dents, or defects caused by normal wear and tear or normal aging of the product;
- the serial number on the product has been altered, defaced, or removed; or
- the product was supplied or licensed for beta, evaluation, testing or demonstration purposes, and you didn't buy or license the product.

**Note:** Although this warranty doesn't apply in these situations, you may have additional rights under local laws.

## How will Belkin make things right?

If you make an eligible claim under this warranty, Belkin will, at its election:

- repair the product with new or refurbished parts, or pay the reasonable costs of repairing the product;
- replace the product with a reasonably available equivalent new or refurbished Belkin product; or

Any repaired or replacement products are warranted for the remainder of the original or (if purchased) extended Warranty Period. All products and parts that are replaced become the property of Belkin. Should the defective product require a "destroy in field" process, please contact Belkin product support for details.

**Note:** The rights and remedies outlined above are the only rights and remedies available under this warranty. However, you may have additional rights under local laws.

## GENERAL EXCLUSIONS AND LIMITATIONS OF LIABILITY

IN THOSE JURISDICTIONS WHERE IT CAN LAWFULLY DO SO, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, BELKIN, ITS RESELLERS AND ITS SUPPLIERS HEREBY DISCLAIM AND EXCLUDE ALL OTHER WARRANTIES, EXPRESS, STATUTORY OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, ACCEPTABILITY, SATISFACTORY QUALITY, NON-INFRINGEMENT, TITLE, FITNESS FOR A PARTICULAR PURPOSE, LOSS OF OR DAMAGE TO DATA, LACK OF VIRUSES OR FREE FROM VIRUS OR MALWARE ATTACK, SECURITY, PERFORMANCE, LACK OF NEGLIGENCE, WORKMANLIKE EFFORT, QUIET ENJOYMENT, THAT THE FUNCTIONS CONTAINED IN THE PRODUCT WILL MEET YOUR REQUIREMENTS, OR THAT DEFECTS IN THE PRODUCT WILL BE CORRECTED, OR THAT YOUR USE OF THE PRODUCT WILL GENERATE ACCURATE, RELIABLE, TIMELY RESULTS, INFORMATION, MATERIAL OR DATA. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY BELKIN, A DEALER, AGENT OR AFFILIATE SHALL CREATE A WARRANTY. TO THE EXTENT WARRANTIES CANNOT BE DISCLAIMED OR EXCLUDED, THEY ARE LIMITED TO THE DURATION OF THE RELEVANT EXPRESS WARRANTY PERIOD.

EXCEPT AS PROVIDED IN THIS WARRANTY AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL BELKIN, ITS AFFILIATES, ASSOCIATES, DEALERS, AGENTS OR SUPPLIERS OR THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, LICENSORS AND ASSIGNS BE LIABLE FOR ANY DIRECT, INDIRECT, EXEMPLARY, PUNITIVE, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOSS OF PROFITS OR REVENUE, FOR BUSINESS INTERRUPTION, FOR PERSONAL INJURY, FOR LOSS OF PRIVACY, FOR LOSS OF ABILITY TO USE ANY THIRD PARTY PRODUCTS OR SERVICES, FOR FAILURE TO MEET ANY DUTY INCLUDING OF GOOD FAITH OR OF REASONABLE CARE, FOR NEGLIGENCE, AND FOR ANY OTHER PECUNIARY OR OTHER LOSS WHATSOEVER), REGARDLESS OF THE THEORY OF LIABILITY (CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR IN ANY WAY RELATED TO THE USE OF OR INABILITY TO USE THE PRODUCT, EVEN IF BELKIN OR SUCH OTHER ENTITIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL THE TOTAL AGGREGATE LIABILITY OF BELKIN, ITS AFFILIATES, ASSOCIATES, DEALERS, AGENTS OR SUPPLIERS TO YOU FOR ALL DAMAGES EXCEED THE PRICE YOU PAID FOR THE PRODUCT. THIS LIMITATION IS CUMULATIVE AND WILL NOT BE INCREASED BY THE EXISTENCE OF MORE THAN ONE

INCIDENT OR CLAIM. THE FOREGOING LIMITATIONS WILL APPLY EVEN IF ANY WARRANTY OR REMEDY PROVIDED FAILS OF ITS ESSENTIAL PURPOSE. NOTHING IN THIS SECTION SHALL LIMIT THE LIABILITY OF BELKIN IN RELATION TO DEATH OR BODILY INJURIES.

THE WARRANTIES AND REMEDIES SET OUT IN THIS AGREEMENT ARE EXCLUSIVE, AND, TO THE EXTENT PERMITTED BY LAW, IN LIEU OF ALL OTHERS ORAL OR WRITTEN, EXPRESS OR IMPLIED. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF IMPLIED WARRANTIES OR OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE FOREGOING LIMITATIONS MAY NOT APPLY TO YOU.

If any term is held to be illegal or unenforceable, the legality or enforceability of the remaining terms shall not be affected or impaired.

## **BELKIN TECHNICAL AND WARRANTY SUPPORT INFORMATION**

### **HOW DO I GET HELP?**

If you have a question about your product or experience a problem with it, please go to <http://support.belkin.com>. You will find online support tools and information to help you with your product.

#### **What should I do if my product is defective?**

You always have the option to return the product to the original seller if you have a problem. You can make a claim based on this warranty or any local laws that apply to you.

You can also make a claim under this warranty or local laws by contacting Belkin Technical Support. To find out how to contact us, click the "Contact Us" link on the home page of <http://belkin.com>. If you are located outside the United States, you will need to choose your region/location first:

<https://www.belkin.com/in/change-region/>

When you contact Technical Support for your region at the links above, you will need to give us some information:

- your product model, hardware revision (if applicable) and serial number;
- proof that you purchased the product, with the date of the purchase shown and place where it was purchased. If you are making a claim under an Extended Warranty, you will also need to provide proof of purchase of the Extended Warranty, which can be accomplished by Belkin matching up the serial number of the product with the Extended Warranty purchase, or by providing an invoice for the product and the extended warranty. **WE WILL ALWAYS NEED A DATED PROOF OF ORIGINAL PURCHASE TO PROCESS WARRANTY CLAIMS.**

Sometimes we will need you to send the product back to us so that we can fix or replace it. If we ask you to return your product to us by post, you will be given a Return Materials Authorization (RMA) number and we'll tell you where to send the product. You will need to make sure the product is properly packaged and shipped. You will be responsible for the costs of returning your product to us. We need to identify your product when it reaches us, so you'll need to include the RMA number AND a copy of your dated proof of original purchase (please keep the original) with the returned product. We also recommend that you send the package by registered and insured mail or by overnight courier to protect the package while it is in transit.

#### **What happens when I return my product?**

Defective products covered by this warranty will be repaired or replaced without charge with the same product or an equivalent product of equal or greater value, or Belkin will provide you with a refund of the purchase price

of the product, minus any rebates and discounts. The remedy offered will be determined by Belkin in its sole discretion.

We can only ship replacement or repaired products to locations in the country where the original product was purchased.

Belkin may need to delete all or part of your data to repair or replace your product. Belkin may also install software updates as part of warranty service. PLEASE MAKE SURE THAT YOU BACK UP ALL OF YOUR DATA ON THE PRODUCT (if applicable) BEFORE SENDING IT IN FOR REPAIR OR REPLACEMENT. BELKIN IS NOT RESPONSIBLE FOR ANY LOSS OF DATA OR SOFTWARE DURING WARRANTY SERVICE.

Repairs or replacements not covered under warranty or your rights under local law may be refused by your place of purchase, or may be subject to charge.

### **How are end-of-life notices provided?**

Any end-of-life notice shall be posted on the product support page at <http://belkin.com>. The date the end-of- life notice is posted shall be deemed to be the date of notification.

### **Technical support**

Along with the Limited Warranty, Belkin provides Complimentary Assisted Technical Support for the Warranty Period and Extended Warranty Period (if purchased) to get your hardware up and running. Complimentary Assisted Technical Support includes technical support (by phone) and live chat (through your computer). At this time, live chat is only available in certain countries. Please visit our website (indicated above) in your local area for details.

For additional support beyond the Complimentary Assisted Technical Support period or for assistance on advanced features beyond basic support, please contact our Technical Support team to learn more about how we can help you get the most out of your product.

Telephone support may not be available where you live and may be subject to charge.

# **BLUE MEDORA EULA**

## Blue Medora End User License Agreement

PLEASE NOTE THAT THE TERMS OF THIS END USER LICENSE AGREEMENT SHALL GOVERN YOUR USE OF THE SOFTWARE, REGARDLESS OF ANY TERMS THAT MAY APPEAR DURING THE INSTALLATION OF THE SOFTWARE.

IMPORTANT-READ CAREFULLY: BY BOTH PARTIES EXECUTING THIS AGREEMENT IN WRITING, the Ordering Activity under GSA Schedule contracts ("YOU" or "Ordering Activity") AGREE TO BE BOUND BY THE TERMS OF THIS END USER LICENSE AGREEMENT ("EULA").

EVALUATION LICENSE. If You are licensing the Software for evaluation purposes, Your use of the Software is only permitted in a non-production environment and for the period limited by the License Key.

### DEFINITIONS.

1.1 "Affiliate" means, with respect to a party at a given time, an entity that then is directly or indirectly controlled by, is under common control with, or controls that party, and here "control" means an ownership, voting or similar interest representing fifty percent (50%) or more of the total interests then outstanding of that entity.

1.2 "Documentation" means that documentation that is generally provided to You by Blue Medora with the Software, as revised by Blue Medora from time to time, and which may include end user manuals, operation instructions, installation guides, release notes, and on-line help files regarding the use of the Software.

1.3 "Guest Operating Systems" means instances of third-party operating systems licensed by You, installed in a Virtual Machine and run using the Software.

1.4 "Intellectual Property Rights" means all worldwide intellectual property rights, including without limitation, copyrights, trademarks, service marks, trade secrets, know how, inventions, patents, patent applications, moral rights and all other proprietary rights, whether registered or unregistered.

1.5 "License" means a license granted under Section 2.1 (General License Grant).



1.6 "License Key" means a serial number that enables You to activate and use the Software.

1.7 "License Term" means the duration of a License as specified in the Order.

1.8 "License Type" means the type of License applicable to the Software, as more fully described in the Order.

1.9 "Open Source Software" or "OSS" means software components embedded in the Software and provided under separate license terms.

1.10 "Order" means a purchase order, enterprise license agreement, or other ordering document issued by You to Blue Medora or a Blue Medora authorized reseller that references and incorporates this EULA and is accepted by Blue Medora as set forth in Section 4 (Order).

1.11 "Product Guide" means the current version of the Product Guide at the time of Your Order, copies of which are found at <http://dev-blue-medora.pantheon.io/products/>.

1.12 "Support Services Terms" means Blue Medora's then-current support policies, copies of which are posted at <https://support.bluededora.com/s/browse?p=all&t=0TO1a000000CtPHGA0>

1.13 "Software" means the Blue Medora computer programs listed on Blue Medora's commercial price list to which You acquire a license under an Order, together with any software code relating to the foregoing that is provided to You pursuant to a support and subscription service contract and that is not subject to a separate license agreement.

1.14 "Territory" means the country or countries in which You have been invoiced; provided, however, that if You have been invoiced within any of the European Economic Area member states, You may deploy the corresponding Software throughout the European Economic Area.

1.15 "Third Party Agent" means a third party delivering information technology services to You pursuant to a written contract with You.

1.16 "Virtual Machine" means a software container that can run its own operating system and execute applications like a physical machine.

1.17 "Blue Medora" means Blue Medora, Inc., a Delaware corporation.

#### LICENSE GRANT.

2.1 General License Grant. Blue Medora grants to You a non-exclusive, non-transferable (except as set forth in Section 12.1 (Transfers; Assignment) license to use the Software and the Documentation during the period of the license and within the Territory, solely for Your internal business operations, and subject to the provisions of the Product Guide. Unless otherwise indicated in the Order, licenses granted to You will be perpetual, will be for use of object code only, and will commence on either delivery of the physical media or the date You are notified of availability for electronic download.

2.2 Third Party Agents. Under the License granted to You in Section 2.1 (General License Grant) above, You may permit Your Third Party Agents to access, use and/or operate the Software on Your behalf for the sole purpose of delivering services to You, provided that You will be fully responsible for Your Third Party Agents' compliance with terms and conditions of this EULA and any breach of this EULA by a Third Party Agent shall be deemed to be a breach by You.

2.3 Copying Permitted. You may copy the Software and Documentation as necessary to install and run the quantity of copies licensed, but otherwise for archival purposes only.

2.4 Benchmarking. You may use the Software to conduct internal performance testing and benchmarking studies. You may only publish or otherwise distribute the results of such studies to third parties as follows: (a) if with respect to Blue Medora products, only if You provide a copy of Your study to \*protected email\* prior to distribution; (b) if with respect to any other Software, only if Blue Medora has reviewed and approved of the methodology, assumptions and other parameters of the study (please contact Blue Medora at \*protected email\* to request such review and approval) prior to such publication and distribution.

2.5 Open Source Software. Notwithstanding anything herein to the contrary, Open Source Software is licensed to You under such OSS's own applicable license terms, which can be found in the oss\_attribution.txt file (or similar file) provided within the Software. These OSS license terms are consistent with the license granted in Section 2 (License Grant), and may contain additional rights benefiting You. To the extent the license for any Open Source Software requires Blue Medora to make available to You the corresponding source code and/or modifications (the "Source Files"), You may obtain a copy of the

applicable Source Files by sending a written request, with Your name and address to: \*protected email\*. All requests should clearly specify: Open Source Files Request, Attention: General Counsel. This offer to obtain a copy of the Source Files is valid for three years from the date You acquired this Software.

#### RESTRICTIONS; OWNERSHIP.

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

3.2 Decompilation. Notwithstanding the foregoing, decompiling the Software is permitted to the extent the laws of the Territory give You the express right to do so to obtain information necessary to render the Software interoperable with other software; provided, however, You must first request such information from Blue Medora, provide all reasonably requested information to allow Blue Medora to assess Your claim, and Blue Medora may, in its discretion, either provide such interoperability information to You, impose reasonable conditions, including a reasonable fee, on such use of the Software, or offer to provide alternatives to ensure that Blue Medora's proprietary rights in the Software are protected and to reduce any adverse impact on Blue Medora proprietary rights.

**3.3 Ownership.** The Software and Documentation, all copies and portions thereof, and all improvements, enhancements, modifications and derivative works thereof, and all Intellectual Property Rights therein, are and shall remain the sole and exclusive property of Blue Medora and its licensors. Your rights to use the Software and Documentation shall be limited to those expressly granted in this EULA and any applicable Order. No other rights with respect to the Software or any related Intellectual Property Rights are implied. You are not authorized to use (and shall not permit any third party to use) the Software, Documentation or any portion thereof except as expressly authorized by this EULA or the applicable Order. Blue Medora reserves all rights not expressly granted to You. Blue Medora does not transfer any ownership rights in any Software.

**ORDER.** Your Order is subject to this EULA. No Orders are binding on Blue Medora until accepted by Blue Medora. Orders for Software are deemed to be accepted upon Blue Medora's delivery of the Software included in such Order. Orders issued to Blue Medora do not have to be signed to be valid and enforceable.

**RECORDS AND AUDIT.** During the License Term for Software, You will maintain accurate records of Your use of the Software sufficient to show compliance with the terms of this EULA. During this period, Blue Medora will have the right subject to applicable Government security requirements to audit Your use of the Software to confirm compliance with the terms of this EULA. That audit is subject to reasonable notice by Blue Medora and will not unreasonably interfere with Your business activities. Blue Medora may conduct no more than one (1) audit in any twelve (12) month period, and only during normal business hours. You will reasonably cooperate with Blue Medora and any third party auditor and will, without prejudice to other rights of Blue Medora, address any non-compliance identified by the audit by promptly paying additional fees. If the audit reveals either underpayment of more than five (5%) percent of the Software fees payable by You for the period audited, Blue Medora will promptly invoice Ordering Activity additional license fees sufficient to cover the unauthorized use revealed by the audit .

**SUPPORT AND SUBSCRIPTION SERVICES.** Blue Medora does not provide any support or subscription services for the Software under this EULA. You have no rights to any updates, upgrades or extensions or enhancements to the Software developed by Blue Medora unless you separately purchase Blue Medora support or subscription services. These support or subscription services are subject to the Support Services Terms.

**WARRANTIES.**

**7.1 Software Warranty, Duration and Remedy.** Blue Medora warrants to You

that the Software will, for a period of ninety (90) days following notice of availability for electronic download or delivery ("Warranty Period"), substantially conform to the applicable Documentation, provided that the Software: (a) has been properly installed and used at all times in accordance with the applicable Documentation; and (b) has not been modified or added to by persons other than Blue Medora or its authorized representative. Blue Medora will, at its own expense and as its sole obligation and Your exclusive remedy for any breach of this warranty, either replace that Software or correct any reproducible error in that Software reported to Blue Medora by You in writing during the Warranty Period. If Blue Medora determines that it is unable to correct the error or replace the Software, Blue Medora will refund to You the amount paid by You for that Software.

7.2 Software Disclaimer of Warranty. OTHER THAN THE WARRANTY ABOVE, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, BLUE MEDORA AND ITS SUPPLIERS MAKE NO OTHER EXPRESS WARRANTIES UNDER THIS EULA, AND DISCLAIM ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND ANY WARRANTY ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING OR PERFORMANCE, OR USAGE OF TRADE. BLUE MEDORA AND ITS LICENSORS DO NOT WARRANT THAT THE SOFTWARE WILL OPERATE UNINTERRUPTED OR THAT IT WILL BE FREE FROM DEFECTS OR THAT IT WILL MEET YOUR REQUIREMENTS.

#### INTELLECTUAL PROPERTY INDEMNIFICATION.

8.1 Defense and Indemnification. Subject to the remainder of this Section 8 (Intellectual Property Indemnification), Blue Medora shall defend You against any third party claim that the Software infringes any patent, trademark or copyright of such third party, or misappropriates a trade secret (but only to the extent that the misappropriation is not a result of Your actions) under the laws of: (a) the United States and Canada; (b) the European Economic Area; (c) Australia; (d) New Zealand; (e) Japan; or (f) the People's Republic of China, to the extent that such countries are part of the Territory for the License ("Infringement Claim") and indemnify You from the resulting costs and damages finally awarded against You to such third party by a court of competent jurisdiction or agreed to in settlement. The foregoing obligations are applicable only if You: (i) promptly notify Blue Medora in writing of the Infringement Claim; (ii) allow Blue Medora sole control over the defense for the claim and any settlement negotiations; and (iii) reasonably cooperate in response to Blue Medora requests for assistance. You may not settle or

compromise any Infringement Claim without the prior written consent of Blue Medora. 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.

8.2 Remedies. If the alleged infringing Software become, or in Blue Medora opinion be likely to become, the subject of an Infringement Claim, Blue Medora will, at Blue Medora option and expense, do one of the following: (a) procure the rights necessary for You to make continued use of the affected Software; (b) replace or modify the affected Software to make it non-infringing; or refund: (i) the contract price paid by You for the License to the affected Software; and (ii) any pre-paid service fee attributable to related support services to be delivered after the date such service is stopped. Nothing in this Section 8.2 (Remedies) shall limit Blue Medora's obligation under Section 8.1 (Defense and Indemnification) to defend and indemnify You, provided that You replace the allegedly infringing Software upon Blue Medora's making alternate Software available to You.

8.3 Exclusions. Notwithstanding the foregoing, Blue Medora will have no obligation under this Section 8 (Intellectual Property Indemnification) or otherwise with respect to any claim based on: (a) a combination of Software with non-Blue Medora products (other than non- Blue Medora products that are listed on the Order and used in an unmodified form); (b) use for a purpose or in a manner for which the Software was not designed; (c) use of any older version of the Software when use of a newer Blue Medora version would have avoided the infringement; (d) any modification to the Software made without Blue Medora's express written approval; (e) any claim that relates to open source software or freeware technology or any derivatives or other adaptations thereof that is not embedded by Blue Medora into Software listed on Blue Medora's commercial price list; or (f) any Software provided on a no charge, beta or evaluation basis. THIS SECTION 8 (INTELLECTUAL PROPERTY INDEMNIFICATION) STATES YOUR SOLE AND EXCLUSIVE REMEDY AND BLUE MEDORAS'S ENTIRE LIABILITY FOR ANY INFRINGEMENT CLAIMS OR ACTIONS.

#### LIMITATION OF LIABILITY.

9.1 Limitation of Liability. TO THE MAXIMUM EXTENT MANDATED BY LAW, IN NO EVENT WILL BLUE MEDORA AND ITS LICENSORS BE LIABLE FOR ANY LOST PROFITS OR BUSINESS OPPORTUNITIES, LOSS OF USE, LOSS OF REVENUE, LOSS OF GOODWILL, BUSINESS INTERRUPTION, LOSS OF DATA, OR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES UNDER ANY THEORY OF LIABILITY,

WHETHER BASED IN CONTRACT, TORT, NEGLIGENCE, PRODUCT LIABILITY, OR OTHERWISE. BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE PRECEDING LIMITATION MAY NOT APPLY TO YOU. BLUE MEDORA'S AND ITS LICENSORS' LIABILITY UNDER THIS EULA WILL NOT, IN ANY EVENT, REGARDLESS OF WHETHER THE CLAIM IS BASED IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, EXCEED THE GREATER OF THE CONTRACT PRICE YOU PAID FOR THE SOFTWARE GIVING RISE TO THE. THE FOREGOING LIMITATIONS SHALL APPLY REGARDLESS OF WHETHER BLUE MEDORA OR ITS LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE. The foregoing limitation of liability shall not apply to (1) personal injury or death resulting from Licensor's negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.

9.2 Further Limitations. Blue Medora's licensors shall have no liability of any kind under this EULA and Blue Medora's liability with respect to any third party software embedded in the Software shall be subject to Section 9.1 (Limitation of Liability). You may not bring a claim under this EULA more than six (6) years after the cause of action arises.

#### TERMINATION.

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

10.2 Termination for Breach. 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, Blue Medora 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.

10.3 Reserved.

10.4 Effect of Termination. Upon Blue Medora's termination of this EULA in accordance with the Contract Disputes Act: (a) all Licensed rights to all Software granted to You under this EULA will immediately cease; and (b) You must cease all use of all Software, and return or certify destruction of all

Software and License Keys (including copies) to Blue Medora, and return, or if requested by Blue Medora, destroy, any related Blue Medora Confidential Information in Your possession or control and certify in writing to Blue Medora that You have fully complied with these requirements. Any provision will survive any termination or expiration if by its nature and context it is intended to survive, including Sections 1 (Definitions), 2.6 (Open Source Software), 3 (Restrictions; Ownership), 5 (Records and Audit), 7.2 (Software Disclaimer of Warranty), 9 (Limitation of Liability), 10 (Termination), 11 (Confidential Information) and 12 (General).

#### CONFIDENTIAL INFORMATION.

11.1 Definition. "Confidential Information" means information or materials provided by one party ("Discloser") to the other party ("Recipient") which are in tangible form and labelled "confidential" or the like, or, information which a reasonable person knew or should have known to be confidential. The following information shall be considered Confidential Information whether or not marked or identified as such: (a) License Keys; (b) product roadmaps or strategic marketing plans; and (c) non- public materials relating to the Software. Blue Medora 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.

11.2 Protection. Recipient may use Confidential Information of Discloser; (a) to exercise its rights and perform its obligations under this EULA; or (b) in connection with the parties' ongoing business relationship. Recipient will not use any Confidential Information of Discloser for any purpose not expressly permitted by this EULA, and will disclose the Confidential Information of Discloser only to the employees or contractors of Recipient who have a need to know such Confidential Information for purposes of this EULA and who are under a duty of confidentiality no less restrictive than Recipient's duty hereunder. Recipient will protect Confidential Information from unauthorized use, access, or disclosure in the same manner as Recipient protects its own confidential or proprietary information of a similar nature but with no less than reasonable care.

11.3 Exceptions. Recipient's obligations under Section 11.2 (Protection) with respect to any Confidential Information will terminate if Recipient can show by written records that such information: (a) was already known to Recipient at the time of disclosure by Discloser; (b) was disclosed to Recipient by a third party who had the right to make such disclosure without any confidentiality restrictions; (c) is, or through no fault of Recipient has become, generally available to the public; or (d) was independently developed by Recipient



without access to, or use of, Discloser's Information. In addition, Recipient will be allowed to disclose Confidential Information to the extent that such disclosure is required by law or by the order of a court of similar judicial or administrative body, provided that Recipient notifies Discloser of such required disclosure promptly and in writing and cooperates with Discloser, at Discloser's request and expense, in any lawful action to contest or limit the scope of such required disclosure.

11.4 Data Privacy. You agree that Blue Medora may process technical and related information about Your use of the Software which may include internet protocol address, hardware identification, operating system, application software, peripheral hardware, and non-personally identifiable Software usage statistics to facilitate the provisioning of updates, support, invoicing or online services and may transfer such information to other companies in the Blue Medora worldwide group of companies from time to time. To the extent that this information constitutes personal data, Blue Medora shall be the controller of such personal data. To the extent that it acts as a controller, each party shall comply at all times with its obligations under applicable data protection legislation.

#### GENERAL.

12.1 Transfers; Assignment. You or Medora will not assign this EULA, any Order, or any right or obligation herein or delegate any performance without the other Party's prior written consent, which consent will not be unreasonably withheld. Any other attempted assignment or transfer by You or Blue Medora will be void..

12.2 Notices. Any notice delivered by Blue Medora to You under this EULA will be delivered via mail, email or fax.

12.3 Waiver. Failure to enforce a provision of this EULA will not constitute a waiver.

12.4 Severability. If any part of this EULA is held unenforceable, the validity of all remaining parts will not be affected.

12.5 Compliance with Laws; Export Control; Government Regulations. Each party shall comply with all laws applicable to the actions contemplated by this EULA. You acknowledge that the Software is of United States origin, is provided subject to the U.S. Export Administration Regulations, may be subject to the export control laws of the applicable territory, and that diversion contrary to applicable export control laws is prohibited. You represent that (1)

you are not, and are not acting on behalf of, (a) any person who is a citizen, national, or resident of, or who is controlled by the government of any country to which the United States has prohibited export transactions; or (b) any person or entity listed on the U.S. Treasury Department list of Specially Designated Nationals and Blocked Persons, or the U.S. Commerce Department Denied Persons List or Entity List; and (2) you will not permit the Software to be used for, any purposes prohibited by law, including, any prohibited development, design, manufacture or production of missiles or nuclear, chemical or biological weapons. The Software and accompanying documentation are deemed to be "commercial computer software" and "commercial computer software documentation", respectively, pursuant to FAR Section 12.212(b), as applicable. Any use, modification, reproduction, release, performing, displaying or disclosing of the Software and documentation by or for the U.S. Government shall be governed solely by the terms and conditions of this EULA.

12.6 Construction. The headings of sections of this EULA are for convenience and are not to be used in interpreting this EULA. As used in this EULA, the word "including" means "including but not limited to".

12.7 Governing Law. This EULA is governed by the Federal laws of the United States. The U.N. Convention on Contracts for the International Sale of Goods does not apply.

12.8 Third Party Rights. Other than as expressly set out in this EULA, this EULA does not create any rights for any person who is not a party to it, and no person who is not a party to this EULA may enforce any of its terms or rely on any exclusion or limitation contained in it.

12.9 Order of Precedence. In the event of conflict or inconsistency among the Product Guide, this EULA and the Order, the following order of precedence shall apply: (a) the Order, (b) this EULA, (c) the Product Guide. With respect to any inconsistency between this EULA and an Order, the terms of the Order shall supersede and control over any conflicting or additional terms and conditions of the EULA, acknowledgement or confirmation or other document issued by You.

12.10 Entire Agreement. This EULA, including the underlying GSA Schedule Contract, Schedule Pricelist and accepted Orders and any amendments hereto, and the Product Guide contain the entire agreement of the parties with respect to the subject matter of this EULA and supersede all previous or contemporaneous communications, representations, proposals, commitments,

understandings and agreements, whether written or oral, between the parties regarding the subject matter hereof. This EULA may be amended only in writing signed by authorized representatives of both parties.

12.11 Contact Information. Please direct legal notices or other correspondence to Blue Medora, Inc., 3225 N Evergreen DR. NE., Grand Rapids, MI 49525, United States of America, Attention: Legal Department.

**BROTHER WARRANTY**

## Brother™ One-Year Limited Warranty and Replacement Service (USA Only)

### Who is covered:

- This limited warranty ("warranty") is given only to the original end-user/retail purchaser (referred to in this warranty as "Original Purchaser") of the accompanying product, consumables and accessories (collectively referred to in this warranty as "this Product").
- If you purchased a product from someone other than an authorized Brother reseller in the United States or if the product was used (including but not limited to floor models or refurbished product by someone other than Brother), prior to your purchase you are not the Original Purchaser and the product that you purchased is not covered by this warranty.

### What is covered:

- This Product includes a Machine and Consumable and Accessory Items. Consumable and Accessory Items include but are not limited to print heads, toner, drums, ink cartridges, print cartridges, cordless handset battery, refill ribbons, thermal PLUS paper and thermal paper.
- Except as otherwise provided herein, Brother warrants that the Machine and the accompanying Consumable and Accessory Items will be free from defects in materials and workmanship, when used under normal conditions.
- This warranty applies only to products purchased and used in the United States. For products purchased in, but used outside, the United States, this warranty covers only warranty service within the United States (and does not include shipping outside the United States).

### What is the length of the Warranty Periods:

- Machines: one year from the original purchase date.
- Accompanying Consumable and Accessory Items: 90 days from the original purchase date or the rated life of consumable, whichever comes first.

### What is NOT covered:

### This warranty does not cover:

- (1) Physical damage to this Product;
- (2) Damage caused by improper installation, improper or abnormal use, misuse, neglect or accident (including but not limited to transporting this Product without the proper preparation and/or packaging);
- (3) Damage caused by another device or software used with this Product (including but not limited to damage resulting from use of non Brother™-brand parts and Consumable and Accessory Items);
- (4) Consumable and Accessory Items that expired in accordance with a rated life;
- (5) Problems arising from other than defects in materials or workmanship; and,
- (6) Normal Periodic Maintenance Items beyond their rated life, such as Waste Ink Absorber, Paper Feeding Kits, Fuser and Laser Units.

This limited warranty is VOID if this Product has been altered or modified in any way (including but not limited to attempted warranty repair without authorization from Brother and/or alteration/removal of the serial number).

### What to do if you think your Product is eligible for warranty service:

Report your issue to either our Customer Service Hotline at 1-877-BROTHER (1-877-276-8437) or to a Brother Authorized Service Center within the applicable warranty period. Supply Brother or the Brother Authorized Service Center with a copy of your dated bill of sale showing that this Product was purchased within the U.S. For the name of local Brother Authorized Service Center(s), call 1-877-BROTHER (1-877-276-8437) or visit [www.brother-usa.com](http://www.brother-usa.com).

### What Brother will ask you to do:

After contacting Brother or a Brother Authorized Service Center, you may be required to deliver (by hand if you prefer) or send the Product properly packaged, freight prepaid, to the Authorized Service Center

together with a photocopy of your bill of sale. **You are responsible for the cost of shipping, packing product, and insurance (if you desire). You are also responsible for loss or damage to this Product in shipping.**

### What Brother will do:

If the problem reported concerning your Machine and/or accompanying Consumable and Accessory Items is covered by this warranty and if you first reported the problem to Brother or an Authorized Service Center within the applicable warranty period, Brother or its Authorized Service Center will repair or replace the Machine and/or accompanying Consumable and Accessory Items at no charge to you for parts or labor. The decision as to whether to repair or replace the Machine and/or accompanying Consumable and Accessory Items is made by Brother in its sole discretion. Brother reserves the right to supply a refurbished or remanufactured replacement Machine and/or accompanying Consumable and Accessory Items and use refurbished parts provided such replacement products conform to the manufacturer's specifications for new product/parts. The repaired or replacement Machine and/or accompanying Consumable and Accessory Items will be returned to you freight prepaid or made available for you to pick up at a conveniently located Authorized Service Center.

If the Machine and/or accompanying Consumable and Accessory Items are not covered by this warranty (either stage), you will be charged for shipping the Machine and/or accompanying Consumable and Accessory Items back to you and charged for any service and/or replacement parts/products at Brother's then current published rates.

The foregoing are your sole (i.e., only) and exclusive remedies under this warranty.

What happens when Brother elects to replace your Machine:

When a replacement Machine is authorized by Brother, and you have delivered the Machine to an Authorized Service Center, the Authorized Service Center will provide you with a replacement Machine after receiving one from Brother. If you are dealing directly with Brother's Express Exchange Service Brother will send to you a replacement Machine shipped for receipt within two business days, with the understanding that you have provided the required proof of purchase information for the Machine that Brother agreed to replace. You are then expected to pack the Machine that Brother agreed to replace in the package from the replacement Machine and return it to Brother using the pre-paid freight bill supplied by Brother in accordance with the instructions provided by Brother. Since you will be in possession of two machines, Brother will require that you provide a valid major credit card number. Brother will issue a hold against the credit card account number that you provide until Brother receives your original Product and determines that your original Product is entitled to warranty coverage. Your credit card will be charged up to the cost of a new Product only if: (i) you do not return your original Product to Brother within five (5) business days; (ii) the problems with your original Product are not covered by the limited warranty; (iii) the proper packaging instructions are not followed and has caused damage to the product; or (iv) the warranty period on your original Product has expired or has not been sufficiently validated with a copy of the proof of purchase (bill of sale). The replacement Machine you receive (even if refurbished or remanufactured) will be covered by the balance of the limited warranty period remaining on the original Product, plus an additional thirty (30) days. You will keep the replacement Machine that is sent to you and your original Machine shall become the property of Brother. Retain your original Accessory Items and a copy of the return freight bill, signed by the courier.

**Limitations:**

Brother is not responsible for damage to or loss of any equipment, media, programs or data related to the use of this Product. Except for the repair or replacement as described above, Brother shall not be liable for any direct, indirect, incidental or consequential damages or specific relief. Because some states do not allow the exclusion or limitation of consequential or incidental damages, the above limitation may not apply to you.

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- This Limited Warranty is the only warranty that Brother is giving for this Product. It is the *final expression and the exclusive and only statement* of Brother's obligations to you. It replaces all other agreements and understandings that you may have with Brother or its representatives.
- This warranty gives you certain rights and you may also have other rights that may vary from state to state.
- This Limited Warranty (and Brother's obligation to you) may not be changed in any way unless you and Brother sign the same piece of paper in which we (1) refer to this Product and your bill of sale date, (2) describe the change to this warranty and (3) agree to make that change.

**Important:** *We recommend that you keep all original packing materials, in the event that you ship this Product.*

# **CASIO WARRANTY**

**DATA-PROJECTOR**  
**CASIO Limited Warranty**

**THIS WARRANTY CARD IS VALID ONLY ON PRODUCTS IN THE COUNTRY OF PURCHASE.**

This product including a remote controller and wireless adaptor, except consumables or articles with limited resistance (e.g. lamp, accessories, case), is warranted to the original purchaser to be free from defects of quality at the time of delivery for a period of three years from the date of purchase ("warranty period"). The light source unit is warranted for three years or six thousand hours, whichever comes first. During the warranty period, and upon proof of purchase, the product will be repaired by using CASIO replacement or reconditioned parts, or the product will be replaced with the same or similar replacement or reconditioned model, within a reasonable time period. To obtain these warranty services, please take or send the product, postage paid, with a copy of your sales receipt or other proof of purchase that shows the date of purchase, to a Service location listed in the "CASIO is here to HELP" page. There will be no parts or labor charge to you for valid warranty services. Due to the possibility of damage or loss during shipping, it is recommended when sending the product for service that you package the product securely and send it insured, return receipt requested.

The customer shall NOT have any claim under this warranty for repair or adjustment expenses if:

1. The problem is caused by improper, rough or careless treatment;
2. The problem is caused by a fire or other natural calamity;
3. The problem is caused by improper repair or adjustment made by anyone other than a CASIO Service Center;
4. The problem is caused by broken display or button;
5. The case is damaged or worn;
6. Maintenance requested consists of repair or replacement of options, accessories, software, or consumables (AC adaptor, cable, battery, etc.);
7. The proof of purchase is not presented when requesting service; or
8. The warranty period has expired.

NEITHER THIS WARRANTY NOT ANY OTHER WARRANTY OF GUARANTEE, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE, SHALL EXTEND BEYOND THE WARRANTY PERIOD. NO RESPONSIBILITY IS ASSUMED FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGE RESULTING FROM INACCURACY OR MATHEMATICAL INACCURACY OF THE PRODUCT OR LOSS OF STORED DATA. SOME STATES OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION ON HOW LONG AN IMPLIED WARRANTY LASTS AND SOME STATES OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR EXCLUSION OR LIMITATION BY A PARTY OF LIABILITY FOR DEATH OR PERSONAL INJURY CAUSED BY THAT PARTY'S NEGLIGENCE, SO THE ABOVE LIMITATIONS OR EXCLUSIONS SHALL NOT IN SUCH CASES APPLY. THIS WARRANTY GIVES YOU SPECIFIC RIGHTS, AND YOU MAY ALSO HAVE OTHER RIGHTS THAT VARY FROM STATE TO STATE, JURISDICTION TO JURISDICTION, OR COUNTRY TO COUNTRY. NOTHING IN THIS WARRANTY AFFECTS YOUR STATUTORY RIGHTS.

To obtain warranty service instructions, verify the problem and obtain Return Merchandise Authorization (RMA) number, please call Casio tech support at 1-800-981-3698.



NOTE: Any product returned without an RMA number will be refused upon delivery. For trouble shooting, to enquire about extended service warranties or to register your product online, please call the number listed above or visit our website - [www.casio.com](http://www.casio.com)(Opens a new window)

CASIO AMERICA, INC. 570 Mount Pleasant Ave. Dover, NJ 07801 USA

To obtain information regarding other projector warranties please visit [http://www.casioprojector.com/features/warranty/extended\\_warranty](http://www.casioprojector.com/features/warranty/extended_warranty)(Opens a new window)

# **CISCO WARRANTY TERMS AND CONDITIONS**

# CISCO WARRANTY

## Cisco 90-Day Limited Hardware Warranty Terms

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The following are terms applicable to your hardware warranty. Your formal Warranty Statement, including the warranty applicable to Cisco software, appears in the *Cisco Information Packet* that accompanies your Cisco product.

**Duration of Hardware Warranty:** Ninety (90) Days

**Replacement, Repair or Refund Procedure for Hardware:** Cisco or its service center will use commercially reasonable efforts to ship a replacement part within ten (10) working days after receipt of the RMA request. Actual delivery times may vary depending on Customer location.

Cisco reserves the right to refund the purchase price as its exclusive warranty remedy.

**To Receive a Return Materials Authorization (RMA) Number:** Please contact the party from whom you purchased the product. If you purchased the product directly from Cisco, contact your Cisco Sales and Service Representative.

**Complete the form below and keep for ready reference.**

Product purchased from:	
Their telephone number:	
Product Model and Serial number:	
Maintenance Contract number:	

Product warranty terms and other information applicable to Cisco products are available at the following URL:

<http://www.cisco.com/go/warranty>

# Cisco EULA

September 24, 2013 as provided on Cisco.com:

[http://www.cisco.com/en/US/docs/general/warranty/English/EU1KEN\\_.html](http://www.cisco.com/en/US/docs/general/warranty/English/EU1KEN_.html)

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IF YOU ACQUIRED THE SOFTWARE IN JAPAN, EXCEPT FOR LIABILITY ARISING OUT OF OR IN CONNECTION WITH DEATH OR PERSONAL INJURY, FRAUDULENT MISREPRESENTATION, AND REGARDLESS OF WHETHER ANY REMEDY SET FORTH HEREIN FAILS OF ITS ESSENTIAL PURPOSE OR OTHERWISE, IN NO EVENT WILL CISCO, ITS AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SUPPLIERS AND LICENSORS BE LIABLE FOR ANY LOST REVENUE, PROFIT, OR LOST OR DAMAGED DATA, BUSINESS INTERRUPTION, LOSS OF CAPITAL, OR FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL, OR PUNITIVE DAMAGES HOWEVER CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY OR WHETHER ARISING OUT OF THE USE OF OR INABILITY TO USE SOFTWARE OR OTHERWISE AND EVEN IF CISCO OR ANY APPROVED SOURCE OR THEIR SUPPLIERS OR LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

IF YOU ACQUIRED THE SOFTWARE IN EUROPE, THE MIDDLE EAST, AFRICA, ASIA OR OCEANIA, IN NO EVENT WILL CISCO, ITS AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SUPPLIERS AND LICENSORS, BE LIABLE FOR ANY LOST REVENUE, LOST PROFIT, OR LOST OR DAMAGED DATA, BUSINESS INTERRUPTION, LOSS OF CAPITAL, OR FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL, OR PUNITIVE DAMAGES, HOWSOEVER ARISING, INCLUDING, WITHOUT LIMITATION, IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR WHETHER ARISING OUT OF THE USE OF OR INABILITY TO USE THE SOFTWARE, EVEN IF, IN EACH CASE, CISCO, ITS AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SUPPLIERS AND LICENSORS, HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. BECAUSE SOME STATES OR JURISDICTIONS DO NOT ALLOW LIMITATION OR EXCLUSION OF CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE ABOVE LIMITATION MAY NOT FULLY APPLY TO YOU. THE FOREGOING EXCLUSION SHALL NOT APPLY TO ANY LIABILITY ARISING OUT OF OR IN CONNECTION WITH: (I) DEATH OR PERSONAL INJURY, (II) FRAUDULENT MISREPRESENTATION, OR (III) CISCO'S LIABILITY IN CONNECTION WITH ANY TERMS THAT CANNOT BE EXCLUDED UNDER APPLICABLE LAW.

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

**Controlling Law, Jurisdiction.** If you acquired, by reference to the address on the purchase order accepted by the Approved Source, the Software in the United States, Latin America, or the Caribbean, the Agreement and warranties ("Warranties") are controlled by and construed under the laws of the State of California, United States of America, notwithstanding any conflicts of law provisions; and the state and federal courts of California shall have exclusive jurisdiction over any claim arising under the Agreement or Warranties. If you acquired the Software in Canada, unless expressly prohibited by local law, the Agreement and Warranties are controlled by and construed under the laws of the Province of Ontario, Canada, notwithstanding any conflicts of law provisions; and the courts of the Province of Ontario shall have exclusive jurisdiction over any claim arising under the Agreement or Warranties. If you acquired the Software in Europe, the Middle East, Africa, Asia or Oceania (excluding Australia), unless expressly prohibited by local law, the Agreement and Warranties are controlled by and construed under the laws of England, notwithstanding any conflicts of law provisions; and the English courts shall have exclusive jurisdiction over any claim arising under the Agreement or Warranties. In addition, if the Agreement is controlled by the laws of England, no person who is not



a party to the Agreement shall be entitled to enforce or take the benefit of any of its terms under the Contracts (Rights of Third Parties) Act 1999. If you acquired the Software in Japan, unless expressly prohibited by local law, the Agreement and Warranties are controlled by and construed under the laws of Japan, notwithstanding any conflicts of law provisions; and the Tokyo District Court of Japan shall have exclusive jurisdiction over any claim arising under the Agreement or Warranties. If you acquired the Software in Australia, unless expressly prohibited by local law, the Agreement and Warranties are controlled by and construed under the laws of the State of New South Wales, Australia, notwithstanding any conflicts of law provisions; and the State and federal courts of New South Wales shall have exclusive jurisdiction over any claim arising under the Agreement or Warranties. If you acquired the Software in any other country, unless expressly prohibited by local law, the Agreement and Warranties are controlled by and construed under the laws of the State of California, United States of America, notwithstanding any conflicts of law provisions; and the state and federal courts of California shall have exclusive jurisdiction over any claim arising under the Agreement or Warranties.

For all countries referred to above, the parties specifically disclaim the application of the UN Convention on Contracts for the International Sale of Goods. Notwithstanding the foregoing, either party may seek interim injunctive relief in any court of appropriate jurisdiction with respect to any alleged breach of such party's intellectual property or proprietary rights. If any portion hereof is found to be void or unenforceable, the remaining provisions of the Agreement and Warranties shall remain in full force and effect. Except as expressly provided herein, the Agreement constitutes the entire agreement between the parties with respect to the license of the Software and Documentation and supersedes any conflicting or additional terms contained in any Purchase Order or elsewhere, all of which terms are excluded. The Agreement has been written in the English language, and the parties agree that the English version will govern.

Product warranty terms and other information applicable to Cisco products are available at the following URL:  
[www.cisco.com/go/warranty](http://www.cisco.com/go/warranty)

Cisco and the Cisco logo are trademarks or registered trademarks of Cisco and/or its affiliates in the U.S. and other countries. To view a list of Cisco trademarks, go to this URL: [www.cisco.com/go/trademarks](http://www.cisco.com/go/trademarks). Third-party trademarks mentioned are the property of their respective owners. The use of the word partner does not imply a partnership relationship between Cisco and any other company. (1110R)

78-3621-01S0

## Cisco “WebEx” Terms and Conditions

September 24, 2013 as provided on Cisco.com:

[http://www.cisco.com/web/products/software\\_licensing\\_center.html](http://www.cisco.com/web/products/software_licensing_center.html)

and specifically

<http://contractdocuments.webex.com/webextermsconditions.pdf>

## WebEx Terms and Conditions

**1. WebEx Services.** These WebEx Terms and Conditions ("Agreement") govern the use by the Subscriber of any services (the "Services") ordered by Subscriber from WebEx and set forth in one or more Order Forms. "Services" in this Agreement does not refer to or include any professional services. Professional services ordered by Subscriber, if any, will be as set forth in a statement of work governed by separate terms and conditions.

**2. Order Forms.** An "Order Form" is a form signed by Subscriber that identifies the type and quantity of Services being ordered and the associated fees. The Order Form includes a link to the Service Description(s). An Order Form is effective only when signed by Subscriber and either signed or provisioned by WebEx. Subscriber may be required to provide information in order to register for and/or use certain Services. Subscriber warrants that all such information is accurate.

**3. Changes to Services.** WebEx may, at its sole discretion and from time to time, enhance and/or expand the features of a Service at no additional cost to Subscriber. WebEx may also, at its sole discretion and from time to time, make available additional features and/or functionalities to a Service which may, but are not required to, be added to a Service by Subscriber at an additional cost ("Cost Feature"). If Subscriber elects to add a Cost Feature, it may do so by contacting its local WebEx sales representative or WebEx directly at [http://www.webex.com/go/contact\\_sales](http://www.webex.com/go/contact_sales) in order to receive a quote for the Cost Feature. Further, WebEx may elect to discontinue the availability of a Service, provided that such discontinuance will be effective no earlier than expiration of the then-current Initial or Renewal Term as specified in the applicable Order Form. Subscriber agrees that WebEx is free to use and incorporate into WebEx products and services any suggestions, ideas, recommendations, bug reports, or other feedback that Subscriber provides to WebEx without payment of compensation to Subscriber.

**4. Beta Services.** WebEx may, at its sole discretion, make available to Subscriber a "beta" version of any of the Services (the "Beta Services") for purposes of evaluation and feedback. Subscriber acknowledges that the Beta Service(s) Subscriber is evaluating may contain bugs, errors and other problems and is provided to Subscriber "AS-IS." WebEx disclaims any warranty or liability obligations to Subscriber of any kind with respect to the Beta Services. Subscriber further acknowledges the importance of communication between WebEx and Subscriber during Subscriber's use of the Beta Services and hereby agrees to receive related correspondence and updates from WebEx. In the event Subscriber requests to opt-out from such communications, Subscriber's participation in the Beta Services will also be canceled. Subscriber also hereby acknowledges that WebEx has not made any representations, promises or guarantees that the Beta Services will ever be announced or made available to anyone in the future and that WebEx has no express or implied obligation to Subscriber to announce or introduce the Beta Services. During the WebEx Beta program, Subscriber will be asked to provide feedback regarding Subscriber's use of the Beta Service(s). Subscriber agrees that WebEx is free to use and incorporate into WebEx products and services any suggestions, ideas, recommendations, bug reports, or other feedback (including, but not limited to, feedback on any Beta Services) that Subscriber provides to WebEx without payment of compensation to Subscriber. WebEx may suspend or terminate access to Beta Services (and delete any Content or data provided to WebEx with respect to such Beta Service(s)) at any time, without notice and without any liability to Subscriber.

**5. Fee Adjustments.** WebEx may, upon at least forty-five (45) days prior written notice and effective at the end of the then-current Initial or Renewal Term, adjust the fees paid by Subscriber for the Services, provided that Subscriber shall have the option, within thirty (30) days of receiving such notice from WebEx, to either (i) modify the quantity or type of Services utilized by Subscriber by a mutual written amendment between the parties, or (ii) terminate the affected Order Forms upon written notice, either of which will become effective at the end of the then current Initial or Renewal Term.

**6. WebEx Training and Support.** Online training and online support will be provided by WebEx at no additional cost, and is specified in the service descriptions included on the applicable Order Form.

**7. Payment.** Subscriber will pay invoices for the Services when due, and in accordance with the Payment Terms set forth on the Order Form. WebEx reserves the right to charge interest at the lower of 1.5% per month or the highest rate permitted by law on any monthly payment (not being reasonably disputed by Subscriber) that is not received when due. Subscriber must notify WebEx in writing of any disputed fees within fifteen (15) days of the invoice date. WebEx may suspend the Services ten (10) business days following WebEx's written notice to Subscriber that Subscriber's payment of undisputed fees is ten (10) or more business days delinquent. Additionally, WebEx is entitled to recover any reasonable sums expended in connection with the collection of sums not paid when due. Subscriber shall pay all taxes (exclusive of taxes based on the net income of WebEx), levies, or charges imposed by any governmental authority of any kind whatsoever applicable to any of the materials, goods, Services or related components provided by WebEx to Subscriber.

## 8. Term and Termination.

**a. Term and Termination of Order Forms.** The "Initial Term" of an Order Form will be for the number of months set forth on the Order Form, commencing on the date the Service is available for use by Subscriber. Each "Renewal Term" will begin at the end of the preceding (Initial or Renewal) Term and continue as set forth on the Order Form. Either party may terminate any Order Form at the end of any (Initial or Renewal) Term by providing the other party written notice of termination at least thirty (30) days prior to the end of such term.

**b. Term and Termination of Agreement.** This Agreement will commence on the date Subscriber signs its first Order Form and may be terminated by written notice effective upon the termination of all of Subscriber's Order Forms. Each party may terminate any Order Form(s) and/or this Agreement by written notice to the other party if the other party is in material breach of its obligations under this Agreement and such breach is not cured within thirty (30) days after written notice thereof from the terminating party.

**c. Surviving Provisions.** The following provisions will survive the expiration or termination of this Agreement: Sections 7 and any payment provisions set forth in the Order Form (as to amounts due and owing as of this Agreement's expiration or termination date), 9, 10, 11, and 12. Upon any termination of this Agreement, Subscriber must cease any further use of the Services and destroy any copies of associated software within its possession and control (to the extent not prohibited by applicable law).

## **9. Subscriber Responsibilities.**

**a. Account Number/Password.** Except when Subscriber's account number/password is obtained by a third party as a result of a material breach of WebEx's physical or computer system security arising from circumstances within WebEx's control, Subscriber agrees that Subscriber is solely responsible for maintaining the confidentiality of Subscriber's username, account number and passwords and solely responsible for any unauthorized usage. Subscriber agrees to immediately notify WebEx of any unauthorized use of Subscriber's account of which Subscriber becomes aware.

**b. Content.** Except when Subscriber's account is accessed by a third party as a result of a material breach of WebEx's physical or computer system security arising from circumstances within WebEx's control, Subscriber agrees that it is solely responsible for the content of all visual, written or audible communications, files, documents, videos, recordings, and any other material ("Content") displayed, posted, uploaded, stored, exchanged or transmitted on or through the Service. Under no circumstances will WebEx be liable to Subscriber for any loss or damages: (i) arising from any Content, or Content related errors or omissions; or (ii) incurred as a result of the use of, access to, or denial of access to the Content. Subscriber understands and agrees that by displaying, posting, uploading, storing, exchanging or transmitting Content while using the Services or otherwise providing Content to a WebEx website or space ("Site"), Subscriber automatically grants (and warrants and represents it has a right to grant) to WebEx, solely for the purpose of offering the Sites and/or the Services to Subscriber, a world-wide, royalty-free, sublicensable (so WebEx affiliates, contractors, resellers and partners can deliver the Services) license to use, modify, publicly perform, publicly display, reproduce and distribute the Content, during the course of this Agreement and any delivery of Services. If at any time Subscriber objects to any material on a Site, Subscriber's sole remedy is to cease using it (to the extent not prohibited by applicable law). WebEx does not endorse and has no control over what Subscribers or other users of the Service ("Users") post or submit to a Site. Subscriber shall contact WebEx Customer Support at 866-229- 3239 if Subscriber becomes aware of misuse of the Services by any person. WebEx cannot guarantee the accuracy of any information submitted by any User or Content, nor any identity information about any User. WebEx may without notice or liability investigate any complaints and violations or suspected violations of this Agreement that come to its attention and may take any action that it believes is appropriate, including, but not limited to, to rejecting, refusing to post or removing any profile, posting Content, or other data, or restricting, suspending, or terminating Subscriber or any User's access to a Site or Services. However, because situations and interpretations vary, WebEx also reserves the right not to take any action.

**c. Communications.** Subscriber agrees that Subscriber will not use the Services to send unsolicited email outside Subscriber's company or organization (e.g., "spam") in violation of applicable law, falsify any email header information when sending emails (e.g., "spoofing"), or attempt to acquire sensitive information such as usernames, passwords and credit card details by masquerading as a trustworthy entity (e.g., "phishing"). Subscriber further agrees not to use the Services to communicate any message or material that is harassing, libelous, threatening, obscene, or that would violate the intellectual property rights of any party, give rise to civil liability, constitute a criminal offense, or is otherwise unlawful under any applicable law or regulation. Subscriber agrees to indemnify, defend and hold harmless WebEx from any and all third party claims, liability, damages and/or costs (including, but not limited to, attorneys' fees) arising from Subscriber's violation of this Section 9.

**d. Privacy.** Subscriber acknowledges and agrees that WebEx acts as a passive conduit and it will not monitor or disclose Content, except as needed to provide the Services, as instructed by Subscriber, or as otherwise required by law. Use of the Sites and the Services constitutes consent by Subscriber to WebEx's and/or its affiliates' collection and use of such information and, for European Economic Area (EEA) customers, to the transfer of such information to a location outside the EEA, as well as to other countries deemed to have adequate data protection laws. Use of Sites and the Services is also subject to the Cisco Systems, Inc. Online Privacy Statement located at <http://www.cisco.com/web/siteassets/legal/privacy.html>, which is incorporated into this Agreement by this reference. The foregoing notwithstanding, WebEx may contact Subscriber via e-mail or otherwise with information relevant to Subscriber's use of the Services and payment obligations, if any, regardless of whether Subscriber has opted out of receiving such notices. Subscriber also agrees to have Subscriber's name and/or email address listed in the header of certain communications Subscriber initiates through the Services.

**10. Warranty Disclaimer.** SUBSCRIBER UNDERSTANDS AND AGREES THAT THE SERVICES, SITES, AND ANY ASSOCIATED SOFTWARE, ARE PROVIDED "AS IS" AND "AS AVAILABLE." TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW, WEBEX, AND ITS SUPPLIERS, RESELLERS AND AFFILIATES, EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. WEBEX, AND ITS SUPPLIERS, RESELLERS AND AFFILIATES, MAKE NO WARRANTY OR REPRESENTATION REGARDING THE SERVICES, ANY INFORMATION, MATERIALS, GOODS OR SERVICES OBTAINED THROUGH THE SERVICES OR THE SITES, OR THAT THE SERVICES WILL MEET ANY SUBSCRIBER REQUIREMENTS, OR BE UNINTERRUPTED, TIMELY, SECURE OR ERROR FREE. Without limiting the foregoing, the Services are not designed or licensed for use in environments requiring fail-safe controls, including without limitation operation of nuclear facilities, aircraft navigation/communication systems, air traffic control, and life support or weapons systems, and WebEx, and its suppliers, resellers and affiliates, specifically disclaim any express or implied warranty of fitness for such purposes.

**11. Limitation of Liability.** IN NO EVENT WILL WEBEX, OR ITS SUPPLIERS, RESELLERS OR AFFILIATES, BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, INDIRECT, EXEMPLARY OR CONSEQUENTIAL DAMAGES

WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, PROCUREMENT OF SUBSTITUTE GOODS AND/OR SERVICES, OR ANY OTHER PECUNIARY LOSS) INCLUDING BUT NOT LIMITED TO CLAIMS ARISING OUT OF, OR RESULTING FROM THE USE OF OR INABILITY TO USE THE SERVICES, THE SITES, OR ASSOCIATED SOFTWARE, WHETHER ARISING IN TORT (INCLUDING NEGLIGENCE), CONTRACT OR ANY OTHER LEGAL THEORY, EVEN IF WEBEX HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY CASE, WEBEX'S (AND ITS SUPPLIERS', RESELLERS' AND AFFILIATES') MAXIMUM CUMULATIVE LIABILITY AND SUBSCRIBER'S EXCLUSIVE REMEDY FOR ANY CLAIMS ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL BE LIMITED TO THE AMOUNT ACTUALLY PAID BY SUBSCRIBER, IF ANY, FOR THE SUBSCRIPTION SERVICE FEES IN THE PREVIOUS TWELVE (12) MONTHS PRECEDING THE EVENT OR CIRCUMSTANCES GIVING RISE TO SUCH CLAIMS EVEN IF ANY REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE. THIS LIMITATION IS CUMULATIVE AND NOT PER INCIDENT (I.E., THE EXISTENCE OF TWO OR MORE CLAIMS WILL NOT ENLARGE THIS LIMIT). Because some states and jurisdictions do not allow the exclusion or limitation of liability, the above limitation may not apply to Subscriber.

## 12. General.

**a. Proprietary Rights.** Excluding Subscriber Marks and Content, WebEx and/or its suppliers, as applicable, retain ownership of all proprietary rights in the Services and Sites and in all trade names, trademarks, service marks, logos, and domain names ("WebEx Marks") associated or displayed with the Services. Subscriber may not frame or utilize framing techniques to enclose any WebEx Marks, or other proprietary information (including images, text, page layout, or form) of WebEx without WebEx's express written consent. Subscriber may not use any meta tags or any other "hidden text" utilizing WebEx Marks without WebEx's express written consent.

**b. Use of Subscriber's Name and Logo.** Subscriber agrees that WebEx may use Subscriber's name, logo and other trademarks or service marks of Subscriber (collectively "Subscriber's Trademarks") to create a co-branded Services website as part of delivery of the Services. Nothing in this Agreement transfers to WebEx any right, title or interest in or to the Subscriber's Trademarks, and all goodwill arising from use of the Subscriber's Trademarks will inure to the Subscriber's benefit.

**c. Copyright Policy.** Subscriber retains copyright and any other rights it already holds in Content which Subscriber submits, stores, posts or displays on or through, the Services. Subscriber may not post, store, modify, distribute, or reproduce in any way copyrighted material, trademarks, rights of publicity or other proprietary rights without obtaining the prior written consent of the owner of such proprietary rights. WebEx may deny access to the Sites or the Services to any User who is alleged to infringe another party's copyright. If Subscriber believes that WebEx or any of its affiliates or any user of WebEx has violated a copyright, please contact us at: [DMCAagent@cisco.com](mailto:DMCAagent@cisco.com) for details on how to properly notify us of a potential copyright infringement or other intellectual property rights issue. In the event Subscriber's content is removed pursuant to this process, Subscriber will receive information on how to file a counter-notice. Notices and counter-notices are legal notices distinct from regular Service activities or communications. As such, they are not subject to WebEx's Privacy Policy. This means WebEx may publish or share them with third parties at WebEx's discretion, and WebEx may produce them pursuant to a legal discovery request.

**d. Assignment.** Neither party may assign or delegate their respective obligations under this Agreement either in whole or in part, without the prior written consent of the other party. Notwithstanding the foregoing, either party may assign their rights and obligations under this Agreement as the result of a merger, consolidation, acquisition or the sale of all or substantially all of the assets of the assigning party and WebEx may assign its rights and delegate its obligations in whole or in part to an affiliate. Either party may terminate this Agreement upon ten (10) days notice, if the assignee can be reasonably considered a competitor of the non-assigning party.

**e. Interpretation and Conflicting Terms.** This Agreement will be interpreted fairly in accordance with its terms and without any strict construction in favor of or against either party. This Agreement has been prepared in the English Language and such version shall be controlling in all respects and any non-English version of this Agreement is solely for accommodation purposes. This Agreement, including all Attachments and Service-specific Supplemental Terms (if any), constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes and replaces all prior or contemporaneous understandings or agreements, written or oral, regarding such subject matter. To the extent that any provision of this Agreement and any Order Form conflict, the terms of the Order Form shall control. However, WebEx and Subscriber shall not be bound by terms additional to or different from those in this Agreement that appear in Subscriber's or WebEx's acknowledgements, purchase orders, quotations, prior understandings, or in any other communications between the parties, unless such terms are expressly agreed to by amendment to this Agreement, and are executed by both Subscriber and WebEx.

**f. Force Majeure.** Neither party will be responsible for failure of performance due to causes beyond its control. Such causes include (without limitation) accidents, acts of God, labor disputes, actions of any government agency, shortage of materials, acts of terrorism, or the stability or availability of the Internet or a portion thereof.

**g. Waivers.** The waiver of any one breach, default or right granted under this Agreement will not constitute the waiver of any subsequent breach, default or right granted. Any provision of this Agreement held to be illegal or unenforceable will be deemed amended to conform to applicable laws or regulations, or if it cannot be so amended without materially altering the intention of the parties, it will be stricken and the remainder of this Agreement will continue in full force and effect.

**h. Use of the Services.** Subscriber may use the Services only as permitted under the terms and conditions of this Agreement or other written agreements between Subscriber and WebEx. Subscriber will not resell, distribute, use on a timeshare or service bureau basis, or otherwise directly generate income from the Services. Subscriber will not modify, make derivative works of, disassemble, decompile or reverse engineer the Sites, Services or any component thereof (except to the

extent expressly permitted by law). For meeting Services, Subscriber may use the Services only for sessions or meetings in which Subscriber is an active participant.

**i. Software.** Subscriber may be required to download and install WebEx software ("Software"). In that event, WebEx agrees to provide Subscriber with a limited, personal, non-exclusive, non-transferable, non-sublicensable license to use the Software in accordance to the terms of this Agreement. Subscriber may not use the Software for anything other than as intended by WebEx in connection with Subscriber's use of the Services. Subscriber may not use the Software with any device, program or service designed to circumvent technological measures employed to control access to, or the rights in, a content file or other work protected by copyright laws. All rights not expressly granted by WebEx are hereby reserved. Subscriber agrees not to take any action to interfere with WebEx's or its supplier's ownership of or rights in the Software. Subscriber agree that, unless otherwise permitted in this license or by law, Subscriber will not: (i) reproduce, republish, display, frame, download, distribute, or transmit the Software; (ii) to the extent permitted under applicable law redistribute, encumber, sell, rent, lease, loan, sublicense, assign, or otherwise transfer rights to the Software; (iii) modify or create any derivative works based on the Software, including customization, translation, or localization; (iv) copy, reproduce, reuse in another product or service, modify, alter, or display in any manner any software or files, or parts thereof, included as part of the Software; (v) except to the extent expressly permitted by law, decompile, disassemble, reverse engineer, or otherwise attempt to derive the source code of the Software, or in any way ascertain, decipher, or obtain the communications protocols for accessing the Software, or the underlying ideas or algorithms of the Software; (vi) create or use any software other than as authorized by WebEx to access the Software; (vii) attempt to gain unauthorized access to the Software or to any account, application, platform, computer system or network associated with the Software; (viii) use the Software in any way that violates this Agreement, or any other agreements between Subscriber and WebEx or its affiliates, or any law; and (ix) remove or alter any trademark, logo, copyright or other proprietary notices, legends, symbols or labels in or on the Software or associated with the Services.

**j. Legal Compliance.** Subscriber agrees that Subscriber will comply with all applicable laws and regulations in connection with Subscriber's use of the Services, including, but not limited to: (a) with respect to personally identifiable information sent or received by Subscriber, all applicable privacy laws and regulations, (b) laws relating to the recording of communications, including, when required, advising all participants in a recorded WebEx meeting or event that the meeting or event is being recorded, and (c) laws relating to the use of VoIP-based services, if applicable. It is the sole responsibility of Subscriber to ensure it has the right to use all features of the Services in Subscriber's jurisdiction. WebEx may modify or not make available Services or Service features to comply with applicable laws and regulations. Subscriber represents that Subscriber is not an individual less than 18 years of age, or an emancipated minor, or over the age of 13 and possess legal parental or guardian consent to register for and use the Sites and Services. WebEx products, technology and the Services are subject to U.S. and local export control laws and regulations. Subscriber shall comply with such laws and regulations governing use, export, re-export, and transfer of products, technology and Services and will obtain all required U.S. and local authorizations, permits, or licenses. Subscriber certifies that Subscriber and any third parties Subscriber invites will not use the Service from within an embargoed country. Subscriber certifies that they are not on the U.S. Department of Commerce's Denied Persons List or affiliated lists, on the U.S. Department of Treasury's Specially Designated Nationals List or on any U.S. Government export exclusion lists. The export obligations under this clause shall survive the expiration or termination of this Agreement.

**k. Governing Law.** Subscriber's use of the Services is subject to Subscriber entering into the Agreement with the WebEx entity specified below based on where Subscriber or its business is located. Choice of law and the location for resolving disputes with such WebEx entity for Subscriber's region/country is also specified below. The validity, interpretation, and performance of this Agreement shall be controlled by and construed under those applicable laws.

i. For North America and South America, the WebEx entity is Cisco WebEx LLC. The websites for this region are [webex.com](http://webex.com) (US and Canada), [webex.com.mx](http://webex.com.mx) (for Latin America) and [webex.com.br](http://webex.com.br) (for Brazil). Governing law for this region is the laws of the State of California, United States of America, as if performed wholly within the state and without giving effect to the principles of conflicts of law. The State and Federal courts of California shall have exclusive jurisdiction over any claim.

ii. For Europe, Africa and the Middle East, the following shall apply. For the United Kingdom, the WebEx entity is WebEx Communications UK, Ltd. and the website is [webex.co.uk](http://webex.co.uk). For France, the WebEx entity is WebEx Communications France SARL and the website is [webex.co.fr](http://webex.co.fr). For Germany, the WebEx entity is WebEx Communications Deutschland GmbH and the website is [webex.co.de](http://webex.co.de). For the rest of Europe, Africa and the Middle East, the WebEx entity is WebEx Communications B.V. and the websites vary by location, please check [webex.com](http://webex.com) for links to specific local country websites, including [webex.es](http://webex.es) (for Spain). Governing law for these regions/countries is the laws of England. The English Courts shall have exclusive jurisdiction over any claim arising under this Agreement. No person who is not a party to this Agreement shall be entitled to enforce or take the benefit of any of its terms under the Contracts (Rights of Third Parties) Act 1999.

iii. For Japan, the WebEx entity is WebEx Communications Japan, K.K. The website for Japan is [webex.co.jp](http://webex.co.jp). Governing law is the laws of Japan. The Tokyo District Court shall have exclusive jurisdiction over any claim arising under this Agreement.

iv. For Australia, New Zealand, Oceania, China, India and the rest of Asia, the following shall apply. For Australia, New Zealand and Oceania, the WebEx entity is WebEx Australia Pty Ltd. and the website is [webex.com.au](http://webex.com.au). For India, the WebEx entity is WebEx Communications India Private Limited and the website is [webex.co.in](http://webex.co.in). For China, the WebEx entity is WebEx (China) Software Ltd. Co. and the website is [webex.com.cn](http://webex.com.cn). For the rest of Asia, the WebEx entity is WebEx Asia Limited and the websites include [webex.com.hk](http://webex.com.hk) (for Hong Kong) and [webex.co.kr](http://webex.co.kr) (for South Korea). Governing law for these regions/countries is the laws of the State of New South Wales, Australia, as if performed wholly within the state and without giving effect to the principles of conflicts of law. The State and Federal Courts of New South Wales shall have exclusive jurisdiction over any claim arising under this Agreement.

v. Notwithstanding the foregoing, either party shall at all times have the right to commence proceedings in any other court of its choice for interim injunctive relief in the event of threatened or actual breach of intellectual property rights.

vi. The parties specifically disclaim the application of the UN Convention on Contracts for the International Sale of Goods to the interpretation or enforcement of this Agreement.



Cisco Systems, Inc.  
 US Public Sector  
 13635 Dulles Technology Drive  
 Herndon, VA 20171  
 (703) 484-5500

Cisco Systems, Inc. Supplemental EULAs (SEULAs) provided at the request of the General Services Administration Schedule Program and are authorized by Cisco solely for the use of GSA Schedule Customer orders.

Cisco Supplemental EULAs (SEULAs) as provided on September 24, 2013

Pg	Coverage	Specific SEULA topic	Reference
3	Cisco Meraki Cloud Networking	Cisco Meraki Cloud Networking	<a href="#">DOC</a>
9	Cloud and Systems Management	<a href="#">Cisco Active Network Abstraction</a>	<a href="#">DOC-19972</a>
10	Cloud and Systems Management	<a href="#">Cisco Cloud Portal</a>	<a href="#">DOC-87346</a>
10	Cloud and Systems Management	<a href="#">Cisco Workplace Portal</a>	<a href="#">DOC-87346</a>
12	Cloud and Systems Management	<a href="#">Cisco Configuration Engine 3.0 Media and Developer Kit</a>	<a href="#">DOC-13883</a>
13	Cloud and Systems Management	<a href="#">Cisco Connected Grid Network Management System</a>	<a href="#">DOC-88737</a>
14	Cloud and Systems Management	<a href="#">Cisco Intelligent Automation for Cloud</a>	<a href="#">DOC-88556</a>
14	Cloud and Systems Management	Cisco Intelligent Automation for Compute	<a href="#">DOC-88556</a>
14	Cloud and Systems Management	<a href="#">Cisco Intelligent Automation for SAP</a>	<a href="#">DOC-88556</a>
16	Cloud and Systems Management	Cisco Prime LMS 4.1	<a href="#">DOC-58713</a>
16	Cloud and Systems Management	<a href="#">Cisco Prime Infrastructure</a>	<a href="#">DOC-58713</a>
18	Cloud and Systems Management	<a href="#">Cisco Prime Central</a>	<a href="#">DOC-58855</a>
14	Cloud and Systems Management	<a href="#">Cisco Process Orchestrator</a>	<a href="#">DOC-88556</a>
14	Cloud and Systems Management	Cisco Server Provisioner	<a href="#">DOC-88556</a>
14	Cloud and Systems Management	<a href="#">Cisco Tidal Enterprise Scheduler</a>	<a href="#">DOC-88556</a>
20	Cloud and Systems Management	<a href="#">Cisco Tidal Enterprise Scheduler</a> (Cisco Cloud Portal, Workplace Portal and Cisco Service Connector)	<a href="#">DOC-88700</a>
14	Cloud and Systems Management	<a href="#">Cisco Tidal Performance Analyzer</a>	<a href="#">DOC-88556</a>
22	Cloud and Systems Management	Cisco Tidal Intelligent Automation	<a href="#">DOC-31651</a>
24	Cloud and Systems Management	Cisco Unified Provisioning Manager	<a href="#">DOC-21311</a>
24	Cloud and Systems Management	Cisco Unified Operations Manager	<a href="#">DOC-21311</a>
24	Cloud and Systems Management	Cisco Unified Service Monitor	<a href="#">DOC-21311</a>
24	Cloud and Systems Management	<a href="#">Cisco Unified Service Statistics Manager</a>	<a href="#">DOC-21311</a>
26	Collaboration	Cisco Magento Managed Services	<a href="#">DOC</a>
29	Collaboration	Cisco UC Virtualization Hypervisor and Cisco UC Virtualization Foundation	<a href="#">DOC</a>
31	Collaboration	Cisco Unified Communications Manager 7.X NFR Kit	<a href="#">DOC-19231</a>
33	Collaboration	Cisco Unified Communications Manager 8.X NFR Kit	<a href="#">DOC-16947</a>
35	Collaboration	Cisco Unified Video Conferencing	<a href="#">DOC-29311</a>
35	Collaboration	<a href="#">Cisco Unified Videoconferencing Manager</a>	<a href="#">DOC-29311</a>
37	Routers	CSR 1000V	<a href="#">DOC-82134</a>
39	Security	<a href="#">Cisco AnyConnect Secure Mobility Client</a>	<a href="#">DOC-1</a>
46	Security	Cisco ASA 5585-X CX-10 Web Security Essentials	<a href="#">DOC-81013</a>



47	Security	Cisco ASA Next Generation Firewall Services (formerly ASA CX Context-Aware Security) Application Visibility & Control	<a href="#">DOC-2</a>
49	Security	Cisco ASA Next Generation Firewall Services (formerly ASA CX Context-Aware Security) Web Security Essentials	<a href="#">DOC-3</a>
50	Security	Cisco ISE Wireless	<a href="#">DOC-4</a>
51	Security	Cisco ISE Wireless Upgrade	<a href="#">DOC-5</a>
52	Security	Cisco ISE Advance	<a href="#">DOC-8</a>
53	Security	Cisco ISE Migration	<a href="#">DOC-7</a>
54	Security	Cisco ISE All-in-One	<a href="#">DOC-8</a>
56	Security	Cisco Content Security Software (formerly Cisco IronPort Email and Web Security Appliances and Security Management Application)	<a href="#">DOC</a>
59	Security	Cisco ASA 1000V Cloud Firewall	<a href="#">DOC-11</a>
61	Security	Cisco Integrated Security Appliance (ISA)	<a href="#">DOC-12</a>
63	Security	Cisco ACS (all-in-one version)	<a href="#">DOC-14</a>
35	TelePresence	Cisco TelePresence Commercial Express	<a href="#">DOC-29311</a>
65	TelePresence	<a href="#">Cisco TelePresence Multipoint Switch 1.5</a>	<a href="#">DOC-14958</a>
35,65	TelePresence	<a href="#">Cisco TelePresence Manager</a>	<a href="#">DOC-14958</a> <a href="#">DOC-29311</a>
65	TelePresence	Cisco TelePresence Primary Codec	<a href="#">DOC-14958</a>
35,65	TelePresence	Cisco TelePresence Express Multipoint Switch	<a href="#">DOC-14958</a> <a href="#">DOC-29311</a>
65	TelePresence	Cisco TelePresence Express Manager System	<a href="#">DOC-14958</a>
67	TelePresence	<a href="#">Cisco TelePresence Multipoint Switch</a>	<a href="#">DOC-26211</a>
68	TelePresence	CTS Management	<a href="#">DOC-20211</a>
69	Video	Cisco Video Control Plane and CDN Manager	<a href="#">DOC-66875</a>
71	Video	Cisco Videoscape Media Managed Services and Videoscape Media Suite Software	<a href="#">DOC-31551</a>
71	Video	<a href="#">Cisco Videoscape Media Suite CMS</a>	<a href="#">DOC-31151</a>
71	Video	<a href="#">Cisco Videoscape Media Suite Entitlement</a>	<a href="#">DOC-31151</a>
71	Video	<a href="#">Cisco Videoscape Media Suite Publisher</a>	<a href="#">DOC-31151</a>
71	Video	<a href="#">Cisco Videoscape Media Suite Streaming Player</a>	<a href="#">DOC-31151</a>
73	WebEx	<a href="#">Cisco WebEx Meeting Server</a>	<a href="#">DOC</a>
77	WebEx	<a href="#">Cisco WebEx Social</a>	<a href="#">DOC</a>



**Meraki LLC**

660 Alabama Street

San Francisco, CA 94110

*Last Updated May 30, 2013***SUPPLEMENTAL END USER LICENSE AGREEMENT**

THIS SUPPLEMENTAL END USER LICENSE AGREEMENT (THIS "AGREEMENT") SUPPLEMENTS AND AMENDS THE TERMS OF THE CISCO SYSTEMS, INC. ("CISCO") END USER LICENSE AGREEMENT AVAILABLE AT THE FOLLOWING WEB ADDRESS: <http://www.cisco.com/go/eula> (THE "EULA"). THIS AGREEMENT FORMS A LEGALLY BINDING AGREEMENT BETWEEN YOU AND MERAKI LLC AND ITS AFFILIATES, INCLUDING CISCO, ITS PARENT COMPANY ("MERAKI") AND GOVERNS YOUR ACQUISITION AND USE OF MERAKI PRODUCTS. PLEASE READ THIS AGREEMENT CAREFULLY. THIS AGREEMENT GOVERNS THE TERMS UNDER WHICH YOU MAY USE OUR FREE WEB AND MOBILE APPS, PURCHASE HARDWARE FROM US OR OUR AUTHORIZED RESELLERS, AND PURCHASE A LICENSE TO USE OUR PROPRIETARY WEB-BASED HOSTED SOFTWARE PLATFORM THAT INTERACTS WITH OUR HARDWARE. , YOU ACKNOWLEDGE THAT YOU HAVE READ, UNDERSTOOD, AND AGREE TO BE BOUND BY THIS AGREEMENT AND TO USE OUR PRODUCTS IN COMPLIANCE WITH THIS AGREEMENT.

IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, PLEASE DO NOT USE OUR PRODUCTS.

The terms "Customer," "you," "your," and "yours" refer to you, the end GSA customer, the authorized entity permitted to use the Products, whether obtained directly from Meraki or through one of our authorized resellers. The terms "Meraki" "we," "us," and "our" refer to Meraki, LLC, a Delaware limited liability company with offices at 500 Terry Francois Street, San Francisco, California, 94158. . For any material modifications to this Agreement, such modifications will be effective if they are stated in a writing, signed by both parties. ..

**ARTICLE 1 DEFINITIONS**

For purposes of this Agreement, the following terms have the corresponding definitions listed below.

"Agent Software" means Meraki's downloadable software client that is installed on a computer or mobile device as part of the Systems Manager application.

"Apps License" has the meaning given to it in Section 3.2, below.

"Customer Content" means content prepared by you for use with the Products, whether or not provided to Meraki, including logos, splash pages, network configurations, and preferences.

"Device Management Functionality" means the actions that may be performed by Customer or by Meraki on a mobile device or other device (e.g., a laptop computer) managed by our Systems Manager product, including: (i) list, access, copy, move, and delete files; (ii) track and record device location over time; (iii) take and record screenshots (on computers only); (iv) set and enforce policies; and (v) install and remove apps (on mobile devices only).

"Documentation" means any user instructions, manuals, Specifications, or other documentation provided by Meraki, at <http://meraki.cisco.com> that relates to the use of the Products, including any Modifications.

"Distributor" has the meaning given to it in Section 3.7, below

"End Users" means those persons who obtain access to your Network.

"Feedback" has the meaning given to it in Section 5.1, below.

"Firmware" means our proprietary software embedded in or otherwise running on the Hardware.

"Firmware License" has the meaning given to it in Section 3.1, below.

"Governing Documents" has the meaning given to it in Section 8.1, below.

"Hardware" means the Meraki hardware products listed on an Order.

"Hosted Software" means our proprietary, web-based software platform, including the interface known as the "Dashboard" and any Agent Software, but specifically excluding the Web Apps.

"Hosted Software License" has the meaning given to it in Section 3.1, below.

"Intellectual Property Rights" means all (a) rights associated with works of authorship throughout the world, including but not limited to copyrights, (b) trademarks, service marks, trade name and logo rights, and similar rights, (c) trade secret rights and other rights in inventions, know-how and confidential or proprietary information, (d) patent rights, (e) domain names and Internet keywords, (f) other intellectual property or other proprietary rights, whether arising by operation of law, contract, license, or otherwise, and (g) registrations, initial applications, renewals, extensions, provisionals, continuations, divisions or reissues thereof now or hereafter in force (including any rights in any of the foregoing).

"Licenses" means, collectively, the Firmware License, the Hosted Software License, and the Apps License.

"Mobile Apps" means the Agent Software for mobile devices.



**"Modification" or "Modifications"** means all changes incorporated into or used with the Software or Documentation, including enhancements, standard releases, and patches.

**"Network"** means your local area network, created in whole or in part by use of our Products.

**"Order"** means a purchase order submitted by you either directly to Meraki or to one of our authorized resellers with respect to the purchase of the hardware products, software products, and related licenses listed on such Order.

**"Products"** means, collectively, the Hardware, the Software, the Documentation, and the Support Services.

**"Purchase Price"** means the aggregate price you paid for the Products listed on the applicable Order.

**"RMA"** has the meaning given to it in Section 7.2, below.

**"Service Level Agreement"** means the Service Level Agreement included as Attachment 1, which governs the terms of the Service Level Warranty.

**"Service Level Warranty"** has the meaning given to it in Section 7.1, below.

**"Software"** means, collectively, the Firmware, the Hosted Software, and the Web Apps.

**"Specifications"** has the meaning given to it in Section 4.1, below.

**"Systems Manager"** means the Web App currently known as Systems Manager.

**"Systems Manager Data"** means the data collected through the Device Management Functionality and otherwise through Systems Manager.

**"Support Services"** means the customer support services described below in Attachment 2.

**"Term"** means the term of the Hosted Software License(s) indicated on the Order or as subsequently modified in connection with the purchase of additional Hosted Software Licenses so that the Term with respect to all such licenses expires at the same time in accordance with the provisions of Section 6.1, below.

**"Traffic Information"** means, collectively, information about devices that connect to the Network, such as MAC address, device type, operating system, geolocation information, and information transmitted by devices when attempting to access or download data or content (e.g., hostnames, protocols, port numbers, and IP addresses) via the Network.

**"Warranty Period"** means, with respect to any item of Hardware, the greater of one year or the warranty period set forth in the applicable Specifications, commencing, in either case, on the date the applicable Hardware is shipped to Customer in fulfillment of the Order.

**"Web Apps"** means the web-based applications (available to you at <http://meraki.cisco.com>) currently known as "Mapper," "Stumbler," and "Systems Manager."

## ARTICLE 2 SERVICES

**2.1. Meraki Responsibilities.** If you have purchased a Hosted Software License, we will provide you with access to the Hosted Software commencing as of the date your Order ships through the expiration of the Term, subject to the terms of this Agreement.

**2.2. Customer Responsibilities.** You are responsible for your use of the Products in full compliance with this Agreement and for all activities engaged in by you and your End Users while using your Network, including without limitation: (i) promptly updating the registration information of the primary account holder for the Hosted Software if it changes or is no longer current, accurate and complete; (ii) using commercially reasonable efforts to prevent unauthorized access to, or use of, the Hosted Software, and notifying Meraki promptly of such unauthorized access or use; (iii) being responsible for the accuracy, quality, integrity, legality, reliability, and appropriateness of all activities of your End Users and providing any support services your End Users may need; (iv) obtaining and maintaining all Hardware and other communications equipment needed to access the Hosted Software or Web Apps and for paying all required third-party access charges (v) being responsible for, and assuming the risk of, any problems resulting from the content, completeness, accuracy, and consistency of all Customer Content; and (vi) complying with all applicable local, state, federal, and foreign laws in using the Hosted Software, or Web Apps.

## ARTICLE 3 LICENSES

**3.1. Firmware License and Hosted Software License.** Subject to the terms and conditions of this Agreement, Meraki grants you a non-sublicensable, non-transferable (except as otherwise provided herein) and non-exclusive license, for the duration of the Term, to (i) use the Firmware only for internal purposes, in object code form, as embedded in, or for execution on, the Hardware (the "Firmware License"), and (ii) access the Hosted Software via a web browser and use the Hosted Software solely for internal business purposes (the "Hosted Software License").

**3.2. Apps License.** If you access any of the Web Apps, including the download and/or installation of any related Agent Software, or download any Mobile App, then, subject to the terms and conditions of this Agreement, Meraki grants you an individual, personal, non-sublicensable, non-exclusive, and non-transferable (except as otherwise provided herein) license to use the Web Apps or Mobile App, as applicable, for your personal or internal business



purposes (the "Apps License").

### 3.3 Reserved.

**3.4. Modifications.** If, during the Term, Meraki integrates any Modifications into the Firmware, Hosted Software, or Web Apps, each such Modification and all related Documentation, will be deemed to be part of the Firmware, Hosted Software, or Web Apps and made available to the Government only under the terms of the applicable Firmware License, Hosted Software License, or Apps License.

**3.5. License to Customer Content.** You hereby grant us a non-sublicensable and non-exclusive license to reproduce, distribute, or use any Customer Content for the duration of the License(s) applicable to the Products you are using in connection with our delivery of the Products and services contemplated by this Agreement. You understand and agree that Meraki may use and disclose, in an aggregated format only, any and all data that is derived or collected from your use of the Products for the purpose of generally improving the Products and to otherwise operate, manage, maintain, improve, or promote Meraki's products and services, provided that such aggregated data would not reasonably be identifiable as originating with or associated with you or any End User.

**3.6. Restrictions.** In exchange for the grant of the applicable license or licenses set forth above, you agree you will not, and will not permit others to, whether directly or indirectly: (i) reverse engineer, decompile, disassemble, or otherwise attempt to discover the source code or underlying ideas or algorithms of the Software; (ii) modify, translate, or create derivative works based on the Software; (iii) rent, lease, distribute, sell, resell, assign, or otherwise transfer rights to the Software; (iv) use or attempt to use the Firmware on third party hardware components; or (v) remove any proprietary notices or labels on the Software.

**3.7. Special Terms Regarding Apple.** Mobile Apps may be distributed by Meraki via a third party ("Distributor"), including Apple, Inc. You acknowledge that this Agreement is entered into solely between you and Meraki. This Agreement is not intended to provide for usage rules for Mobile Apps that are less restrictive than the Usage Rules set forth for Licensed Applications in, or that otherwise conflict with, the App Store Terms of Service as of the date that you accept the App Store Terms of Service (which you acknowledge you have had the opportunity to review).

## ARTICLE 4 HARDWARE

**4.1. Use.** The specifications for any Hardware you have purchased are set forth on the relevant Meraki data sheets (which can be found on <http://meraki.cisco.com>) (the "Specifications"). You will use the Hardware only in accordance with the Specifications and subject to the terms of this Agreement, including this ARTICLE 4.

**4.2. Restrictions.** You will not, and will not permit others to, whether directly or indirectly: (i) disassemble or attempt to reverse engineer the Hardware; (ii) remove or erase the Firmware from the Hardware, or otherwise try to disable or alter the Firmware functionality; (iii) load any other software onto the Hardware; (iv), make any alterations, updates, enhancements, additions or improvements to the Hardware without the prior written approval of Meraki; or (v) remove any logo, trademark, or service mark of Meraki from any item of Hardware. Any alterations, updates, enhancements, additions, or improvements so approved will be the sole property of Meraki. If any alterations, updates, enhancements, additions or improvements interfere with the normal operation, maintenance, or support of the Hardware (including by increasing the cost of maintenance or support or creating a safety hazard), you will promptly remove the same and restore the Hardware to its normal condition.

## ARTICLE 5 OWNERSHIP

**5.1. Meraki Property.** Except as provided in Section 5.2, below, as between you and Meraki, Meraki owns (i) all right, title, and interest, including all Intellectual Property Rights therein, in and to the Software and Documentation, and (ii) all Intellectual Property Rights in the Hardware. Nothing in this Agreement will be construed as transferring or changing our Intellectual Property Rights or interests in the Products in any respect. In addition, we will own any and all right, title, and interest in and to any feedback, suggestions, information, or materials you convey to us will be controlled by applicable provisions of the Copyright Act, 17 U.S.C. § 103 and the FAR clause at 52.227-14 related to the Products in connection with your use of the Products ("Feedback"). You hereby assign to Meraki all right, title, and interest in such Feedback and will execute any documents and take any additional actions Meraki deems necessary to evidence, record, or perfect the foregoing assignment.

**5.2. Customer Property.** Except as provided in Section 3.5, above, as between you and Meraki, you own the Customer Content and all Intellectual Property Rights therein. Nothing in this Agreement will be construed as transferring or changing your ownership rights or interests in the Customer Content in any respect.

**5.3. Reservation of Rights.** Other than the rights expressly granted to you in this Agreement, we reserve all rights with respect to the Products and any and all related rights, including any derivative works and any media, mode, or method of distribution or transmission of the Products, whether available now or developed in the future.

**5.4. Privacy and Data Collection.** Our Privacy Policy hereby incorporated into this Agreement as Attachment 3. Please read the Privacy Policy carefully for information relating to our collection, use, and disclosure of personal information. We



collect Traffic Information and may from time to time make available functionality that allows the Government to limit or restrict the types of Traffic Information we collect. Additionally, for devices with Agent Software installed, we transmit certain geolocation information about those devices and the networks on which they are running to Google Inc. ("Google"), which provides us with related geolocation information that we store and make available to network administrators as described in our Privacy Policy. Google's Privacy Policy, and not Meraki's, governs Google's handling of the information that we provide to Google. We use Traffic Information to make data available to you regarding, and to allow you to exercise certain controls with respect to, the traffic on your Network. We use Systems Manager Data to provide support and conduct product development activities. You represent and warrant to us that you have obtained or will obtain valid consent from each End User to add that End User's device to the Network, to permit you and Meraki to collect, use, and disclose Traffic Information as described in this Section 5.4, and, to the extent you use Systems Manager, to use Systems Manager as described above (including, without limitation, accessing and deleting files on devices) and to permit you and Meraki to collect, use, and disclose Systems Manager Data as described in this Section 5.4. You hereby consent to our collection, use, and disclosure of Traffic Information and, to the extent you use Systems Manager, to our use of the Device Management Functionality and its collection, use, and disclosure of Systems Manager Data, in each case as described in this Section 5.4.

5.5. **Publicity.** Neither we, nor you, will use the other's name, trademark, or trade name without the prior written consent of the other party.

#### **ARTICLE 6 TERM AND TERMINATION**

6.1. **Term.** This Agreement will be effective with respect to your use of the Products until the expiration of the License(s) applicable to the Products you are using, unless earlier terminated under the FAR. To the extent that you purchase additional Hosted Software License(s) subsequent to the date of the first Order, the duration of each Hosted Software License you have purchased will be adjusted such that all of your Hosted Software Licenses terminate on the same date.

The new co-termination date is calculated as a function of (i) the remaining time on your existing Hosted Software License(s) at the time of purchase, (ii) the duration of the Hosted Software License(s) purchased, and (iii) the one-year list price of each such Hosted Software License. This function produces a time value attributable to each Hosted Software License purchased that, when added together with the time value attributable to all new Hosted Software Licenses in a given purchase, yields what we call the "Incremental Dollar Days" associated with the new purchase. In addition, based on the one-year list price of all Hosted Software Licenses in your Network and the number of each type of Hosted Software License purchased, we determine the amount of Hosted Software License value that your Network consumes each day, what we call the "Daily License Usage Rate." By dividing the Incremental Dollar Days by the Daily License Usage Rate, and adding the resulting number of days to the remaining time on your existing Hosted Software Licenses we arrive at the adjusted co-termination date following any new purchase. For further information regarding our licensing and co-termination policies please visit <http://meraki.cisco.com/support/#policies:licensing>.

6.2. **Termination.** Termination may only be effected by the procedures set forth in the FAR.

6.3. **Effect of Termination.** Upon the termination of this Agreement for any reason, your access to and right to use the Products will terminate, and all Licenses will terminate. Upon expiration of a Hosted Software License, your Apps License will survive and you may continue to access and use the Web Apps and Mobile Apps, subject to the terms and conditions of this Agreement. Upon termination of this Agreement, each party will return (or destroy) any Confidential Information of the other party in its possession. The following provisions of this Agreement will survive any termination of the Agreement: Sections 5.1, 5.2, 5.3, 5.4, and 6.3, and ARTICLE 8.

#### **ARTICLE 7 MERAKI WARRANTIES**

7.1. **Service Warranties.** Meraki will make reasonable efforts to provide the Hosted Software and Web Apps available in accordance with the service level warranty set forth in the Service Level Agreement included as Attachment 1 (the "Service Level Warranty"). The remedy set forth in the Service Level Agreement is your sole and exclusive remedy with respect to the subject matter of the Service Level Agreement, and our sole and exclusive liability, in contract, tort, or otherwise, for any breach of the Service Level Warranty.

7.2. **Hardware Warranties.** We represent and warrant to you, the entity who obtained the Hardware from Meraki or its authorized reseller, but not to any End Users or other third parties, as follows: (i) for the Warranty Period, the Hardware will be free from material defects in materials and workmanship; (ii) all items of Hardware are new or refurbished unless otherwise indicated on the face of the Order; and (iii) we have good title to the Hardware, free and clear of any liens, claims, or encumbrances. Hardware not meeting the warranties set forth above will be, at our option, (a) repaired, (b) replaced, or (c) Meraki will refund to you the depreciated amount of the Purchase Price allocable to the defective Hardware, calculated on a straight-line, five-year basis. All Hardware repaired or replaced under warranty will be warranted for the remainder of the Warranty Period. For any return permitted under Meraki's return policy as provided in Attachment 4, you will request a Return Materials Authorization ("RMA") number in writing with the reasons for the return



request. The remedies described above are our sole liability and your sole remedy for any breach of the warranties contained in this Section 7.2. Meraki is not responsible for any Customer Content or any other non-Meraki data or information stored on any Hardware returned to Meraki for repair, whether under warranty or not.

#### **ARTICLE 8 MISCELLANEOUS**

**8.1. Integration.** This Agreement, the EULA, the Order, and the Service Level Agreement (collectively, the "Governing Documents") constitute the entire agreement between Meraki and Customer with respect to the subject matter of the Governing Documents and supersede all prior agreements, understandings, and arrangements, oral or written, between Meraki and Customer. No agreement or representations, oral or otherwise, express or implied, with respect to the subject matter of the Governing Documents have been made either by Meraki or Customer which is not expressly set forth in the Governing Documents. If there is a conflict between the terms of this Agreement and the EULA, the terms of this Agreement will apply.

**8.2. Force Majeure.** Neither you nor Meraki will be liable under this Agreement by reason of any failure or delay in the performance of its obligations on account of strikes (other than strikes of a party's own employees), shortages, riots, insurrection, fires, flood, storm, explosions, acts of God, war, governmental action, labor conditions (other than with respect to a party's own employees), earthquakes, material shortages or any other causes that are beyond the reasonable control of such party so long as the parties will use commercially reasonable efforts, including the implementation of business continuity measures, to mitigate the effects of such force majeure.

**8.3 Reserved.**

**8.4. Severability.** If any portion of this Agreement is held invalid by a court of competent jurisdiction, then such portion will be deemed to be of no force or effect, and this Agreement will be construed as if such portion had not been included herein.

**8.5. Assignment.** Neither this Agreement nor any rights under this Agreement may be assigned or otherwise transferred by either party, in whole or in part, without the prior written consent of the other party, in accordance with the provisions of the Anti-Assignment Act, 41 U.S.C. § 6305, and approval procedures set forth at FAR42.1204. Any attempted assignment in violation of this Section 8.5 will

be void and without effect. Subject to the foregoing, this Agreement will be binding upon and will inure to the benefit of the parties and their respective successors and assigns.



## IMPORTANT: READ CAREFULLY

### Dear Customer, Supplemental End User License Agreement

This Supplemental End User License Agreement (“SEULA”) contains additional terms and conditions for the Software Product licensed under the End User License Agreement (“EULA”) between you (“GSA Customer”) and Cisco (collectively, the “Agreement”). Capitalized terms used in this SEULA but not defined will have the meanings assigned to them in the EULA. To the extent that there is a conflict between the terms and conditions of the EULA and this SEULA, the terms and conditions of this SEULA will take precedence.

In addition to the limitations set forth in the EULA on your access and use of the Software, you agree to comply at all times with the terms and conditions provided in this SEULA. When the end user is an instrumentality of the U.S. Government, this agreement is a contract with the U.S. government and becomes effective when signed by the GSA Schedule Holder and the GSA Contracting Officer as an addendum to the Contract. If this is an ID/IQ contract or Schedule Contract, Ordering Activities placing orders against the ID/IQ or Schedule Contract are subject to this agreement as a term of the contract. This SEULA shall bind the government, subject to federal law. This agreement shall not operate to bind a government employee or person acting on behalf of the government in his or her personal capacity.

**YOU MAY RETURN THE SOFTWARE (INCLUDING ANY UNOPENED CD PACKAGE AND ANY WRITTEN MATERIALS) FOR A FULL REFUND, OR, IF THE SOFTWARE AND WRITTEN MATERIALS ARE SUPPLIED AS PART OF ANOTHER PRODUCT, YOU MAY RETURN THE ENTIRE PRODUCT FOR A FULL REFUND. YOUR RIGHT TO RETURN AND REFUND EXPIRES 30 DAYS AFTER PURCHASE FROM CISCO OR AN AUTHORIZED CISCO RESELLER, AND APPLIES ONLY IF YOU ARE THE ORIGINAL END USER PURCHASER.**

**SUPPLEMENTAL LICENSE AGREEMENT FOR CISCO SYSTEMS NETWORK MANAGEMENT SOFTWARE:** Cisco Network Active Abstraction

#### Additional Licensing Instructions:

**Client Licensing:** To activate additional users for the licenses purchased please contact your Cisco Account Manager or Sales Representative or send email to [ask-ana-licensing@cisco.com](mailto:ask-ana-licensing@cisco.com) with the requested information below:

1. GSA Customer Purchase Order
2. Your Contact Information
3. Your Cisco Sales Representative Name

**NOTE:** This alias is used only for license activation. For any questions or support issues, contact your Cisco Account Manager or representative.

#### Installation and Use

This license strictly prohibits Customer and any user from utilizing this Software for more than a single Customer network management environment.

#### Reproduction and Distribution

Customer may not reproduce nor distribute software

## 2. DESCRIPTION OF OTHER RIGHTS AND LIMITATIONS

Please refer to the attached Cisco Systems, Inc. End User License Agreement



Cloud and Systems Management [Cisco Cloud Portal](#)  
Cloud and Systems Management [Cisco Workplace Portal](#)

[DOC-67346](#)  
[DOC-67346](#)

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If you have licensed Cisco Workplace Portal, the following additional terms apply:

Cisco Workplace Portal is licensed for use with end user and workplace-related services including non-server computers, computer accessories, PDAs and handhelds, desktop software, mobility, unified communications, end user applications, email management, access to printing or files, office and wireless phones, voicemail, calling cards, video conferencing facilities and other workplace-related services for employees, agents, consultants and/or independent contractors of the Government.

Cisco Service Connectors and Adapters are not for use with the Cisco Workplace Portal. If you licensed Cisco Cloud Portal, the following additional terms apply:

Cisco Cloud Portal is licensed for use with cloud computing and data center-related services including computing, storage, networking, IaaS, PaaS, application hosting, database services, application development & maintenance, application installations & upgrades, dedicated application hosting, disaster recovery, network administration, application testing, and systems monitoring.

Cisco Cloud Portal is licensed for use only in the management of service catalogues and provisioning of computing and SW components that relate to a cloud computing and orchestration infrastructure maintained and managed by the licensee.

Cisco Service Connector is licensed for the following functions: Core Functions Adapter, Windows Adapter (a single instance for the Windows server hosting the Cisco Process Orchestrator (CPO) Engine), email adapter, single instance of Active Directory (AD) Adapter (a single instance for the domain in which the server is installed), Core Automation Pack, Common Activities Automation

Pack, and the Tasks Automation Pack.

CPO elements included in Cisco Service Connector can only be used with the licensed components listed below:

Cisco Service Connector Web Service Adapter -- Limited to 5 connections to Web Services for newScale Request Center for Cloud and third-party Orchestrators.

Cisco Service Connector Terminal Adapter -- Limited to 1 terminal or UNIX/Linux target for inbound synchronization of VMware objects to newScale Request Center for Cloud.

Cisco Service Connector VMware Adapter -- Limited to 5 connections to VMware vCenter for inbound synchronization of VMware objects to newScale Request Center for Cloud.



Cisco Service Connector Microsoft Community Adapter -- Limited to 1 Windows target for inbound synchronization of VMware objects to newScale Request Center for Cloud.

Cisco Service Connector Database Adapter -- Limited to 1 database target for the database of newScale Request Center for Cloud. If additional licenses are required beyond these quantities, a separate purchase and installation of CPO is required. Cisco Service Connector and Adapters are restricted to use with Cisco Cloud Portal.





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**1. ADDITIONAL LICENSE RESTRICTIONS**

Software Upgrades, Major and Minor Releases

Cisco may provide Cisco Configuration Engine software updates. The software update and new version releases can be purchased through Cisco or a recognized partner or reseller.

The customer should purchase one software update for each Configuration Engine installation. If the customer is eligible to receive the software update or new version release through a Cisco extended service program, the customer should request to receive only one software update or new version release per valid service contract.

Reproduction and Distribution. Customer may not reproduce nor distribute software.

**2. DESCRIPTION OF OTHER RIGHTS AND LIMITATIONS**

Please refer to the attached Cisco Systems, Inc. End User License Agreement.



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**Product Name**

L CGNMS ADD 1 USR CG NMS Add 1 Operator 3 year GIS Map license  
L CGNMS RNW 1 USR CG NMS Renew 1 Operator 3 year GIS Map license  
R CGNMS CGRPT K9 CG NMS 1 Year Pilot Kit 1 Operator, 25 CGR1K Mgmt license  
R CGNMS EP PT K9 CG NMS 1Yr Pilot Kit 1 Operator, 25 CGR1K, 20K EP Mgmt license  
Connected Grid Network Management System (CG NMS) License



This license entitles the user to specific Cisco CG NMS product features for specific time duration. The specific Cisco CG NMS product features and the time duration are detailed as follows:

L CGNMS ADD 1 USR CG NMS Add 1 Operator 3 year GIS Map license

L CGNMS RNW 1 USR CG NMS Renew 1 Operator 3 year GIS Map license

R CGNMS CGRPT K9 CG NMS 1 Year Pilot Kit 1 Operator, 25 CGR1K Mgmt license

R CGNMS EP PT K9 CG NMS 1Yr Pilot Kit 1 Operator, 25 CGR1K, 20K EP Mgmt license

The user is entitled to receive updates as made available during the term of the license, provided that the user holds a valid license for the application software and there is a valid Cisco SMARTnet or SASU contract on the supporting CG NMS products.



Cloud and Systems Management	<a href="#">Cisco Intelligent Automation for Cloud</a>	<a href="#">DOC-68556</a>
Cloud and Systems Management	Cisco Intelligent Automation for Compute	<a href="#">DOC-68556</a>
Cloud and Systems Management	<a href="#">Cisco Intelligent Automation for SAP</a>	<a href="#">DOC-68556</a>
Cloud and Systems Management	<a href="#">Cisco Process Orchestrator</a>	<a href="#">DOC-68556</a>
Cloud and Systems Management	Cisco Server Provisioner	<a href="#">DOC-68556</a>
Cloud and Systems Management	<a href="#">Cisco Tidal Enterprise Scheduler</a>	<a href="#">DOC-68556</a>
Cloud and Systems Management	<a href="#">Cisco Tidal Performance Analyzer</a>	<a href="#">DOC-68556</a>

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### END USER LICENSE AGREEMENT FOR THE TIDAL SOFTWARE PRODUCTS;

For purposes of this Supplement, the Software covered under this SEULA includes the following and each of their respective associated components and modules:

Tidal Enterprise Scheduler Cisco Process Orchestrator Tidal Performance Analyzer

Cisco Intelligent Automation for Compute

Cisco Intelligent Automation for Cloud

Cisco Intelligent Automation For Cloud Starter Edition

Cisco Server Provisioner

Cisco Intelligent Automation for SAP Definitions

For purposes of this Supplement, the following defined terms will apply:

Designated System shall mean the designated platform for which Customer originally licenses the Software from Cisco for installation and use. Such designated platform may include for instance, but is not limited to, a designation of the specific number of CPUs or system description or name as approved by Cisco.

Movement and Usage Fees shall mean fees applicable as set solely by Cisco for the transfer and installation of Software on a system that is not a Designated System.

Total Deployment Size shall mean the designated configuration for which The Cisco Intelligent Automation For Cloud Starter

Edition Solution's total deployment size cannot exceed 160 blades collectively across a customer s installation.

-Other Terms and Conditions.



**Movement and Usage.** With respect to the license granted to Customer in the Agreement, such license is applicable only to the Designated System. Movement of Software to another system requires Customer providing prior written notice to obtain updated keys, and additional fees may apply. A fee schedule is available upon Customer's written request to Cisco.

**License.** For the avoidance of doubt, the license granted to Customer for the Software in the license section shall be perpetual if designated as such by Cisco at time of Order for the Designated System, subject to payment of any applicable fees, including, but not limited to, any Movement and Usage fees described above.

**Total Deployment Size.** For avoidance of doubt, no customer shall deploy the Cisco Intelligent Automation For Cloud Starter

Edition Solution in a configuration that exceeds 160 blades in total deployment size across their enterprise.



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### SUPPLEMENTAL END USER LICENSE AGREEMENT FOR CISCO SYSTEMS SOFTWARE

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### ADDITIONAL LICENSE RESTRICTIONS

**Device Restricted Versions:** The Customer may install and run the Software on a single server to manage up to the cumulative device count specified in the Right To Use statement located on the Claim Certificate received as part of the software package. When used anywhere in this SEULA, a "device" means any device in the Customer's network environment which has its own IP address.

Please refer to this guide for further device definition.

Customers whose requirements exceed the license limit of devices must purchase additional incremental licenses. Device restrictions are enforced by license registration and through serial key installation.



Limitations associated with the maximum number of devices that the application can support per server is specified below. The licensed device limit will always override the maximum number of devices supported per server unless the customer has purchased and registered the 5,000 or the 10,000 device license offering.

#### Installation and Use

The Software components are provided to Customer solely to install, update, supplement, or replace existing functionality of the applicable Network Management Software product. Some license terms, such as device count and proof of preexisting licenses may be electronically enforced. Customer may install and use the following Software components:

Cisco Prime LAN Management Solution (Cisco Prime LMS): May be installed on one (1) server in Customer's network management environment. Installing the Software and applying a single serial license key to two (2) servers are supported in the 5,000 and 10,000 device restricted versions, but the cumulative total number of devices supported cannot exceed 5,000 and 10,000 respectively per serial license key. When two servers are used to host Cisco Prime LMS, each server should have a copy of the original license key installed on it. Customers should not modify the license file.

#### Additional Information for 5,000 Device Restricted Version for LMS 4.2

Users of Cisco Prime LMS 4.2 with 5,000 device restricted licensing may require Cisco Prime LMS to be run on separate servers in order to support a large number of devices or to meet certain performance criteria. One additional copy of Cisco Prime LMS may be installed on a secondary server provided the customer has purchased and registered the 5,000 device restricted version of the Cisco Prime LMS software. When installed on a secondary server, the cumulative total number of devices supported cannot exceed 5,000 per serial license key. Device support beyond 5,000 unique cumulative devices will require additional licenses and copies of Cisco Prime LMS to be purchased pursuant to a newly executed GSA Customer Purchase Order.

#### Additional Information for 10,000 Device Restricted Version for LMS 4.2

Users of Cisco Prime LMS 4.2 with 10,000 device restricted licensing often require Cisco Prime LMS to be run on separate servers in order to support a large number of devices or to meet certain performance criteria. One additional copy of Cisco Prime LMS may be installed on a secondary server provided that the customer has purchased and registered the 10,000 device restricted version of the Cisco Prime LMS software. When installed on a secondary server, the cumulative total number of devices supported cannot exceed 10,000 per serial license key. Device support beyond 10,000 unique cumulative devices will require additional licenses and copies of Cisco Prime LMS to be purchased pursuant to a newly executed GSA Customer Purchase Order.

#### Additional Information for RHEL

RHEL distribution that comes along with Cisco Prime LMS 4.2 is solely intended for use by Cisco Prime LMS application alone and customers may not use this for other purposes.

#### Reproduction and Distribution

Customer may not reproduce nor distribute software except to make copies to authorized employees, agents, and contractors for backup purposes only.

#### DESCRIPTION OF OTHER RIGHTS AND LIMITATIONS

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### **SUPPLEMENTAL LICENSE AGREEMENT**

#### **SUPPLEMENTAL LICENSE AGREEMENT FOR CISCO SYSTEMS NETWORK MANAGEMENT SOFTWARE: CISCO PRIME CENTRAL**

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MATERIALS ARE SUPPLIED AS PART OF ANOTHER PRODUCT, YOU MAY RETURN THE ENTIRE PRODUCT FOR A FULL REFUND ACCORDING TO THE TERMS OF THE UNDERLYING GSA SCHEDULE CONTRACT.

Cisco Prime Central requires a license to connect to and/or interoperate with other Cisco and third party systems or components, and is further subject to the limitations set forth below. Please see the Additional Information section of this document for any licenses which are included with your specific product purchase. If your requirements exceed the scope of any license expressly included with your product, you must purchase additional licenses from Cisco pursuant to a newly executed GSA Customer Purchase Order.

The following restrictions apply:

- Cisco Prime Central Tier 1 and Tier 2 Gateway may not be used to connect Cisco Prime Central to third party systems, such as third party trouble ticketing systems, except as expressly set forth in the Additional Information section or through a separately purchased license.
- Cisco Prime Central Tier 1 and Tier 3 Data Service Adapter instances may only be used to connect to other Cisco applications or components embedded within Cisco applications, and in addition, only if expressly licensed as set forth in the Additional Information section or through a separately purchased license.
- Cisco Prime Central may not be integrated with an OSS system(s) using MTOSI interface except as expressly licensed as set forth in the Additional Information section or through a separately purchased license.
- Cisco Prime Central may not be integrated with Cisco Domain Manager(s) except as expressly licensed as set forth in the Additional Information section or through a separately purchased license.

**Rights Included for Cisco Prime Central MTOSI License**

Cisco Prime Central MTOSI license includes the right to use one (1) MTOSI instance to integrate Cisco Prime Central to an OSS system using the MTOSI interface.

**Reproduction and Distribution**

Customer may not reproduce nor distribute software. **DESCRIPTION OF OTHER RIGHTS AND LIMITATIONS**

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If you have licensed Cisco Workplace Portal, the following additional terms apply:

Cisco Workplace Portal is licensed for use with end user and workplace-related services including non-server computers, computer accessories, PDAs and handhelds, desktop software, mobility, unified communications, end user applications, email management, access to printing or files, office and wireless phones, voicemail, calling cards, video conferencing facilities and other workplace-related services for the employees, agents, consultants and/or independent contractors. Cisco Service Connectors and Adapters are not for use with the Cisco Workplace Portal. If you have licensed Cisco Cloud Portal, the following additional terms apply:

Cisco Cloud Portal is licensed for use with cloud computing and data center-related services including computing, storage, networking, IaaS, PaaS, application hosting, database services, application development & maintenance, application installations & upgrades, dedicated application hosting, disaster recovery, network administration, application testing, and systems monitoring.

Cisco Cloud Portal is licensed for use only in the management of service catalogues and provisioning of computing and SW components that relate to a cloud computing and orchestration infrastructure maintained and managed by the customer.

Cisco Service Connector is licensed for the following functions: Core Functions Adapter, Windows Adapter (a single instance for the Windows server hosting the Cisco Process Orchestrator (CPO) Engine), email adapter, single instance of Active Directory (AD) Adapter (a single instance for the domain in which the server is installed), Core Automation Pack, Common Activities Automation Pack, and the Tasks Automation Pack.

CPO elements included in Cisco Service Connector can only be used with licensed components listed below:

Cisco Service Connector Web Service Adapter -- Limited to 5 connections to Web Services for newScale Request Center for Cloud and third-party Orchestrators.



Cisco Service Connector Terminal Adapter -- Limited to 1 terminal or UNIX/Linux target for inbound synchronization of VMware objects to newScale Request Center for Cloud.

Cisco Service Connector VMware Adapter -- Limited to 5 connections to VMware vCenter for inbound synchronization of VMware objects to newScale Request Center for Cloud.

Cisco Service Connector Microsoft Community Adapter -- Limited to 1 Windows target for inbound synchronization of VMware objects to newScale Request Center for Cloud.

Cisco Service Connector Database Adapter -- Limited to 1 database target for the database of newScale Request Center for Cloud. If additional licenses are required beyond these quantities, a separate purchase and installation of CPO is required.

Cisco Service Connector and Adapters restricted to use with Cisco Cloud Portal.



**IMPORTANT: READ CAREFULLY**

**Dear Customer,  
Supplemental End User License Agreement**

This Supplemental End User License Agreement (“SEULA”) contains additional terms and conditions for the Software Product licensed under the End User License Agreement (“EULA”) between you (“GSA Customer”) and Cisco (collectively, the “Agreement”). Capitalized terms used in this SEULA but not defined will have the meanings assigned to them in the EULA. To the extent that there is a conflict between the terms and conditions of the EULA and this SEULA, the terms and conditions of this SEULA will take precedence.

In addition to the limitations set forth in the EULA on your access and use of the Software, you agree to comply at all times with the terms and conditions provided in this SEULA. When the end user is an instrumentality of the U.S. Government, this SEULA is a contract with the U.S. government and becomes effective when signed by Cisco and the GSA Contracting Officer as an addendum to the Contract. If this is an ID/IQ contract or Schedule Contract, Ordering Activities placing orders against the ID/IQ or Schedule Contract are subject to this SEULA as a term of the contract. This SEULA shall bind the government, subject to federal law. This agreement shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity.

**IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THE AGREEMENT, THEN CISCO IS UNWILLING TO LICENSE THE SOFTWARE TO YOU AND (A) YOU MAY NOT DOWNLOAD, INSTALL OR USE THE SOFTWARE, AND (B) YOU MAY RETURN THE SOFTWARE (INCLUDING ANY UNOPENED CD PACKAGE AND ANY WRITTEN MATERIALS) FOR A FULL REFUND, OR, IF THE SOFTWARE AND WRITTEN MATERIALS ARE SUPPLIED AS PART OF ANOTHER PRODUCT, YOU MAY RETURN THE ENTIRE PRODUCT FOR A FULL REFUND. YOUR RIGHT TO RETURN AND REFUND EXPIRES 30 DAYS AFTER PURCHASE FROM CISCO OR AN AUTHORIZED CISCO RESELLER, AND APPLIES ONLY IF YOU ARE THE ORIGINAL END USER PURCHASER.**

**END USER LICENSE AGREEMENT FOR THE TIDAL SOFTWARE PRODUCTS IMPORTANT: READ CAREFULLY**  
Software

For purposes of this Supplement, the Software covered under this SEULA includes the following and each of their respective associated components and modules:

Tidal Enterprise Scheduler  
Tidal Horizon  
Tidal Intelligent Automation  
Tidal Enterprise Orchestrator  
Tidal Intersperse  
Tidal Performance Analyzer  
Tidal Transaction Analyzer  
Tidal Intelligent Reporting  
Tidal Enterprise Reporter  
Cisco Intelligent Automation Cloud Automation  
Definitions

For purposes of this Supplement, the following defined terms will apply:

“Designated System” shall mean the designated platform for which Customer originally licensed the Software from Cisco for installation and use. Such designated platform may include, but is not limited to, a designation of the specific number of CPUs or system descriptions or names as approved by Cisco.



“Movement and Usage Fees” shall mean fees applicable as set solely by Cisco for the transfer and installation of Software on a system that is not a Designated System.

“NFR” means not for resale, to be used for nonproduction, demonstration use only.

**Other Terms and Conditions**

“Movement and Usage”. With respect to the license granted to the Customer in the Agreement, such license is applicable only to the Designated System. Movement of Software to another system requires Customer providing Cisco with prior written notice to obtain updated keys, and pursuant to a new GSA Customer Purchase Order. Additional fees may apply. A fee schedule is available upon Customer’s written request to Cisco.

“License”. The license granted to the Software in the license section shall be perpetual if designated as such by Cisco at time of Customer order for the Designated System, subject to payment of any applicable fees, including, but not limited to, any Movement and Usage fees described above.

“NFR Software”. With respect to the License granted in the Agreement as to the use of any Software sold to Customer as NFR Software, the purchase of such Software is subject to the following additional restrictions:

1. NFR purchases are available to all Cisco registered partners (categories include Select, Premier, Silver and Gold level partners). Cisco authorized training partners may also participate, but use is limited to instructional purposes only. Cisco has the sole discretion to define a registered partner and status.
2. Purchase limit is one NFR kit per operational installation for demonstration, proof of concept or internal nonproduction use.
3. Software cannot be resold, traded, copied, transferred, sublicensed, or used in any manner other than as NFR.



Cloud and Systems Management	Cisco Unified Provisioning Manager	<a href="#">DOC-21311</a>
Cloud and Systems Management	Cisco Unified Operations Manager	<a href="#">DOC-21311</a>
Cloud and Systems Management	Cisco Unified Service Monitor	<a href="#">DOC-21311</a>
Cloud and Systems Management	<a href="#">Cisco Unified Service Statistics Manager</a>	<a href="#">DOC-21311</a>

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In addition to the limitations set forth in the EULA on your access and use of the Software, you agree to comply at all times with the terms and conditions provided in this SEULA. . When the end user is an instrumentality of the U.S. Government, this SEULA is a contract with the U.S. government and becomes effective when signed by Cisco and the GSA Contracting Officer as an addendum to the Contract. If this is an ID/IQ contract or Schedule Contract, Ordering Activities placing orders against the ID/IQ or Schedule Contract are subject to this SEULA as a term of the contract. This SEULA shall bind the Government, subject to federal law. This agreement shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity.

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(This section shall replace the "License" section in the EULA)

License. Conditioned upon compliance with the terms and conditions of the Agreement, Cisco grants to Customer a nonexclusive and nontransferable license to use for the purpose of delivering Managed Services, the Software and the Documentation for which Customer has paid the required license fees. "Managed Services" means the performance by Customer of providing services for third parties ( Subscribers ) which will require communicating with and managing Cisco equipment not owned or leased by the Customer. "Documentation" means written information (whether contained in user or technical manuals, training materials, specifications or otherwise) pertaining to the Software that Cisco makes available with the Software in any manner (including on CD Rom, or on line). In order to use the Software, Customer may be required to input a registration number or product authorization key and register Customer s copy of the Software online at [Cisco's website](#) to obtain the necessary license key or license file.

Customer s license to use the Software shall be limited to, and Customer shall not use the Software in excess of, a single hardware chassis or card.

Unless otherwise expressly provided in the Documentation or any applicable Supplemental License Agreement, Customer shall use the Software solely as embedded in, for execution on, or (where the applicable Documentation or the applicable Supplemental License Agreement permits installation on non Cisco equipment) for communication with Cisco equipment not owned or leased by Customer in connection with Customer s provision of Managed Services to Subscriber. No other licenses are granted by implication, estoppel or otherwise. Upon termination of Managed Services to Subscriber, Customer is required to remove all deployed Software deployed by Customer to Subscriber s network and servers.



Customer's license to use the Software is contingent upon Customer deploying or otherwise making available the Software and any

Documentation in compliance with and subject to the Software Subscriber License Responsibilities listed below.

#### Software Subscriber License Responsibilities

The following license terms and responsibilities, substantially as stated here, will be accepted and agreed to, in writing or as otherwise provided in the EULA, by the Subscribers of Managed Services:

Subscriber agrees to be bound by the following terms and conditions. In the absence of a signed agreement, use of the Software by Subscriber or by Customer on Subscriber's behalf, or receipt by Subscriber of any direct or indirect benefit derived therefrom, shall constitute acceptance by Subscriber of the following terms:

1. Subscriber is granted a limited license from Cisco and its suppliers and licensors to use the Software solely in connection with the Managed Services and to the extent such Software is deployed by Customer on Subscriber's network or servers.
2. Upon termination of services to Subscriber, Customer is required to remove, and cooperate with Customer's efforts to remove, all deployed Software from the Subscriber's network and servers.
3. Subscriber may use the Software only in connection with the receipt of Managed Services from Customer, and for the purposes described in the Software's supporting Documentation if any.
4. Subscribers may only use the Software pursuant to these terms and Customer's license with Cisco and its suppliers and licensors, and Subscriber agrees to be governed by such terms and license including without limitation, the General Terms Applicable to the Limited Warranty Statement and End User License Agreement.
5. Subscriber may receive, or have deployed on its network or servers, updates, patches, error corrections or new or modified versions of the Software (collectively referred to as "Releases") from time to time. Releases are deemed part of the Software subject to the terms herein and the license with Cisco and its suppliers and licensors.
6. Subscribers acknowledge that all right, title and interest in and to the Software, the ideas and expressions contained therein, all updates and enhancements, all physical forms, regardless of where resident, whether permanent or transient, including authorized and unauthorized copies, any and all modifications made by Cisco, its suppliers and licensors, the software's supporting documentation, and all copyrights, patents, trademarks, service marks or other intellectual property or proprietary rights relating to the above are, and shall remain with Cisco and its suppliers and licensors. Subscriber is granted only a limited right of use as set forth herein.
7. Subscribers will not distribute, provide or make available, either directly or indirectly, to any person, organization or entity, any part of the Software, including but not limited to the code and the software's supporting documentation in any form except as directed by Customer in support of the delivery of Managed Services.
8. Subscribers will not place any portion of the Software into the public domain; And,
9. Subscribers will not copy, alter, translate, decompile, disassemble, reverse engineer or create derivative works of the Software, except that the Subscriber may make copies as required for the authorized use of the Software, may make copies of the supporting documentation as needed, and may make one additional copy of the Software for back up or archival purposes.



## SUPPLEMENTAL LICENSE AGREEMENT

### **SUPPLEMENTAL LICENSE AND SERVICES AGREEMENT FOR CISCO SYSTEMS' MAGENTO MANAGED SERVICES ("MAGENTO SERVICES") AND MAGENTO SOFTWARE ("MAGENTO SOFTWARE").**

**IMPORTANT—READ CAREFULLY: THIS SUPPLEMENTAL LICENSE AND SERVICES AGREEMENT ("SLSA") CONTAINS ADDITIONAL LIMITATIONS RELATING TO THE MAGENTO SERVICES AND MAGENTO SOFTWARE PROVIDED TO CUSTOMER UNDER THE END USER LICENSE AGREEMENT ("EULA") BETWEEN CUSTOMER AND CISCO. CAPITALIZED TERMS USED IN THIS SLSA AND NOT OTHERWISE DEFINED HEREIN SHALL HAVE THE MEANINGS ASSIGNED IN THE EULA. TO THE EXTENT THERE IS A CONFLICT BETWEEN THIS SLSA AND THE EULA OR ANY OTHER TERMS AND CONDITIONS APPLICABLE TO THE MAGENTO SERVICES OR MAGENTO SOFTWARE, THE TERMS AND CONDITIONS IN THIS SLSA SHALL TAKE PRECEDENCE.**

**CUSTOMER'S RIGHT TO USE THE MAGENTO SERVICES IS LIMITED SOLELY TO THOSE SKU COMPONENTS OF THE MAGENTO SERVICES PURCHASED BY CUSTOMER PURSUANT TO A VALID PURCHASE ORDER. CUSTOMER MAY USE THE MAGENTO SERVICES ONLY DURING THE PERIOD FOR WHICH SERVICES WERE PURCHASED BY CUSTOMER UNDER THE APPLICABLE SKU PURSUANT TO A VALID PURCHASE ORDER. ALL OTHER USES ARE STRICTLY PROHIBITED.** When the end user is an instrumentality of the U.S. Government, this agreement is a contract with the U.S. government and becomes effective when signed by The Schedule Holder and the GSA Contracting Officer as an addendum to the Contract. If this is an ID/IQ contract or Schedule Contract, Ordering Activities placing orders against the ID/IQ or Schedule Contract are subject to this agreement as a term of the contract. This SLSA shall bind the Government, subject to federal law. This agreement shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity."

**IF CUSTOMER DOES NOT AGREE TO BE BOUND BY SUCH TERMS AND CONDITIONS, CUSTOMER MAY NOT INSTALL, DOWNLOAD, OR OTHERWISE USE THE MAGENTO SERVICES OR MAGENTO SOFTWARE.**

#### **LICENSE; ADDITIONAL RESTRICTIONS**

**License.** Conditioned upon compliance with the terms and conditions of the Agreement, Cisco grants to Customer a limited, nonexclusive, non-transferable, worldwide license to access and use the Magento Services and the Documentation to provide the Network Services its customers, subject to the production server and development server limitations set forth in the Purchase Order. The foregoing license does not transfer or convey to Customer or any third party any right, title or interest in or to Magento Services, the Magento Software or Documentation or any associated intellectual property rights, but only a limited right of use revocable in accordance with the terms of the Agreement.

**Restricted Use.** Customer is purchasing the rights to access and use the then-current version of the Magento Software; Customer's license specifically excludes any subsequent Major Releases of the Magento Software. No other updates, upgrades, or other Magento Software releases are licensed by Cisco to Customer hereunder.

**Major Release** means a release of Magento Software that provides additional software functions. Cisco designates Major Releases as a change in the ones digit of the Magento Software version number [(x).x.x]. Cisco does not warrant Major Releases will be compatible with prior software releases.

**Minor Release** means an incremental release of Magento Software that provides maintenance fixes and additional Magento Software functions. Cisco designates Minor releases as a change in the tenths digit of the Magento Software version number [x.(x).x].

#### **CUSTOMER RESPONSIBILITIES**

(a) In performing the Magento Services, Cisco may instruct the Customer to perform certain tasks or checks relating to Customer's network. Customer will, at its expense, perform all such checks and tests. Customer will also provide Cisco, or its authorized representative, reasonable access, at no cost to Cisco, to Customer's networking equipment in connection with the Magento Services. Customer shall not be required to furnish specialized equipment or know-how.





Any rework or additional work resulting from modification of the Magento Services requested by Customer (and accepted by Cisco) or any act or omission of Customer, including providing inaccurate information to Cisco will only occur pursuant to the parties executing a new Purchase Order. (b) Customer is responsible for obtaining all approvals required by any third parties in order for Cisco to perform any

Magento Service under this Agreement. Cisco will not be responsible or otherwise liable for any failure to perform the Magento Services to the extent caused by Customer's failure to obtain such third party approvals or if any third party otherwise prevents Cisco from performing the Magento Services.

(c) Customer will not resell the Magento Software or Magento Services or create or offer derivative versions of the Magento Software or Magento Services, either directly or indirectly through a third party.

(d) Customer will be responsible for its compliance with all privacy, data control or use laws and regulations relating to its use of the Magento Services, including without limitation any data contained in any reports provided by Cisco hereunder. Customer acknowledges the potential privacy and other issues associated with the collection and use of such data. Customer warrants and covenants that it will comply with all laws (including, without limitation, copyright laws, privacy laws and import and export laws) applicable to Customer or its use of the Magento Services. In addition, Customer is responsible for obtaining any permits or approvals relating to its use of the Magento Services, including without limitation any permits or approvals relating to transactions requiring its customer's credit card information or other personally identifiable information.

(e) Customer will not use the Magento Services to send spam, viruses or malware.

(f) Customer understands the Magento Services are hosted by Cisco via a network utilized by Customer and other Cisco customers; Customer will not intentionally or unintentionally access data not owned by Customer or otherwise related to Customer's use of the Magento Services, or log into, or attempt to log into, a server or account which Customer is not authorized to access.

(g) Customer will not attempt to probe, scan or test the vulnerability of a system or breach security or authentication measures without proper authorization.

(h) Customer will be responsible for handling all communication, technical support to and business relations with its customers, including without limitation responding to inquiries and technical questions.

(i) Customer will be responsible for determining whether or not any reported defects or issues may be replicated and that they are isolated to the Magento Services or Magento Software.

(j) Customer is responsible for any catastrophic security events that result from any unauthorized configuration of the Magento Service components by Customer's personnel.

The failure of Customer to comply with Customer's responsibilities set forth above may be deemed a material breach of. Any termination shall be in accordance with FAR 12.302(b) and 52.233-1.

**Customer Warranties.** Customer represents, warrants and covenants that (i) it shall only use the Magento Services and Magento Software to provide Magento Services to its End Users only as permitted by any Capacity limitations set forth in the Purchase Order. If Customer wishes to utilize the Magento Software beyond the Capacity set forth in the Purchase Order, Customer shall be obligated to place a new Purchase Order with Cisco to procure such additional required Capacity as soon as is reasonably practical.

**Content.** Customer is and shall be solely responsible for the creation, renewal, updating, deletion, editorial content, control and all other aspects of any files, software, scripts, multimedia images, graphics, audio, video, text, data or other objects, including any third party content or materials, originating or transmitted from any location owned or operated by Customer, and/or uploaded or routed to, passed through and/or stored on or within the Magento Services, or otherwise provided to Cisco in any medium or transmitted or routed using the Magento Services ("Customer Content"). Customer owns all right, title, and interest in the Customer Content, or possesses or shall possess all legally valid rights in the Customer Content necessary for the uses of the Customer Content contemplated herein. Customer shall not transmit or route to Cisco or the Magento Services, or otherwise direct via the Magento Services, any Customer Content that (a) infringes any copyright, trade secret, or other intellectual property right, (b) contains libelous, defamatory, or obscene material under any applicable law, or (c) otherwise violates any federal laws or regulations relating to content or content distribution. Customer shall be responsible for utilizing Magento Services in accordance with the Documentation. If Customer has actual knowledge that any Customer Content infringes the intellectual property or other rights of a third



party or violates any applicable federal laws or regulations (including, without limitation, laws and regulations relating to indecency or obscenity), Customer shall remove such Customer Content from Customer's origin server. Customer shall be solely responsible for maintaining the availability of its networks, web site(s) and any other medium for the delivery of online video services, and all Customer Content, IP addresses, domain names, hyperlinks, databases, applications and other resources as necessary for Customer to operate and maintain its services to meet Customer's purposes and objectives. During the Term, Customer grants to Cisco a limited, non-exclusive license to use the Customer Content solely for Cisco to perform the Magento Services as contemplated hereunder.

4. In the case where at no material fault of Cisco, the Magento Services or Magento Software, a third party software component, including but not limited to, WMDRM Server or Windows Media Player ("WMP") or Microsoft PlayReady creates a digital rights management (DRM) security breach due to a failure or hacking of such component, Cisco shall notify Customer as soon as is practical after receiving a confirmed notice from the provider of such components or discovering such a DRM security breach itself. If, after receiving such DRM breach notice, Customer continues to allow its content to be accessed with any software or services operated in conjunction with the Magento Services or Magento Software during the period where there is no fix for such DRM security breach, or Customer decides not to implement such fix (which may require restricting End Users to using certain versions of third party applications), then Customer acknowledges and agrees Cisco will not have any liability to Customer for any costs, damages or legal fees related to a DRM security breach.

Neither this SLSA nor any rights or obligations under this SLSA shall be assigned by a party without the other's prior written consent, in accordance with the provisions of the Anti-Assignment Act 41 USC 6305 and FAR 42.1204.

#### **ADDITIONAL SERVICES**

During the period Customer has purchased Magento Services, Cisco's Software Application Support (SAS) service obligations are provided in Attachment 5. Customer is not eligible to receive Software Application Support Plus Upgrades (SASU) services, if any, included on such URL.

Professional Services relating to the Magento Services or Magento Software purchased by Customer pursuant to a Purchase Order will be set forth in a separate document to be mutually agreed upon by the parties.

**IMPORTANT: READ CAREFULLY**

Dear Customer,

This Supplemental End User License Agreement ("SEULA") contains additional terms and conditions for the Software product that is used with Cisco's Unified Communications products, including features, functionality and solutions enabled in such Software (collectively, "Software Product") licensed under the End User License Agreement ("EULA") between you ("GSA Customer") and Cisco (collectively, the "Agreement"). Capitalized terms used in this SEULA, but not defined, will have the meaning assigned to them in the EULA. To the extent that there is a conflict between the terms and conditions of the EULA and this SEULA, the terms and conditions of this SEULA will take

precedence.

In addition to the limitations set forth in the EULA on the Government's access and use of the Software Product, you agree to comply at all times with the terms and conditions provided in this SEULA. When the end user is an instrumentality of the U.S. Government, this SEULA is a contract with the U.S. Government and becomes effective when signed by Cisco and the GSA Contracting Officer as an addendum to the Contract. If this is an ID/IQ contract or Schedule Contract, Ordering Activities placing orders against the ID/IQ or Schedule Contract are subject to this SEULA as a term of the contract. This SEULA shall bind the Government, subject to federal law. This agreement shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity.

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For the purpose of this SEULA, we define the following terms:

"Cisco UC Product" means the following products:

**Call Processing and System  
Management Applications**

Cisco Unified Communications Manager  
Cisco Unified Communications Manager  
– IM & Presence  
Cisco Unified Communications Manager  
– Basic Paging Server  
Cisco Unified Communications Manager  
– Session Manager Edition  
Cisco Emergency Responder  
Cisco Unified Attendant Consoles



Cisco Unified Communications Management Suite (including Operations Manager, Service Manager, Service Statistics Monitor and Provisioning Manager)  
Cisco Prime Collaboration Suite  
Cisco Survivable Remote Site Telephony Manager  
Cisco InterCompany Media Engine

**Messaging and Presence Applications**

Cisco Unity  
Cisco Unity Connection  
Cisco Unified Presence

**Contact Center Applications**

Cisco Unified Contact Center Express (including Work Force Management, Work Force Optimization, Quality Management, Compliance Recording)  
Cisco Unified IP IVR  
Cisco Unified Contact Center Enterprise (including Packaged Contact Center Enterprise and Email/Web Interaction Manager)  
Cisco Unified Intelligence Center  
Cisco Unified Contact Center Management Portal  
Cisco Unified Customer Voice Portal  
Cisco MediaSense  
Cisco SocialMiner  
Cisco Remote Expert Solution (including Remote Expert Manager and Interactive Experience Manager)

**Conferencing, Collaboration and Social**

Cisco Webex  
Cisco Unified MeetingPlace  
Cisco TelePresence and Tandberg suites  
Cisco Video Communications Server  
Cisco Quad

Additionally, any bundled solutions including the applications listed above, including without limitation, Cisco Unified Communications Manager Business Edition 6000, are also licensed to run with the virtual machines.

“Software Product” includes the following two products: Cisco UC Virtualization Hypervisor and Cisco UC Virtualization Foundation.

In addition to the Agreement, the following supplemental terms apply:

1. You may use the VMware Products solely to operate and run in conjunction with the applicable CISCO UC Product or approved third party applications; they cannot be



used in any manner independently from the CISCO UC Product or such third party applications. For purposes of this SEULA, "Approved Third Party Applications" include applications from Vendors enrolled in the "Collaboration" or "Complementary to Collaboration" categories within Cisco Solutions Plus or Cisco Developer Network Programs that are not listed in the Cisco Business Edition 6000 Co-residency Policy Document available at:

[http://www.cisco.com/en/US/products/ps11369/prod\\_white\\_papers\\_list.html](http://www.cisco.com/en/US/products/ps11369/prod_white_papers_list.html)

All use shall terminate and cease when the use of the Cisco UC Product or Approved Third Party Applications terminates.

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**SUPPLEMENT TO CISCO END USER LICENSE AGREEMENT (“EULA”) FOR SW UNIFIED COMMUNICATIONS SYSTEM 7.1(3) NOT FOR RESALE**

This package contains a bundle of Cisco Unified Communications products (the “Cisco UC NFR Bundle”) made available under these terms only to qualified Cisco resellers and channel partners. In addition to the EULA terms set forth in Attachment 8 and any other Supplemental End User License Agreement (“SEULA”) terms (collectively, the EULA and the SEULA terms are referred to as the “Software Agreement”) accompanying or otherwise applicable to the software products enclosed (the “Software”), the following additional supplemental SEULA terms apply to the Software and are hereby incorporated as part of the Software Agreement:

The Cisco UC NFR Bundle Software is provided to you as a Cisco reseller or channel partner for your internal demonstration and testing purposes only. The Cisco UC NFR offering may only be used in internal lab or demonstration environments by the acquiring reseller or partner. The Software is not intended for and should never be used in production and may not be resold. You agree that Cisco and its suppliers shall not be held liable for any damages arising from use of the Software. If a new release of a Software product included with the Cisco UC NFR Bundle is made available by Cisco and/or as a version of the included Software products is announced by Cisco to be at end of life, your license to use for testing and demonstration purposes of that product will terminate. Components of this Software are “NFR” or not for resale. You agree not to distribute the Software to a third party. The NFR Software does not include support and is not eligible for upgrades.

You are not obligated to provide Cisco with comments or suggestions regarding this Software. However, should you provide any comments or suggestions for the modification, correction, improvement or enhancement of the Software



("Feedback") then you (including the company or companies you represent) grant to Cisco a non exclusive, irrevocable, worldwide, royalty free, fully paid up license in and to any and all intellectual property rights in the Feedback, including the right to sublicense to Cisco licensees and customers (with the right to grant further sublicenses), the right to use and disclose such Feedback in any manner Cisco choose and to display, perform, copy, have copies, make, have made, use, sell, offer to sell, export and otherwise distribute or dispose of products embodying such Feedback but without any obligation to reference or disclose the source of such Feedback.

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

This Supplemental End User License Agreement (“SEULA”) contains additional terms and conditions for the Software Product licensed under the End User License Agreement (“EULA”) between you (“GSA Customer”) and Cisco (collectively, the “Agreement”). Capitalized terms used in this SEULA but not defined will have the meanings assigned to them in the EULA. To the extent that there is a conflict between the terms and conditions of the EULA and this SEULA, the terms and conditions of this SEULA will take precedence.

In addition to the limitations set forth in the EULA on your access and use of the Software, you agree to comply at all times with the terms and conditions provided in this SEULA. When the end user is an instrumentality of the U.S. Government, this SEULA is a contract with the U.S. Government and becomes effective when signed by Cisco and the GSA Contracting Officer as an addendum to the Contract. If this is an ID/IQ contract or Schedule Contract, Ordering Activities placing orders against the ID/IQ or Schedule Contract are subject to this SEULA as a term of the contract. This SEULA shall bind the Government, subject to federal law. This agreement shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity.

IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THE AGREEMENT, THEN CISCO IS UNWILLING TO LICENSE THE SOFTWARE TO YOU AND (A) YOU MAY NOT DOWNLOAD, INSTALL OR USE THE SOFTWARE, AND (B) YOU MAY RETURN THE SOFTWARE (INCLUDING ANY UNOPENED CD PACKAGE AND ANY WRITTEN MATERIALS) FOR A FULL REFUND, OR, IF THE SOFTWARE AND WRITTEN MATERIALS ARE SUPPLIED AS PART OF ANOTHER PRODUCT, YOU MAY RETURN THE ENTIRE PRODUCT FOR A FULL REFUND. YOUR RIGHT TO RETURN AND REFUND EXPIRES 30 DAYS AFTER PURCHASE FROM CISCO OR AN AUTHORIZED CISCO RESELLER, AND APPLIES ONLY IF YOU ARE THE ORIGINAL END USER PURCHASER.

**SUPPLEMENT TO CISCO END USER LICENSE AGREEMENT (“AGREEMENT”) FOR SW UNIFIED COMMUNICATIONS SYSTEM 7.1(2) NOT FOR RESALE**

In addition to the Software Agreement, the following supplemental terms (“Supplement”) apply to the Software licensed to you and are hereby incorporated as part of the Agreement:

The Software is provided for your internal demonstration and testing purposes only. The Software is not intended for and should never be used in production. You agree that Cisco and its suppliers shall not be held liable for any damages arising from use of the Software in a production environment.

For the avoidance of doubt, components of this Software are NFR or not for resale. At no time does the license herein permit you to distribute the Software to a third party.

You are not obligated to provide Cisco with comments or suggestions regarding this Software. However, should you provide any comments or suggestions for the modification, correction, improvement or enhancement of the Software (“Feedback”) then you (including the company or companies you represent) grant to Cisco a non exclusive, irrevocable, worldwide, royalty free, fully paid up license in and to any and all intellectual property rights in the Feedback, including the right to sublicense to Cisco licensees and customers (with the right to grant further sublicenses), the right to use and disclose such Feedback in any manner Cisco choose and to display, perform, copy, have copies, make, have made, use, sell, offer to sell, export and otherwise distribute or dispose of products embodying such Feedback but without any obligation to reference or disclose the source of such Feedback.

In the event of a conflict between this Supplement and the Agreement, the Supplement shall control.





Collaboration  
Collaboration  
TelePresence

Cisco Unified Video Conferencing  
[Cisco Unified Videoconferencing Manager](#)  
Cisco TelePresence Commercial Express

[DOC-29311](#)  
[DOC-29311](#)  
[DOC-29311](#)

## IMPORTANT: READ CAREFULLY

### Dear Customer, Supplemental End User License Agreement

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In addition to the limitations set forth in the EULA on your access and use of the Software, you agree to comply at all times with the terms and conditions provided in this SEULA. When the end user is an instrumentality of the U.S. Government, this SEULA is a contract with the U.S. government and becomes effective when signed by Cisco and the GSA Contracting Officer as an addendum to the Contract. If this is an ID/IQ contract or Schedule Contract, Ordering Activities placing orders against the ID/IQ or Schedule Contract are subject to this SEULA as a term of the contract. This SEULA shall bind the government, subject to federal law. This agreement shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity.

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For the purpose of this SEULA, we define the following terms:

“Authorized Service Provider” is a service provider that has an agreement with Cisco that explicitly authorizes support for the Restricted Features.

“Intra-company Use” is a use of the Software Product which occurs within the same company/entity and which traverses a service provider network for the purpose of interconnecting and communicating to endpoints within the same companies/entities.

“Inter-company Use” is a use of the Software Product which occurs between two or more companies/entities and which traverses a service provider network for the purpose of interconnecting and communicating to other companies/entities. A use may include functionality that is accessed before, during or after a Cisco TelePresence meeting. Inter-company Use also includes providing features of the Software Product in a commercially available service offering.

“Restricted Features” means one or more of the following features: (i) Inter-company Multipoint encryption; and (ii) Inter-company HD/SD Inter-Operability.

In addition to the Agreement, the following supplemental terms apply:

1. The Restricted Features are available or potentially enabled in this Software Product but may only be used for Intra-company Use. THE RESTRICTED FEATURES CANNOT BE USED FOR THE PURPOSES OF INTER-COMPANY USE UNLESS SUCH USE IS PERMITTED BY AN AUTHORIZED SERVICE PROVIDER. IF YOU WERE TO USE THE RESTRICTED FEATURES FOR INTER-COMPANY USE, YOUR USE OF THE RESTRICTED FEATURES PRIOR TO SUCH AUTHORIZATION WOULD CONSTITUTE A BREACH OF THE AGREEMENT. Unless your use is through an Authorized Service Provider, you are not authorized to use the Restricted Features for Inter-company Use until



the Restricted Features have been noted as a generally available feature set in the updated release notes for the Software Product, as posted by Cisco on [cisco.com](http://cisco.com). Notwithstanding the foregoing, your Intra-company Use of the Restricted Features shall not be restricted by this paragraph.

2. The CTS-Manager calendaring feature for scheduling TelePresence calls may only be used for Intra-company Use. The CTS-Manager calendaring feature may not be used with more than one calendaring application. Customers in a shared office space with multiple tenants using their own calendaring solution must deploy one CTS-Manager per tenant.
3. The Commercial Express product contains software provided by VMware, Inc. or its affiliates, and use of VMware software is subject to the terms of the VMware ESX/ESXi End User License Agreement Attachment 10.

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**Definitions**

**CPU** means a central processing unit that encompasses part of a Server.

**Evaluation Term** means a sixty-day period during which the Software may be used solely for trial or evaluation purposes, free of additional charge.

**Instance** means a single copy of the Software. Each copy of the Software loaded into memory constitutes a single Instance.

**License Term** means the period of time during which you are authorized to use the Software to deliver information technology

services to your internal or external customers. The License Term varies depending on the license fee paid.

**Server** means a single physical computer or device on a network that manages or provides network resources for multiple users. Each Server must meet or exceed the following CPU requirements: Intel Nehalem, AMD Barcelona and a clock frequency of 1.8GHz.

**Software** means the CSR 1000V, successor versions, or other virtual software products that Cisco determines shall be governed under this SEULA. To run, the Software requires VMWare ESXi version 5.0 or higher.

**Term** means the License Term and any Evaluation Term.

**Virtual Machine** means a software container that can run its own operating system and execute applications like a Server.

**Service Provider** means a company that provides information technology services to external end user customers.

**Additional License Terms and Conditions**

1. Cisco hereby grants You the right to install and use a single Instance of the Software during the Term. Upon expiration of the License Term, an Evaluation Term commences unless and until You renew the License Term by payment of the required license fees. Following expiration of the Evaluation Term, the Software communication interfaces shut down until all functionality ceases.



2. The Software may be deployed on a Server in a Virtual Machine. Each unique Instance of the Software requires payment of the applicable license fees. You may not run multiple Instances of the Software without payment of the applicable license fees.

3. Subject to the terms and conditions herein and payment of applicable license fees, You may use the Software as a Service Provider or to deliver hosted information technology services to your employees, agents, consultants and/or independent contractors., or to employees and contractors of your affiliated companies.

Description of Other Rights and Obligations

Please refer to the Cisco Systems, Inc. End User License Agreement.



## Cisco End User License Agreement, AnyConnect Secure Mobility Client, Release 3.0

**IMPORTANT: PLEASE READ THIS END USER LICENSE AGREEMENT CAREFULLY. DOWNLOADING, INSTALLING OR USING CISCO OR CISCO-SUPPLIED SOFTWARE CONSTITUTES ACCEPTANCE OF THIS AGREEMENT.**

CISCO SYSTEMS, INC. OR ITS SUBSIDIARY LICENSING THE SOFTWARE INSTEAD OF CISCO SYSTEMS, INC. ("CISCO") IS WILLING TO LICENSE ITS SOFTWARE TO YOU, ("GSA CUSTOMER") ONLY UPON THE CONDITION THAT YOU

ACCEPT ALL OF THE TERMS CONTAINED IN THIS END USER LICENSE AGREEMENT PLUS ANY ADDITIONAL

LIMITATIONS ON THE LICENSE SET FORTH IN A SUPPLEMENTAL LICENSE AGREEMENT ACCOMPANYING THE PRODUCT (COLLECTIVELY THE "AGREEMENT"). TO THE EXTENT OF ANY CONFLICT BETWEEN THE TERMS OF THIS END USER LICENSE AGREEMENT AND ANY SUPPLEMENTAL LICENSE AGREEMENT, THE SUPPLEMENTAL LICENSE AGREEMENT SHALL APPLY.

When the end user is an instrumentality of the U.S. Government, this SEULA is a contract with the U.S. government and becomes effective when signed by Cisco and the GSA Contracting Officer as an addendum to the Contract. If this is an ID/IQ contract or Schedule Contract, Ordering Activities placing orders against the ID/IQ or Schedule Contract are subject to this SEULA as a term of the contract. This SEULA shall bind the government, subject to federal law. This agreement shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity.

IF YOU DO NOT AGREE TO ALL OF THE TERMS OF

THE AGREEMENT, THEN CISCO IS UNWILLING TO LICENSE THE SOFTWARE TO YOU AND (A) YOU MAY NOT DOWNLOAD, INSTALL OR USE THE SOFTWARE, AND (B) YOU MAY RETURN THE SOFTWARE (INCLUDING ANY UNOPENED CD PACKAGE AND ANY WRITTEN MATERIALS) FOR A FULL REFUND, OR, IF THE SOFTWARE AND WRITTEN MATERIALS ARE SUPPLIED AS PART OF ANOTHER PRODUCT, YOU MAY RETURN THE ENTIRE PRODUCT FOR A FULL REFUND. YOUR RIGHT TO RETURN AND REFUND EXPIRES 30 DAYS AFTER PURCHASE FROM CISCO OR AN AUTHORIZED CISCO RESELLER, AND APPLIES ONLY IF YOU ARE THE ORIGINAL END USER PURCHASER.

THE FOLLOWING TERMS OF THE AGREEMENT GOVERN CUSTOMER'S ACCESS AND USE OF EACH CISCO OR CISCO-SUPPLIED SOFTWARE ("SOFTWARE").

### License

Conditioned upon compliance with the terms and conditions of the Agreement, Cisco grants to Customer a nonexclusive and nontransferable license to use for Customer's internal business purposes the Software and the Documentation for which Customer has paid the required license fees. "Documentation" means written information (whether contained in user or technical manuals, training materials, specifications or otherwise) pertaining to the Software and made available by Cisco with the Software in any manner (including on CD-ROM, or on-line). In order to use the Software, Customer may be required to input a registration number or product authorization key and register Customer's copy of the Software online at Cisco's website to obtain the necessary license key or license file. Customer's license to use the Software shall be limited to, and Customer shall not use the Software in excess of, a single hardware chassis or card or such other limitations as are set forth in the applicable Supplemental License Agreement or in the applicable Purchase Order which has been accepted by Cisco and for which Customer has paid to Cisco the license fee as required by the "GSA Customer Purchase Order").

Unless otherwise expressly provided in the Documentation or any applicable Supplemental License Agreement, Customer shall use the Software solely as embedded in, for execution on, or (where the applicable Documentation permits installation on non-Cisco equipment) for communication with Cisco equipment owned or leased by Customer



and used for Customer's internal purposes. No other licenses are granted by implication, estoppel or otherwise. For evaluation or beta copies for which Cisco does not charge a license fee, the above requirement to pay license fees does not apply.

#### **General Limitations**

This is a license, not a transfer of title, to the Software and Documentation, and Cisco retains ownership of all copies of the Software and Documentation. Customer acknowledges that the Software and Documentation contain trade secrets of Cisco or its suppliers or licensors, including but not limited to the specific internal design and structure of individual programs and associated interface information. Except as otherwise expressly provided under the Agreement, Customer shall have no right, and Customer specifically agrees not to:

- (i) transfer, assign or sublicense its license rights to any other person or entity (other than in compliance with any Cisco relicensing/transfer policy then in force), or use the Software on unauthorized or secondhand Cisco equipment, and Customer acknowledges that any attempted transfer, assignment, sublicense or use shall be void;
- (ii) make error corrections to or otherwise modify or adapt the Software or create derivative works based upon the Software, or permit third parties to do the same;
- (iii) reverse engineer or decompile, decrypt, disassemble or otherwise reduce the Software to human-readable form, except to the extent otherwise expressly permitted under applicable law notwithstanding this restriction;
- (iv) publish any results of benchmark tests run on the Software;
- (v) use or permit the Software to be used to perform services for third parties, whether on a service bureau or time sharing basis or otherwise, without the express written authorization of Cisco; or
- (vi) disclose, provide, or otherwise make available trade secrets contained within the Software and Documentation in any form to any third party without the prior written consent of Cisco. Customer shall implement reasonable security measures to protect such trade secrets.

To the extent required by applicable law, and at Customer's written request, Cisco shall provide Customer with the interface information needed to achieve interoperability between the Software and another independently created program, on payment of Cisco's applicable fee, if any. Customer shall observe strict obligations of confidentiality with respect to such information and shall use such information in compliance with any applicable terms and conditions upon which Cisco makes such information available.

#### **Software, Upgrades and Additional Copies**

For purposes of the Agreement, "Software" shall include (and the terms and conditions of the Agreement shall apply to) computer programs, including firmware, as provided to Customer by Cisco or an authorized Cisco reseller, and any upgrades, updates, bug fixes or modified versions thereto (collectively, "Upgrades") or backup copies of any of the foregoing. NOTWITHSTANDING ANY OTHER PROVISION OF THE AGREEMENT: (1) CUSTOMER HAS NO LICENSE OR RIGHT TO MAKE OR USE ANY ADDITIONAL COPIES OR UPGRADES UNLESS CUSTOMER, AT THE TIME OF MAKING OR ACQUIRING SUCH COPY OR UPGRADE, ALREADY HOLDS A VALID LICENSE TO THE ORIGINAL SOFTWARE AND HAS PAID THE APPLICABLE FEE FOR THE UPGRADE OR ADDITIONAL COPIES; (2) USE OF UPGRADES IS LIMITED TO CISCO EQUIPMENT FOR WHICH CUSTOMER IS THE ORIGINAL END USER PURCHASER OR LESSEE OR OTHERWISE HOLDS A VALID LICENSE TO USE THE SOFTWARE WHICH IS BEING UPGRADED; AND (3) THE MAKING AND USE OF ADDITIONAL COPIES IS LIMITED TO NECESSARY BACKUP PURPOSES ONLY. NOTHING CONTAINED HEREIN SHALL RESTRICT THE CUSTOMER'S RIGHT TO PROVIDE COPIES TO ITS DULY AUTHORIZED EMPLOYEES, AGENTS, CONSULTANTS AND/OR INDEPENDENT CONTRACTORS SOLELY FOR BACKUP PURPOSES..

#### **Proprietary Notices**

Customer agrees to maintain and reproduce all copyright and other proprietary notices on all copies, in any form, of the Software in the same form and manner that such copyright and other proprietary notices are included on the Software. Except as expressly authorized in the Agreement, Customer shall not make any copies or duplicates of any Software without the prior written permission of Cisco. . NOTHING CONTAINED HEREIN SHALL RESTRICT THE GOVERNMENT'S RIGHT TO PROVIDE COPIES TO ITS DULY AUTHORIZED EMPLOYEES, AGENTS, CONSULTANTS AND/OR INDEPENDENT CONTRACTORS SOLELY FOR BACKUP PURPOSES.



### **Term and Termination**

The Agreement and the license granted herein shall remain effective until terminated. The parties may terminate the Agreement only in accordance with the procedures set forth in the FAR. Upon termination, Customer shall destroy all copies of Software and Documentation in its possession or control. All confidentiality obligations of Customer and all limitations of liability and disclaimers and restrictions of warranty shall survive termination of this Agreement. In addition, the provisions of the sections titled "U.S. Government End User Purchasers" and "General Terms Applicable to the Limited Warranty Statement and End User License Agreement" shall survive termination of the Agreement.

### **Government Records**

Customer grants to Cisco and its independent accountants the right to examine Customer's books, records and accounts during Customer's normal business hours to verify compliance with this Agreement as long as Cisco complies with Customer's security requirements. In the event such audit discloses non-compliance with this Agreement, the parties shall negotiate a new GSA Customer Purchase Order to bring the Customer into compliance..

### **Export, Re-Export, Transfer and Use Controls**

The Software, Documentation and technology or direct products thereof (hereafter referred to as Software and Technology), supplied by Cisco under this Agreement are subject to export controls under the laws and regulations of the United States (U.S.) and any other applicable countries' laws and regulations. Customer shall comply with such laws and regulations governing export, re-export, transfer and use of Cisco Software and Technology and will obtain all required U.S. and local authorizations, permits, or licenses. Cisco and Customer each agree to provide the other information, support documents, and assistance as may reasonably be required by the other in connection with securing authorizations or licenses. Information regarding compliance with export, re-export, transfer and use may be located at the following URL: [http://www.cisco.com/web/about/doing\\_business/legal/global\\_export\\_trade/general\\_export/contract\\_compliance.html](http://www.cisco.com/web/about/doing_business/legal/global_export_trade/general_export/contract_compliance.html) and is provided for informational purposes only.

### **U.S. Government End User Purchasers**

The Software and Documentation qualify as "commercial items," as that term is defined at Federal Acquisition Regulation ("FAR") (48 C.F.R.) 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in FAR 12.212. Consistent with FAR 12.212 and DoD FAR Supp. 227.7202-1 through 227.7202-4, and notwithstanding any other FAR or other contractual clause to the contrary in any agreement into which the Agreement may be incorporated, Customer may provide to Government end user or, if the Agreement is direct, Government end user will acquire, the Software and Documentation with only those rights set forth in the Agreement.

The Government agrees that the Software and Documentation are "commercial computer software" and "commercial computer software documentation," and accepts the rights and restrictions herein.

### **Limited Warranty**

Subject to the limitations and conditions set forth herein, Cisco warrants that commencing from the date of shipment to Customer (but in case of resale by an authorized Cisco reseller, commencing not more than ninety (90) days after original shipment by Cisco), and continuing for a period of the longer of (a) ninety (90) days or (b) the warranty period (if any) expressly set forth as applicable specifically to software in the warranty card accompanying the product of which the Software is a part (the "Product") (if any): (a) the media on which the Software is furnished will be free of defects in materials and workmanship under normal use; and (b) the Software substantially conforms to the Documentation. The date of shipment of a Product by Cisco is set forth on the packaging material in which the Product is shipped. Except for the foregoing, the Software is provided "AS IS". This limited warranty extends only to



the Customer who is the original licensee. Customer's sole and exclusive remedy and the entire liability of Cisco and its suppliers under this limited warranty will be (i) replacement of defective media and/or (ii) at Cisco's option, repair, replacement, or refund of the purchase price of the Software, in both cases subject to the condition that any error or defect constituting a breach of this limited warranty is reported to Cisco or the party supplying the Software to Customer, if different than Cisco, within the warranty period. Cisco or the party supplying the Software to Customer may, at its option, require return of the Software and/or Documentation as a condition to the remedy. In no event does Cisco warrant that the Software is error free or that Customer will be able to operate the Software without problems or interruptions. In addition, due to the continual development of new techniques for intruding upon and attacking networks, Cisco does not warrant that the Software or any equipment, system or network on which the Software is used will be free of vulnerability to intrusion or attack.

#### **Restrictions**

This warranty does not apply if the Software, Product or any other equipment upon which the Software is authorized to be used (a) has been altered, except by Cisco or its authorized representative, (b) has not been installed, operated, repaired, or maintained in accordance with instructions supplied by Cisco, (c) has been subjected to abnormal physical or electrical stress, abnormal environmental conditions, misuse, negligence, or accident; or (d) is licensed for beta, evaluation, testing or demonstration purposes. The Software warranty also does not apply to (e) any temporary Software modules; or (f) any Software for which Cisco does not receive a license fee.

#### **Disclaimer OF Warranty**

EXCEPT AS SPECIFIED IN THIS WARRANTY SECTION, ALL EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS, AND WARRANTIES INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, SATISFACTORY QUALITY, NON-INTERFERENCE, ACCURACY OF INFORMATIONAL CONTENT, OR ARISING FROM A COURSE OF DEALING, LAW, USAGE, OR TRADE PRACTICE, ARE HEREBY EXCLUDED TO THE EXTENT ALLOWED BY APPLICABLE LAW AND ARE EXPRESSLY DISCLAIMED BY CISCO, ITS SUPPLIERS AND LICENSORS. TO THE EXTENT AN IMPLIED WARRANTY CANNOT BE EXCLUDED, SUCH WARRANTY IS LIMITED IN DURATION TO THE EXPRESS WARRANTY PERIOD. BECAUSE SOME STATES OR JURISDICTIONS DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, THE ABOVE LIMITATION MAY NOT APPLY. THIS WARRANTY GIVES CUSTOMER SPECIFIC LEGAL RIGHTS, AND CUSTOMER MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM JURISDICTION TO JURISDICTION. This disclaimer and exclusion shall apply even if the express warranty set forth above fails of its essential purpose.

The foregoing exclusions/limitations of liability shall not apply (1) to personal injury or death caused by Cisco's negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.

#### **General Terms Applicable to the Limited Warranty Statement, End User License Agreement, and Supplemental License Agreement**

##### **Controlling Law, Jurisdiction**

If you acquired the Software in the United States, the Agreement and Hardware and Software warranties ("Warranties") are controlled by and construed under the Federal laws of the United States of America, notwithstanding any conflicts of law provisions. For all countries referred to above, the parties specifically disclaim the application of the UN Convention on Contracts for the International Sale of Goods.

If any portion hereof is found to be void or unenforceable, the remaining provisions of the Agreement and Warranties shall remain in full force and effect. Except as expressly provided herein, the Agreement constitutes the entire agreement between





the parties with respect to the license of the Software and Documentation. The Agreement has been written in the English language, and the parties agree that the English version will govern.

**Supplemental End User License Agreement for Cisco  
Systems AnyConnect Secure Mobility and other SSL  
VPN-related Client Software**

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For purposes of this SEULA, the Product name and the Product description You have ordered is any of the following ("Software"):

- Cisco AnyConnect Secure Mobility Client
- Cisco AnyConnect VPN Client
- Cisco AnyConnect Profile Editor
- Cisco AnyConnect Host Scan (HostScan)
- Cisco AnyConnect Diagnostics and Reporting Tool (DART)
- Cisco SSL VPN Client
- Cisco VPN Client
- Cisco Secure Desktop
- Smart Tunnels
- Port Forwarding
- Additional SSL VPN delivered applets

**Definitions**

For purposes of this SEULA, the following definitions apply:

"Endpoint" means a computer, smartphone or other mobile device used in conjunction with any of the Software.

"Network Access Manager Module" means a separate module in the Cisco AnyConnect Secure Mobility Client with IEEE 802.1X authentication functionality to manage wired and wireless network connections.



"Non-personal Information" means technical and related information that is not personally identifiable, including, but not limited to, the operating system type and version, origin and nature of identified malicious system threats, and the Software modules installed on an Endpoint device.

"Personal Information" means any information that can be used to identify an individual, including, but not limited to, an individual's name, user name, email address and any other personally identifiable information.

"Telemetry Module" means a separate module in the Cisco AnyConnect Secure Mobility Client to provide Personal Information and Non-personal Information from Endpoint devices to Cisco's web security infrastructure.

"Web Security Module" means a separate module in the Cisco AnyConnect Secure Mobility Client with functionality that redirects web traffic to the Cisco ScanSafe hosted web security infrastructure, for customers that have subscribed to Secure Mobility for ScanSafe and used in conjunction with Cisco ScanSafe Web Filtering and/or Cisco ScanSafe Web Security services.

### **Additional License Terms and Conditions**

#### **1. Installation and Use on Unlimited Number of Endpoint Devices**

Cisco hereby grants You the right to install and use any of the Software listed above in this SEULA on an unlimited number of Endpoint devices, provided that, except with respect to the Network Access Manager Module as described in Section 2 below, each of those Endpoint devices must use the Software only to connect to Cisco equipment. These license grants are subject to export restrictions in the EULA and to the network equipment license restrictions in Section 3 below. You may make one copy of the Software for each such Endpoint device and a reasonable number of backup copies for the purpose of installing the Software on that Endpoint device.

#### **2. Cisco AnyConnect Network Access Manager Module**

The Network Access Manager Module, as described in the Cisco AnyConnect Secure Mobility Client Administrator Guide, may be used by You in conjunction with non-Cisco wired and wireless equipment for the purpose of connecting to non-Cisco network equipment. Support services (including Technical Assistance or TAC support) are only available if You have an active support contract for Cisco Products used in conjunction with the Network Access Manager Module. Support services will not be provided directly to your end users by Cisco.

#### **3. Cisco Network Equipment and Hosted Service License Entitlements and Restrictions**

Your use of the Software or specific features thereof with Cisco network equipment shall be subject to license entitlements and restrictions for the applicable Cisco network equipment or hosted services. Please consult Your administrator guide for the applicable Cisco network equipment or hosted services for the relevant license entitlements and restrictions.

#### **4. Distribution to Third Party Business Partners and Customers**

You may copy and distribute the Software to your duly authorized employees, agents, consultants, and/or independent contractors (collectively referred to as "employees") solely and exclusively for the purposes of accessing your Cisco equipment, provided that You shall remain responsible for compliance with the EULA and this SEULA by such employees. Each such distribution of the Software to a third party must be accompanied by a copy of the EULA and this SEULA.

#### **5. No Support to Third Party Business Partners or Customers**

Cisco will not provide end-user support (including Technical Assistance or TAC support) to any third party business partner or customer that receives the Software in accordance with Section 4 hereof. You shall be responsible for providing all support to each such third party.

#### **6. Effect of Termination on Third Party Business Partners or Customers**

In the event of termination of the Agreement, If applicable, You must use commercially reasonable efforts to notify the third party

business partner or customer to whom You have distributed the Software that their rights of access and use of the Software have also ceased.

#### **7. Data, Information and Privacy**

• **Telemetry Module**—If You install the Telemetry Module, You consent to Cisco's collection, use, processing and storage of Personal Information and Non-personal Information as described below. This Personal Information and Non-personal Information is transferred to Cisco, including the transfer of such information to the United States and/or another country



outside the European Economic Area, so Cisco can determine how users are interacting with our products and for the purpose of providing You technical networking support and improving our products and services. Cisco may share this information with select third parties in an anonymous aggregated form. None of this Personal Information and Non-personal Information will be used to identify or contact You, and use of the Personal Information and Non-personal Information shall be subject to Cisco's Privacy Statement, Attachment 6. You may withdraw this consent to collection, use, processing and storage of Personal Information and Non-personal Information at any time either by turning the Telemetry Module off or by uninstalling the Telemetry Module. Configuration and uninstallation instructions for the Telemetry Module are available in Your Cisco AnyConnect Secure Mobility Client Administrator Guide.

- Web Security Module—If You agree to this Agreement and install and utilize the Web Security Module to communicate with the Cisco ScanSafe Web Filtering and/or Cisco ScanSafe Web Security Services, You consent to Cisco's collection, use, processing and storage of Personal Information as described below. This Personal Information is transferred to Cisco, including the transfer of such information to the United States and/or another country outside the European Economic Area, so Cisco can determine how users are interacting with our products and for the purpose of providing You technical networking support and improving our products and services. None of this Personal Information will be used to identify or contact You, and use of the Personal Information shall be subject to Cisco's Privacy Statement, Attachment 6. You may withdraw this consent to collection, use, processing and storage of Personal Information at any time by configuring the Cisco ScanSafe Web Filtering Service to anonymize Your end user data. Configuration instructions for the Cisco ScanSafe Web Filtering Service are available in Your Cisco ScanSafe Web Filtering Service Administrator Guide.

**IMPORTANT: READ CAREFULLY****Dear Customer,**

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In addition to the limitations set forth in the EULA on your access and use of the Software, the Government agrees to comply at all times with the terms and conditions provided in this SEULA. . When the end user is an instrumentality of the U.S. Government, this SEULA is a contract with the U.S. government and becomes effective when signed by Cisco and the GSA Contracting Officer as an addendum to the Contract. If this is an ID/IQ contract or Schedule Contract, Ordering Activities placing orders against the ID/IQ or Schedule Contract are subject to this SEULA as a term of the contract. This SEULA shall bind the government, subject to federal law. This agreement shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity.

**. IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THE AGREEMENT, THEN CISCO IS UNWILLING TO LICENSE THE SOFTWARE TO YOU AND (A) YOU MAY NOT DOWNLOAD, INSTALL OR USE THE SOFTWARE, AND (B) YOU MAY RETURN THE SOFTWARE (INCLUDING ANY UNOPENED CD PACKAGE AND ANY WRITTEN MATERIALS) FOR A FULL REFUND, OR, IF THE SOFTWARE AND WRITTEN MATERIALS ARE SUPPLIED AS PART OF ANOTHER PRODUCT, YOU MAY RETURN THE ENTIRE PRODUCT FOR A FULL REFUND. -YOUR RIGHT TO RETURN AND REFUND EXPIRES 30 DAYS AFTER PURCHASE FROM CISCO OR AN AUTHORIZED CISCO RESELLER, AND APPLIES ONLY IF YOU ARE THE ORIGINAL END USER PURCHASER.**

**SUPPLEMENTAL END USER LICENSE AGREEMENT FOR CISCO SYSTEMS ASA CX SOFTWARE:  
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Software shall include Cisco s ASA CX Application Visibility and Control and ASA CX Web Security Essentials software and services.

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AND ANY WRITTEN MATERIALS) FOR A FULL REFUND, OR, IF THE SOFTWARE AND WRITTEN MATERIALS ARE SUPPLIED AS PART OF ANOTHER PRODUCT, YOU MAY RETURN THE ENTIRE PRODUCT FOR A FULL REFUND. YOUR RIGHT TO RETURN AND REFUND EXPIRES 30 DAYS AFTER PURCHASE FROM CISCO OR AN AUTHORIZED CISCO RESELLER, AND APPLIES ONLY IF YOU ARE THE ORIGINAL END USER PURCHASER.

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Security Cisco ASA Next Generation Firewall Services (formerly ASA CX Context-Aware Security) Application [DOC-2](#)  
Visibility & Control

## IMPORTANT: READ CAREFULLY

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### Product Name

ASA5585-10-AP1Y ASA 5585-X CX-10 Application Visibility and Control 1Year



**SUPPLEMENTAL END USER LICENSE AGREEMENT FOR CISCO SYSTEMS ASA CX SOFTWARE:  
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Security

Cisco ASA Next Generation Firewall Services  
(formerly ASA CX Context-Aware Security) Web Security [DOC-3](#)  
Essentials

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**Product Name**

ASA5585-20-AW3Y ASA 5585-X CX-20 AVC and Web Security Essentials 3Year

**SUPPLEMENTAL END USER LICENSE AGREEMENT FOR CISCO SYSTEMS ASA CX SOFTWARE:  
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Documentation

means information (whether contained in user or technical manuals, training materials, specifications, videos or otherwise) pertaining to the Software and made available by Cisco with the Software in any manner (including on CD Rom, or online).

In

order to use the Software, Customer may be required to input a registration number or product authorization key and register Customer s copy of the Software online at Cisco s website to obtain the necessary license key or license file.



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**Product Name**

L-ISE-AD5Y-W-100= Cisco ISE 100 Endpoint 5 Year Wireless Subscription License

**Identity Services Engine (ISE) Wireless License**

The Cisco Identity Services Engine (ISE) Wireless Package License entitles the user to use the Base and Advanced features and

services for Wireless Endpoints only and to receive updates as made available during the term of the subscription, provided that you

holds a valid license for the application software and there is a valid Cisco SMARTnet or SASU contract on the supporting ISE

platform.

**Features and Functionality**

The Identity Services Engine Wireless License Package provides features that require a valid license to operate. These features are

supported on Cisco Identity Services Engine hardware and software platforms.

**Licensing**

A valid ISE Wireless license allows a wireless endpoint (e.g. laptop) to be supported by the Identity Services Engine platform. This

license entitles the user to support up to number of wireless endpoints that is equal to the license quantity purchased, i.e. the quantity of wireless endpoints supported is limited to the quantity of licenses ordered. (e.g. 1,000 licenses will support 1,000 wireless endpoints).



Additional licenses can be purchased to support more wireless endpoints. The purchased license quantity will be listed in the sales order. The Identity Services Engine Wireless Package License is a 5 year subscription license and subject to the termination provisions stated in the FAR.

In order to be able to deploy the ISE across different types of endpoints or access technologies (wired, wireless and vpn), customers

have to purchase the Wireless Upgrade license. The Wireless Upgrade license allows for the ISE to be deployed with wired, wireless

and vpn endpoints. The pre-requisite for installing the Wireless Upgrade license is having the Wireless license installed on the ISE.

The endpoint count of the Wireless Upgrade license has to be the same as the pre-installed Wireless license.

Support

Cisco Support Services, either SMARTnet for the hardware instance or SASU for the virtual instance, provide Cisco Identity

Service Engine customers with the necessary support services when using the Base license. For the SMARTnet option, the ISE

software is considered the operating system so updates include the following: maintenance releases, minor updates and major updates.

Security

Cisco ISE Wireless Upgrade

[DOC-5](#)

## IMPORTANT: READ CAREFULLY

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**Product Name**

L-ISE-W-UPG-100= ISE 100 Endpoint 5 Year Wireless Upgrade Subscription Lic

**Identity Services Engine (ISE) Wireless Upgrade License**

The Cisco Identity Services Engine (ISE) Wireless Upgrade License entitles the user to use the Base and Advanced features and

services for All Endpoints and not just limited to Wireless Endpoints only and to receive updates as made available during the term of

the subscription, provided that ~~you~~the GSA Customer Government holds a valid license for the application software and there is a valid Cisco SMARTnet or SASU contract on the supporting ISE platform.

**Features and Functionality**

The Identity Services Engine Wireless Upgrade License provides features that require a valid license to operate. These features are

supported on Cisco Identity Services Engine hardware and software platforms.

**Licensing**

A valid ISE Wireless Upgrade license allows any type of endpoint wired, wireless and vpn endpoint to be supported by the Identity

Services Engine platform. The pre-requisite to install this license is the ISE Wireless License. This license entitles the user to support

up to number of wired, wireless and vpn endpoints that is equal to the license quantity purchased, i.e. the quantity of endpoints

supported is limited to the quantity of licenses ordered. (e.g. 1,000 licenses will support 1,000 endpoints).

Additional licenses can be purchased to support more endpoints. The purchased license quantity will be listed in the GSA Customer Purchase Order.

The Identity Services Engine Wireless Upgrade License is a subscription license whose term will expire at the same time as the

pre-installed Wireless license and is subject to termination provisions stated in the FAR, ~~the underlying GSA Schedule Contract and/or any applicable Government SA Customer Purchase Orders.~~

**Support**

Cisco Support Services, either SMARTnet for the hardware instance or SASU for the virtual instance, provide Cisco Identity

Service Engine customers with the necessary support services when using the Base license. For the SMARTnet option the ISE

software is considered the operating system, so updates include the following: maintenance releases, minor updates and major

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YOUR RIGHT TO

RETURN AND REFUND EXPIRES 30 DAYS AFTER PURCHASE FROM CISCO OR AN AUTHORIZED CISCO RESELLER, AND APPLIES ONLY IF YOU ARE THE ORIGINAL END USER PURCHASER.

**Product Name**

L-ISE-ADV3Y-50K= Cisco ISE 50000 EndPoint 3Year Advanced Subscription License

**Identity Services Engine (ISE) Advanced Package License**

The Cisco Identity Services Engine (ISE) Advanced Package License entitles the Government to use the Advanced Package features, services,

and to receive updates as made available during the term of the Subscription, provided that the Government holds a valid license for the

application software and there is a valid Cisco SMARTnet or SASU contract on the supporting ISE platform.

**Features and Functionality**

The Identity Services Engine Advanced Software Package provides features that require a valid license to operate. These features

are supported on Cisco Identity Services Engine hardware and software platforms.

**Licensing**

A valid ISE Advanced license allows an endpoint (e.g. laptop) to be supported by the Identity Services Engine platform.

This license

entitles the Government to support up to the number of endpoints that is equal to the license quantity purchased, i.e. the quantity of endpoints



supported with Advanced features is limited to the quantity of licenses ordered. (e.g. 1,000 licenses will support 1,000 endpoints).

Additional licenses can be purchased to support more endpoints. The purchased license quantity will be listed in the Government Purchase Order.

The Identity Services Engine Advanced Package license is subscription based and has either a 3 or 5 year term. The license is valid

with proper purchase for the duration of the term. License subscriptions must be renewed before the expiration date for continued

use of software Features and Services. After the expiration date has occurred without renewal, Advanced Package Features and

Services may cease operation. The purchased license term is listed on the sales order.

The Government's subscription term begins 24 hours after the PAK file is transmitted to the user. The PAK file will be transmitted electronically

within 24 hours of Cisco's receipt of the Government Purchase Order. . The term expires after the duration specified in the Government Purchase Order has been reached.

#### Support

Cisco Support Services, either SMARTnet for the hardware instance or SASU for the virtual instance, provide Cisco Identity

Service Engine customers with the necessary support services when using Advanced Subscription Licenses. For the SMARTnet

option the ISE software is considered the operating system so updates include the following: maintenance releases, minor updates

and major updates. Please note that a Cisco ISE customer must have an active SMARTnet or SASU contract when using Advanced

Subscription Licenses.

Security

Cisco ISE Migration

[DOC-7](#)

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**IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THE AGREEMENT, THEN CISCO IS UNWILLING TO LICENSE THE**

**SOFTWARE TO YOU AND (A) YOU MAY NOT DOWNLOAD, INSTALL OR USE THE SOFTWARE, AND (B) YOU**



MAY RETURN THE SOFTWARE (INCLUDING ANY UNOPENED CD PACKAGE AND ANY WRITTEN MATERIALS) FOR A FULL REFUND, OR, IF THE SOFTWARE AND WRITTEN MATERIALS ARE SUPPLIED AS PART OF ANOTHER PRODUCT, YOU MAY RETURN THE ENTIRE PRODUCT FOR A FULL REFUND. YOUR RIGHT TO RETURN AND REFUND EXPIRES 30 DAYS AFTER PURCHASE FROM CISCO OR AN AUTHORIZED CISCO RESELLER, AND APPLIES ONLY IF YOU ARE THE ORIGINAL END USER PURCHASER.

**Product Name**

L-ISE-ADV-250-M= Cisco ISE 250 EndPoint Advanced + Base Migration License

**Identity Services Engine (ISE) Advanced Package License**

The Cisco Identity Services Engine (ISE) Advanced Package License entitles the Government to use the Advanced Package features, services,

And to receive updates as made available during the term of the Subscription, provided that you holds a valid license for the application software and there is a valid Cisco SMARTnet or SASU contract on the supporting ISE platform.

**Features and Functionality**

The Identity Services Engine Advanced Software Package provides features that require a valid license to operate. These features

are supported on Cisco Identity Services Engine hardware and software platforms.

**Licensing**

A valid ISE Advanced license allows an endpoint (e.g. laptop) to be supported by the Identity Services Engine platform. This license

entitles the user to support up to the number of endpoints that is equal to the license quantity purchased, i.e. the quantity of endpoints supported with Advanced features is limited to the quantity of licenses ordered. (e.g. 1,000 licenses will support 1,000 endpoints).

Additional licenses can be purchased to support more endpoints. The purchased license quantity will be listed in the GSA Customer Purchase Order.

The Identity Services Engine Advanced Package license is subscription based and has either a 3 or 5 year term. The license is valid

with proper purchase for the duration of the term. License subscriptions must be renewed before the expiration date for continued

use of software Features and Services. After the expiration date has occurred without renewal, Advanced Package Features and

Services may cease operation. The purchased license term is listed on the GSA Customer Purchase Order.

Your subscription term begins 24 hours after the PAK file is transmitted to the user. The PAK file will be transmitted electronically

within 24 hours of Cisco's receipt of the GSA Customer Purchase Order.. The term expires after the duration specified in the GSA Customer Purchase Order..

**Support**

Cisco Support Services, either SMARTnet for the hardware instance or SASU for the virtual instance, provide Cisco Identity

Service Engine customers with the necessary support services when using Advanced Subscription Licenses. For the SMARTnet

option the ISE software is considered the operating system, so updates include the following: maintenance releases, minor updates

and major updates. Please note that a Cisco ISE customer must have an active SMARTnet or SASU contract when using Advanced



Subscription Licenses.

Security

Cisco ISE All-in-One

[DOC-8](#)

## Supplemental End User License Agreement for Identity Services Engine

### IMPORTANT: READ CAREFULLY

This Supplemental End User License Agreement (“SEULA”) contains additional terms and conditions for the Software product licensed under the End User License Agreement (“EULA”) between you (“GSA Customer”) and Cisco

(collectively, the “Agreement”). Capitalized terms used in this SEULA but not defined will have the meanings assigned to them in the EULA. To the extent that there is a conflict between the terms and

conditions of the EULA and this SEULA, the terms and conditions of this SEULA will take precedence. In addition to the limitations set forth in the EULA on the Government’s access and use of the Software, the Government agrees to comply at all times with the terms and conditions provided in this SEULA. . When the end user is an instrumentality of the U.S. Government, this SEULA is a contract with the U.S. Government and becomes effective when signed by Cisco and the GSA Contracting Officer as an addendum to the Contract. If this is an ID/IQ contract or Schedule Contract, Ordering Activities placing orders against the ID/IQ or Schedule Contract are subject to this SEULA as a term of the contract. This SEULA shall bind the Government, subject to federal law. This agreement shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity.

IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THE AGREEMENT, THEN CISCO IS UNWILLING TO LICENSE THE SOFTWARE TO YOU AND (A) YOU MAY NOT DOWNLOAD, INSTALL OR USE THE SOFTWARE, AND (B) YOU MAY RETURN THE SOFTWARE (INCLUDING ANY UNOPENED CD PACKAGE AND ANY WRITTEN MATERIALS) FOR A FULL REFUND, OR, IF THE SOFTWARE AND WRITTEN MATERIALS ARE SUPPLIED AS PART OF ANOTHER PRODUCT, YOU MAY RETURN THE ENTIRE PRODUCT FOR A FULL REFUND. YOUR RIGHT TO RETURN AND REFUND EXPIRES 30 DAYS AFTER PURCHASE FROM CISCO OR AN AUTHORIZED CISCO RESELLER, AND APPLIES ONLY IF YOU ARE THE ORIGINAL END USER PURCHASER.

### Product Name

For purposes of this SEULA, the Product name you have ordered is any of the following:

- Cisco ISE 1 Year Wireless Subscription License
- Cisco ISE 3 Year Wireless Subscription License
- Cisco ISE 5 Year Wireless Subscription License
- Cisco ISE 1 Year Wireless Upgrade Subscription License
- Cisco ISE 3 Year Wireless Upgrade Subscription License
- Cisco ISE 5 Year Wireless Upgrade Subscription License
- Cisco ISE 1 Year Advance Subscription License
- Cisco ISE 3 Year Advance Subscription License
- Cisco ISE 5 Year Advance Subscription License
- Cisco ISE Advance Migration Licenses

### Identity Services Engine Term Licenses

Provided that you holds a valid license for the application software and that there is a valid Cisco SMARTnet or SASU contract on the supporting ISE platform, you are entitled to use the following Cisco Identity Services Engine (ISE) features and services depending on the Product you have ordered:

Cisco ISE Wireless Licenses

For the Cisco ISE Wireless Subscription License: you are entitled to use the Base and Advance features and



services for Wireless Endpoints only and to receive updates as made available during the term of the subscription. A valid ISE Wireless Subscription License allows a wireless endpoint (e.g. laptop) to be supported by the Identity Services Engine platform. This license entitles the GSA Customer to support up to the number of wireless endpoints that is equal to the license quantity purchased, i.e. the quantity of wireless endpoints supported is limited to the quantity of licenses ordered (e.g. 1,000 licenses will support 1,000 wireless endpoints);

#### Cisco ISE Wireless Upgrade Licenses

For the Cisco ISE Wireless Upgrade Subscription License: you are entitled to use the Base and Advance features and services for all Endpoints (not just limited to Wireless Endpoints only), and to receive updates as made available during the term of the subscription. A valid ISE Wireless Upgrade Subscription License allows any type of endpoint wired, wireless and vpn endpoint to be supported by the Identity Services Engine Platform. The pre-requisite to install this ISE Wireless Upgrade Subscription License is the ISE Wireless Subscription License. A ISE Endpoint Wireless Upgrade Subscription License entitles the user to support up to number of wired, wireless and vpn endpoints that is equal to the license quantity purchased, i.e. the quantity of endpoints supported is limited to the quantity of licenses ordered (e.g. 1,000 licenses will support 1,000 endpoints). The endpoint count of the ISE Endpoint Wireless Upgrade Subscription License has to be the same as the pre-installed ISE Endpoint Wireless Subscription; or Cisco ISE Advance Licenses.

For the Cisco ISE Advance Subscription License: you are entitled to use the Advance Package features, services, and to receive updates as made available during the term of the Subscription. The ISE Advance Subscription License allows all endpoints (e.g. laptop) to be supported by the Identity Services Engine platform. This license entitles the GSA Customer to support up to number of endpoints that is equal to the license quantity purchased, i.e. the quantity of endpoints supported with Advance features is limited to the quantity of licenses ordered (e.g. 1,000 licenses will support 1,000 endpoints).

#### Cisco ISE Advance Migration Licenses

For the Cisco ISE Advance Migration Licenses: you are entitled to use the Base and Advance features and services, and to receive updates as made available during the term of the Subscription. The ISE Advance Migration License allows all endpoints (e.g. laptop) to be supported by the Identity Services Engine platform. The Cisco ISE Advance Migration License includes a perpetual ISE Base License with a perpetual term and an ISE Advance License with a 3-year term. This license entitles the GSA Customer to support up to number of endpoints that is equal to the license quantity purchased, i.e. the quantity of endpoints supported with Base and Advance features is limited to the quantity of licenses ordered (e.g. 1,000 licenses will support 1,000 endpoints).

#### Additional licenses

Additional ISE Licenses can be purchased to support more endpoints. The purchased license quantity will be listed in the GSA Customer Purchase Order.

#### Term

The ISE Term Licenses are subscription-based, and have either a 1-year, 3-year, or 5-year term, except that: (a) the term of the ISE Wireless Upgrade License will expire at the same time as the pre-installed ISE Wireless License; and (b) the ISE Advance Migration License includes a perpetual ISE Base License with a perpetual term and a ISE Advance License with a 3-year term. The ISE Term Licenses are subject to the termination provisions contained in the FAR. License subscriptions must be renewed before the expiration date for continued use

of software Features and Services. After the expiration date has occurred without renewal, Features and Services may cease operation.

#### Features and Functionality

The ISE License provides features that require a valid license to operate. These features are supported on Cisco ISE hardware and software platforms.





(formerly Cisco IronPort Email and Web Security  
Appliances and Security Management Application)

**Supplemental End User License Agreement for  
Cisco Systems Content Security Software**

**IMPORTANT: READ CAREFULLY**

This Supplemental End User License Agreement (“SEULA”) contains additional terms and conditions for the Software product licensed under the End User License Agreement (“EULA”) between You (“GSA Customer” as used herein means You and its duly authorized employees, agents, consultants and/or independent contractors and Cisco (collectively, the “Agreement”). Capitalized terms used in this SEULA but not defined will have the meanings assigned to them in the EULA. To the extent that there is a conflict between the terms and conditions of the EULA and this SEULA, the terms and conditions of this SEULA will take precedence.

In addition to the limitations set forth in the EULA on your access and use of the Software, you agree to comply at all times with the terms and conditions provided in this SEULA. When the end user is an instrumentality of the U.S. Government, this SEULA is a contract with the U.S. Government and becomes effective when signed by Cisco and the GSA Contracting Officer as an addendum to the Contract. If this is an ID/IQ contract or Schedule Contract, Ordering Activities placing orders against the ID/IQ or Schedule Contract are subject to this SEULA as a term of the contract. This SEULA shall bind the Government, subject to federal law. This agreement shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity.

**IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THE AGREEMENT, THEN CISCO IS UNWILLING TO LICENSE THE SOFTWARE TO YOU AND (A) YOU MAY NOT DOWNLOAD, INSTALL OR USE THE SOFTWARE, AND (B) YOU MAY RETURN THE SOFTWARE (INCLUDING ANY UNOPENED CD PACKAGE AND ANY WRITTEN MATERIALS) FOR A FULL REFUND, OR, IF THE SOFTWARE AND WRITTEN MATERIALS ARE SUPPLIED AS PART OF ANOTHER PRODUCT, YOU MAY RETURN THE ENTIRE PRODUCT FOR A FULL REFUND. YOUR RIGHT TO RETURN AND REFUND EXPIRES 30 DAYS AFTER PURCHASE FROM CISCO OR AN AUTHORIZED CISCO RESELLER, AND APPLIES ONLY IF YOU ARE THE ORIGINAL END USER PURCHASER.**

For purposes of this SEULA, the Product name and the Product description You have ordered is any of the following Cisco Systems Email Security Appliance (“ESA”), Cisco Systems Web Security Appliance (“WSA”) and Cisco Systems Security Management Application (“SMA”) (collectively, “Content Security”) and their Virtual Appliance equivalent (“Software”):

- Cisco AsyncOS for Email
- Cisco AsyncOS for Web
- Cisco AsyncOS for Management
- Cisco Email Anti-Spam, Sophos Anti-Virus
- Cisco Email Outbreak Filters
- Cloudmark Anti-Spam
- Cisco Image Analyzer
- McAfee Anti-Virus
- Cisco Intelligent Multi-Scan
- Cisco RSA Data Loss Prevention
- Cisco Email Encryption
- Cisco Email Delivery Mode



Cisco Web Usage Controls  
Cisco Web Reputation  
Sophos Anti-Malware  
Webroot Anti-Malware  
McAfee Anti-Malware  
Cisco Email Reporting  
Cisco Email Message Tracking  
Cisco Email Centralized Quarantine  
Cisco Web Reporting  
Cisco Web Policy and Configuration Management  
Cisco Advanced Web Security Management with Splunk  
Email Encryption for Encryption Appliances  
Email Encryption for System Generated Bulk Email  
Email Encryption and Public Key Encryption for Encryption Appliances  
Large Attachment Handling for Encryption Appliances  
Secure Mailbox License for Encryption Appliances

#### **Definitions**

For purposes of this SEULA, the following definitions apply:

“GSA Customer Service” means the GSA Customer’s email, Internet, security management services provided to employees and End Users for the purposes of conducting the GSA Customer’s internal business.

“End User” means: (1) for the WSA and SMA, the employee, agent, consultant and/or independent contractor or other agent authorized by the GSA Customer to access the Internet and the SMA via the GSA Customer’s Service; and (2) for the ESA, the email boxes of the employees, consultants, independent contractors, or other agents authorized by the GSA Customer to access or use the email services via the GSA Customer’s Service.

“GSA Customer Purchase Order” means the purchase agreement, evaluation agreement, beta, pre-release agreement or similar agreement between the GSA Customer and Cisco or the GSA Customer and a Cisco reseller, or the valid terms of any GSA Customer Purchase Order accepted by Cisco in connection therewith, containing the purchase terms for the Software license granted by this Agreement.

“Personally Identifiable Information” means any information that can be used to identify an individual, including, but not limited to, an individual’s name, user name, email address and any other personally identifiable information.

“Server” means a single physical computer or devices on a network that manages or provides network resources for multiple users.

“Services” means Cisco Software Subscription Services.

“Telemetry Data” means samples of the GSA Customer’s email and web traffic, including data on email message and web request attributes and information on how different types of email messages and web requests were handled by the GSA Customer’s Cisco hardware products. Email message metadata and web requests included in Telemetry Data are anonymized and obfuscated to remove any Personally Identifiable Information.

“Term” means the length of the Software subscription You purchased, as indicated in the GSA Customer’s Purchase Order.

“Virtual Appliance” means the virtual version of Cisco’s email security appliances, web security appliances, and security management appliances.

“Virtual Machine” means a software container that can run its own operating system and execute applications like a Server.

#### **Additional License Terms and Conditions**

**LICENSE GRANTS AND CONSENT TO TERMS OF DATA COLLECTION**  
**License of Software.**



The GSA Customer agrees to be bound by the terms of this Agreement, and so long as the GSA Customer is in compliance with this Agreement, Cisco hereby grants to The GSA Customer a nonexclusive, non-sublicensable, non-transferable, worldwide license during the Term to use the Software only on Cisco's hardware products, or in the case of the Virtual Appliances, on a Virtual Machine, solely in connection with the provision of the GSA Customer Company Service to End Users. The number of End Users licensed for the use of the Software is limited to the number of End Users specified in the Ordering Documents. In the event that the number of End Users in connection with the provision of the Company Service exceeds the number of End Users specified in the Ordering Documents, Company shall contact an Approved Source to purchase additional licenses for the Software. The duration and scope of this license(s) is further defined in the Ordering Document. The GSA Customer Purchase Order supersedes the EULA with respect to the term of the Software license. Except for the license rights granted herein, no right, title or interest in any Software is granted to the GSA Customer by Cisco, Cisco's resellers or their respective licensors. The GSA Customer's entitlement to Upgrades to the Software is subject to any separate support contract that the GSA Customer may execute. This Agreement and the Services are co-terminus.

**Consent and License to Use Data.**

Subject to the Cisco Privacy Statement, Attachment 6.

The Government hereby consents and grants to Cisco a license to collect and use Telemetry Data from the Company. Cisco does not collect or use Personally Identifiable Information in the Telemetry Data. Cisco may share aggregated and anonymous Telemetry Data with third parties to assist us in improving the GSA Customer's user experience and the Software and other Cisco security products and services. The GSA Customer may terminate Cisco's right to collect Telemetry Data at any time by disabling SenderBase Network Participation in the Software. Instructions to enable or disable SenderBase Network Participation are available in the Software configuration guide.

**Description of Other Rights and Obligations**

Please refer to the Cisco Systems, Inc. End User License Agreement and Privacy Statement, Attachments 8 and 6.

**SUPPLEMENTAL END USER LICENSE AGREEMENT FOR CISCO SYSTEMS VIRTUAL SOFTWARE PRODUCTS:****IMPORTANT: READ CAREFULLY**

This Supplemental End User License Agreement (“SEULA”) contains additional terms and conditions for the Software licensed under the End User License Agreement (“EULA”) between you (“GSA Customer”) and Cisco (collectively, the “Agreement”). Capitalized terms used in this SEULA but not defined will

have the meanings assigned to them in the EULA. To the extent that there is a conflict between the terms and conditions of the EULA and this SEULA, the terms and conditions of this SEULA will take

precedence.

In addition to the limitations set forth in the EULA on the GSA Customer’s access and use of the Software, the GSA Customer agrees to comply at all times with the terms and conditions provided in this SEULA. . When the end user is an instrumentality of the U.S. Government, this SEULA is a contract with the U.S. government and becomes effective when signed by Cisco and the GSA Contracting Officer as an addendum to the Contract. If this is an ID/IQ contract or Schedule Contract, Ordering Activities placing orders against the ID/IQ or Schedule Contract are subject to this SEULA as a term of the contract. This SEULA shall bind the government, subject to federal law. This agreement shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity.

**IF YOU DO NOT**

**AGREE TO ALL OF THE TERMS OF THE AGREEMENT, THEN CISCO IS UNWILLING TO LICENSE THE SOFTWARE TO YOU AND (A) YOU MAY NOT DOWNLOAD, INSTALL OR USE THE SOFTWARE, AND (B) YOU MAY RETURN THE SOFTWARE (INCLUDING ANY UNOPENED CD PACKAGE AND ANY WRITTEN MATERIALS) FOR A FULL REFUND, OR, IF THE SOFTWARE AND WRITTEN MATERIALS ARE SUPPLIED AS PART OF ANOTHER PRODUCT, YOU MAY RETURN THE ENTIRE PRODUCT FOR A FULL REFUND. YOUR RIGHT TO RETURN AND REFUND EXPIRES 30 DAYS AFTER PURCHASE FROM CISCO OR AN AUTHORIZED CISCO RESELLER, AND APPLIES ONLY IF YOU ARE THE ORIGINAL END USER PURCHASER.**

**Definitions**

“CPU” means a central processing unit that encompasses part of a Server.

“Failover Pair” means a primary Instance and a standby Instance with the same Software configuration where the standby Instance can take over in case of failure of the primary Instance.

“Instance” means a single copy of the Software. Each copy of the Software loaded into memory is an Instance.

“Server” means a single physical computer or device on a network that manages or provides network resources for multiple users.

“Software” means Cisco’s Adaptive Security Appliance 1000V Cloud Firewall Software, Nexus 1000V series switch products, Virtual Security Gateway products.

“Virtual Machine” means a software container that can run its own operating system and execute applications like a Server.

“Service Provider” means a company that provides information technology services to external end user customers.

**Additional License Terms and Conditions**

1. Cisco hereby grants You the right to install and use the Software listed above in this SEULA on single or multiple Cisco or non-Cisco Servers or as a Virtual Machine.
2. A unit license fee to Cisco or an authorized Cisco reseller shall be due for each Cisco or non-Cisco Server CPU on which the Software is installed, per Virtual Machine run by the Software, or



per Instance, as determined by Cisco. Cisco also reserves the right to offer, in its sole discretion, versions of the Software that may not be subject to a unit license fee.

3. For the Adaptive Security Appliance 1000V Cloud Firewall Software, You are licensed to the number of Instances of the Software equal to the number of CPUs covered by the unit license fee, and if You deploy a Failover Pair, for an additional standby Instance for each primary Instance.

**Description of Other Rights and Obligations**

Please refer to the Cisco Systems, Inc. End User License Agreement, Attachment 8.



Version 1.0

**SUPPLEMENTAL END USER LICENSE AGREEMENT FOR CISCO SYSTEMS  
INTEGRATED SECURITY APPLIANCE SOFTWARE:  
IMPORTANT: READ CAREFULLY**

This Supplemental End User License Agreement ("SEULA") contains additional terms and conditions for the Software Product licensed under the End User License Agreement ("EULA") between you ("GSA Customer") and Cisco (collectively, the "Agreement"). Capitalized terms used in this SEULA but not defined will have the meanings assigned to them in the EULA. To the extent that there is a conflict between the terms and conditions of the

EULA and this SEULA, the terms and conditions of this SEULA will take precedence.

In addition to the limitations set forth in the EULA on your access and use of the

Software, you agree to comply at all times with the terms and conditions provided in this

SEULA. . When the end user is an instrumentality of the U.S. Government, this SEULA is a contract with the U.S.

government and becomes effective when signed by Cisco and the GSA Contracting Officer as an addendum to the Contract.

If this is an ID/IQ contract or Schedule Contract, Ordering Activities placing orders against the ID/IQ or Schedule Contract

are subject to this SEULA as a term of the contract. This SEULA shall bind the government, subject to federal law. This

agreement shall not operate to bind a Government employee or person acting on behalf of the Government in his or her

personal capacity.

IF YOU DO NOT

AGREE TO ALL OF THE TERMS OF THE AGREEMENT, THEN CISCO IS

UNWILLING TO LICENSE THE SOFTWARE TO YOU AND (A) YOU MAY NOT

DOWNLOAD, INSTALL OR USE THE SOFTWARE, AND (B) YOU MAY RETURN

THE SOFTWARE (INCLUDING ANY UNOPENED CD PACKAGE AND ANY

WRITTEN MATERIALS) FOR A FULL REFUND, OR, IF THE SOFTWARE AND

WRITTEN MATERIALS ARE SUPPLIED AS PART OF ANOTHER PRODUCT,

YOU MAY RETURN THE ENTIRE PRODUCT FOR A FULL REFUND. YOUR RIGHT TO

RETURN AND REFUND EXPIRES 30 DAYS AFTER PURCHASE FROM CISCO OR AN

AUTHORIZED CISCO RESELLER, AND APPLIES ONLY IF YOU ARE THE ORIGINAL

END USER PURCHASER.

**Definitions**

For purposes of this SEULA, the following definitions apply:

"Non-personal Information" means technical and related information that is not personally identifiable, including, but not limited to, the operating system type and version, origin and nature of identified malicious system threats, and the Software modules installed on an endpoint device.

"Personal Information" means any information that can be used to identify an individual, including, but not limited to, an individual's name, user name, email address and any other personally identifiable information.

**Additional License Terms and Conditions****Term License**

The Software is licensed for the one (1) or three (3) year license term, as set forth in the Software purchase order documentation.

Version 1.0

**Data, Information and Privacy**

If You agree to this Agreement, You consent to Cisco's collection, use, processing and storage of Personal Information and Non-personal Information, and the transfer of Personal Information and Non-personal Information to Cisco, including the transfer of



such information to the United States and/or another country outside the European Economic Area, as described in Cisco's Privacy Statement included as Attachment 6.



## Supplemental End User License Agreement for Access Control System

### IMPORTANT: READ CAREFULLY

This Supplemental End User License Agreement (“SEULA”) contains additional terms and conditions for the Software Product licensed under the End User License Agreement (“EULA”) between you (“GSA Customer”) and Cisco

(collectively, the “Agreement”). Capitalized terms used in this SEULA but not defined will have the meanings assigned to them in the EULA. To the extent that there is a conflict between the terms and

conditions of the EULA and this SEULA, the terms and conditions of this SEULA will take precedence.

In addition to the limitations set forth in the EULA on your access and use of the Software, you agree to comply at all times with the terms and conditions provided in this SEULA. . When the end user is an instrumentality of the U.S. Government, this SEULA is a contract with the U.S. government and becomes effective when signed by Cisco and the GSA Contracting Officer as an addendum to the Contract. If this is an ID/IQ contract or Schedule Contract, Ordering Activities placing orders against the ID/IQ or Schedule Contract are subject to this SEULA as a term of the contract. This SEULA shall bind the government, subject to federal law. This agreement shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity.

### IF YOU DO NOT

AGREE TO ALL OF THE TERMS OF THE AGREEMENT, THEN CISCO IS UNWILLING TO LICENSE THE SOFTWARE TO YOU AND (A) YOU MAY NOT DOWNLOAD, INSTALL OR USE THE SOFTWARE, AND (B) YOU MAY RETURN THE SOFTWARE (INCLUDING ANY UNOPENED CD PACKAGE AND ANY WRITTEN MATERIALS) FOR A FULL REFUND, OR, IF THE SOFTWARE AND WRITTEN MATERIALS ARE SUPPLIED AS PART OF ANOTHER PRODUCT, THE GOVERNMENT MAY RETURN THE ENTIRE PRODUCT FOR A FULL REFUND. YOUR RIGHT TO RETURN AND REFUND EXPIRES 30 DAYS AFTER PURCHASE FROM CISCO OR AN AUTHORIZED CISCO RESELLER, AND APPLIES ONLY IF YOU ARE THE ORIGINAL END USER PURCHASER.

### Product Name

For purposes of this SEULA, the Product the Government has ordered is any of the following:

- ACS 1121 Appliance With 5.x SW And Base license
- ACS 1121 Appliance And 5.x SW Upgrade from Previous Versions
- ACS application & BASE license for SNS-3415-K9 appliance
- Upgrade to ACS application on SNS-3415-K9 appl. w/ BASE license
- ACS 5.2 VMWare Software And Base License
- ACS 5.2 VMWare SW + Base License Upgrade from Previous Versions
- ACS 5.2 VMWare SW + Base License (Electronic Delivery)
- ACS 5.2 VMWare SW Upgrade (Electronic Delivery)
- ACS 5.3 VMWare Software And Base License
- ACS 5.3 VMWare SW + Base License Upgrade from Previous Versions
- ACS 5.3 VMWare SW + Base License (Electronic Delivery)
- ACS 5.3 VMWare SW Upgrade (Electronic Delivery)
- ACS 5.4 VMWare Software And Base License
- ACS 5.4 VMWare SW + Base License Upgrade from Previous Versions
- ACS 5.4 VMWare SW + Base License (Electronic Delivery)
- ACS 5.4 VMWare SW Upgrade (Electronic Delivery)

### 1. ADDITIONAL LICENSE RESTRICTIONS





**Installation and Use of Cisco Secure Access Control System:** The Cisco Secure Access Control System (“ACS”) Software component of the Cisco Hardware Platform is preinstalled. CDs containing tools to restore this Software to the Hardware are provided to you for reinstallation purposes only. You may only run the supported Cisco Secure Access Control System Software Products on the Cisco Hardware Platform designed for its use. No unsupported software product or component may be installed on the Cisco Hardware Platform. Each Cisco Secure Access Control System is shipped with a Product Activation Key (“PAK”) that must be registered with Cisco to obtain an appropriate base license file. The PAK and associated license file are intended for use on one and only one Cisco Secure Access Control System.

**Installation and Use of Cisco Secure Access Control System Software for Virtual Machine:** The Cisco Secure Access Control System (“ACS”) Software for Virtual Machine can run and is supported only on versions of Virtual Machine specified in the product documentation. Each copy of Cisco Secure ACS Software for Virtual Machine is shipped with a Product Activation Key (“PAK”) that must be registered with Cisco to obtain an appropriate base license file. The PAK and associated license file are intended for use on with one and only one running Instance of Cisco Secure ACS Software.

## 2. DEFINITIONS

“Instance” means a single copy of the Software. Each copy of the Software loaded into memory is an Instance.

“Server” means a single physical computer or device on a network that manages or provides network resources for multiple users.

“Virtual Appliance” means the virtual version of Cisco’s email security appliances, web security appliances, and security and identity management appliances.

“Virtual Machine” means a software container that can run its own operating system and execute applications like a Server.



TelePresence	<a href="#">Cisco TelePresence Multipoint Switch 1.5</a>	<a href="#">DOC-14958</a>
TelePresence	Cisco TelePresence Primary Codec	<a href="#">DOC-14958</a>
TelePresence	Cisco TelePresence Express Manager System	<a href="#">DOC-14958</a>

**IMPORTANT: READ CAREFULLY**

**Dear Customer,  
Supplemental End User License Agreement**

This Supplemental End User License Agreement (“SEULA”) contains additional terms and conditions for the Software Product licensed under the End User License Agreement (“EULA”) between you (“GSA Customer”) and Cisco (collectively, the “Agreement”). Capitalized terms used in this SEULA but not defined will have the meanings assigned to them in the EULA. To the extent that there is a conflict between the terms and conditions of the EULA and this SEULA, the terms and conditions of this SEULA will take precedence.

In addition to the limitations set forth in the EULA on your access and use of the Software, you agree to comply at all times with the terms and conditions provided in this SEULA. . When the end user is an instrumentality of the U.S. Government, this SEULA is a contract with the U.S. Government and becomes effective when signed by Cisco and the GSA Contracting Officer as an addendum to the Contract. If this is an ID/IQ contract or Schedule Contract, Ordering Activities placing orders against the ID/IQ or Schedule Contract are subject to this SEULA as a term of the contract. This SEULA shall bind the Government, subject to federal law. This agreement shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity.

**IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THE AGREEMENT, THEN CISCO IS UNWILLING TO LICENSE THE SOFTWARE TO YOU AND (A) YOU MAY NOT DOWNLOAD, INSTALL OR USE THE SOFTWARE, AND (B) YOU MAY RETURN THE SOFTWARE (INCLUDING ANY UNOPENED CD PACKAGE AND ANY WRITTEN MATERIALS) FOR A FULL REFUND, OR, IF THE SOFTWARE AND WRITTEN MATERIALS ARE SUPPLIED AS PART OF ANOTHER PRODUCT, YOU MAY RETURN THE ENTIRE PRODUCT FOR A FULL REFUND. YOUR RIGHT TO RETURN AND REFUND EXPIRES 30 DAYS AFTER PURCHASE FROM CISCO OR AN AUTHORIZED CISCO RESELLER, AND APPLIES ONLY IF YOU ARE THE ORIGINAL END USER PURCHASER.**

For the purpose of this SEULA, we define the following terms:

“Intragovernmental Features” are those features that are deployed within an enterprise and do not traverse a service provider network for the purpose of interconnecting and communicating to other enterprises. This does not include transport provided for communication within the enterprise allowing it to communicate to itself.

“Inter-company Features” are those features that provide support for communications between enterprises through a service provider network.

In addition to the Agreement, the following supplemental terms apply to Inter-company Features.

Multipoint encryption for Inter-company feature is available in the Software Product but you are not authorized to use it until you have been permitted to do so upon notice from Cisco.



TelePresence

[Cisco TelePresence Manager](#)

[DOC-14958](#)  
[DOC-29311](#)

TelePresence

Cisco TelePresence Express Multipoint Switch

[DOC-14958](#)  
[DOC-29311](#)

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

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

This Supplemental End User License Agreement ("SEULA") contains additional terms and conditions for the Software Product licensed under the End User License Agreement ("EULA") between you ("GSA Customer") and Cisco (collectively, the "Agreement"). Capitalized terms used in this SEULA but not defined will have the meanings assigned to them in the EULA. To the extent that there is a conflict between the terms and conditions of the EULA and this SEULA, the terms and conditions of this SEULA will take precedence.

In addition to the limitations set forth in the EULA on your access and use of the Software, you agree to comply at all times with the terms and conditions provided in this SEULA. When the end user is an instrumentality of the U.S. Government, this SEULA is a contract with the U.S. government and becomes effective when signed by Cisco and the GSA Contracting Officer as an addendum to the Contract. If this is an ID/IQ contract or Schedule Contract, Ordering Activities placing orders against the ID/IQ or Schedule Contract are subject to this SEULA as a term of the contract. This SEULA shall bind the government, subject to federal law. This agreement shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity.

**IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THE AGREEMENT, THEN CISCO IS UNWILLING TO LICENSE THE SOFTWARE TO YOU AND (A) YOU MAY NOT DOWNLOAD, INSTALL OR USE THE SOFTWARE, AND (B) YOU MAY RETURN THE SOFTWARE (INCLUDING ANY UNOPENED CD PACKAGE AND ANY WRITTEN MATERIALS) FOR A FULL REFUND, OR, IF THE SOFTWARE AND WRITTEN MATERIALS ARE SUPPLIED AS PART OF ANOTHER PRODUCT, THE GOVERNMENT MAY RETURN THE ENTIRE PRODUCT FOR A FULL REFUND. YOUR RIGHT TO RETURN AND REFUND EXPIRES 30 DAYS AFTER PURCHASE FROM CISCO OR AN AUTHORIZED CISCO RESELLER, AND APPLIES ONLY IF YOU ARE THE ORIGINAL END USER PURCHASER.**

For the purpose of this SEULA, we define the following terms:

"Authorized Service Provider" is a service provider that has an agreement with Cisco explicitly authorizing support for the Restricted Features.

"Intra- Governmental Use" is a use of the Software Product which occurs within the government and which traverses a service provider network for the purpose of interconnecting and communicating to endpoints within the same companies/entities.

"Inter company Use" is a use of the Software Product which occurs between two or more companies/entities and which traverses a service provider network for the purpose of inter connecting and communicating to other companies/entities. A use may include functionality that is accessed before, during or after a Cisco TelePresence meeting. Inter company Use also includes providing features of the Software Product in a commercially available service offering.

"Restricted Features" means one or more of the following features: (i) Inter company Multipoint encryption; and (ii) Inter company HD/SD Inter Operability.

In addition to the Agreement, the following supplemental terms apply:

1. The Restricted Features are available or potentially enabled in this Software Product but may only be used for Intra-Governmental Use. **THE RESTRICTED FEATURES CANNOT BE USED FOR THE PURPOSES OF INTERGOVERNMENTAL USE UNLESS SUCH USE IS PERMITTED BY AN AUTHORIZED SERVICE PROVIDER.** you are not authorized to use the Restricted Features for Inter-Governmental Use until the Cisco notifies the GSA Customer. Restricted Features are generally available feature sets in the updated release notes for the Software Product.



Notwithstanding the foregoing, your Intra-Governmental Use of the Restricted Features shall not be restricted by this paragraph.

2. The CTS Manager calendaring feature for scheduling TelePresence calls may only be used for Intra-Governmental Use. The CTS Manager calendaring feature may not be used with more than one calendaring application. Customers in a shared office space with multiple tenants using their own calendaring solution must deploy one CTS Manager per tenant.

TelePresence

CTS Management

[DOC-20211](#)

## **IMPORTANT: READ CAREFULLY**

### **Dear Customer, Supplemental End User License Agreement**

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In addition to the limitations set forth in the EULA on the Government’s access and use of the Software, you agree to comply at all times with the terms and conditions provided in this SEULA. When the end user is an instrumentality of the U.S. Government, this SEULA is a contract with the U.S. government and becomes effective when signed by Cisco and the GSA Contracting Officer as an addendum to the Contract. If this is an ID/IQ contract or Schedule Contract, Ordering Activities placing orders against the ID/IQ or Schedule Contract are subject to this SEULA as a term of the contract. This SEULA shall bind the government, subject to federal law. This agreement shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity.

**IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THE AGREEMENT, THEN CISCO IS UNWILLING TO LICENSE THE SOFTWARE TO YOU AND (A) YOU MAY NOT DOWNLOAD, INSTALL OR USE THE SOFTWARE, AND (B) YOU MAY RETURN THE SOFTWARE (INCLUDING ANY UNOPENED CD PACKAGE AND ANY WRITTEN MATERIALS) FOR A FULL REFUND, OR, IF THE SOFTWARE AND WRITTEN MATERIALS ARE SUPPLIED AS PART OF ANOTHER PRODUCT, YOU MAY RETURN THE ENTIRE PRODUCT FOR A FULL REFUND YOUR RIGHT TO RETURN AND REFUND EXPIRES 30 DAYS AFTER PURCHASE FROM CISCO OR AN AUTHORIZED CISCO RESELLER, AND APPLIES ONLY IF YOU ARE THE ORIGINAL END USER PURCHASER.**

“Authorized Service Provider” is a service provider that has an agreement with Cisco that explicitly authorizes support for the Restricted Features.

“Intra-Governmental Use” is a use of the Software Product which occurs within the same Government entity and which traverses a service provider network for the purpose of interconnecting and communicating to endpoints within the same entities.

“Inter-Governmental Use” is a use of the Software Product which occurs between two or more Government entities and which traverses a service provider network for the purpose of interconnecting and communicating to other entities. A use may include functionality that is accessed before, during or after a Cisco TelePresence meeting. Inter-Governmental Use also includes providing features of the Software Product in a commercially available service offering.

“Restricted Features” means one or more of the following features: (i) Inter-Governmental Multipoint encryption; and (ii) Inter-Governmental HD/SD Inter-Operability.



In addition to the Agreement, the following supplemental terms apply:

The Restricted Features are available or potentially enabled in this Software Product, but may only be used for Intra-Governmental Use. THE RESTRICTED FEATURES CANNOT BE USED FOR THE PURPOSES OF INTER-GOVERNMENTAL USE UNLESS SUCH USE IS PERMITTED BY AN AUTHORIZED SERVICE PROVIDER. The Government is not authorized to use the Restricted Features for Inter-Governmental Use until Cisco notifies the GSA Customer that the Restricted Features are available feature sets. Notwithstanding the foregoing, the GSA Customer's Intra-Governmental Use of the Restricted Features shall not be restricted by this paragraph.

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Dear Customer,

This Supplemental End User License Agreement ("SEULA") contains additional terms and conditions for the Software Product licensed under the End User License Agreement ("EULA") between you ("GSA Customer") and Cisco (collectively, the "Agreement"). Capitalized terms used in this SEULA but not defined will have the meanings assigned to them in the EULA. To the extent that there is a conflict between the terms and conditions of the EULA and this SEULA, the terms and conditions of this SEULA will take precedence.

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**SUPPLEMENTAL LICENSE AGREEMENT**

SUPPLEMENTAL LICENSE AGREEMENT FOR CISCO SYSTEMS VIDEO CONTROL PLANE AND CDN MANAGER ("SOFTWARE"): VIDEO BACK OFFICE, VIDEO CONTROL PLANE, CDN ANALYTICS, CDN PROVISIONS MANAGER

**IMPORTANT-READ CAREFULLY: THIS SUPPLEMENTAL LICENSE AGREEMENT ("SLA") CONTAINS ADDITIONAL LIMITATIONS ON THE LICENSE TO THE SOFTWARE PROVIDED TO GSA CUSTOMER UNDER THE END USER LICENSE AGREEMENT ("EULA") BETWEEN GSA CUSTOMER AND CISCO. CAPITALIZED TERMS USED IN THIS SLA AND NOT OTHERWISE DEFINED HEREIN SHALL HAVE THE MEANINGS ASSIGNED IN THE EULA. TO THE EXTENT THERE IS**

**A CONFLICT BETWEEN THIS SLA AND THE EULA OR ANY OTHER TERMS AND CONDITIONS APPLICABLE TO THE SOFTWARE, THE TERMS AND CONDITIONS IN THIS SLA SHALL TAKE PRECEDENCE.**

**THE GSA CUSTOMER'S RIGHT TO USE THE SOFTWARE IS LIMITED SOLELY TO THOSE PRODUCTS COMPONENTS OF THE SOFTWARE (INCLUDING BUT NOT LIMITED TO THE VIDEO BACK OFFICE, VIDEO CONTROL PLANE, CDN ANALYTICS, CDN PROVISIONS MANAGER COMPONENTS) PURCHASED BY GSA CUSTOMER PURSUANT TO A VALID GSA CUSTOMER PURCHASE ORDER. ALL OTHER USES ARE STRICTLY PROHIBITED.**

**WITH RESPECT TO THE SOFTWARE LICENSED UNDER THIS SLA, (A) "SERVICES" WILL APPLY SOLELY TO CISCO'S PERFORMANCE OF SERVICES RELATING TO THE SOFTWARE; AND (B) THE TERM "NETWORK"**



RELATING TO THE CISCO SEVERITY AND ESCALATION GUIDELINES, WILL BE DEFINED TO APPLY SOLELY TO THE SOFTWARE. When the end user is an instrumentality of the U.S. Government, this agreement is a contract with the U.S. Government and becomes effective when signed by Cisco and the GSA Contracting Officer as an addendum to the Contract. If this is an ID/IQ contract or Schedule Contract, Ordering Activities placing orders against the ID/IQ or Schedule Contract are subject to this agreement as a term of the contract. This SLA shall bind the Government, subject to federal law. This agreement shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity.

. IF GSA CUSTOMER DOES NOT AGREE TO BE BOUND BY SUCH TERMS AND CONDITIONS, CUSTOMER MAY NOT INSTALL, DOWNLOAD, OR OTHERWISE USE THE SOFTWARE.

#### LICENSE; ADDITIONAL RESTRICTIONS

License. Conditioned upon compliance with the terms and conditions of the Agreement, Cisco grants to GSA Customer a nonexclusive, non-transferable, worldwide, royalty-free license to use the Software and the Documentation to provide the delivery of online

video services ("Video Services") to End Users, subject to the capacity limitations set forth in the description of the product associated with the product SKU (collectively, "Capacity") set forth in the GSA Customer Purchase Order. The foregoing license does not transfer or convey to GSA Customer or any third party any right, title or interest in or to the Software or Documentation or any associated intellectual property rights, but only a limited right of use, revocable in accordance with the terms of the Agreement.

Restricted Version and Use. GSA Customer may install and use the Software only within the Territory specified in the Agreement solely for the purpose of operating GSA Customer's service for the management and delivery of Video Services to End Users. GSA Customers are purchasing the rights to the then-current Major Release of the Software and its associated Minor Releases and GSA Customer's license specifically excludes any subsequent Major Releases of the Software. No other Updates, upgrades, or other Software releases are licensed by Cisco to GSA Customer hereunder.

Major Release means a release of Software that provides additional software functions. Cisco designates Major Releases as a change in the ones digit of the Software version number [(x).x.x].

Minor Release means an incremental release of Software that provides maintenance fixes and additional Software functions. Cisco designates Minor releases as a change in the tenths digit of the Software version number [x.(x).x].

Customer Warranties. GSA Customer represents, warrants and covenants that (i) it shall only use the Software to provide Video Services to its End Users only as permitted by any Capacity limitations set forth in the GSA Customer Purchase Order. If GSA Customer wishes to utilize the Software beyond the Capacity set forth in the GSA Customer Purchase Order, GSA Customer shall be obligated to place a new GSA Customer Purchase Order with Cisco to procure such additional required Capacity as soon as is reasonably practical.

Content. As between Cisco and GSA Customer, GSA Customer is and will be solely responsible for the creation, renewal, updating, deletion, editorial content, control, maintaining any and all backup, and all other aspects of any files, software, scripts, multimedia images, graphics, audio, video, text, data or other objects, including any third party content or materials, originating or transmitted from any location owned or operated by GSA Customer, in any medium, which is transmitted or delivered by GSA Customer using the Software ("GSA Customer Content"). GSA Customer owns all right, title, and interest in the GSA Customer Content, or possesses or will possess all legally valid rights in the GSA Customer Content necessary to use the GSA Customer Content. Customer shall be solely responsible for maintaining the availability of its networks, web site(s) and any other medium for the delivery of online video services, and all GSA Customer Content, IP addresses, domain names, hyperlinks, databases, applications and other resources as necessary for GSA Customer to operate and maintain its services to meet GSA Customer's business purposes and objectives.

#### ADDITIONAL SERVICES

Professional Services and/or Support Services relating to the Software purchased by GSA Customer pursuant to a Purchase Order will be set forth in a separate document to be mutually agreed by the parties.





Video	Cisco Videoscape Media Managed Services and Videoscape Media Suite Software	<a href="#">DOC-31151</a>
Video	<a href="#">Cisco Videoscape Media Suite CMS</a>	<a href="#">DOC-31151</a>
Video	<a href="#">Cisco Videoscape Media Suite Entitlement</a>	<a href="#">DOC-31151</a>
Video	<a href="#">Cisco Videoscape Media Suite Publisher</a>	<a href="#">DOC-31151</a>
Video	<a href="#">Cisco Videoscape Media Suite Streaming Player</a>	<a href="#">DOC-31151</a>

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**RETURN AND REFUND EXPIRES 30 DAYS AFTER PURCHASE FROM CISCO OR AN AUTHORIZED CISCO RESELLER, AND APPLIES ONLY IF YOU ARE THE ORIGINAL END USER PURCHASER.**

**SUPPLEMENTAL LICENSE AGREEMENT**

**SUPPLEMENTAL LICENSE AGREEMENT FOR CISCO SYSTEMS VIDEOSCAPE MEDIA SUITE SOFTWARE (“VMS SOFTWARE”): CMS, ENTITLEMENT, PUBLISHER, MEDIA STREAMING PLAYER, MEDIA DOWNLOAD APPLICATION**

**IMPORTANT-READ CAREFULLY: THIS SUPPLEMENTAL LICENSE AGREEMENT (“SLA”) CONTAINS ADDITIONAL LIMITATIONS ON THE LICENSE TO THE VMS SOFTWARE PROVIDED TO GSA CUSTOMER UNDER THE END USER LICENSE AGREEMENT (“EULA”) BETWEEN GSA CUSTOMER AND CISCO. CAPITALIZED TERMS USED IN THIS SLA AND NOT OTHERWISE DEFINED HEREIN SHALL HAVE THE MEANINGS ASSIGNED IN THE EULA. TO THE EXTENT THERE IS A CONFLICT BETWEEN THIS SLA AND THE EULA OR ANY OTHER TERMS AND CONDITIONS APPLICABLE TO THE VMS SOFTWARE, THE TERMS AND CONDITIONS IN THIS SLA SHALL TAKE PRECEDENCE.**



GSA CUSTOMER'S RIGHT TO USE THE VMS SOFTWARE IS LIMITED SOLELY TO THOSE SKU COMPONENTS OF THE VMS SOFTWARE (INCLUDING BUT NOT LIMITED TO THE CMS, ENTITLEMENT, PUBLISHER, STREAMING PLAYER OR DOWNLOAD APPLICATION COMPONENTS) PURCHASED BY GSA CUSTOMER PURSUANT TO A VALID GSA CUSTOMER PURCHASE ORDER. ALL OTHER USES ARE STRICTLY PROHIBITED.

WITH RESPECT TO THE VMS SOFTWARE LICENSED UNDER THIS SLA, (A) "SERVICES" WILL APPLY SOLELY TO CISCO'S PERFORMANCE OF SERVICES RELATING TO THE VMS SOFTWARE, INCLUDING ANY SERVICES PROVIDED BY CISCO PURSUANT TO EXHIBIT C; AND (B) THE TERM "NETWORK" RELATING TO THE CISCO SEVERITY AND ESCALATION GUIDELINES, WILL BE DEFINED TO APPLY SOLELY TO THE VMS SOFTWARE.

IF CUSTOMER DOES NOT AGREE TO BE BOUND BY SUCH TERMS AND CONDITIONS, CUSTOMER MAY NOT INSTALL, DOWNLOAD, OR OTHERWISE USE THE VMS SOFTWARE.

#### LICENSE; ADDITIONAL RESTRICTIONS

**License.** Conditioned upon compliance with the terms and conditions of the Agreement, Cisco grants to GSA Customer a perpetual, nonexclusive, non-transferable, worldwide, royalty-free license to use the VMS Software and the Documentation to provide the delivery of online video services ("Video Services") to End Users, subject to the User Capacity, Transaction Capacity or Title Capacity (collectively, "Capacity") limitations set forth in the GSA Customer Purchase Order. The foregoing license does not transfer or convey to GSA Customer or any third party any right, title or interest in or to the VMS Software or Documentation or any associated intellectual property rights, but only a limited right of use, revocable in accordance with the terms of this Agreement.

**Restricted Version and Use.** GSA Customer may install and use the VMS Software only within the Territory specified in the Agreement solely for the purpose of operating GSA Customer's service for the management and delivery of Video Services to End Users. GSA Customers are purchasing the rights to the then-current Major Release of the VMS Software and its associated Minor Releases and GSA Customer's license specifically excludes any subsequent Major Releases of the VMS Software. No other Updates, upgrades, or other VMS Software releases are licensed by Cisco to GSA Customer hereunder. Major Release means a release of VMS Software that provides additional software functions. Cisco designates Major Releases as a change in the ones digit of the VMS Software version number [(x).x.x].

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**GSA Customer Warranties.** GSA Customer represents, warrants and covenants that (i) it shall only use the VMS Software to provide Video Services to its End Users only as permitted by any Capacity limitations set forth in the GSA Customer Purchase Order. If GSA Customer wishes to utilize the VMS Software beyond the Capacity set forth in the Purchase Order, GSA Customer shall be obligated to place a new GSA Customer Purchase Order with Cisco to procure such additional required Capacity as soon as is reasonably practical.

**Content.** As between Cisco and GSA Customer, GSA Customer is and will be solely responsible for the creation, renewal, updating, deletion, editorial content, control, maintaining any and all backup, and all other aspects of any files, software, scripts, multimedia images, graphics, audio, video, text, data or other objects, including any third party content or materials, originating or transmitted from any location owned or operated by GSA Customer, in any medium, which is transmitted or delivered by GSA Customer using the VMS Software ("GSA Customer Content").

GSA Customer owns all right, title, and interest in the GSA Customer Content, or possesses or will possess all legally valid rights in the GSA Customer Content necessary to use the GSA Customer Content. GSA Customer shall be solely responsible for maintaining the availability of its networks, web site(s) and any other medium for the delivery of online video services, and all GSA Customer Content, IP addresses, domain names, hyperlinks, databases, applications and other resources as necessary for GSA Customer to operate and maintain its services to meet GSA Customer's purposes and objectives. In the case where at no material fault of Cisco or the VMS Software, a third party software component, including but not limited to, WMDRM Server or Windows Media Player ("WMP") or Microsoft PlayReady creates a digital rights management (DRM) security breach due to a failure or hacking of such component, Cisco shall notify GSA Customer as soon as is practical after receiving a confirmed notice from the provider of such components or discovering such a DRM security breach itself. If, after receiving such DRM breach notice, GSA Customer continues to allow its content to be



accessed with any software or services operated in conjunction with the VMS Software during the period where there is no fix for such DRM security breach, or GSA Customer decides not to implement such fix (which may require restricting End Users to using certain versions of third party applications), then GSA Customer acknowledges and agrees Cisco will not have any liability to GSA Customer for any costs, damages or legal fees related to a DRM security breach.

**ADDITIONAL SERVICES**

Professional Services and/or Support Services relating to the VMS Software purchased by GSA Customer pursuant to a Purchase Order will be set forth in a separate document to be mutually agreed by the parties.



**SUPPLEMENTAL END USER LICENSE AGREEMENT FOR CISCO WEBEX MEETINGS SERVER SOFTWARE:  
IMPORTANT: READ CAREFULLY**

This Supplemental End User License Agreement ("SEULA") contains additional terms and conditions for the Software licensed under the End User License Agreement ("EULA") between you ("GSA Customer") and Cisco (collectively, the "Agreement"). Capitalized terms used in this SEULA but not defined will have the meanings assigned to them in the EULA. To the extent that there is a conflict between the terms and conditions of the EULA and this SEULA, the terms and conditions of this SEULA will take precedence.

In addition to the limitations set forth in the EULA on your access and use of the Software, you agree to comply at all times with the terms and conditions provided in this SEULA. When the end user is an instrumentality of the U.S. Government, this SEULA is a contract with the U.S. Government and becomes effective when signed by Cisco and the GSA Contracting Officer as an addendum to the Contract. If this is an ID/IQ contract or Schedule Contract, Ordering Activities placing orders against the ID/IQ or Schedule Contract are subject to this SEULA as a term of the contract. This SEULA shall bind the Government, subject to federal law. This agreement shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity.

**IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THE AGREEMENT, THEN CISCO IS UNWILLING TO LICENSE THE SOFTWARE TO YOU AND (A) YOU MAY NOT DOWNLOAD, INSTALL OR USE THE SOFTWARE, AND (B) YOU MAY RETURN THE SOFTWARE (INCLUDING ANY UNOPENED USB DRIVE AND ANY WRITTEN MATERIALS) FOR A FULL REFUND, OR, IF THE SOFTWARE AND WRITTEN MATERIALS ARE SUPPLIED AS PART OF ANOTHER PRODUCT, YOU MAY RETURN THE ENTIRE PRODUCT FOR A FULL REFUND. YOUR RIGHT TO RETURN AND REFUND EXPIRES 30 DAYS AFTER PURCHASE FROM CISCO OR AN AUTHORIZED CISCO RESELLER, AND APPLIES ONLY IF YOU ARE THE ORIGINAL END USER PURCHASER.**

1. Cisco WebEx Meetings Server (the "Software") is a software-based enterprise conferencing product that integrates audio, video and web conferencing in a single, on-premises solution.
2. License. Conditioned upon compliance with the terms and conditions of the Agreement, Cisco grants to GSA Customer a nonexclusive, nontransferable and sublicenseable (to GSA Customer's end users) license to use for GSA Customer's (and/or GSA Customer's end users') internal business purposes the Software and Documentation for which GSA Customer has paid the required license and/or subscription fee. The server component of the Software may be installed only on Cisco hardware that is: (a) operated by GSA Customer, or (b) operated by a third party under the GSA Customer's direct control. GSA Customer may copy and distribute the client component of the Software to its duly authorized agents, consultants and/or independent contractors solely and exclusively in connection with allowing such third parties to attend meetings hosted by GSA Customer using the Software, provided that GSA Customer shall remain responsible for such third parties' compliance with the Agreement. "Documentation" means information (whether contained in user or technical manuals, training materials, specifications, videos or otherwise) pertaining to the Software and made available by Cisco with the Software in any manner (including on USB Drive or online). In order to use the Software, GSA Customer may be



required to input a registration number or product authorization key and register GSA Customer's copy of the Software online at Cisco's website to obtain the necessary license key or license file.

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### 3. User Licenses.

"Employees" are the full and part-time employees, agents, consultants and/ or third-party independent contractors of GSA Customer.

Employees may include third-party contractors, only if (a) GSA Customer allows the third-party contractor to use the Software only for the benefit of GSA Customer, (b) GSA Customer does not charge the third-party contractor for the use of the Software, and (c) GSA Customer takes full liability for the actions of the third-party contractor, including, but not limited to the third-party contractor's misuse of the Software.

A "User" is a GSA Customer Employee assigned an account by GSA Customer to use the Software to host meetings. A User may host an unlimited number of meetings ("Meeting(s)") using the Software; provided that a User may only host one (1) Meeting at a time. Each Meeting must be hosted by a User and is limited to the maximum number of participants as determined by the capacity of the Software licensed by GSA Customer.

4. Limited User Licenses. GSA Customer's license to use the Software shall be limited to, and GSA Customer shall not use the Software in excess of, such limitations as are set forth in the SEULA or in the applicable GSA Customer Purchase Order which has been accepted by Cisco and for which GSA Customer

has paid to Cisco the required fee (the "GSA Customer Purchase Order"). GSA Customer may only have as many users as allowed under any and all applicable GSA Customer Purchase Orders. GSA Customer understands and agrees that the Software will perform internal checks to compare the number of Users using the Software with the number of Users licensed by GSA Customer, and if it repeatedly finds more Users than authorized, Cisco will provide notice to the GSA Customer and provide the GSA Customer with the opportunity to negotiate additional GSA Customer Purchase Orders to bring the GSA Customer into compliance.

5. Content. GSA Customer agrees that it is solely responsible for the content of all visual, written or audible communications, files, documents, videos, recordings and any other material ("Content") used, displayed, uploaded, exchanged or transmitted on or through the Software. Under no circumstances will Cisco be liable to GSA Customer for any loss or damages: (i) arising from any Content, or Content related errors or omissions; or (ii) incurred as a result of the use of, access to, or denial of access to the Content.

6. Privacy. GSA Customer understands and agrees that, as part of Cisco providing support to GSA Customer, Cisco may request access to and use of technical or diagnostic information (e.g., server logs) that may contain Personal Information and Non-personal Information of GSA Customer and/or GSA Customer's meeting invitees ("Server Data"). If you provide such Server Data to Cisco, you consent to Cisco's collection, use, processing and storage of Personal Information and Nonpersonal Information as described below. This Personal Information and Non-personal Information is transferred to Cisco, including the transfer of such information to the United States and/or another country outside the European Economic Area, so Cisco can determine how users are interacting with our products and for the purposes of providing GSA Customer support and improving our products and services. Cisco may share this information with select third parties in an anonymous aggregated form. None of this Personal Information and Non-personal Information will be used to identify or contact individual users, and use of the Personal Information and Non-personal Information shall be subject to Cisco's Privacy Statement, included as Attachment 6. GSA Customer may withdraw



this consent to collection, use, processing and storage of Personal Information and Non-personal Information at any time by not providing Cisco access to the Server Data. Active steps are required each time by the System Administrator to provide Cisco access to the Server Data.

7. GSA Customer agrees that it will not use the Software to send unsolicited email outside GSA Customer's company or organization (e.g., "spam") in violation of applicable law, falsify any email header information when sending emails (e.g., "spoofing"), or attempt to acquire sensitive information such as usernames, passwords and credit card details by masquerading as a trustworthy entity (e.g., "phishing"). GSA Customer further agrees not to use the Software to communicate any message or material that is harassing, libelous, threatening, obscene, or that would violate the intellectual property rights of any party, give rise to civil liability, constitute a criminal offense, or is otherwise unlawful under any applicable law or regulation.

8. The Software may not be appropriate for use in all countries. GSA Customer agrees that GSA Customer

will comply with all applicable laws and regulations in connection with GSA Customer's use of the Software, including, but not limited to: (a) with respect to personally identifiable information sent or received by GSA Customer, all applicable privacy laws and regulations, (b) laws relating to the recording of communications, including, when required, advising all participants in a recorded WebEx Meetings Server meeting or event that the meeting or event is being recorded, and (c) laws relating to the use of VoIP-based services, if applicable. It is the sole responsibility of GSA Customer to ensure it has the right to use all features of the Software. Cisco may modify or not make available the Software and/or certain Software features to comply

with applicable laws and regulations. The Software is subject to U.S. and local export control laws and regulations. GSA Customer shall comply with such laws and regulations governing use, export, re-export, and transfer of the Software and will obtain all required U.S.

authorizations, permits, or licenses. The export obligations under this clause shall survive the expiration or termination of the Agreement.

9. The Software contains certain third party database products ("Third Party Database Products") that may impose additional restrictions on GSA Customer's use. GSA Customer shall not install or configure the Third Party Database Products separately and independently from the Software. GSA Customer shall not access the Third Party Database Products directly or through other database tools, but rather only through the Software. GSA Customer shall not navigate the underlying data schema of the Third Party Database Products. GSA Customer shall not access the Third Party Database Products or

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establish the transfer of data without Cisco Application Programmer Interfaces APIs. GSA Customer shall not upgrade the Third Party

Database Products separately, but only as a component of Third Party Database Products.

10. Oracle Java SE Terms and conditions. (i) Trademarks and Logos. This SEULA does not authorize an end user licensee to use any Oracle America, Inc. name, trademark, service mark, logo or icon. The GSA Customer acknowledges that Oracle owns the Java trademark and all Java-related trademarks, logos and icons including the Coffee Cup and Duke ("Java Marks"). and agrees to: (a) comply with the Java Trademark Guidelines included as Attachment 7 ; (b) not do anything harmful

to or inconsistent with Oracle's rights in the Java Marks; and (c) assist Oracle in protecting those rights, including assigning to Oracle any rights acquired by Customer in any Java Mark. (ii) Third Party Code. Additional copyright notices and license terms applicable to portions of the Oracle Java SE software are set forth in the THIRDPARTYLICENSEREADME.txt file. (iii) Commercial Features. Use of the Commercial Features for any commercial or production



purpose require a separate license from Oracle.re.

11. Portions of the Software utilize Microsoft Windows Media Technologies. Copyright (c) 1999-2006 Microsoft Corporation.



**SUPPLEMENTAL END USER LICENSE AGREEMENT FOR CISCO SYSTEMS  
WEBEX SOCIAL SOFTWARE:  
IMPORTANT: READ CAREFULLY**

This Supplemental End User License Agreement (“SEULA”) contains additional terms and conditions for the Software licensed under the End User License Agreement (“EULA”) between you (“GSA Customer”) and Cisco (collectively, the “Agreement”). Capitalized terms used in this SEULA but not defined will have the meanings assigned to them in the EULA. To the extent that there is a conflict between the terms and conditions of the EULA and this SEULA, the terms and conditions of this SEULA will take precedence.

In addition to the limitations set forth in the EULA on your access and use of the Software, you agree to comply at all times with the terms and conditions provided in this SEULA. . When the end user is an instrumentality of the U.S. Government, this SEULA is a contract with the U.S. Government and becomes effective when signed by Cisco and the GSA Contracting Officer as an addendum to the Contract. If this is an ID/IQ contract or Schedule Contract, Ordering Activities placing orders against the ID/IQ or Schedule Contract are subject to this SEULA as a term of the contract. This SEULA shall bind the Government, subject to federal law. This agreement shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity.

**IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THE AGREEMENT, THEN CISCO IS UNWILLING TO LICENSE THE SOFTWARE TO YOU AND (A) YOU MAY NOT DOWNLOAD, INSTALL OR USE THE SOFTWARE, AND (B) YOU MAY RETURN THE SOFTWARE (INCLUDING ANY UNOPENED CD PACKAGE AND ANY WRITTEN MATERIALS) FOR A FULL REFUND, OR, IF THE SOFTWARE AND WRITTEN MATERIALS ARE SUPPLIED AS PART OF ANOTHER PRODUCT, YOU MAY RETURN THE ENTIRE PRODUCT FOR A FULL REFUND. YOUR RIGHT TO RETURN AND REFUND EXPIRES 30 DAYS AFTER PURCHASE FROM CISCO OR AN AUTHORIZED CISCO RESELLER, AND APPLIES ONLY IF YOU ARE THE ORIGINAL END USER PURCHASER.**

1. WebEx Social Software is an enterprise collaboration platform that may provide different functionality including, but not limited to: content/documents (content development, content management, portals, and Intranets); communication (voice/video, instant messaging, conferencing, and email); business process (business applications, vertical applications, customer care, and workflow); and social networking (profiles, teams, communities, networks).
2. License. Conditioned upon compliance with the terms and conditions of this Agreement, Cisco grants to GSA Customer a nonexclusive, nontransferable and sublicenseable (to GSA Customer’s end users) license to use for GSA Customer’s (and/or GSA Customer’s end users’) internal business purposes the Software and Documentation for which GSA Customer has paid the required license and/or subscription fee. “Documentation” means information (whether contained in user or technical manuals, training materials, specifications, videos or otherwise) pertaining to the Software and made available by Cisco with the Software in any manner (including on CD-Rom, or online). In order to use the Software, GSA Customer may be required to input a registration number or product authorization key and register GSA Customer’s copy of the Software online at Cisco’s website to obtain the necessary license key or license file.





3. GSA Customer's license to use the Software shall be limited to, and GSA Customer shall not use the Software in excess of, such limitations as are set forth in the SEULA or in the applicable GSA Customer Purchase Order which has been accepted by Cisco and for which GSA Customer has paid to Cisco the required fee (the "GSA Customer Purchase Order").
4. Content. GSA Customer agrees that it is solely responsible for the content of all visual, written or audible communications and any other material ("Content") displayed, uploaded, exchanged or transmitted on or through the Software. Under no circumstances will Cisco be liable to GSA Customer for any loss or damages: (i) arising from any Content, or Content related errors or omissions; or (ii) incurred as a result of the use of, access to, or denial of access to the Content.
5. Third Party Offerings. Certain uses of Software may allow Customer to evaluate and use thirdparty applications and/or services ("Third Party Offerings"). Third Party Offerings may involve the exchange of data with the Software. Cisco is not responsible for Customer's data outside of the Software or for modifications or deletions of Customer's data made by third parties or their Third Party Offerings.
6. Use of Twitter Services. GSA Customer's use of Twitter Services is governed by and Twitter Terms of Services
7. WebEx Social Software contains certain Oracle database products ("Oracle Products") that impose additional restrictions on GSA Customer's use. GSA Customer shall not install or configure Oracle Products separately and independently from WebEx Social Software. Except for Enterprise Manager, GSA Customer shall not access Oracle Products directly or through other database tools, but rather only through WebEx Social Software. GSA Customer shall not navigate the underlying data schema of Oracle Products. GSA Customer shall not access Oracle Products or establish the transfer of data without Cisco APIs. GSA Customer shall not upgrade Oracle Products separately, but only as a component of Oracle Products.
8. WebEx Social Software contains IBM Licensed Materials. Copyright IBM Corporation 2009. IBM Licensed Materials or their modifications may not be used for any purpose other than to enable WebEx Social Software.



## Attachment 1

This Service Level Agreement (this “Agreement”) sets forth Cisco Meraki’s obligations and our customers’ rights with respect to the performance of Cisco Meraki’s Hosted Software. All capitalized terms used but not otherwise defined in this Agreement have the meanings given to them in the End Customer Agreement above (the Meraki SEULA), or as otherwise entered into between Cisco Meraki and Customer (the “Customer Agreement”).

**1. Definitions.** For purposes of this Agreement, the following terms have the meaning ascribed to each term below:

“Downtime” means if the Hosted Software is unavailable to Customer due to failure(s) in the Hardware, Firmware, or Hosted Software, as confirmed by both Customer and Cisco Meraki.

“Monthly Uptime Percentage” means the total number of minutes in a calendar month minus the number of minutes of Downtime suffered in a calendar month, divided by the total number of minutes in a calendar month.

“Service Credit” means the number of days that Cisco Meraki will add to the end of the Term, at no charge to Customer.

**2. Service Level Warranty.** During the Term, the Hosted Software will be operational and available to Customer at least 99.99% of the time in any calendar month (the “Service Level Warranty”). If the Monthly Uptime Percentage does not meet the Service Level Warranty in any calendar month, and if Customer meets its obligations under this Agreement, then Customer will be eligible to receive Service Credit as follows:

Uptime	Days Credited
< 99.99% - ≥ 99.9%	3
< 99.9% - ≥ 99.0%	7
< 99.0%	15

**3. Customer Must Request Service Credit.** In order to receive any of the Service Credits described above, Customer must notify Cisco Meraki within 30 days from the time Customer becomes eligible to receive a Service Credit. Failure to comply with this requirement will forfeit Customer’s right to receive a Service Credit.

**4. Maximum Service Credit.** The aggregate maximum amount of Service Credit to be issued by Cisco Meraki to Customer for all Downtime that occurs in a single calendar month will not exceed 15 days. Service Credit may not be exchanged for, or converted into, monetary amounts.

**5. Exclusions.** The Service Level Warranty does not apply to any services that expressly exclude this Service Level Warranty (as stated in the documentation for such services) or any performance issues (i) caused by Force Majeure on the terms set forth in Section 9.3 of the Agreement, (ii) that resulted from Customer’s equipment or third party equipment, or both (not within the primary control of Cisco Meraki), or (iii) that otherwise resulted from Customer’s violation of Sections 3.5 or 4.2 of the Agreement.



6. Exclusive Remedy. This Agreement states Customer's sole and exclusive remedy for any failure by Cisco Meraki to meet the Service Level Warranty.



## Attachment 2

Meraki Support Overview:

### Enterprise support at no additional cost

Cisco Meraki's simple, all-inclusive pricing includes enterprise-class phone support. We will help you deploy your first network or troubleshoot global network issues and other unforeseen emergencies at no additional cost.

### Deep expertise and fanatical service

Our support engineers have deep expertise in enterprise networking and wireless design. The Cisco Meraki support team sits alongside the engineers who build Cisco Meraki products, providing a wealth of expertise.

### Real time cloud-based support tools

Cisco Meraki support engineers use real time web-based tools to securely and quickly diagnose and troubleshoot your network, providing the speed and service of an on-site visit without the hassle.

### The best support call is the one you don't have to make

Cisco Meraki self-provisioning hardware, automatic firmware updates, automatic network optimization, intuitive user interface and built-in contextual help dramatically reduce support incidents, providing reliable and hassle free enterprise networking.

#### Meraki Support Includes

Access to knowledge base  
Case-based support viewable in dashboard  
Firmware and software upgrades and updates  
24x7 telephone support based out of San Francisco, London, Sydney technical assistance centers

### Contact Support

[Log in](#) to submit cases.

#### Telephone support

- US / North America  
[\(415\) 432-1203](tel:(415)432-1203)
- Europe  
[+44 20-78-71-2776](tel:+442078712776)
- Australia / Asia-Pacific  
New Zealand  
Singapore



[+61 285203052](tel:+61285203052)  
[+64 99749591](tel:+6499749591)  
[+65 31582108](tel:+6531582108)

- Mexico

[+52 5511638940](tel:+525511638940)

- Brazil

[+55 1130422855](tel:+551130422855)

- Note

Starting on January 1, 2014, you will need your Cisco Meraki account number in order to access telephone support. This number is available on the help tab of the Meraki dashboard.



## Attachment 3

### Meraki Privacy Policy

This privacy policy (this "**Policy**") describes the collection of personal information and certain other information by Meraki, LLC, a Delaware limited liability company and a wholly owned subsidiary of Cisco Systems, Inc. ("**Meraki**," "**we**," or "**us**") from users of our Web site at meraki.cisco.com (the "**Website**"), as well as all applications, widgets, software, tools, and other services provided by us and on which a link to this Policy is displayed (collectively, together with the Website, our "**Services**"). This Policy also describes our use and disclosure of such information. By using our Services, you consent to the collection, use, and disclosure of information in accordance with this Policy. This Policy is incorporated by reference into the [Meraki Terms of Use](#) and the [Meraki End Customer Agreement](#) and is subject to the provisions of the Meraki Terms of Use and the Meraki End Customer Agreement. The terms "**you**," "**your**," and "**user**" refer to the user visiting the Website or accessing or using the Services. Other capitalized terms used but not defined in this Privacy Policy have the meanings given to them in the Terms of Use.

Meraki has received TRUSTe's Privacy Seal signifying that this privacy policy and our practices have been reviewed for compliance with the TRUSTe program viewable on the validation page available by clicking the TRUSTe seal.

If you have an unresolved privacy or data use concern that we have not addressed satisfactorily, please **contact TRUSTe**.

TRUSTe's Dispute Resolution process is only available in English.

The TRUSTe certification covers our collection, use and disclosure of information we collect through our Services. The use of information collected through our Services shall be limited to the purpose of providing the service for which the customer has engaged Meraki.

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

### Personal Information

"**Personal Information**," as used in this Policy, is information that specifically identifies an individual, such as an individual's name, address, telephone number, or e-mail address. Personal Information also includes information, such as demographic information (e.g., date of birth, gender, geographic area, and preferences), when any of this information is linked to Personal Information that identifies that individual.

Personal Information does not include "aggregate" or other non-personally identifiable information. Aggregate information is information that we collect about a group or category of products, services, or users that is not personally identifiable or from which individual identities are removed. We may use and disclose aggregate information, and other non-personally identifiable information, for various purposes at our sole discretion and without notice or liability to you.

### Collection of Information

#### Collection of Voluntarily-Provided Information



We collect Personal Information that our users provide to us in a variety of ways on our Services. These include the following:

- *E-mail Newsletters.* We may offer e-mail newsletters from time to time on our Services. If you sign up to receive a newsletter from us, we collect your e-mail address.
- *User Accounts and Profiles.* Our Services may give you the ability to register for an account or to create and update a user profile. If we offer user account or profile functionality on the Services, we will collect the Personal Information that you provide to us in the course of registering for an account or creating or updating a user account or profile. This information may include, for example, name, postal address, telephone number, e-mail address, and related demographic information about you. We may indicate that some Personal Information is required for you to register for the account or to create the profile, while some is optional.
- *Logging into Networks.* Certain networks using our Services may require users to establish or use login credentials. In connection with supporting this log-on functionality, we may collect information such as email addresses, telephone numbers, or user or administrator-created usernames, along with user-created or administrator-created passwords, to facilitate such log-on functionality and otherwise to provide our Services.
- *Correspondence.* If you contact us by e-mail, using a contact form on the Services, or by other means, we collect the Personal Information contained within, and associated with, your correspondence.
- *Contests and Sweepstakes.* We and other business partners may conduct or sponsor special contests, sweepstakes, and other promotions that users may enter or otherwise participate in on our Services or otherwise. Certain of these promotions may be co-branded with one of our advertisers or other business partners. In these instances, the collection of your Personal Information may occur directly by the third-party partner on its website or other online service and may be shared with us. The promotion will state the privacy policy or policies governing the collection of such personal information.
- *Testimonials.* We display testimonials of satisfied customers on our site in addition to other endorsements. With your consent we may post your testimonial along with your name.
- *Information Related to Data Collected for our Customers.* Meraki collects information under the direction of its customers, and has no direct relationship with the individuals whose personal data it processes. If you are an individual who makes use of services offered by one of our customers and would no longer like to be contacted by that customer, please contact the customer that you interact with directly. We may transfer personal information to companies that help us provide our Services. Transfers to subsequent third parties are covered by the service agreements with our customers.

#### *Passive Information Collection*

When you use or visit our Services, some information is collected automatically. For example, when you access our Services, we automatically collect your browser's Internet Protocol (IP) address, your browser type, the nature of the device from which you are visiting the Services (e.g., a personal computer or a mobile device), identifiers for any handheld or mobile device that you may be using, the Web site that you visited immediately prior to accessing any Web-based Services, the actions you take on our Services, and the content, features, and activities that you access and engage with on our Services. We also may collect information regarding your interaction with e-mail messages from Meraki, such as whether you opened, clicked on, or forwarded a message.

We may collect this information passively using technologies such as standard server logs, cookies, and clear GIFs (also known as "Web beacons"). We use passively-collected information to administer, operate, maintain and improve our Services and our other services and systems and to provide content that is tailored to you.

If we link or associate any information gathered through passive means with Personal Information, or if applicable laws require us to treat any information gathered through passive means as Personal Information, we treat the combined



information as Personal Information under this Policy. Otherwise, we use and disclose information collected by passive means in aggregate form or otherwise in a non-personally identifiable form. Please be aware that in the course of your use of the Services, websites or other services provided by third parties ("**Third-Party Services**"), including marketing or website optimization vendors, may set cookies on your hard drive or use other means of passively collecting information about your use of their Third-Party Services or other services or content. To do this, they may use first-party cookies (which are set by the same domain your browser is receiving data from) or third-party cookies (which are set by a different domain). Meraki also may make non-personally identifiable information available to Third-Party Services, and these Third-Party Services may collect such information, to assist such parties in understanding our users' activities and usage patterns on the Services. If desired, you may use the [Google Analytics Opt-out Browser Add-on](#) to opt-out of having information collected by Google Analytics.

We do not have access to, or control over, the actions of Third-Party Services. Each provider of Third-Party Services uses information that it collects in accordance with its own privacy and security policies.

Additionally, please be aware that Google and other third-party vendors may place or recognize one or more unique cookies on your computer when you use the Services, and may record information to these cookies based upon your activities on our Services and on third-party websites and other Third-Party Services. Google and these other third-party vendors may use information about those activities to inform, optimize, and serve advertisements. In particular, we may use Google and other third-party vendors to engage in "remarketing," in which advertisements you see on third-party websites and services may be based on your prior visits to our Services.

To learn more about these practices, and to opt-out from Google's and other vendors' use of information collected on the Services through cookies for advertising purposes, you may visit [Google's Ads Preferences Manager](#), [TRUSTe's Preference Manager](#), or the [Network Advertising Initiative opt-out page](#). Please note that opting-out will not prevent advertisements from being served to you on the Internet; it will only result in advertisements that utilize cookies to serve advertisements on the specified advertising networks from which you opt-out no longer being targeted. We are not responsible for the activities of other parties that may not comply with your opt-out requests.

We also use Google Conversion Tracking, which tracks whether users engage in certain activities (e.g., filling out a form to receive more information about our products or services) after they view one of our advertisements on a Third-Party Service. Google uses cookies to track conversions and to report that information to us.

Finally, please also be aware that we use the Google Maps API as a source of maps, geographic data, and geolocation information for purposes of providing location-based information regarding terminal devices connected to networks managed by our Services and for providing related reporting and analysis. Google may collect information, including personal information, from those who view content provided through the Google Maps API, and Google handles such information in accordance with the [Google Privacy Policy](#).

#### *Network Usage Information Collected by Our Services*

Some of our Services collect information from terminal devices connected to networks that are managed by those Services. Those Services also collect information regarding the performance of, and certain other information regarding, such networks. This information includes, for example, MAC address, device type, operating system, geolocation information, and network traffic information (e.g., hostnames, protocols, port numbers, and IP addresses). This information is made available to administrators of networks managed by our Services through an online interface that we call the "dashboard". Additionally, if a Meraki customer elects to use our device management tool currently known as Systems Manager ("**Systems Manager**") and installs its software on, or configures the profile of, a mobile device or other device (e.g., a laptop computer) managed by Systems Manager, the customer or Meraki may undertake certain actions on the device, such as the following: (i) list, access, copy, move, and delete files; (ii) track and record device location over time; (iii) take and record screenshots; (iv) manage the device through remote desktop functionality; (v) set and enforce policies; and (vi) install/remove apps. Finally, for devices with Systems Manager installed or devices that utilize Global Positioning System (GPS) technology, we transmit certain geolocation information about those devices and the network(s) on which they are running to Google, which provides us with related geolocation information that we store and make available to network





administrators through our dashboard as described above in this paragraph. Google handles the information that we provide to it in accordance with the [Google Privacy Policy](#).

#### *Information from Other Sources*

We may receive information about you, including Personal Information, from affiliated and unaffiliated third parties, and may combine this information with other Personal Information we maintain about you in order to ensure we have accurate information. If we do so, this Policy governs any combined information that we maintain in personally identifiable format.

### **Use of Information**

We use Personal Information and other information we collect to do any of the following: provide services to our customers; provide information and otherwise respond to your requests, including sales inquiries, email requests, and shipping requests; enhance, improve, operate, maintain, and debug the Website, our other Services, and our other programs, services, Web sites, and systems; improve the effectiveness of our Website as a marketing tool and optimize the performance of the Website and our other Services; prevent fraudulent use of our Services and other systems; to prevent or take action against activities that are, or may be, in violation of the Meraki End Customer Agreement, the Meraki Terms of Use, or applicable law; to tailor content and other aspects of your experience on and in connection with the Services; maintain a record of our dealings with you; for other administrative purposes; and for any other purposes that we may disclose to you at the point at which we request your Personal Information, and pursuant to your consent.

We may also use Personal Information you provide to contact you regarding products, services, and offers, both from ourselves and third parties, that we believe you may find of interest. We allow you to opt-out from receiving marketing communications from us as described in the "Choice" section below.

### **Disclosure of Information**

Except as described in this Policy, we will not disclose your Personal Information that we collect on the Services to third parties without your consent. We may disclose information to third parties if you consent to us doing so, as well as in the following circumstances:

#### *Service Providers*

We may disclose Personal Information to third-party service providers (e.g., payment processing and data storage and processing facilities) that assist us in our work. We limit the Personal Information provided to these service providers to that which is reasonably necessary for them to perform their functions, and we require them to agree to maintain the confidentiality of such Personal Information.

#### *Business Transfers*

Information about our users, including Personal Information, may be disclosed and otherwise transferred to an acquirer, successor, or assignee as part of any merger, acquisition, debt financing, sale of company assets, or similar transaction, as well as in the event of an insolvency, bankruptcy, or receivership in which Personal Information is transferred to one or more third parties as one of our business assets.

#### *To Affiliated Companies*

We may disclose Personal Information and other information to our parent company and to other corporate affiliates of ours. These affiliated third-party companies may use and disclose Personal Information and other information that we disclose to them in accordance with their privacy policies and procedures.

#### *To Channel Partners*



We may disclose Personal Information and other information to channel partners, such as resellers, of ours. These third parties may use such Personal Information and other information that we disclose to them for purposes such as marketing our products and services to you.

#### *To Protect our Interests*

We also may disclose Personal Information and other information if we believe that doing so is legally required or is in our interest to protect our property or other legal rights (including, but not limited to, enforcement of our agreements) or the rights or property of others, or otherwise to help protect the safety or security of our Services or other users of the Services.

### **Choices Regarding Promotional Communications**

If you receive commercial e-mail from us, you may unsubscribe at any time by following the instructions contained within the e-mail. You may also opt-out from receiving commercial e-mail from us, and any other promotional communications that we may send to you from time to time (e.g., by postal mail) by sending your request to us by e-mail at [privacy@meraki.com](mailto:privacy@meraki.com) or by writing to us at the address given at the end of this policy. Additionally, if we offer user account functionality on the Services, we may allow you to view and modify settings relating to the nature and frequency of promotional communications that you receive from us.

Please be aware that if you opt-out of receiving commercial e-mail from us, it may take up to ten business days for us to process your opt-out request, and you may receive commercial e-mail from us during that period. Additionally, even after you opt-out from receiving commercial messages from us, you will continue to receive administrative messages from us regarding our Services.

### **Your California Privacy Rights**

You may choose to opt-out of the sharing of your personal information with third parties for their direct marketing purposes at any time by e-mailing us at [opt-out@meraki.com](mailto:opt-out@meraki.com). Once we receive your opt-out request, we will no longer disclose your Personal Information to third-parties for their direct marketing purposes. Please be aware that this opt-out does not prohibit disclosures of Personal Information or other information made for non-direct marketing purposes.

### **Access**

If we offer the ability to create user accounts or profiles on our Services, you may have the ability to access and update certain categories of Personal Information that you provide to us by logging in to your account and accessing your account settings. If you wish to access, amend, or delete any other Personal Information we hold about you, you may contact us at [privacy@meraki.com](mailto:privacy@meraki.com).

If you request access to your account including deletion requests on any of our Services (via a user settings page, by e-mail, or otherwise) including requests to remove testimonials that contain Personal Information, we will respond to your access requests within 30 days. Please note that we may need to retain some of your Personal Information in order to satisfy our legal obligations, or where we reasonably believe that we have a legitimate reason to do so.

Please note that Meraki has no direct relationship with the individuals whose personal data we process on behalf of our customers. An individual who seeks access, or who seeks to correct, amend, or delete inaccurate data should direct his or her query to our customer (the data controller). If the customer requests Meraki to remove the data, we will respond to their request within 30 days.

We will retain personal data we process on behalf of our customers for as long as needed to provide services to our customer. Meraki will retain and use this personal information as necessary to comply with our legal obligations, resolve disputes, and enforce our agreements.



The Services may contain links to other Web sites or other Third-Party Services that we do not own or operate. If you choose to visit or use any Third-Party Services or products or services available on or through such Third-Party Services, please be aware that this Policy will not apply to your activities or any information you disclose while using those Third-Party Services or any products or services available on or through such Third-Party Services. We are not responsible for the privacy practices of these Third-Party Services or any products or services on or through them. Additionally, the Services may contain links to Web sites and services that we operate but that are governed by different privacy policies. We encourage you to carefully review the privacy policies applicable to any Web site or service you visit other than the Services before providing any Personal Information on them.

## Children

Children's safety is important to us, and we encourage parents and guardians to take an active interest in the online activities of their children. Our Services are not directed to children under the age of 13, and we do not knowingly collect Personal Information from children under the age of 13 without obtaining parental consent. If we learn that we have collected Personal Information from a child under the age of 13 on our Services, we will delete that information as quickly as possible. If you believe that we may have collected any such Personal Information on our Services, please notify us at [privacy@meraki.com](mailto:privacy@meraki.com).

## International Visitors

Many of our servers and data centers are located in the United States. If you choose to use the Services from outside the U.S., then you should know that you may be transferring your Personal Information outside of your region and into the U.S. for storage and processing. By providing your Personal Information to us through your use of the Service, you agree to that transfer, storage, and processing in the U.S. Also, we may transfer your data from the U.S. to other countries or regions in connection with storage and processing of data, fulfilling your requests, and operating the Services. You should know that each region can have its own privacy and data security laws, some of which may be less stringent as compared to those of your own region.

## Security

We use certain security measures in an effort to protect Personal Information from accidental loss, disclosure, misuse, and destruction. The security of your Personal Information and our customers' information is important to us. When you enter sensitive information (such as login credentials) we encrypt the transmission of that information using secure socket layer technology (SSL). Please be aware, however, that no data security measures can be guaranteed to be completely effective. Consequently, we cannot ensure or warrant the security of any information that you provide to us. You transmit information to us at your own risk.

If Meraki learns of a security systems breach, then we may attempt to notify you electronically so that you can take appropriate protective steps. Meraki may post a notice through the Services if a security breach occurs. Depending on where you live, you may have a legal right to receive notice of a security breach in writing. To receive a free written notice of a security breach, you should notify us at [privacy@meraki.com](mailto:privacy@meraki.com).



## Attachment 4

### Meraki Return Policy

#### *Warranty Returns*

If you are experiencing hardware issues, please contact Cisco Meraki support by signing in to dashboard (Help > File a Ticket) or by [calling us](#).

If you require advance replacement, please call Cisco Meraki technical support. Advance replacement orders will ship within 1 business day.

Cisco Meraki stands behind its products. Hardware products come with either a one year or lifetime warranty, as specified on the relevant Cisco Meraki data sheet.

To request a return materials authorization (RMA), please complete our RMA request form. If your RMA request is approved, Cisco Meraki will email you an RMA number and a return shipping label free of charge. We will ship replacement units within five business days of receiving your defective units. If no trouble is found, we will contact you before taking further action.

Additional information about Cisco Meraki's hardware warranty can be found in [Cisco Meraki's End Customer Agreement](#).

#### *Free Trial Returns*

If you would like to return units from a free trial, please go to your free trial webpage (using the link your rep provided you with) and go to the returns tab to fill out the RMA request form. If your free trial hardware was shipped to the US, Canada, or an EU member country you will also be able to print out a return shipping label and ship the product back to Cisco Meraki at no charge to you.

#### *Refund Requests*

If you are dissatisfied with your Cisco Meraki purchase for any reason, you may return your order for a full refund. All returns must meet the following criteria:

1. You purchased the product through an authorized Cisco Meraki reseller or direct from Cisco Meraki
2. You are the original purchaser of the product
3. You submit your refund request within 30 days of purchase
4. The product is in new condition, including all accessories in the original packaging

To request a refund, please complete our RMA request form.

If your refund request is approved, Cisco Meraki will email you an RMA number. In order for the refund to be accepted and processed, Meraki must receive the hardware you are returning no later than 30 days following the date the RMA number is issued. Once we have received and inspected the units, we will process your return. If you purchased through a Cisco Meraki reseller, your refund will be issued by that reseller. If you purchased directly from Cisco Meraki, we will issue a refund, typically within 15 days of receiving the return. (If you paid by credit card we will credit the original credit card. If you paid by any other method, we will send you a check.)

From time to time Cisco Meraki offers special refund terms. If your return is covered by special terms, please reference those terms on your RMA request.



Please contact Cisco Meraki directly for all returns, including product purchased through distributors or resellers.

### *Shipment Preparation*

- Please return units in their entirety. That is, include all power supplies, antennas, and other components along with the original product box.
- Please use the original shipping carton and packaging material. If this is not possible, use another shipping carton with padding to protect the units from damage during shipping. DO NOT ship a product without a carton.
- The customer will be charged for product that is damaged due to insufficient packaging.
- Once you have received your RMA number from Cisco Meraki via email, write this RMA number in large letters on the exterior of the shipping carton. Shipments to Cisco Meraki without an RMA approval will not be processed.
- If Cisco Meraki approves your RMA request, you will receive a confirmation email containing an RMA number within two business days. The address to which the product should be sent will also be included in that email.
- Cisco Meraki will pay for warranty replacement return shipments and free trial return shipments from the US and Canada. For all other returns it is your responsibility to pay for return shipping back to Cisco Meraki using the carrier of your choice. Cisco Meraki recommends that the return package has a tracking number and is insured for the proper value of its contents. Cisco Meraki is not responsible for packages lost by carriers.



## Attachment 5

This document describes Cisco's Software Application

All capitalized terms in this description have the meaning ascribed to them in the Glossary of Terms. Direct Sale from Cisco. If you have purchased these

Services directly from Cisco, this document is incorporated into your Master Services Agreement (MSA) with Cisco. In the event of a conflict between this Service Description and your MSA, this Service Description shall govern.

Sale via Cisco-Authorized Reseller. If you have purchased these Services through a Cisco-Authorized Reseller, this document is for description purposes only; is not a contract between you and Cisco. The contract, if any, governing the provision of this Service will be the one between you and your Cisco Authorized Reseller.

### SAS

#### Cisco Responsibilities:

- Cisco Technical Assistance Center (TAC) access 24 hours per day, 7 days per week to assist by telephone, fax, electronic mail or the internet with Application Software use, configuration and troubleshooting issues. Cisco will respond within one (1) hour for all calls received during Standard Business Hours and for Severity 1 and 2 calls received outside Standard Business Hours. For Severity 3 and 4 calls received outside Standard Business Hours, Cisco will respond no later than the next Business Day.
- Manage problems according to the [Cisco Severity and Escalation Guideline](#).
- Access to Cisco.com. This system provides Customer with helpful technical and general information on Cisco Products as well as access to Cisco's on-line Software Center library. Please note that access restrictions identified by Cisco from time to time may apply.
- Work-around solutions or patches to reported Application Software problems using reasonable commercial efforts. For an Application Software patch, a Maintenance Release for the Application Software experiencing the problem will be provided as follows: (a) download from Cisco.com (as available), or (b) shipment of Application Software on media such as CDROM using a nominated carrier. Requests for alternative carriers will be at Customer's expense.
- Minor and Maintenance Releases. The Application Software releases and supporting Documentation are available on the Cisco.com Software Center ([www.cisco.com/software](http://www.cisco.com/software)) or on media such as CDROM, through the Cisco Product Upgrade Tool (PUT) ([www.cisco.com/upgrade](http://www.cisco.com/upgrade)). Applicable supporting Documentation, if available, is on Cisco.com and is limited to one copy per release. Additional copies may be purchased.

### SASU

#### Cisco Responsibilities:

- Cisco-provided deliverables, as specified above in SAS.
- Cisco-provided, on request, Major Application Software Releases. Such Updates are limited to Application Software releases that have been validly licensed and paid for and that are covered under a current SASU contract. The Application Software releases and supporting Documentation will be made available on the Cisco.com Software Center ([www.cisco.com/software](http://www.cisco.com/software)) or on media such as CDROM, through the Cisco PUT ([www.cisco.com/upgrade](http://www.cisco.com/upgrade)). Applicable supporting Documentation, if available, is available on Cisco.com and is limited to one copy per licensed Software. Additional copies may be purchased.

#### Customer Responsibilities:

The provision of the Service options assumes that Customer will:

- Provide a severity level as described in the [Cisco Severity and Escalation Guideline](#) for all the calls Customer places.
- Provide, at Customer's expense, reasonable access to the Product through the Internet or via modem to establish a data communication link between Customer and the Cisco TAC engineer and systems

passwords so that problems may be diagnosed and, where possible, corrected remotely.



- Provide thirty (30) days Notice to Cisco of any requested addition(s) to your Equipment List.
- Notify Cisco, using Cisco.com, of Product on the Equipment List which Customer has moved to a new location within thirty (30) days of such relocation. Please be aware that the Services will be provided to Customer beginning thirty (30) days after receipt of your notification. Cisco will also need Customer to notify Cisco of any modification to the Product and configuration including upgrades or changes to FRUs not in the original configuration within five (5) days of such modification.
- Provide current shipment contact information as follows: contact name, title, address, telephone number, e-mail address, and fax number.
- Provide valid and applicable serial numbers for all Product problems and issues reported to Cisco or where Customer is seeking information from Cisco in connection with Product use. Cisco may also require Customer to provide additional information in the form of location of the Product, city location details and zip code information.
- When requested, provide Cisco with a list of all personnel that Customer has authorized to contact Cisco or access Cisco.com for Services and to download Software from Cisco.com or ordered via Cisco's PUT. Customer is responsible for reviewing the list on an annual basis and adding or removing personnel as necessary
- Verify any in-transit damage of the media for the SAS or SASU Application Software Updates.
- Update to the latest Application Software release and latest third-party Software release, if required by Cisco to correct a reported Application Software problem.
- Pay all engineering time, travel, and out-of-pocket expenses if Customer request performance of onsite Services or Services outside the scope of Service options described in this document.
- Provide any Hardware required to perform fault isolation.
- Receive Services on Cisco Application Software for which Customer has:
  - Purchased a valid and current license for the latest Major and Minor release or is renewing support for a valid supported license revision.
- Make all reasonable efforts to isolate the Application Software problem prior to requesting support from Cisco.
- Acquire, install configure and provide technical support for all:
  - Third-party Products, including upgrades required by Cisco or related Services; and
  - Network infrastructure, including, but not limited to, local and wide-area data Networks and equipment required by Cisco for operation of Application Software.
- Maintain Customer's entire Application Software implementation for configurable Application Software currently in use under the same Service option for Cisco to provide Services for any portion of Customer's Application Software implementation.



## Attachment 6

### Cisco Online Privacy Statement

Cisco Systems, Inc. and its subsidiaries (collectively "Cisco") are committed to protecting your privacy and ensuring you have a positive experience on our websites and in using our products and services ("Solution" or "Solutions"). This Privacy Statement applies to Cisco websites that link to this Statement but does not apply to those Cisco websites that have their own privacy statement. Our personal information handling practices are described below, in the supplements on the right, and in notices at the point of collection.

#### TRUSTe Certification

Cisco Systems, Inc. has been awarded TRUSTe's Privacy Seal signifying that this privacy policy and practices have been reviewed by TRUSTe for compliance with [TRUSTe's program requirements](#) including transparency, accountability and choice regarding the collection and use of your personal information. The TRUSTe program only covers information that is collected through the websites [www.cisco.com](http://www.cisco.com), [www.webex.com](http://www.webex.com), and [www.theflip.com](http://www.theflip.com), and does not cover information that may be collected through any software downloaded from these websites.

TRUSTe's mission, as an independent third party, is to accelerate online trust among consumers and organizations globally through its leading privacy trustmark and innovative trust solutions. If you have questions or complaints regarding our privacy policy or practices, please contact us at [privacy@cisco.com](mailto:privacy@cisco.com). If you are not satisfied with our response, you can contact [TRUSTe here](#).

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

#### Collection of Your Personal Information

We will inform you of the purpose for collecting personal information when we collect it from you and keep it to fulfill the purposes for which it was collected, as required by applicable laws or for legitimate purposes. "Personal Information" is any information that can be used to identify an individual, and may include name, address, email address, phone number or payment card number. We collect Personal Information (and engage third parties to collect Personal Information to assist us) for a variety of reasons, such as processing your order, providing you with a newsletter subscription, enabling the use of certain features of our Solutions, personalizing your experience, managing a job application, or during the testing admissions process when a computer based certification test is administered to you (for more information about online testing, <http://pearsonvue.com/Cisco>). We and the third parties we engage may combine the information we collect from you over time and across our websites with information obtained from other sources to help us improve its overall accuracy and completeness, and to help us better tailor our interactions with you.

If you choose to provide third party Personal Information (such as name, email and phone number), we will assume that you have the third party's permission to provide us the information. Examples include forwarding reference material to a friend or job referrals. This information will not be used for any other purpose.

In some instances, Cisco may collect non-personal (aggregate or demographic) data through cookies, web logs, web beacons and other similar applications. This information is used to better understand and improve the usability, performance, and effectiveness of the website. Please read the "Cookies" section below for more information. In addition, by using some of our Solutions, anonymous network information may be transmitted to us such as the performance of the Solution and types of devices attached to the network. With this information we can determine how users are interacting with the Solution, to assist us with improving it, to manage your network, and to provide alerts via the Solution of available software updates/upgrades.

#### Uses of Your Personal Information

We will only use your Personal Information in the way we specified when it was collected. We will not subsequently change the way your Personal Information is used without first asking for your permission. Some of the ways we may use Personal Information include to deliver a Solution that you have requested, support our Solutions, contact you for customer satisfaction surveys, personalize websites and newsletters to your preferences, administer and process your certification exams, or communicate for marketing purposes. You can edit your preferences at any time (see [Your Choices and Selecting Your Communication Preferences](#) below).

#### Access to and Accuracy of Your Personal Information





We need your help in keeping your Personal Information accurate and up to date so please notify us of any changes to your Personal Information. To update your Personal Information and communication preferences, you can contact [privacy@cisco.com](mailto:privacy@cisco.com). In addition, you may have the ability to view or edit your personal information online, including:

- **Cisco.com** – You can access and update your profile using the [Cisco Profile Management Tool](#). You may also make these updates or request deactivation of your website profile by sending an email to [web-help@cisco.com](mailto:web-help@cisco.com).
- **Home.cisco.com** (formerly [Linksysbycisco.com](#)) – You can access and update your profile by signing into your Online Account at <http://home.cisco.com/>. You may also make these updates or request deactivation of your website profile by sending an email to [privacy@linksys.com](mailto:privacy@linksys.com).
- **Webex.com** - You can access and update your profile by signing into your user online account at <http://try.webex.com/lmk/get/profile>. You may also make these updates or request deactivation of your website profile by sending an email to [privacy@webex.com](mailto:privacy@webex.com).
- **TheFlip.com** - You can access and update your profile by signing into your user online account at <http://puredigital2.custhelp.com/cgi-bin/puredigital2.cfm/php/enduser/ask.php>. You may also make these updates or request deactivation of your website profile by sending an email to [remove@theflip.com](mailto:remove@theflip.com).

We make good faith efforts to honor your reasonable request to access and correct your data if it is inaccurate or delete the data if we are not required to retain it by law or for legitimate purposes. We will respond to your request to access within 30 days.

For a list of Cisco entities that may be considered data controllers from time to time and where you can exercise your rights of access and request corrections or deactivations under applicable data protection laws, [click here](#).

#### Your Choices and Selecting Your Communication Preferences

We give you the choice of receiving a variety of information that complements our Solutions. You can manage your communication preferences and unsubscribe using one of the following methods:

- Each promotional email from us includes instructions on how you can unsubscribe from that particular mailing.
- Sending a message via email at [privacy@cisco.com](mailto:privacy@cisco.com) or via mail to Cisco Systems, Inc., Legal Department, 170 West Tasman Dr., San Jose, CA 95134, USA. Please be sure to include your name, email address and specific relevant information about the material that you no longer wish to receive.

These choices do not apply to the receipt of mandatory service communications that are considered part of certain Solutions, which you may receive periodically unless you cancel the Solution in accordance with its terms and conditions.

#### Sharing Your Personal Information

We do not sell or share your Personal Information to third parties for marketing purposes unless you have granted us permission to do so. We will ask for your consent before we use or share your information for any purpose other than the reason you provided it or as otherwise provided by this Privacy Statement. We may share Personal Information in the following ways:

- Within Cisco or with any of our worldwide subsidiaries for purposes of data processing or storage.
- With business partners, service vendors, authorized third-party agents or contractors to provide a requested service or transaction, including processing orders and credit card transactions, hosting websites, hosting seminar registration and providing customer support. We only provide these third parties with the minimum amount of Personal Information necessary to complete/provide the requested service or transaction. We do not allow third parties to use your Personal Information for a different purpose.
- To comply with the law or legal process (such as responding to subpoenas or court orders) and to exercise our legal rights or defend against legal claims.
- To investigate, prevent, or take action regarding illegal activities, suspected or potential fraud, brand protection matters (such as gray market sales or use of Cisco's trademark without a license), situations involving potential threats to the physical safety of any person, violations of Cisco's terms of use, or as otherwise required by law.

#### Security of Your Personal Information

We are committed to protecting the Personal Information you share with us and utilize a combination of industry-standard security technologies, procedures, and organizational measures to help protect your Personal Information from unauthorized access, use or disclosure. We recommend you to take every precaution in protecting your Personal Information when you are on the Internet. For example, change your passwords often, use a combination of letters and numbers when creating passwords, and make sure you use a secure browser. When you enter sensitive information on our forms, we encrypt this data using SSL or other technologies. Please visit our Learning Center for more tips for using security features when connected to the Internet using a router.



## Retention of Personal Information

We will only retain your Personal Information to fulfill the purposes for which it was collected or as required for legitimate purposes or permitted by law.

## Use of Cookies and other Web Technologies

Like many websites, Cisco uses automatic data collection tools, such as cookies, embedded web links and web beacons. These tools collect certain standard information that your browser sends to our website such as your browser type and the address of the website from which you arrived at our website. They may also collect information about your Internet Protocol (IP) address (a number automatically assigned to your computer whenever you are surfing the Web, allowing Web servers to locate and identify your computer, which is a unique address assigned to your PC by your Internet Service Provider or Information Systems Department on a TCP/IP network) and clickstream behavior (for example, the pages you view and the links you click). These tools help make your visit to our website easier, more efficient and more valuable by providing you with a customized experience and recognizing you when you return. To learn more, read Cisco's Use of [Automatic Data Collection Tools](#).

Our website includes widgets, which are interactive mini-programs that run on our site to provide specific services from another company (e.g. displaying the news, opinions, music, etc). Personal information, such as your email address, may be collected through the widget. Cookies may also be set by the widget to enable it to function properly. Information collected by this widget is governed by the privacy policy of the company that created it. Our widget may have an import contacts feature to help you email your contacts. At your request, we will search your email address book to help you import your contacts to our website.

Some web browsers may let you enable a "do not track" feature that sends signals to the websites you visit, indicating that you do not want your online activities tracked. This is different than blocking or deleting cookies, as browsers with a "do not track" feature enabled may still accept cookies. There is currently no industry standard for how companies should respond to "do not track" signals, although one may develop in the future. We do not respond to "do not track" signals at this time. If we do so in the future, we will describe how in this Privacy Statement. More information about "do not track" is available at [www.allaboutdnt.org](http://www.allaboutdnt.org).

## Linked Websites

We may provide links to other third-party websites and services which are outside our control and not covered by this Privacy Statement. We encourage you to review the privacy statements posted on those websites (and all websites) you visit.

## Forums/Chat Rooms

If you participate in a discussion forum or chat room on a Cisco website, you should be aware that the information you provide there will be made broadly available to others, and can be read, collected or used by other users of these forums, potentially inside or outside Cisco, who have access to that discussion forum or chat room. This information could also be used to send you unsolicited messages. Also, please recognize that individual forums and chat rooms may have additional rules and conditions. Each participant's opinion on a forum or chat room is his or her own and should not be considered as reflecting the opinion of Cisco. We are not responsible for the Personal Information or any other information you choose to submit in these forums.

## Children's Privacy

Cisco does not knowingly collect Personal Information from children under the age of 13. If we learn that we have collected Personal Information of a child under the age of 13, we will delete that data from our systems. Please note that the Personal Information collected by Cisco Networking Academy (NetAcad) is subject to the privacy statement posted on the NetAcad websites along with any applicable privacy supplement.

Cisco encourages parents and guardians to go online with their children. Here are a few tips to help make a child's online experience safer:

- Teach children never to give Personal Information (such as name, address, phone number, school, etc.) unless supervised by a parent or responsible adult.
- Know the sites your children are visiting and which sites are appropriate.
- Look for website privacy policies and know how your child's information is treated.

For more tips on protecting children's privacy online, please see Cisco's Online Privacy Portal [here](#) or FTC's website [here](#).

## Consent to Transfer, Processing and Storage of Personal Information

As Cisco is a global organization, we may transfer your Personal Information to Cisco in the United States of America, to any Cisco subsidiary worldwide, or to third parties acting on our behalf, for the purposes of processing or storage. By providing any Personal Information to us, you fully understand and unambiguously consent to the transfer, processing and storage of such information outside of your country of residence where data protection standards may be different. Our Privacy Statement and our practices are designed to provide a globally consistent level of protection for Personal Information all over



the world. This means that even in countries whose laws provide for less protection for your information, Cisco will still handle your information in the manner described here.

#### **Your California Privacy Rights**

Residents of the State of California, under California Civil Code § 1798.83, have the right to request from companies conducting business in California a list of all third parties to which the company has disclosed Personal Information during the preceding year for direct marketing purposes. Alternatively, the law provides that if the company has a privacy policy that gives either an Opt-out or Opt-in choice for use of your Personal Information by third parties (such as advertisers) for marketing purposes, the company may instead provide you with information on how to exercise your disclosure choice options.

Cisco qualifies for the alternative option. We have a comprehensive privacy statement, and provide you with details on how you may either Opt-out or Opt-in to the use of your Personal Information by third parties for direct marketing purposes. Therefore, we are not required to maintain or disclose a list of the third parties that received your Personal Information for marketing purposes during the preceding year.

If you are a California resident and request information about how to exercise your third party disclosure choices, please send a request to [privacy@cisco.com](mailto:privacy@cisco.com).

#### **How to Contact Us**

We value your opinions. Should you have any privacy-related questions or comments related to this Privacy Statement, please send an email to [privacy@cisco.com](mailto:privacy@cisco.com).

#### **Updates to this Cisco Privacy Statement**

We may update this Privacy Statement at any time, so please review it frequently. If we change our Privacy Statement, we will post the revised version here, with an updated revision date. If we make significant changes to our Privacy Statement, we may also notify you by other means prior to the changes taking effect, such as sending an email or posting a notice on our website.

REVISED AND POSTED AS OF: FEBRUARY 3, 2014. Please note this version does not substantively change the way we treat personal information compared to the previous version of the privacy statement available [here](#).



## Attachment 7

### Third Party Usage Guidelines for Oracle Trademarks

#### Oracle Trademarks

Oracle's trademarks and service marks ("Oracle trademarks") are valuable assets that Oracle needs to protect. We ask that you help us by properly using and crediting Oracle trademarks in accordance with these guidelines. For information about proper use of Oracle logos, logotypes, signatures, and design marks, please review the Third Party Usage Guidelines for Oracle Logos.

#### Permissible Use

You may generally use Oracle trademarks to refer to the associated Oracle products or services. For instance, an authorized reseller can note in its advertisements that it is selling the Oracle application server. Similarly, an Oracle customer may issue a press release stating that it has implemented Oracle software.

#### Relationship of Products or Services

You may indicate the relationship of your products or services to Oracle products or services by using accurate, descriptive tag lines such as "for Oracle database," "for use with Oracle E-Business Suite applications," and "works with Oracle software" in connection with your product or service name. Within text or body copy, such tag lines may appear in the same type as your product or service name. On product, packaging, advertising and other collateral where your product or service name is displayed apart from body copy, make sure that the tag line appears in significantly smaller type than your name. You should also distinguish the tag line from your mark by using a different font or color. However, Oracle or the tag line should never appear in the Oracle red color. This is important to avert any implication that your product or service is produced or endorsed by Oracle.

#### Titles

Oracle permits use of its marks in single volume book titles (not magazines or periodicals) where such use is descriptive or referential. To avoid misleading the public as to Oracle sponsorship, affiliation or endorsement, the Oracle mark must not appear more prominently than the rest of the title, and do not use Oracle logos on the cover. In addition, we request that you include a disclaimer of association with Oracle on the copyright page.

#### Open Source Software

Most open source licenses do not grant, and many exclude, a license of trademark rights. Do not assume you can use the name of a source code base in the name of your distribution developed from that code base. Without a license or permission, you may not incorporate Oracle trademarks in the name of your distribution or other products that incorporate open source elements. Truthful statements incorporating a trademark are generally allowed (for example, in the format "MyImplementation, derived from Trademarked ProductName"), but you should check the terms of the license for the original source code or any posted trademark guidelines for the project.

#### User Groups

Oracle generally permits use of its marks in groups name that include phrases such as "user group," "special interest group," "lobby," etc., that clarify the relationship between Oracle and the group and do not create confusion about the source of products. This applies only to user groups that are not formally doing business as commercial entities. If you are administering a user group that includes an Oracle trademark in its name, do not claim any trademark rights in the name or attempt to register the name or your logo with a trademark office, and do not register the name as a trade name or business name, or conduct any business under the name.



#### Prohibited Use

You may not use Oracle trademarks in a manner which could cause confusion as to Oracle sponsorship, affiliation or endorsement. Take particular care not to use Oracle marks as set out below.

#### Company, Product or Service Names

Do not use Oracle trademarks or potentially confusing variations as all or part of your company, product or service names. If you wish to note the relationship of your products or services to Oracle products or services, please use an appropriate tag line as detailed above. For example, "XYZ for Oracle database" not "OraXYZ or XYZ Oracle"

#### Logos

For more information regarding use of Oracle logos, please review the Third Party Usage Guidelines for Oracle Logos.

#### Trade Dress

You must not imitate Oracle trade dress, type style or logos. For instance, do not copy Oracle packaging for use with your product or display your product name in the distinctive logotype associated with the Oracle logo.

#### Domain Names

Do not use Oracle trademarks or potentially confusing variations in your Internet domain name. This helps prevent Internet users from being confused as to whether you or Oracle is the source of the Web site.

#### Correct Use

Proper use of Oracle trademarks reinforces their role as brands for our products and services, and helps prevent them from becoming generic names that can be used by anyone. Examples of former trademarks that became generic terms are "aspirin," "cellophane," and "escalator." By adhering to the following rules, you help protect Oracle's investment in its trademarks.

#### Use a Generic Term

Use a generic term in association with each Oracle trademark the first time the mark appears in text, and as often as possible after that. You need not include generic names in headlines, package titles and documentation titles. For example, "Oracle iLearning software", "Oracle On Demand services", and "Oracle database."

#### Use as Adjectives

Oracle trademarks are adjectives and should not be used as nouns, or in the possessive or plural form. For example, "Oracle database's benefits.." not "Oracle's benefits..."

#### Avoid Variations

Do not vary Oracle trademarks by changing their spelling or abbreviating them. For example, "Oracle Collaboration Suite" not "CollabSuite."

#### Trademark Symbols and Credit Lines

Proper trademark attribution through trademark symbols and credit lines helps makes the public aware of our trademarks, and helps prevent them from becoming generic terms. Credit lines also help clarify that they belong to Oracle. Accordingly, Oracle would appreciate you attributing ownership of Oracle trademarks to Oracle Corporation by using trademark symbols (™ or SM or ®) and credit lines as detailed below.



#### Trademark Symbols

Use the ® symbol with the most prominent appearance of the "Oracle" mark on products, packaging, manuals, advertisements, promotional materials and Web pages (for example, in the headline of an advertisement), and the first use of the mark in text or body copy. This includes situations where "Oracle" is a part of a product or service name (for example, Oracle® Collaboration Suite, Oracle® PartnerNetwork). You do not need to use trademark symbols with other Oracle trademarks.

#### Example: XYZ Develops New Product for Oracle® Database

XYZ Corporation, a member of the Oracle® PartnerNetwork program, has developed the ABC software cartridge for use with the industry leading Oracle database. The ABC software cartridge is one of numerous products XYZ has developed that complement leading Oracle offerings.

"Oracle" receives a trademark symbol in the headline because this is the most prominent appearance, and when it appears as part of the "Oracle PartnerNetwork" name because this is the first appearance in text. While there is no trademark symbol after "Oracle" when it appears in front of the term "products" and "offerings" since we already used a symbol the first time that the term "Oracle" appeared in body copy. It is always acceptable to continue using the ® after "Oracle" throughout the document.

#### Credit Line

All products, packaging, manuals, advertisements, promotional materials and Web pages bearing Oracle trademarks should include the following trademark credit line.

"Oracle and Java are registered trademarks of Oracle and/or its affiliates. Other names may be trademarks of their respective owners."

The credit line may appear anywhere on the collateral, but typically is displayed on a copyright page, the back of a package or at the end of a document or web page.

#### "Oracle" As a Trade Name

Trade names are the actual business names of companies. Trademarks and trade names are not the same, even though many companies use their trade names as trademarks. If you are using "Oracle" as a substitute for Oracle Corporation, you are using it as a trade name. Because they are nouns, trade names can be used in the possessive and do not require a generic term or a trademark symbol. Thus, you should not use a ® after "Oracle" when it appears as part of the full corporate name or as a trade name.

#### Examples

Corporate Name: This software was developed by Oracle Corporation.

Trade Name: This software was developed by Oracle.

Trade Name: Oracle's latest software developments are outstanding.

Trademark: The Oracle® database leads the industry.



## Attachment 8

### CISCO END USER LICENSE AGREEMENT (EULA)

## Cisco EULA

September 24, 2013 as provided on Cisco.com:

[http://www.cisco.com/en/US/docs/general/warranty/English/EU1KEN\\_.html](http://www.cisco.com/en/US/docs/general/warranty/English/EU1KEN_.html)

**IMPORTANT: PLEASE READ THIS END USER LICENSE AGREEMENT CAREFULLY. IT IS VERY IMPORTANT THAT YOU CHECK THAT YOU ARE PURCHASING CISCO SOFTWARE OR EQUIPMENT FROM AN APPROVED SOURCE AND THAT YOU, OR THE ENTITY YOU REPRESENT (COLLECTIVELY, THE "CUSTOMER") HAVE BEEN REGISTERED AS THE END USER FOR THE PURPOSES OF THIS CISCO END USER LICENSE AGREEMENT.**

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## ATTACHMENT 9

Reserved



## Attachment 10

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**5. RECORDS AND AUDIT.** During the License Term for Software and for two (2) years after its expiration or termination, You will maintain accurate records of Your use of the Software sufficient to show compliance with the terms of this EULA. During this period, VMware will have the right to audit Your use of the Software to confirm compliance with the terms of this EULA. That audit is subject to reasonable notice by VMware and will not unreasonably interfere with Your business activities. VMware may conduct no more than one (1) audit in any twelve (12) month period, and only during normal business hours. You will reasonably cooperate with VMware and any third party auditor and will, without prejudice to other rights of VMware, address any non-compliance identified by the audit by promptly paying additional fees. You will promptly reimburse VMware for all reasonable costs of the audit if the audit reveals either underpayment of more than five (5%) percent of the Software fees payable by You for the period audited, or that You have materially failed to maintain accurate records of Software use.

**6. SUPPORT AND SUBSCRIPTION SERVICES.** Except as expressly specified in the Product Guide, VMware does not provide any support or subscription services for the Software under this EULA. You have no rights to any updates, upgrades or extensions or enhancements to the Software developed by VMware unless you separately purchase VMware support or subscription services. These support or subscription services are subject to the Support Services Terms.

## **7. WARRANTIES.**

**7.1 Software Warranty, Duration and Remedy.** VMware warrants to You that the Software will, for a period of ninety (90) days following notice of availability for electronic download or delivery ("Warranty Period"), substantially conform to the applicable Documentation, provided that the Software: (a) has been properly installed and used at all times in accordance with the applicable Documentation; and (b) has not been modified or added to by persons other than VMware or its authorized representative. VMware will, at its own expense and as its sole obligation and Your exclusive remedy for any breach of this warranty, either replace that Software or correct any reproducible error in that Software reported to VMware by You in writing during the Warranty Period. If VMware determines that it is unable to correct the error or replace the Software, VMware will refund to You the amount paid by You for that Software, in which case the License for that Software will terminate.

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## 8. INTELLECTUAL PROPERTY INDEMNIFICATION.

**8.1 Defense and Indemnification.** Subject to the remainder of this Section 8 (Intellectual Property Indemnification), VMware shall defend You against any third party claim that the Software infringes any patent, trademark or copyright of such third party, or misappropriates a trade secret (but only to the extent that the misappropriation is not a result of Your actions) under the laws of: (a) the United States and Canada; (b) the European Economic Area; (c) Australia; (d) New Zealand; (e) Japan; or (f) the People's Republic of China, to the extent that such countries are part of the Territory for the License ("Infringement Claim") and indemnify You from the resulting costs and damages finally awarded against You to such third party by a court of competent jurisdiction or agreed to in settlement. The foregoing obligations are applicable only if You: (i) promptly notify VMware in writing of the Infringement Claim; (ii) allow VMware sole control over the defense for the claim and any settlement negotiations; and (iii) reasonably cooperate in response to VMware requests for assistance. You may not settle or compromise any Infringement Claim without the prior written consent of VMware.

**8.2 Remedies.** If the alleged infringing Software become, or in VMware's opinion be likely to become, the subject of an Infringement Claim, VMware will, at VMware's option and expense, do one of the following: (a) procure the rights necessary for You to make continued use of the affected Software; (b) replace or modify the affected Software to make it non-infringing; or (c) terminate the License to the affected Software and discontinue the related support services, and, upon Your certified deletion of the affected Software, refund: (i) the fees paid by You for the License to the affected Software, less straight-line depreciation over a three (3) year useful life beginning on the date such Software was delivered; and (ii) any pre-paid service fee attributable to related support services to be delivered after the date such service is stopped. Nothing in this Section 8.2 (Remedies) shall limit VMware's obligation under Section 8.1 (Defense and Indemnification) to defend and indemnify You, provided that You replace the allegedly infringing Software upon VMware's making alternate Software available to You and/or You discontinue using the allegedly infringing Software upon receiving VMware's notice terminating the affected License.

**8.3 Exclusions.** Notwithstanding the foregoing, VMware will have no obligation under this Section 8 (Intellectual Property Indemnification) or otherwise with respect to any claim based on: (a) a combination of Software with non-VMware products (other than non-VMware products that are listed on the Order and used in an unmodified form); (b) use for a purpose or in a manner for which the Software was not designed; (c) use of any older version of the Software when use of a newer VMware version would have avoided the infringement; (d) any modification to the Software made without VMware's express written approval; (e) any claim that relates to open source software or freeware technology or any derivatives or other adaptations thereof that is not embedded by VMware into Software listed on VMware's commercial price list; or (f) any Software provided on a no charge, beta or evaluation basis. THIS SECTION 8 (INTELLECTUAL PROPERTY INDEMNIFICATION) STATES YOUR SOLE AND EXCLUSIVE REMEDY AND VMWARE'S ENTIRE LIABILITY FOR ANY INFRINGEMENT CLAIMS OR ACTIONS.

## 9. LIMITATION OF LIABILITY.

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



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

## **10. TERMINATION.**

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

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

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

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

## **11. CONFIDENTIAL INFORMATION.**

**11.1 Definition.** "Confidential Information" means information or materials provided by one party ("Discloser") to the other party ("Recipient") which are in tangible form and labelled "confidential" or the like, or, information which a reasonable person knew or should have known to be confidential. The following information shall be considered Confidential Information whether or not marked or identified as such: (a) License Keys; (b) information regarding VMware's pricing, product roadmaps or strategic marketing plans; and (c) non-public materials relating to the Software.

**11.2 Protection.** Recipient may use Confidential Information of Discloser; (a) to exercise its rights and perform its obligations under this EULA; or (b) in connection with the parties' ongoing business relationship. Recipient will not use any Confidential Information of Discloser for any purpose not expressly permitted by this EULA, and will disclose the Confidential Information of Discloser only to the employees or contractors of Recipient who have a need to know such Confidential Information for purposes of this EULA and who are under a duty of confidentiality no less restrictive than Recipient's duty hereunder. Recipient will protect Confidential Information from unauthorized use, access, or disclosure in the same manner as Recipient protects its own confidential or proprietary information of a similar nature but with no less than reasonable care.

**11.3 Exceptions.** Recipient's obligations under Section 11.2 (Protection) with respect to any Confidential Information will terminate if Recipient can show by written records that such information: (a) was already known to Recipient at the time of disclosure by Discloser; (b) was disclosed to Recipient by a third party who had the right to make such disclosure without any confidentiality restrictions; (c) is, or through no fault of Recipient has become, generally available to the public; or (d) was independently developed by Recipient without access to, or use of, Discloser's Information. In addition, Recipient will be allowed to disclose Confidential Information to the extent that such



disclosure is required by law or by the order of a court of similar judicial or administrative body, provided that Recipient notifies Discloser of such required disclosure promptly and in writing and cooperates with Discloser, at Discloser's request and expense, in any lawful action to contest or limit the scope of such required disclosure.

**11.4 Data Privacy.** You agree that VMware may process technical and related information about Your use of the Software which may include internet protocol address, hardware identification, operating system, application software, peripheral hardware, and non-personally identifiable Software usage statistics to facilitate the provisioning of updates, support, invoicing or online services and may transfer such information to other companies in the VMware worldwide group of companies from time to time. To the extent that this information constitutes personal data, VMware shall be the controller of such personal data. To the extent that it acts as a controller, each party shall comply at all times with its obligations under applicable data protection legislation.

## 12. GENERAL.

**12.1 Transfers; Assignment.** Except to the extent transfer may not legally be restricted or as permitted by VMware's transfer and assignment policies, in all cases following the process set forth at [www.vmware.com/support/policies/licensingpolicies.html](http://www.vmware.com/support/policies/licensingpolicies.html), You will not assign this EULA, any Order, or any right or obligation herein or delegate any performance without VMware's prior written consent, which consent will not be unreasonably withheld. Any other attempted assignment or transfer by You will be void. VMware may use its Affiliates or other sufficiently qualified subcontractors to provide services to You, provided that VMware remains responsible to You for the performance of the services.

**12.2 Notices.** Any notice delivered by VMware to You under this EULA will be delivered via mail, email or fax.

**12.3 Waiver.** Failure to enforce a provision of this EULA will not constitute a waiver.

**12.4 Severability.** If any part of this EULA is held unenforceable, the validity of all remaining parts will not be affected.

**12.5 Compliance with Laws; Export Control; Government Regulations.** Each party shall comply with all laws applicable to the actions contemplated by this EULA. You acknowledge that the Software is of United States origin, is provided subject to the U.S. Export Administration Regulations, may be subject to the export control laws of the applicable territory, and that diversion contrary to applicable export control laws is prohibited. You represent that (1) you are not, and are not acting on behalf of, (a) any person who is a citizen, national, or resident of, or who is controlled by the government of any country to which the United States has prohibited export transactions; or (b) any person or entity listed on the U.S. Treasury Department list of Specially Designated Nationals and Blocked Persons, or the U.S. Commerce Department Denied Persons List or Entity List; and (2) you will not permit the Software to be used for, any purposes prohibited by law, including, any prohibited development, design, manufacture or production of missiles or nuclear, chemical or biological weapons. The Software and accompanying documentation are deemed to be "commercial computer software" and "commercial computer software documentation", respectively, pursuant to DFARS Section 227.7202 and FAR Section 12.212(b), as applicable. Any use, modification, reproduction, release, performing, displaying or disclosing of the Software and documentation by or for the U.S. Government shall be governed solely by the terms and conditions of this EULA.

**12.6 Construction.** The headings of sections of this EULA are for convenience and are not to be used in interpreting this EULA. As used in this EULA, the word 'including' means "including but not limited to".

**12.7 Governing Law.** This EULA is governed by the laws of the State of California, United States of America (excluding its conflict of law rules), and the federal laws of the United States. To the extent permitted by law, the state and federal courts located in Santa Clara County, California will be the exclusive jurisdiction for disputes arising out of or in connection with this EULA. The U.N. Convention on Contracts for the International Sale of Goods does not apply.

**12.8 Third Party Rights.** Other than as expressly set out in this EULA, this EULA does not create any rights for any person who is not a party to it, and no person who is not a party to this EULA may enforce any of its terms or rely on



any exclusion or limitation contained in it.

**12.9 Order of Precedence.** In the event of conflict or inconsistency among the Product Guide, this EULA and the Order, the following order of precedence shall apply: (a) the Product Guide, (b) this EULA and (c) the Order. With respect to any inconsistency between this EULA and an Order, the terms of this EULA shall supersede and control over any conflicting or additional terms and conditions of any Order, acknowledgement or confirmation or other document issued by You.

**12.10 Entire Agreement.** This EULA, including accepted Orders and any amendments hereto, and the Product Guide contain the entire agreement of the parties with respect to the subject matter of this EULA and supersede all previous or contemporaneous communications, representations, proposals, commitments, understandings and agreements, whether written or oral, between the parties regarding the subject matter hereof. This EULA may be amended only in writing signed by authorized representatives of both parties.

**12.11 Contact Information.** Please direct legal notices or other correspondence to VMware, Inc., 3401 Hillview Avenue, Palo Alto, California 94304, United States of America, Attention: Legal Department.

- See more at: [http://www.vmware.com/download/eula/esxi50\\_eula.html#sthash.PWrl1eoX.dpuf](http://www.vmware.com/download/eula/esxi50_eula.html#sthash.PWrl1eoX.dpuf)

## **End User License Agreement FireAMP Product**

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(vi) disclose, provide, or otherwise make available trade secrets contained within the Software and Documentation in any form to any third party without the prior written consent of Cisco. Customer shall implement reasonable security measures to protect such trade secrets.

To the extent required by applicable law, and at Customer's written request, Cisco shall provide Customer with the interface information needed to achieve interoperability between the Software and another independently created program, on payment of Cisco's applicable fee, if any. Customer shall observe strict obligations of confidentiality with respect to such information and shall use such information in compliance with any applicable terms and conditions upon which Cisco makes such information available.

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***Term and Termination.*** The Agreement and the license granted herein shall remain

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**Customer Records.** Customer grants to Cisco and its independent accountants the right to examine Customer's books, records and accounts during Customer's normal business hours to verify compliance with this Agreement, provided that Cisco coordinates such activity with Customer and complies with Customer's security requirements. In the event such audit discloses noncompliance with this Agreement, Customer shall promptly pay to Cisco the appropriate license fees.

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Subject to the limitations and conditions set forth herein, Cisco warrants that commencing from the date of shipment to Customer (but in case of resale by an Approved Source other than Cisco, commencing not more than ninety (90) days after original shipment by Cisco), and continuing for a period of the longer of (a) ninety (90) days or (b) the warranty period (if any) expressly set forth as applicable specifically to software in the warranty card accompanying the product of which the Software is a part (the "") (if any): (a) the media on which the Software is furnished will be free of defects in materials and workmanship under normal use; and (b) the Software substantially conforms to the Documentation. The date of shipment of a Product by Cisco is set forth on the packaging material in which the Product is shipped. Except for the foregoing, the Software is provided "AS IS". This limited warranty extends only to the Software purchased from an Approved Source by a Customer who is the first registered end user. Customer's sole and exclusive remedy and the entire liability of Cisco and its suppliers under this limited warranty will be (i) replacement of defective media and/or (ii) at Cisco's option, repair, replacement, or refund of the purchase price of the Software, in both cases subject to the condition that any error or defect constituting a breach of this limited warranty is reported to the Approved Source supplying the Software to Customer, within the warranty period Cisco or the Approved Source supplying the Software to Customer may, at its option, require return of the Software and/or Documentation as a condition to the remedy. In no event does Cisco warrant that the Software is error free or that Customer will be able to operate the Software without problems or interruptions. In addition, due to the continual development of new techniques for intruding upon and attacking networks, Cisco does not warrant that the Software or any equipment, system or network on which the Software is used will be free of vulnerability to intrusion or attack. In the event of a breach of warranty, the U.S. Government reserves all rights and remedies under the contract, the Federal Acquisition Regulations, and the Contract Disputes Act, 41 U.S.C. 7101-7109.

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

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The parties specifically disclaim the application of the UN Convention on Contracts for the International Sale of Goods. If any portion hereof is found to be void or unenforceable, the remaining provisions of the Agreement and Warranties shall remain in full force and effect. Except as expressly provided herein, the Agreement constitutes the entire agreement between the parties with respect to the license of the Software and Documentation and supersedes any conflicting or additional terms contained in any Purchase Order or elsewhere, all of which terms are excluded. The Agreement has been written in the English language, and the parties agree that the English version will govern.

Product warranty terms and other information applicable to Cisco products are available at the following URL: <http://www.cisco.com/go/warranty>.

[SUPPLEMENTAL LICENSE AGREEMENT FOLLOWS]

## Supplemental End User License Agreement

### FireAMP Product

#### IMPORTANT: READ CAREFULLY

This Supplemental End User License Agreement (“SEULA”) contains additional terms and conditions for the FireAMP Product (the “Software”) licensed under the End User License Agreement (“EULA”) between you (the Ordering Activity, as defined in GSA ORDER ADM4800.2H and revised from time to time) and Cisco (collectively, the “Agreement”). Capitalized terms used in this SEULA but not defined will have the meanings assigned to them in the EULA. To the extent that there is a conflict between the terms and conditions of the EULA and this SEULA, the terms and conditions of this SEULA will take precedence.

In addition to the limitations set forth in the EULA on your access and use of the Software, you agree to comply at all times with the terms and conditions provided in this SEULA.

IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THE AGREEMENT, THEN CISCO IS UNWILLING TO LICENSE THE SOFTWARE TO YOU AND (A) YOU MAY NOT DOWNLOAD, INSTALL OR USE THE SOFTWARE, AND (B) YOU MAY RETURN THE SOFTWARE (INCLUDING ANY UNOPENED CD PACKAGE AND ANY WRITTEN MATERIALS) FOR A FULL REFUND, OR, IF THE SOFTWARE AND WRITTEN MATERIALS ARE SUPPLIED AS PART OF ANOTHER PRODUCT, YOU MAY RETURN THE ENTIRE PRODUCT FOR A FULL REFUND. YOUR RIGHT TO RETURN AND REFUND EXPIRES 30 DAYS AFTER PURCHASE FROM CISCO OR AN AUTHORIZED CISCO RESELLER, AND APPLIES ONLY IF YOU ARE THE ORIGINAL END USER PURCHASER.

#### Definitions

“**Endpoint**” means any device capable of processing data used in conjunction with any of the Software or Cisco-provided services, including but not limited to personal computers, mobile devices and network computer workstations.

“**Non-Personal Information**” means technical and related information that is not Personal Information, including, but not limited to the operating system type and version; file metadata and identifiers such as SHA-256 values; network host data; origin and nature of malware; Endpoint GUIDs (globally unique identifiers); Internet Protocol (“IP”) addresses; MAC addresses; logfiles; the types of software or applications installed on a network or an Endpoint; and any aggregate or demographic data such as cookies, web logs, web beacons, and other similar applications.

“**Personal Information**” means any information that can be used to identify an individual and may include an individual’s name, address, email address, phone number, payment card number, and user name.

#### Additional License Rights and Restrictions

**License.** Conditioned upon compliance with the terms and conditions of the Agreement, Cisco grants to you a nonexclusive, nontransferable and non-sublicenseable license to use for your internal business purposes the Software and Documentation for which you have paid the required license and/or subscription fee. The license shall be a subscription to use the Software for a defined period of time as indicated in a SKU or as otherwise shown in the ordering document. In order to use the Software, you may be required to input a registration number or product authorization key and register your copy of the Software online at Cisco’s website to obtain the necessary license key or license file. You will need a connection to the Internet in order to access certain cloud-based components of the Software. You are solely responsible for establishing and maintaining all required Internet connections.

Certain components of the Software will be required to be installed on your Endpoints. You may install such components of the Software only on the number of Endpoints for which you have paid the applicable fee.

If you allow a third party acting on your behalf (i.e. a contractor) to access and use the Software, then you shall remain responsible for compliance with the Agreement by each such third party. If you distribute the Software to such third party or otherwise install any component of the Software on an Endpoint of such third party, then each such distribution or installation shall include a copy of the Agreement.

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The subscription term is subject to the termination provisions under the GSA Schedule contract. You must renew the subscription license and pay the applicable fee before the expiration date for continued authorized use of the Software. You may not use the Software in a manner that exceeds the permitted number of Endpoints, term of subscription or other limitations associated with the applicable license or subscription fee paid or payable by you. If the subscription term expires without renewal, Software features and services may cease operation. In the event of a termination of the Agreement, you must use commercially reasonable efforts to notify all permitted third party users that their rights of access and use of the Software have also ceased.

#### **Consent to Data Collection and Privacy**

**1. Data Collection and Processing.** Cisco may, as part of your use of the Software and/or the provision of related services by Cisco, collect, retain, and use Non-Personal Information and specific identifiable data about you, your network and your Endpoints (e.g., Endpoint IDs, IP addresses, location, content, etc.). Some of this specific identifiable data may contain Personal Information. Cisco also may transfer data so collected to Cisco's offices and subsidiaries in the United States and other countries where Cisco or its service providers have facilities.

**2. Purpose of Data Collection and Processing.** The data Cisco collects from the Software is necessary for the essential use and functionality of the Software (e.g. device tracking, access control, data and traffic analysis, threat detection, malware and conduct-related analysis, etc.), and is also used by Cisco to provide associated services and to improve the operation and functionality of the Software. For these reasons you may not be able to opt out from some of this data collection other than by uninstalling or disabling the Software. You may have the ability, however, to configure your Software to limit some of the data that can be collected, as described in the applicable Software Documentation.

**3. Consent to Data Collection and Use.** You agree to the collection, use, transfer, backup, and storage of your Personal Information and other data by Cisco and its service providers. Cisco will not process this information other than in accordance with Cisco's Privacy Statement (identified in section 4 below). Cisco and its service providers may, as part of your use of the Software and the provision of related services by Cisco, transfer, copy, backup and store your Personal Information and other data in the United States, Europe, or other countries or jurisdictions outside your own where data protection standards may be different.

**4. Privacy Statement.** By entering into this Agreement, you agree that Cisco's Privacy Statement, as it exists at any relevant time, applies to you. The most current Privacy Statement can be found at:

[http://www.cisco.com/web/siteassets/legal/privacy\\_full.html](http://www.cisco.com/web/siteassets/legal/privacy_full.html)

**[End of SEULA]**

# Supplemental End User License Agreement for FirePOWER Services

## **IMPORTANT: READ CAREFULLY**

This Supplemental End User License Agreement (“SEULA”) contains additional terms and conditions for the Software Product licensed under the End User License Agreement (“EULA”) between you (the Ordering Activity, as defined in GSA ORDER ADM4800.2H and revised from time to time) and Cisco (collectively, the “Agreement”). Capitalized terms used in this SEULA but not defined will have the meanings assigned to them in the EULA. To the extent that there is a conflict between the terms and conditions of the EULA and this SEULA, the terms and conditions of this SEULA will take precedence. In addition to the limitations set forth in the EULA on your access and use of the Software, you agree to comply at all times with the terms and conditions provided in this SEULA.

IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THE AGREEMENT, THEN CISCO IS UNWILLING TO LICENSE THE SOFTWARE TO YOU AND (A) YOU MAY NOT DOWNLOAD, INSTALL OR USE THE SOFTWARE, AND (B) YOU MAY RETURN THE SOFTWARE (INCLUDING ANY UNOPENED CD PACKAGE AND ANY WRITTEN MATERIALS) FOR A FULL REFUND, OR, IF THE SOFTWARE AND WRITTEN MATERIALS ARE SUPPLIED AS PART OF ANOTHER PRODUCT, YOU MAY RETURN THE ENTIRE PRODUCT FOR A FULL REFUND. YOUR RIGHT TO RETURN AND REFUND EXPIRES 30 DAYS AFTER PURCHASE FROM CISCO OR AN AUTHORIZED CISCO RESELLER, AND APPLIES ONLY IF YOU ARE THE ORIGINAL END USER PURCHASER.

## **Product Name**

For purposes of this SEULA, the Product name you have ordered is any of the following:

1. Cisco FirePOWER Services Subscription for IPS and Apps
2. Cisco FirePOWER Services Subscription for AMP
3. Cisco FirePOWER Services Subscription for URL

## **Definitions**

“**Endpoint**” means any device capable of processing data used in conjunction with any of the Products or Cisco-provided services, including but not limited to personal computers, mobile devices and network computer workstations.

“**Non-Personal Information**” means technical and related information that is not Personal Information, including, but not limited to the operating system type and version; file metadata and identifiers such as SHA-256 values; network host data; origin and nature of malware; Endpoint GUIDs (globally unique identifiers); Internet Protocol (“IP”) addresses; MAC addresses; logfiles; the types of software or applications installed on a network or an Endpoint; and any aggregate or demographic data such as cookies, web logs, web beacons, and other similar applications.

“**Personal Information**” means any information that can be used to identify an individual and may include an individual’s name, address, email address, phone number, payment card number, and user name.

## **Additional License Rights and Restrictions**

**License.** Conditioned upon compliance with the terms and conditions of the Agreement, Cisco grants to you a nonexclusive, nontransferable and non-sublicenseable license to use for your internal business

purposes the Product and Documentation for which you have paid the required license and/or subscription fee. The license shall be a subscription to use the Product for a defined period of time as indicated in a SKU or as otherwise shown in the ordering document. In order to use the Product, you may be required to input a registration number or product authorization key and register your copy of the Product online at Cisco’s website to obtain the necessary license key or license file.

The subscription term is subject to the termination provisions under the GSA Schedule

contract or Federal Procurement Regulations. You must renew the subscription license and pay the applicable fee before the expiration date for continued authorized use of the Product. If the subscription term expires without renewal, Product features and services may cease operation.

If Cisco provides you with application IDs, signatures or rules for use with any Product (collectively, the “Rules”), then such Rules, and all modifications and updates thereto, are provided on an “AS IS” basis without warranty of any kind, either expressed or implied, including, without limitation, warranties that the Rules are free of defects, merchantable, fit for a particular purpose, error-free or non-infringing.

#### **Consent to Data Collection and Privacy**

**1. Data Collection and Processing.** Cisco may, as part of your use of the Product(s) and/or the provision of services by Cisco, collect, retain, and use Non-Personal Information and specific identifiable data about you, your network and your Endpoints (e.g., Endpoint IDs, IP addresses, location, content, etc.). Some of this specific identifiable data may contain Personal Information. Cisco also may transfer data so collected to Cisco’s offices and subsidiaries in the United States and other countries where Cisco or its service providers have facilities.

**2. Purpose of Data Collection and Processing.** The data Cisco collects from a Product is necessary for the essential use and functionality of the Product (e.g. device tracking, access control, data and traffic analysis, threat detection, malware and conduct-related analysis, etc.), and is also used by Cisco to provide associated services and to improve the operation and functionality of the Products. For these reasons you may not be able to opt out from some of this data collection other than by uninstalling or disabling the Product. You may have the ability, however, to configure your Product to limit some of the data that can be collected, as described in the applicable Product Documentation.

**3. Consent to Data Collection and Use.** You agree to the collection, use, transfer, backup, and storage of your Personal Information and other data by Cisco and its service providers. Cisco will not process this information other than in accordance with Cisco’s Privacy Statement (identified in section 4 below). Cisco and its service providers may, as part of your use of the Product and the provision of related services by Cisco, transfer, copy, backup and store your Personal Information and other data in the United States, Europe, or other countries or jurisdictions outside your own where data protection standards may be different.

**4. Privacy Statement.** By entering into this Agreement, you agree that Cisco’s Privacy Statement, as it exists at any relevant time, applies to you. The most current Privacy Statement can be found at: [http://www.cisco.com/web/siteassets/legal/privacy\\_full.html](http://www.cisco.com/web/siteassets/legal/privacy_full.html)



## **END USER LICENSE AGREEMENT**

### **SOURCEFIRE NETWORK SECURITY PRODUCTS**

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This Agreement governs Your access and use of the Sourcefire Products, except to the extent there is a separate written agreement signed by both You and Sourcefire that expressly states that it governs Your use of the Sourcefire Products.

#### **1. DEFINITIONS**

The following capitalized terms shall have the following meanings in this EULA:

1.0 “You” means the ordering activity, as defined in GDA Order ADM 4800.2h and revised from time to time.

1.1. “Appliance” means any Sourcefire-branded network security appliance made available to You, consisting of Hardware and pre-installed Sourcefire Software and/or other Licensed Materials.

1.2. “Documentation” means written information contained in user manuals and technical specifications pertaining to the use of the Sourcefire Products made available by Sourcefire with the Sourcefire Products in any manner (including on CD-ROM, on-line or accessible within the Product).

1.3. “Hardware” means the hardware components of any Appliance on which Sourcefire Software is installed and runs.

1.4. “Laws” means, collectively, all international and national laws, treaties, statutes, ordinances, regulations and other types of government authority.

1.5. “Licensed Materials” means any Sourcefire Software, Documentation and Subscription Data licensed by Sourcefire to You hereunder.

1.6. “Party” or “Parties” means, individually each party hereto, and collectively all the parties to this Agreement.

1.7. “Products” means the Sourcefire Products and/or the Third Party Products.

1.8. “Reseller” means an authorized reseller or distributor of Sourcefire.

1.9 “ Sourcefire Products” means the Appliance(s) and/or Licensed Materials.

1.10. “Sourcefire Software” means the machine-readable computer software programs licensed by Sourcefire to You hereunder including any software provided to You for use on a subscription, term or software-as-a-services (SaaS) basis, and all Updates to any of the foregoing.

1.11. “Subscription Data” means that data made available to You by Sourcefire for use with the Sourcefire Products including, but not limited to, URL data and IP address blacklists. Subscription Data may be made available separately from the software.

1.12 “Third Party Products” means any products or other materials made available to You for use with Sourcefire Products and which are not Sourcefire Products.

1.13. “Updates” means with respect to Licensed Materials any Sourcefire-approved periodic patches, bug-fixes, work-arounds, error corrections, enhancements, rules updates, vulnerability database updates, security enhancement updates and additions and other modifications thereto, or revised versions thereof, which may be made available from time to time.

Unless otherwise defined herein, the capitalized terms used in this EULA shall be defined in the context in which they are used.

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#### **2. YOUR PAYMENT OBLIGATIONS**

In consideration for Your purchase of an Appliance and Your license to use the Licensed Materials, You agree to pay all amounts due or incurred by You.

#### **3. LICENSE GRANT**

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#### **4. SCOPE OF USE**

If You purchased an Appliance, You may only use the Licensed Materials included on that Appliance for use on such Appliance. If Sourcefire Products are made available to You for use without an Appliance on a “virtual” basis, Your use of such Sourcefire Products may not exceed the applicable number of licenses purchased and other use limitations associated with the fees paid or payable by You for such use. If You purchased a license to use the Licensed Materials on a subscription or term basis, You may not deploy or use such Licensed Materials in a manner that exceeds the term of subscription, the permitted number of users, hosts or endpoints, or other subscription or term limitations associated with the applicable fees paid or payable by You.

#### **5. LICENSE RESTRICTIONS**

You agree not to directly or indirectly: (i) sell, lease, rent, distribute, sublicense, assign or transfer any of the Licensed Materials; (ii) reverse engineer, decompile, disassemble, decrypt or otherwise attempt to determine the source code of any of the Licensed Materials, except to the limited extent permitted by law; (iii) modify, make error corrections to or create derivative works based on the Licensed Materials; (iv) use any Licensed Materials for the benefit of any third parties (e.g., in an ASP, SaaS, outsourcing or service bureau relationship) or in any way other than in its intended manner, except as otherwise permitted by Sourcefire; (v) publish any results of benchmark tests run on the Sourcefire Software; (vi) remove, alter or obscure any proprietary or copyright notice, labels, or marks on the Hardware or within the Licensed Materials; (vii) disable or circumvent any access control or related security measure, process or procedure established with respect to the Appliance or any Licensed Materials or any other part thereof; (viii) create Internet "links" to the Subscription Data or "frame" or "mirror" the Subscription Data

on any other server or wireless or Internet-based device; or (ix) utilize the Subscription Data in order to: (1) build a competitive product or service; (2) build a product using similar ideas, features, functions or graphics; (3) copy any ideas, features, functions or graphics; or (4) aggregate subscriptions to the Subscription Data, either by sublicensing or by rebranding of the Subscription.

You are responsible for all use of the Products obtained by You and for compliance with this Agreement; any breach of this Agreement by You or other user in connection with the use of those Products obtained by You shall be deemed to have been made by You.

#### **6. INTELLECTUAL PROPERTY; TITLE**

This Agreement does not transfer to You any title or any ownership right or interest in any Licensed Materials or in any other intellectual property rights of Sourcefire or Sourcefire's licensors. You acknowledge that the Appliance(s) and the Licensed Materials contain, embody and are based upon patented or patentable inventions, trade secrets, copyrights and other intellectual property rights owned by Sourcefire and its licensors. If You purchased an Appliance, title and risk of loss to each Appliance transfers to You when the Appliance is delivered to Sourcefire's designated carrier for shipment; Products are shipped FOB Sourcefire's designated shipping facility. If you purchased an Appliance from a Reseller, the terms of such purchase regarding price, title to the Appliance and delivery thereof are between You and such Reseller. If You purchased an Appliance directly from Sourcefire, the terms of such purchase are as set forth in the Sourcefire sales order submitted by You and accepted by Sourcefire. In all instances, Licensed Materials are licensed to You pursuant to this Agreement and not sold to You.

#### **7. TECHNICAL SUPPORT**

You may purchase technical support for Sourcefire Products by separately enrolling in Sourcefire's customer support plan (the "Support Plan") and paying Sourcefire or a Reseller the then-applicable customer support fee. Your rights and Sourcefire's obligations under the Support Plan are set forth in the Support Plan terms and conditions, a current copy of which is located at [www.sourcefire.com/customer-support](http://www.sourcefire.com/customer-support). All Updates received by You pursuant to the Support Plan shall be governed by, and licensed to You under, this Agreement.

#### **8. CONFIDENTIALITY**

As used herein, "Confidential Information" means any non-public technical or business information of either Party, including without limitation, any

information relating to Sourcefire's techniques, algorithms, software, know-how and current or future product designs, financial information, procurement requirements, and manufacturing or business forecasts. Confidential Information does not include information that (i) is or becomes generally known to the public through no fault or breach of this Agreement by the receiving party; (ii) the receiving party can demonstrate by written evidence was rightfully in the receiving party's possession at the time of disclosure, without an obligation of confidentiality; (iii) is independently developed by the receiving party without use of or access to the disclosing party's Confidential Information or otherwise in breach of this Agreement; (iv) the receiving party rightfully obtains from a third party not under a duty of confidentiality and without restriction on use or disclosure; or (v) is required to be disclosed pursuant to, or by, any Laws (including federal laws such as the Freedom of Information Act 5 U.S.C. §552), court order or other legal process to do so, provided that the receiving party shall, promptly upon learning that such disclosure is required, give written notice of such disclosure to the disclosing party. The party receiving Confidential Information will employ all reasonable measures to maintain the confidentiality of such Confidential Information, but in no event shall such measures be less than the measures the receiving party employs to protect its own confidential information. The party receiving the Confidential Information will limit the disclosure of the other party's Confidential Information to its employees and contractors with a bona fide need to access such Confidential Information in order to exercise its rights and obligations under this Agreement; provided that, all such employees and contractors are bound by a written non-disclosure agreement that contains restrictions at least as protective as those set forth herein.

#### **9. INSTALLATION**

You represent, warrant and covenant that You are solely responsible for the proper installation, configuration and management of the Appliance

on which the Licensed Materials will be installed, as well as the installation of any separately provided Licensed Materials. You further understand and hereby acknowledge that the failure to properly configure and manage an Appliance, and the failure to properly install any separately provided Licensed Materials, may adversely affect the performance of the Appliance and the Licensed Materials. You represent, warrant and covenant that You will adhere to the recommended minimum requirements specified in the Documentation. Sourcefire shall have no obligation under this Agreement to the extent an Appliance or any separately provided Licensed Materials fails to substantially perform the functions described in the Documentation, in whole or in part, because (i) You fail to adhere to specified minimum operating requirements; (ii) Your separate hardware fails to perform properly; (iii) You improperly configured an Appliance; or (iv) the Licensed Materials had been improperly installed.

#### **10. WARRANTY AND DISCLAIMER**

Sourcefire warrants that, for a period of ninety (90) days from the date of initial shipment of the Appliance or, in the case of Sourcefire Software separately provided to You, the date the Sourcefire Software is made available to You for download or delivered on a fixed media (as the case may be, the "Software Warranty Period"), the unmodified Sourcefire Software will, under normal use, substantially perform the

functions described in its Documentation. Sourcefire also warrants that for a period of one (1) year from the date of initial shipment of a new Appliance (the "Hardware Warranty Period") that the unmodified Hardware comprising such Appliance will, under normal use, be free of substantial defects in materials and workmanship. Neither of the aforementioned warranties apply if the Sourcefire Software or Appliance (i) has been altered, except by Sourcefire or its authorized representative; (ii) has not been installed, operated, repaired or maintained in accordance with the Documentation and/or instructions supplied by Sourcefire; (iii) has been subjected to abnormal physical or electrical stress, abnormal environmental conditions, misuse, negligence or accident by You; or (iv) is licensed for beta, evaluation, testing or demonstration purposes. If a court of competent jurisdiction determines that the statutory warranty periods of such jurisdiction apply rather than the Software Warranty Period and Hardware Warranty Periods referenced above, then such statutory warranty periods will control only in the event of a conflict with the terms of this Section 10.

EXCEPT AS EXPRESSLY WARRANTED IN THIS SECTION 10, THE SOURCEFIRE PRODUCTS (INCLUDING, ANY EVALUATION AND BETA PRODUCTS), AND ANY OTHER DOCUMENTATION, MATERIALS AND/OR DATA PROVIDED BY SOURCEFIRE ARE PROVIDED "AS IS" AND "WITH ALL FAULTS," AND SOURCEFIRE EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES OF ANY KIND OR NATURE, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF OPERABILITY, CONDITION, TITLE, NON-INFRINGEMENT, NON-INTERFERENCE, QUIET ENJOYMENT, VALUE, ACCURACY OF DATA, OR QUALITY, AS WELL AS ANY WARRANTIES OF MERCHANTABILITY, SYSTEM INTEGRATION, WORKMANSHIP, SUITABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR THE ABSENCE OF ANY DEFECTS THEREIN, WHETHER LATENT OR PATENT.

THE SOURCEFIRE PRODUCTS ARE NOT FAULT-TOLERANT AND ARE NOT DESIGNED OR INTENDED FOR USE IN ANY HAZARDOUS ENVIRONMENT REQUIRING FAIL-SAFE PERFORMANCE OR OPERATION. SOURCEFIRE PRODUCTS ARE NOT FOR USE IN THE OPERATION OF AIRCRAFT NAVIGATION, NUCLEAR FACILITIES, WEAPONS SYSTEMS, DIRECT OR INDIRECT LIFE-SUPPORT SYSTEMS, AIR TRAFFIC CONTROL SYSTEMS, OR ANY APPLICATION OR INSTALLATION WHERE FAILURE COULD RESULT IN DEATH, PHYSICAL INJURY OR PROPERTY DAMAGE.

NO WARRANTY IS MADE BY SOURCEFIRE ON THE BASIS OF TRADE USAGE, COURSE OF DEALING OR COURSE OF TRADE. SOURCEFIRE DOES NOT WARRANT THAT THE APPLIANCE, THE LICENSED MATERIALS OR ANY OTHER INFORMATION, MATERIALS, DOCUMENTATION OR TECHNOLOGY PROVIDED UNDER THIS AGREEMENT WILL MEET YOUR REQUIREMENTS OR THAT THE OPERATION THEREOF WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ALL ERRORS WILL BE CORRECTED. YOU ACKNOWLEDGE THAT SOURCEFIRE'S OBLIGATIONS UNDER THIS AGREEMENT ARE FOR YOUR BENEFIT ONLY.

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NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, ANY THIRD PARTY PRODUCTS ARE PROVIDED "AS IS" WITHOUT ANY WARRANTY WHATSOEVER.

Sourcefire's obligation and liability, and Your remedy under the warranties set forth in Section 10 shall be for Sourcefire to use commercially reasonable efforts to remedy the problem, or to replace the defective Hardware and/or the Sourcefire Software, if Sourcefire is notified in writing

of all warranty problems during the applicable warranty period. If the non-conforming item(s) covered by this warranty cannot be remedied by repair or replacement, Contractor shall refund the fee associated with the non-conforming item(s).

In event of a breach of warranty, the U.S. Government reserves all rights and remedies under the contract, the Federal Acquisition Regulations, and the Contract Disputes Act, 41 U.S.C. §7101-7109."

#### **11. LIMITATION OF LIABILITY**

IN NO EVENT WILL SOURCEFIRE'S OR ANY OF ITS SUBSIDIARIES' OR AFFILIATES' AGGREGATE LIABILITY (INCLUDING, BUT NOT LIMITED TO, LIABILITY FOR NEGLIGENCE, STRICT LIABILITY, BREACH OF CONTRACT, MISREPRESENTATION AND OTHER CONTRACT OR TORT CLAIMS) ARISING FROM OR RELATED TO THIS AGREEMENT, OR THE USE OF THE PRODUCTS, EXCEED THE AMOUNT OF FEES YOU PAID TO SOURCEFIRE OR ITS RESELLER, AS APPLICABLE, FOR THE PRODUCTS THAT GAVE RISE TO SUCH LIABILITY. UNDER NO CIRCUMSTANCES SHALL SOURCEFIRE OR ANY OF ITS SUBSIDIARIES, AFFILIATES, SUPPLIERS OR LICENSORS BE LIABLE FOR ANY OF THE FOLLOWING: (I) THIRD PARTY CLAIMS, EXCEPT AS SET FORTH IN SECTION 13; (II) LOSS OR DAMAGE TO ANY SYSTEMS, RECORDS OR DATA; (III) INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE, RELIANCE, OR COVER DAMAGES (INCLUDING LOST PROFITS AND LOST SAVINGS); OR (IV) DAMAGES ARISING OUT OF ANY THIRD PARTY PRODUCTS, IN EACH CASE EVEN IF SOURCEFIRE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. YOU ARE SOLELY RESPONSIBLE AND LIABLE FOR VERIFYING THE SECURITY, ACCURACY AND ADEQUACY OF ANY OUTPUT FROM ANY PRODUCTS, AND FOR ANY RELIANCE THEREON. THE LIMITATIONS OF LIABILITY IN THIS SECTION 11 ARE INTENDED TO APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED OR HAVE PROVEN INEFFECTIVE.

THIS CLAUSE SHALL NOT IMPAIR THE U.S. GOVERNMENT'S RIGHT TO RECOVER FOR FRAUD OR CRIMES ARISING OUT OF OR RELATED TO THIS CONTRACT UNDER ANY FEDERAL FRAUD STATUTE, INCLUDING THE FALSE CLAIMS ACT, 31 USC 3729-3733. FURTHERMORE, THIS CLAUSE SHALL NOT IMPAIR NOR PREJUDICE THE U.S. GOVERNMENT'S RIGHT TO EXPRESS REMEDIES PROVIDED IN THE GSA GOVERNMENT'S RIGHT TO EXPRESS REMEDIES PROVIDED IN THE GSA SCHEDULE CONTRACT (E.G. CLAUSE 552.238-75-PRICE REDUCTIONS, CLAUSE 52.212-4(H)-PATENT INDEMNIFICATION, AND GSAR 552.215-72-PRICE ADJUSTMENT-FAILURE TO PROVIDE ACCURATE INFORMATION.

#### **12. ESSENTIAL BASIS**

The disclaimers, exclusions and limitations of liability set forth in this Agreement form an essential basis of the bargain between the Parties, and, absent any of such disclaimers, exclusions or limitations of liability, the provisions of this Agreement, including, without limitation, the economic terms, would be substantially different.

#### **13. INFRINGEMENT OBLIGATIONS**

13.1. If Your use of the Products hereunder is, or in Sourcefire's opinion is likely to be, enjoined due to the type of Claim then Sourcefire

may, at its sole option and expense but without obligation to do so: (i) procure for You the right to continue to use the Products under the terms of this Agreement; (ii) replace the Products with a functional equivalent; (iii) modify the Products so that they become non-infringing (including disabling the challenged functionality), provided the modified Products remain substantially equivalent in function to the enjoined Products; or (iv) repurchase the affected Products less depreciation at the rate of twenty-five percent (25%) per year, or *pro rata* for the part of the year, from the date of payment to the date of removal of the Products. Further, if as a result of a Claim a court of competent jurisdiction issues a final injunction (which has not been appealed) against Your use of any part of the Products, then Sourcefire will, at its sole option, perform one of the remedy options listed in this Section 13.2. In either case, if Sourcefire selects option (ii), (iii) or (iv) listed in this Section 13.2, You shall immediately refrain from use of the allegedly infringing Products.

13.2. Sourcefire shall have no indemnification obligation or liability for any Claim to the extent that it arises out of or relates to: (i) Your use of the Products after Sourcefire notifies You to discontinue use due to a Claim; (ii) the combination of the Sourcefire Products with a non-Sourcefire application, product, data or business process; (iii) damages attributable to a non-Sourcefire application, product, data or business process; (iv) modifications to the Products made other than by Sourcefire; (v) changes made by Sourcefire on behalf of You; (vi) continued use of the Products for which Sourcefire has provided You with modifications or substitute Products if use of such modifications or substitute Products would have prevented the Claim; or (vii) use of the Products in a manner prohibited under this Agreement.

13.3. THE PROVISIONS OF THIS SECTION 13 SET FORTH SOURCEFIRE'S SOLE AND EXCLUSIVE OBLIGATIONS, AND YOUR SOLE AND EXCLUSIVE REMEDIES, WITH RESPECT TO INFRINGEMENT, VIOLATION OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS OF ANY KIND. IN NO EVENT SHALL SOURCEFIRE'S LIABILITY TO YOU UNDER SECTION 13 EXCEED THE AMOUNT OF THE FEES PAID BY YOU FOR THE SOURCEFIRE PRODUCT THAT IS THE SUBJECT OF SUCH CLAIM.

#### **14. VERIFICATION**

You agree that Sourcefire or its designee shall have the right to periodically conduct on-site audits of Your use of the Products for the Sourcefire EULA v53 Network Security Products

limited purpose of verifying that You are in compliance with Your obligations under this Agreement and have paid all applicable fees, provided that Sourcefire coordinates such activity with You and complies with Your security requirements. These audits will be conducted during regular business hours, and Sourcefire will make reasonable efforts to minimize interference with Your regular business activities. Alternatively, Sourcefire may request that You complete a self-audit questionnaire in a form provided by Sourcefire. If an audit or such questionnaire reveals unlicensed use of the Products,

#### **15. EXPORT; RE-EXPORT**

The Products are subject to export controls under the Laws of the United States and other countries. You shall comply with all such Laws governing export, re-export, transfer and use of the Products and will obtain all required U.S. and local authorizations, permits and licenses. Sourcefire assumes no responsibility or liability for Your failure to obtain such necessary authorizations, permits and licenses. Information regarding U.S. export laws can be found at [www.bis.doc.gov](http://www.bis.doc.gov). You agree not to use or transfer the Products for any use relating to the operation of nuclear facilities, chemical or biological weapons, or missile technology, unless authorized by the U.S. Government by regulation or specific written license.

#### **16. U.S. GOVERNMENT END USERS**

The Licensed Materials, information and data provided under this Agreement are prepared entirely at private expense and are "Commercial Items" as that term is defined in 48 C.F.R. 2.101. If you are an agency, department, or other entity of the United States Government, or funded in whole or in part by the United States Government, then your use, duplication, reproduction, release, modification, disclosure or transfer of this commercial product and data, is restricted in accordance with 48 C.F.R. §12.211, 48 C.F.R. §12.212, 48 C.F.R. §227.7102-2, and 48 C.F.R. §227.7202, as applicable. Consistent with 48 C.F.R. §12.211, 48 C.F.R. §12.212, 48 C.F.R. §227.7102-1 through 48 C.F.R. §227.71023, and 48 C.F.R. §§227.7202-1 through 227.7202-4, as applicable, this commercial product and data are licensed to U.S. Government end users (i) only as Commercial Items, and (ii) with only those rights as are granted to all other users pursuant to the Sourcefire's standard end user license agreement. In case of conflict between any of the FAR and DFARS provisions listed herein and this Agreement, the construction that provides greater limitations on the U.S. Government's rights shall control. For purpose of any public disclosure provision under any federal, state or local law, it is agreed that this commercial product and data are a trade secret and proprietary commercial products and not subject to disclosure.

#### **17. FREE SOFTWARE**

You acknowledge and agree that while certain open source code Third Party Products are made available to You hereunder for free for use in combination with the Sourcefire Products, the terms and conditions under which such Third Party Products are being made available to You are

as set forth in their respective third party agreements (the "Third Party Agreements"), and that this Agreement in no way supplements or detracts from any term or condition of such Third Party Agreements. Sourcefire is not giving any warranties for these Third Party Products and Your use of these Third Party Products will be subject solely to such Third Party Agreements. A listing of these Third Party Products, including the applicable Third Party Agreements and other applicable disclosures, is available in the Documentation. You may obtain the source code to such open source code software in accordance with the directions set forth in the Documentation.

#### **18. EVALUATION PRODUCTS**

If You have been provided Products on an evaluation-only basis or beta-release basis (each, "Evaluation Products") to evaluate their suitability for

purchase and/or licensing on a for-fee basis (as the case may be, for "Evaluation"), You acknowledge and agree that the evaluation license key(s)

for these Evaluation Products will be set with a set expiration date (the "Expiration Date"), pursuant to which upon activation of the Evaluation Products, You may use the Evaluation Products through the Expiration Date (the "Evaluation Period") solely for their Evaluation. All Evaluation Products are provided to You "AS IS" without warranty of any kind, whether express, implied, statutory, or otherwise, and the limited warranties

referenced in Section 10 and the indemnification obligations referenced in Section 13 above will not be applicable to Your use of the Evaluation Products. Sourcefire bears no liability for any damages resulting from use (or attempted use) of the Evaluation Products.

#### **19. COLLECTION OF DATA**

Sourcefire hereby informs You that the Products use data collection technology to collect and analyze certain information about Your network and endpoints including, but not limited to, the IP addresses of Your endpoints, other information which may contain personally identifiable information and the metadata of certain executable files in order to (i) identify malware on Your network and endpoints; (ii) provide support and related services to You regarding Your use of the Products; and (iii) improve Sourcefire's products. You do have the ability to configure the Products to limit some of the data that can be collected. Except as provided by law, You grant Sourcefire a perpetual right and license to use the information and data made available by You via the Products in order to attempt to prevent malware from running on Your network and endpoints, to conduct related analysis and provide support and for product improvement purposes.

Sourcefire may engage other companies and individuals to perform functions on its behalf, such as payment processing, order fulfillment, marketing programs and customer service so Sourcefire may share such information with such subcontractors in order to perform these functions, but such subcontractors may not use Your personal information for other purposes, unless You agree.

#### **20. GOVERNING LAW**

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

The Parties specifically disclaim the application of the UN Convention on Contracts for the International Sale of Goods. If any portion hereof is found to be void or unenforceable, the remaining provisions of the Agreement and Warranties shall remain in full force and effect. Except as expressly provided herein, the Agreement constitutes the entire agreement between the Parties with respect to the license of the Licensed Materials and supersedes any conflicting prior oral or written communications or additional terms contained in any purchase order or elsewhere, all of which terms are excluded. The Agreement has been written in the English language, and the parties agree that the English version will govern.

#### **21. ASSIGNMENT**

You may not assign or otherwise transfer this Agreement or the license rights granted hereunder without Sourcefire's prior written consent. Notwithstanding the foregoing, You may assign this Agreement if a majority of Your outstanding voting capital stock is sold to a third party, or if You sell all or substantially all of Your assets or if You otherwise undergo a change of control, provided, that, in such instance such assignment will not become effective until You provide Sourcefire written notice of such event.

#### **22. TERM; TERMINATION**

The subscription term is subject to the termination provisions under the GSA Schedule contract and Federal Acquisition Regulations You agree that, upon such termination, You will cease using the Licensed Materials and either destroy or return all copies thereof.

#### **23. GENERAL**

Neither Party shall be liable for any delay or failure due to a force majeure event and other causes beyond its reasonable control, provided, however, this provision shall not apply to Your payment obligations. Any notices under this Agreement to Sourcefire will be personally delivered or sent by certified or registered mail, return receipt requested, or by nationally recognized overnight express courier, to 9770 Patuxent Woods Drive, Columbia, Maryland U.S.A. 21046, or such other address as Sourcefire may specify in writing. Such notices will be effective upon receipt, which may be shown by confirmation of delivery. All notices to Sourcefire shall be sent to the attention of General Counsel (unless otherwise specified by Sourcefire). Amendments or changes to this Agreement must be in mutually executed writings to be effective. Sections 1-2, 5-6, 8-12 and 14-23, including all warranty disclaimers and use restrictions, shall survive the termination or expiration of this Agreement. The Parties are independent contractors for all purposes under this Agreement.

[END OF AGREEMENT]

**AGREEMENT (Government Customers – GSAMultiple Award Schedule Contract)**

This agreement (“Agreement”) is entered into effective as of \_\_\_\_\_, 20\_\_, (the “Effective Date”) between Cisco Systems, Inc., on behalf of itself and for the benefit of its affiliates, including, without limitation, Duo Security, Inc., a Delaware corporation with a registered address at 123 N. Ashley Street, Ann Arbor, MI 48104 (“Duo Security”), and the Federal Customer purchasing from the GSA Multiple Award Schedule (MSA) contract (“Customer”). This Agreement, including the Terms and Conditions containing, among other things, warranty disclaimers, liability limitations and use limitations, includes and is effective for the Order Form and any subsequent renewals, purchase orders or Order Forms (submitted in written or electronic form) related to Customer’s subscribing to the Services unless different or additional terms are expressly agreed to in writing and signed by both parties. There will be no force or effect given to any different or additional terms contained in any purchase order or similar form issued by either party, even if signed by the parties unless such terms are included in an amendment in accordance with the terms of Section 14.3 of this Agreement. Each party’s acceptance of this Agreement was and is expressly conditional upon the other’s acceptance of the terms contained in this Agreement to the exclusion of all other terms. Capitalized terms shall have the meanings ascribed to them in the Terms and Conditions.

**TERMS AND CONDITIONS**

**1. DEFINITIONS**

1.1 “Customer” means the U.S. Government customer that has placed an order with for the Services and thereby signed up for the Services and agreed to the terms of this Agreement under the GSA MAS contract. The Department of Veterans Affairs shall not be a Customer and cannot purchase from Duo Security under the GSA MAS contract.

1.2 “Customer Data” means any information or data about Customer or Users (and its and their staff, customers or suppliers, as applicable), that is supplied to Duo Security by or on behalf of Customer or any User in connection with the Services, or which Duo Security is required to access, generate, process, store or transmit pursuant to this Agreement, including (but without limitation) information about Customer’s and Users’ respective devices, computers and use of the Services.

1.3 “Customer Personal Data” means any Customer Data that is personal data (as defined under the DPA).

1.4 “Data Protection Laws” means the DPA, EC Directive 95/46/EEC, EC Directive 2002/58/EC, the UK Privacy and Electronic Communications (EC Directive) Regulations 2003 and any other applicable data protection laws, regulations and legally binding codes of practice from time to time in force applicable to the performance of a party's obligations under this Agreement.

1.5 “Documentation” means guides, instructions, policies and reference materials provided to Customer by Duo Security in connection with the Services, including the documentation located at <https://www.duosecurity.com/docs>, which may be amended from time to time.

1.6 “DPA” means the UK Data Protection Act of 1998.

1.7 “Duo Mobile Software” means all Duo Security proprietary mobile applications (available on iPhone, Android, Palm, Blackberry, Windows Mobile and other supported mobile devices) used in providing the Services, and any updates, fixes and/or patches developed from time to time.

1.8 “Fees” means the applicable fees as set forth on the Order Form.

1.9 “Hardware Tokens” mean hardware security tokens purchased by Customer under an Order Form. 2

1.10 "Integration Software" means (a) Duo Security proprietary software and (b) open source software used in providing the Services which integrates with Customer's network or application, including SSL or other VPN, Unix operating system, Microsoft application, and/or web application, as provided in the Documentation and any updates, fixes and/or patches developed from time to time.

1.11 "Intellectual Property Rights" means all patents, registered designs, unregistered designs, design rights, utility models, semiconductor topography rights, database rights, copyright and other similar statutory rights, trade mark, service mark and any know how relating to algorithms, drawings, tests, reports and procedures, models, manuals, formulae, methods, processes and the like (including applications for any of the preceding rights) or any other intellectual or industrial property rights of whatever nature in each case in any part of the world and whether or not registered or registerable, for the full period and all extensions and renewals where applicable.

1.12 "Order Form(s)" means the order forms through which the Government customer purchases the Duo Security Services from Duo Security under the GSA MAS contract for the initial order for the Service, and any subsequent order forms issued to Duo Security, specifying, among other things, the maximum number of Users, the initial Term, the purchase of any Hardware Tokens, the Fees, telephony credits (if any), and such other charges and terms as agreed between the parties.

1.13 "Performance Data" means data with respect to usage and other aggregate measures of the Services' performance that Duo Security may collect from time to time.

1.14 "Services" means the products and services that are ordered by and/or made available to Customer under a free trial or an Order Form (including, where applicable, the Software, Hardware Tokens and services using only the Duo Mobile Software) and made available online by Duo Security, including associated offline components, as described in the Documentation.

1.15 "Service Level Agreement" or "SLA" means the description of support provided to Customers and its Users and of the availability of the Services attached to this document as Appendix A.

1.16 "Software" means the Integration Software and Duo Mobile Software.

1.17 "Telephony Credits" mean credits for Customer's Users to provide authentication by telephone or SMS.

1.18 "Term" means the subscription term indicated on the Order Form and any subsequent renewal terms.

1.19 "User" means any user of the Services who Customer may authorize to enroll to use the Services under the terms of this Agreement.

## **2. SERVICES FOR CUSTOMER; DUO SECURITY OBLIGATIONS**

2.1 Subject to and conditioned on the GSA MAS Contractor's receipt of payment of the Fees and in any event, subject to full compliance with all other terms and conditions of this Agreement, Duo Security grants Customer and Users a non-exclusive, non-sublicensable, non-transferrable license to access and use the Services, along with such Documentation as Duo Security may make available during the Term.

2.2 The Services and SLA are subject to modification from time to time at Duo Security's sole discretion, provided the modifications do not materially diminish the functionality of the Services provided by Duo Security and the Services continue to perform according to the description of the Services specified in Section 2.3 in all material aspects. Customer shall have the right to terminate the Agreement pursuant to Section 10.2 without any penalty if (i) a material modification to the Services or the SLA is made which materially diminishes the functionality of the Services or materially diminishes the SLA, (ii) Duo Security has not obtained Customer's consent for such modifications and (iii) Duo Security does not provide a remedy in the cure period stated in Section 10.2.

2.3 Duo Security will make the Services available and the Services will perform substantially in accordance with the description of the services found at <http://www.duosecurity.com/editions>. Notwithstanding the foregoing, Duo Security reserves the right to suspend Customer's (or any of its Users') access to the Services: (i) for scheduled or emergency maintenance, or (ii) as it deems reasonably necessary to respond to any actual or potential security concerns.

2.4 Subject to full compliance with the terms and conditions of this Agreement, Duo Security will use commercially reasonable efforts to provide support to Customer as described in the Service Level Agreement. In the event that Customer earns 15 days of service credits, determined in accordance with the terms of the Service Level Agreement, in each of three consecutive months, Customer may notify Duo Security of its intention to terminate the Services and may terminate its Agreement with Duo Security for the provision of the Services to Customer and, as the sole and exclusive remedy, Customer will receive a refund of any pre-paid subscription Fees paid for Services not rendered as of the termination date. 3

2.5 Duo Security collects certain information about Customer and its Users as well as their respective devices, computers and use of the Services. Duo Security uses, discloses and protects this information as described in this Agreement and Duo Security's Privacy Policy (the "Privacy Policy") dated March 24, 2016, attached to this document as Appendix B.

### **3. CUSTOMER RESPONSIBILITIES**

3.1 Customer may only use the Services in accordance with the Documentation and as explicitly set forth in this Agreement. Customer will cooperate with Duo Security in connection with the performance of this Agreement as may be necessary, which may include making available such personnel and information as may be reasonably required to provide the Services or support. Customer is solely responsible for determining whether the Services are sufficient for its purposes, including but not limited to, whether the Services satisfy Customer's legal and/or regulatory requirements.

3.2 Use of the Services may require Users to install Duo Mobile Software on their mobile devices. In addition, third party terms may apply with respect to third party products and software accessible via the Services and with respect to devices using third party operating systems or software or in the event that Duo Mobile Software is downloaded from third party sites (collectively, "Third Party Services"). Customer's access and use of Third Party Services is governed solely by the terms and conditions of such Third Party Services. Duo Security does not endorse, is not responsible or liable for, makes no representations or warranties and provides no indemnification with respect to any aspect of the Third Party Services, notwithstanding anything in this Agreement to the contrary. Duo Security is not liable for any damage or loss caused or alleged to be caused by or in connection with enablement, access or use of any such Third Party Services, or Customer's reliance on the privacy practices, data security processes or other policies of such Third Party Services. Duo Security does not provide customer support or assistance with respect to the Third Party Services. Users may be required to register for or log into such Third Party Services on their respective websites or apps.

3.3 Customer acknowledges that the Services will require the Users to share with Duo Security certain information for the purposes of providing the Services, such as user names, password and other login information. This information may include personal information (such as email address, and/or phone number) regarding the Users, and Duo Security will use such information for the purposes of providing the Services to Customer and Users. Prior to authorizing an individual to become a User, Customer is fully responsible for obtaining the consent of that individual, in accordance with all applicable laws, to the use of his/her information by Duo Security for purposes of providing the Services, which use shall be governed by the terms of the Privacy Policy. Customer represents and warrants that all such consents have been or will be obtained prior to authorizing any individual to become a User.

3.4 Customer will be fully responsible for Users' compliance with this Agreement. Any breach of this Agreement or such other terms by a User shall be deemed to be a breach by Customer. Customer is solely responsible for determining whether the Services are sufficient for Customer's purposes.

3.5 There will be no force or effect given to any different or additional terms contained in any purchase order or similar form issued by either party, even if signed by the parties after the date hereof unless such terms are included in an amendment in accordance with the terms of Section 14.3 of this Agreement. Each party's acceptance of this Agreement was and is expressly conditional upon the other's acceptance of the terms contained in the Agreement to the exclusion of all other terms.

### **4. RESTRICTIONS**

Customer will not, and will not permit any of its Users nor any third party to: reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas or algorithms of the Services, Software, Hardware Tokens or any data related to the Services (except to the extent such prohibition is contrary to applicable law that cannot be excluded by the agreement of the parties); modify, translate, or create derivative works based on the Services or Software; share, rent, lease, loan, resell, sublicense, distribute, use or otherwise transfer the Services or Software for timesharing or service bureau purposes or for any purpose other than its own use; or use the Services or Software other than in accordance with this Agreement and in compliance with all applicable laws and regulations (including but not limited to any European privacy laws and intellectual property laws).

### **5. PAYMENT OF FEES**

5.1 Customer will pay the GSA MAS Contractor and the GSA MAS Contractor will pay Duo Security the Fees plus all applicable sales, use and other purchase related taxes (or provide Duo Security with a valid certificate of exemption from the requirement of paying sales, use or other purchase related taxes) in accordance with the Prompt Payment Act and the Order Form. Except as otherwise indicated in the applicable Order Form, all fees and expenses shall be in U.S. dollars. Duo Security will not charge users any fees for their use of the Services or Duo Mobile



Software without Customer's authorization. Users' carriers or service providers may charge fees for data usage, messaging, phone calls or other services that are required for them to use the Services. 4

5.2 Customer's Order Form will indicate an initial allotment of Telephony Credits, if applicable. Customer may purchase additional Telephony Credits separately via the billing section of Customer's administrative interface or by contacting a sales representative. U.S. and international rates for telephony can be found at [https://www.duosecurity.com/docs/telephony\\_credits](https://www.duosecurity.com/docs/telephony_credits).

5.3 At any time during the Term, and unless otherwise agreed to in writing by the parties, any increase or overage in the maximum number of Users specified in the Order Form will be treated in accordance with this Section 5.3 (a "Subscription Upgrade"). The maximum number of Users shall be increased as follows:

For Subscription Upgrades (i) for Customers where the maximum number of Users on the Order Form is fewer than 500 Users, the maximum number of Users will be increased automatically in increments equal to 50 Users, (ii) for Customers where the maximum number of Users on the Order Form is 500 - 1000 Users, the maximum number of Users will be increased automatically in increments equal to 100 Users, and (iii) for Customers where the maximum number of Users on the Order Form is 1001 or greater, the maximum number of Users will be increased automatically in increments equal to 250 Users.

Duo Security shall invoice Customer for the increase in the maximum number of Users at the subscription rate and payment terms specified in the most recent Order Form, which will be prorated for the remainder of the then applicable subscription Term. For any future subscription Term, the number of Users and applicable Fees will reflect any Subscription Upgrades.

## 6. CONFIDENTIALITY

6.1 Each party (the "Receiving Party") understands that the other party (the "Disclosing Party") has disclosed or may disclose information relating to the Disclosing Party's technology, Users or business (hereinafter referred to as "Confidential Information" of the Disclosing Party).

6.2 The Receiving Party agrees: (i) not to disclose the Confidential Information to any third person other than those of its employees, investors and potential acquirers with a need to have access thereto and who have entered into non-disclosure and non-use agreements applicable to the Disclosing Party's Confidential Information or are subject to the Federal Trade Secrets Act (18 USC §1905), and (ii) to use such Confidential Information solely as reasonably required in connection with the Services and/or this Agreement. The Receiving Party further agrees to take the same security precautions to protect against unauthorized disclosure or unauthorized use of such Confidential Information of the Disclosing Party that the party takes with its own confidential or proprietary information, but in no event will a party apply less than commercially reasonable precautions to protect such Confidential Information. Each party acknowledges that the use of such precautions is not a guarantee against unauthorized disclosure or use. The Disclosing Party agrees that the foregoing will not apply with respect to any information that the Receiving Party can document (a) is or becomes generally available to the public without any action by, or involvement of, the Receiving Party, or (b) was in its possession without a duty of non-disclosure or known by it prior to receipt from the Disclosing Party, or (c) was rightfully disclosed to it without restriction by a third party, or (d) was independently developed without use of any Confidential Information of the Disclosing Party. Nothing in this Agreement will prevent the Receiving Party from disclosing the Confidential Information pursuant to any judicial or governmental order, provided that, to the extent permitted by law, the Receiving Party gives the Disclosing Party reasonable prior notice of such disclosure to contest such order. For the avoidance of doubt, Customer acknowledges that Duo Security utilizes the services of certain third parties in connection with the provision of the Services (such as data hosting and telephony service providers) and the provision of the Third Party Services and such third parties will have access to Customer's Confidential Information, subject to compliance with this Section 6. The parties agree that Performance Data and any other de-identified information in any form or format is not Confidential Information and will not be subject to any confidentiality restrictions or obligations.

6.3 Customer acknowledges that Duo Security does not wish to receive any Confidential Information from Customer that is not necessary for Duo Security to perform its obligations under this Agreement, and, unless the parties specifically agree otherwise, Duo Security may reasonably presume that any unrelated information received from Customer is not confidential or Confidential Information, unless such information is marked as "Confidential".

## 7. INTELLECTUAL PROPERTY RIGHTS; OWNERSHIP

Except as expressly set forth herein, Duo Security alone (and its licensors, where applicable) will retain all Intellectual Property Rights relating to the Services or the Software or any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by Customer or any third party relating to the Services and/or the Software, which are hereby assigned to Duo Security. Customer will not copy, distribute, reproduce or use any of the foregoing except as expressly permitted under this Agreement. As between the parties, Duo Security will own all Performance Data, all other forms of aggregated information, and all de-identified data relating to any User and/or the Services. This Agreement is not a sale and does not convey to Customer any rights of ownership in or related to the Services or Software, or any Intellectual Property Rights.

**US Government Rights.** The Services and Software are “commercial items” as that term is defined at FAR 2.101.  
If Customer is the 5

US Federal Government (Government) Executive Agency (as defined in FAR 2.101), Duo Security provides the Services and Software, including any related technical data, and/or professional services in accordance with the following: If acquired by or on behalf of any Executive Agency (other than an agency within the Department of Defense (DoD), the Government acquires, in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Computer Software), only those rights in technical data and software customarily provided to the public as defined in this Agreement. If acquired by or on behalf of any Executive Agency within the DoD, the Government acquires, in accordance with DFARS 227.7202-3 (Rights in commercial computer software or commercial computer software documentation), only those rights in technical data and software customarily provided in this Agreement. In addition, DFARS 252.227-7015 (Technical Data – Commercial Items) applies to technical data acquired by DoD agencies. Any Federal Legislative or Judicial Agency shall obtain only those rights in technical data and software customarily provided to the public as defined in this Agreement. If any Federal Executive, Legislative, or Judicial Agency has a need for rights not conveyed under the terms described in this Section, it must negotiate with Duo Security to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written addendum specifically conveying such rights must be included in any applicable contract or agreement to be effective. If this Agreement fails to meet the Government's needs or is inconsistent in any way with Federal law, and the parties cannot reach a mutual agreement on terms for this Agreement, the Government agrees to terminate its use of the Services and return the Software, unused, to Duo Security. This U.S. Government Rights clause in this Section is in lieu of, and supersedes, any other FAR, DFARS, or other clause, provision, or supplemental regulation that addresses Government rights in computer software or technical data under this Agreement.

## **8. DATA PROTECTION**

8.1 In this Section 8, the terms “personal data”, “data processor”, “data subject”, “process and processing” and “data controller” shall be as defined in the DPA.

8.2 For the purposes of the Data Protection Laws, as between Customer and Duo Security, the parties agree that Customer shall at all times be the data controller and Duo Security shall be the data processor with respect to the processing of Customer Personal Data in connection with this Agreement.

8.3 By entering into this Agreement, Customer agrees that Duo Security may collect, retain and use certain Customer Personal Data (which may include, without limitation, names, mobile telephone numbers, IP addresses and email addresses of Users) in connection with the Services. As the data controller of such Customer Personal Data, Customer shall be responsible for ensuring that, and warrants and represents to Duo Security that it shall ensure that any processing of Customer Personal Data in connection with the Services shall comply with the Data Protection Laws. This shall include (without limitation) ensuring that Customer: (a) has given adequate notice and made all appropriate disclosures to the data subjects regarding Customer's and/or Duo Security's use and disclosure of Customer Personal Data, including (but without limitation) for the provision of the Services; and (b) has and/or obtains all necessary rights, and where applicable, all appropriate and valid consents from the data subjects to share such personal data with Duo Security and to permit use of Customer Personal Data by Duo Security for the purposes of the provision of the Services and performing its obligations under this Agreement or as may be required by applicable law (“Purpose”), including (but without limitation) notifying the data subject of the transfer of Customer Data outside of the European Economic Area to countries whose laws they have acknowledged may provide a lower standard of data protection than exists in the European Economic Area (“EEA”).

8.4 At the request of Customer, Duo Security and Customer shall negotiate a separate data processing agreement, setting forth each Party's obligations in respect of any processing of Customer Personal Data, which agreement will be incorporated herein by reference once executed by the Parties.

8.5 Customer acknowledges that Duo Security is reliant on Customer for direction as to the extent to which Duo Security is entitled to use and process Customer Data. Consequently, Duo Security will not be liable for any claim brought by a data subject to the extent that such action or omission resulted directly from Customer's instructions. Customer undertakes to comply in all respects with any applicable laws, regulations, standards and guidelines applicable to personal data and shall use all reasonable endeavors to where possible anonymize personal data sent to Duo Security.

## **9. INDEMNIFICATION.**

For Customers enrolled in one of the editions of Services requiring purchase, Duo Security shall indemnify and hold Customer harmless from liability to third parties resulting from infringement by the Services of any United States or United Kingdom patent or any copyright or misappropriation of any trade secret, provided Duo Security is promptly notified of any and all threats, claims and proceedings related thereto and given reasonable assistance and the opportunity (subject to the requirements of 28 USC §516, if applicable) to assume sole control over defense and settlement; Duo Security will not be responsible for any settlement it does not approve. The foregoing obligations do

not apply with respect to portions or components of the Services (i) not created by Duo Security, (ii) resulting in whole or in part from Customer specifications, (iii) that are modified after delivery by Duo Security, 6

(iv) combined with other products, processes or materials where the alleged infringement relates to such combination, (v) where Customer continues allegedly infringing activity after being notified thereof or after being informed of modifications that would have avoided the alleged infringement, or (vi) where Customer's use of Services is not strictly in accordance with this Agreement and all related Documentation. If Duo Security receives information about an actual or alleged infringement or misappropriation claim that would be subject to indemnification rights set forth in this Section 9, Duo Security shall have the option, at its expense, to (i) modify the Software to be non-infringing; or (ii) obtain for Customer a license to continue using the Software. If Duo Security determines it is not commercially reasonable to perform either of the above options, then Duo Security may at its option elect to terminate the license for the Services and refund the unearned portion of any pre-paid subscription Fees, pro-rated on a monthly basis. THIS SECTION STATES CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR INFRINGEMENT, MISAPPROPRIATION AND/OR CLAIMS ALLEGING INFRINGEMENT OR MISAPPROPRIATION.

#### **10. TERM; TERMINATION**

10.1 Subject to earlier termination as expressly provided for in this Agreement, the initial Term of this Agreement shall be for the Term specified in the Order Form, or in the event of multiple Order Forms, until the Term of all Order Forms has expired. Each Order Form and this Agreement shall terminate upon expiration or termination in accordance with this Section 10 unless Customer provides at least forty-five (45) days prior written notice to Duo Security that it wishes to renew by placing an order directly with Duo Security or renews the Services through GSA MAS contract. The Fees per User for each renewal Term will be in accordance with the GSA MAS contract or, if renewed directly with Duo Security, equal to the Fees per User for the immediately prior Term plus a price increase to be agreed upon by Duo Security and Customer. Any pricing increase will not exceed seven percent (7%) per year, unless the pricing was designated in the applicable Order Form as promotional or one-time; provided, however, the Fees for each renewal Term shall not exceed the list price as of the start date of such renewal Term.

10.2 In the event of any material breach of this Agreement, the GSA MAS Contractor, on behalf of Duo Security, shall pursue its rights under the Contract Disputes Act or other applicable Federal statute while continuing performance as set forth in GSAR 552.212-4(d).

10.3 The Sections of this Agreement which by their nature should survive termination or expiration of this Agreement, including but not limited to Sections 3.1 and 4 through 14 (inclusive), will survive termination or expiration of this Agreement. No refund of Fees shall be due in any amount on account of termination by Duo Security pursuant to this Section 10. In the event of termination by Customer pursuant to this Section 10, Customer shall be entitled as its sole and exclusive remedy, to receive a refund of any pre-paid subscription Fees paid by Customer to Duo Security for Services not rendered as of the termination date. When this Agreement expires or terminates, Duo Security shall cease providing the Service to Customer.

#### **11. WARRANTIES AND DISCLAIMER OF ADDITIONAL WARRANTIES**

11.1 For Customers enrolled in one of the editions of Services requiring purchase, Duo Security represents and warrants that it will not knowingly include, in any Duo Security software released to Users and provided to Customer hereunder, any computer code or other computer instructions, devices or techniques, including without limitation those known as disabling devices, trojans, or time bombs, that intentionally disrupt, disable, harm, infect, defraud, damage, or otherwise impede in any manner, the operation of a network, computer program or computer system or any component thereof, including its security or User data. If, at any time, Duo Security fails to comply with the warranty in this Section 11.1, Customer may promptly notify Duo Security in writing of any such noncompliance. Duo Security will, within thirty (30) days of receipt of such written notification, either correct the noncompliance or provide Customer with a plan for correcting the noncompliance. If the noncompliance is not corrected or if a reasonably acceptable plan for correcting them is not established during such period, Customer may terminate this Agreement and receive a refund of any pre-paid but unearned subscription Fees, pro-rated on a monthly basis, as its sole and exclusive remedy for such noncompliance.

11.2 For Customers that have purchased Hardware Tokens as part of the Services, Duo Security warrants to Customer only that Hardware Tokens will be free of defects in material and workmanship at the time of sale and for a period of six (6) months thereafter. This limited warranty is limited to replacement of defective Hardware Tokens. This limited Hardware Token warranty is Customer's exclusive remedy for defective Hardware Tokens.

11.3 EXCEPT FOR THE EXPRESS WARRANTIES PROVIDED IN THIS SECTION 11, THE SERVICES AND DUO SECURITY CONFIDENTIAL INFORMATION AND ANYTHING PROVIDED IN CONNECTION WITH THIS AGREEMENT ARE PROVIDED "AS-IS," WITHOUT ANY WARRANTIES OF ANY KIND. DUO SECURITY HEREBY DISCLAIMS FOR ITSELF AND ITS SUPPLIERS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES, TERMS OR

CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PURPOSE OR A PARTICULAR PURPOSE,  
SATISFACTORY QUALITY, TITLE, AND NON-INFRINGEMENT.  
**12. LIMITATION OF LIABILITY** 7

12.1 NOTHING IN THIS AGREEMENT (OR ANY ORDER FORM) SHALL LIMIT OR EXCLUDE EITHER PARTY'S LIABILITY FOR (A) DEATH OR PERSONAL INJURY CAUSED BY ITS NEGLIGENCE, OR THE NEGLIGENCE OF ITS EMPLOYEES, AGENTS OR SUBCONTRACTORS; (B) FRAUD OR FRAUDULENT MISREPRESENTATION; OR (C) ANY OTHER LIABILITY THAT CANNOT BE EXCLUDED OR LIMITED BY LAW.

12.2 SUBJECT TO SECTION 12.1, IN NO EVENT WILL DUO SECURITY OR ITS SUPPLIERS BE LIABLE TO CUSTOMER (OR ANY PERSON CLAIMING UNDER OR THROUGH CUSTOMER) FOR ANY INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE USE OF THE SERVICES OR ANYTHING PROVIDED IN CONNECTION WITH THIS AGREEMENT, THE DELAY OR INABILITY TO USE THE SERVICES OR ANYTHING PROVIDED IN CONNECTION WITH THIS AGREEMENT OR OTHERWISE ARISING FROM THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, (I) LOSS OF REVENUE OR ANTICIPATED PROFITS (WHETHER DIRECT OR INDIRECT) OR (II) LOST BUSINESS OR (III) LOST SALES, WHETHER BASED IN CONTRACT, TORT (INCLUDING ACTIVE AND PASSIVE NEGLIGENCE AND STRICT LIABILITY) BREACH OF STATUTORY DUTY OR OTHERWISE, EVEN IF DUO SECURITY HAS BEEN ADVISED OF THE POSSIBILITY OF DAMAGES.

12.3 SUBJECT TO SECTION 12.1, THE TOTAL LIABILITY OF DUO SECURITY FOR ANY CLAIM, WHETHER BASED IN CONTRACT, TORT (INCLUDING ACTIVE AND PASSIVE NEGLIGENCE AND STRICT LIABILITY) OR OTHERWISE, WILL NOT EXCEED, IN THE AGGREGATE, THE FEES PAID OR TO BE PAID TO DUO SECURITY HEREUNDER IN THE TWELVE MONTH PERIOD ENDING ON THE DATE THAT SUCH CLAIM IS FIRST ASSERTED, PROVIDED, HOWEVER THAT THE MAXIMUM LIABILITY OF DUO SECURITY FOR ALL CLAIMS SHALL BE THE THEN CURRENT ANNUALIZED VALUE OF THE APPLICABLE ORDER FORM. THE FOREGOING LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

### **13. U.S. GOVERNMENT MATTERS**

Notwithstanding anything else, Customer may not provide to any person or export or re-export or allow the export or re-export of the Services or any software or anything related thereto or any direct product thereof, in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign agency or authority.

### **14. MISCELLANEOUS**

14.1 Severability. If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable.

14.2 Assignment. This Agreement is not assignable, transferable or sublicensable by either party except with the other party's prior written consent, which shall not be unreasonably withheld. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective permitted successors and permitted assigns.

14.3 Entire Agreement; Amendment. Both parties agree that this Agreement and the GSA MAS Contract into which the Agreement is incorporated is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement, and that all waivers, amendments and modifications must be in a writing signed by both parties and specifically reference the provision of this Agreement being waived, amended or modified, except as otherwise provided herein. No agency, partnership, joint venture, or employment is created as a result of this Agreement and Customer does not have any authority of any kind to bind Duo Security in any respect whatsoever.

14.4 Notices. All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; and upon receipt, if sent by certified or registered mail (return receipt requested), postage prepaid. Duo Security may provide notice using the information provided in the most recent Order Form and Customer may provide notice using the contact information provided on [duosecurity.com](http://duosecurity.com).

14.5 Force Majeure. Any delay or failure in the performance of any duties or obligations of either party (except the payment of money owed) will not be considered a breach of this Agreement if such delay or failure is due to a labor dispute, fire, earthquake, flood or any other event beyond the reasonable control of a party, provided that such party promptly notifies the other party thereof and uses reasonable efforts to resume performance as soon as possible.

14.6 Governing Law; Arbitration. This Agreement will be governed by the Federal law. 8



14.7 Publicity. Upon the Customer's prior written consent, Duo Security may mention Customer's name in press announcements, case studies, trade shows, or other marketing or advertising materials. 9

Appendix A  
Service Level Agreement

**Duo Security SLA** During the term of your Duo Security license (the “Agreement”, the Duo web admin interface and web services will be operational and available to Customer at least 99.9% of the time in any calendar month (the “Duo Security SLA”). If Duo Security does not meet the Duo Security SLA, and if Customer meets its obligations under this Duo Security SLA, Customer will be eligible to receive the Service Credits described below. This Duo Security SLA states Customer’s sole and exclusive remedy for any failure by Duo Security to meet the Duo Security SLA.

**Definitions** The following definitions shall apply to the Duo Security SLA.

- “Downtime” means when there is more than a five percent user error rate across all of a Customer’s users. Downtime is measured based on server side error rate.
- “Service” means the Duo Security multifactor authentication service.
- “Monthly Uptime Percentage” means total number of minutes in a calendar month minus the number of minutes of Downtime suffered in a calendar month, divided by the total number of minutes in a calendar month.
- “Service Credit” means the number of days of Service to be added to the end of the Service term, at no charge to Customer calculated as follows:

Uptime	Days Credited
< 99.9% - ≤ 99.0%	3
< 99.0% - ≤ 95.0%	7
< 95.0%	15

# DELL EULA



## Dell Enterprise License Agreement

- 1. General.** This Enterprise License Agreement ("ELA") sets forth the legal agreement between \_\_\_\_\_ and its affiliates who are legally bound by these terms ("Customer") and Dell Products L.P. or Dell Global B.V. (Singapore Branch) on behalf of Dell Inc. and its worldwide affiliates ("Company"). Customer and Dell are each referred to individually as a "party" and collectively as the "parties." The "Software" shall mean collectively the software program described in Exhibit A, the associated media, printed materials, online or electronic documentation, and any copies thereof. Customer acknowledges and agrees that the license provided herein is being granted in consideration of the payment required under Exhibit A. Whenever the Customer is the U.S. Federal Government, or any prime contractor or subcontractor (at any tier) under any contract, grant, cooperative agreement, or other activity with the U.S. Federal Government, the terms and conditions with respect to Customer's use and disclosure of the Software and Documentation shall be set forth in an attached Exhibit B.
- 2. License.** Subject to the terms, conditions and limitations of this ELA and timely payment by Customer of the amounts due under Exhibit A, Dell hereby grants Customer a limited, nonexclusive, nontransferable, non-assignable license, without rights to sublicense, to (A) install or have installed, display and use the Software (in object code only) only on as many computers, devices and/or in such configurations as Customer is expressly entitled under Exhibit A, and (B) only for such period as Customer are entitled under Exhibit A. The terms and conditions of this ELA will govern use of the Software and any upgrades, updates, patches, hotfixes and/or additional versions of the Software provided by Dell, at Dell's sole discretion, that replace and/or supplement the original Software (collectively, "Update"), unless such Update is accompanied by or references a separate license agreement, in which case the terms and conditions of that agreement will govern. If this ELA governs Customer's use of an Update, such Update shall be considered Software for purposes of this ELA. Unless earlier terminated as provided herein, the term of each individual license granted under this ELA begins on the date of execution by Customer of this ELA, and continues only for such period as indicated in Exhibit A. Each party recognizes that Dell grants no licenses except for the license expressly set forth herein.
- 3. License Limitations.** Customer may not copy the Software except for a reasonable number of copies solely as needed for backup or archival purposes or as otherwise expressly permitted in in Section 2 "License" above. Customer may not modify or remove any titles, trademarks or trade names, copyright notices, legends, or other proprietary notices or markings on or in the Software. The rights granted herein are limited to Dell's and its licensors' and suppliers' intellectual property rights in the Software and do not include any other third party's intellectual property rights. If the software was provided to Customer on removable media (e.g., CD, DVD, or USB drive), Customer may own the media on which the Software is recorded but Dell, Dell's licensor(s) and/or supplier(s) retain ownership of the Software itself and all related intellectual property rights. Customer is not granted any rights to any trademarks or service marks of Dell. This ELA does not apply to any third party software that is not included as part of the Software or addressed in Exhibit A. The use of any other software, including any software package or file, whether licensed to Customer by Dell or by a third party, is subject to the terms and conditions that come with or are associate with such software.
- 4. Rights Reserved.** THE SOFTWARE IS LICENSED, NOT SOLD. Except for the license expressly granted in this ELA, Dell, on behalf of itself and its licensors and suppliers, retains all right, title, and interest in and to the Software and in all related content, materials, copyrights, trade secrets, patents, trademarks, derivative works and any other intellectual and industrial property and proprietary rights, including registrations, applications, renewals, and extensions of such rights (the "Works"). The rights in these Works are valid and protected in all forms, media and technologies existing now or hereinafter developed and any use other than as contemplated herein, including the reproduction, modification, distribution, transmission, adaptations, translation, display, republication or performance of the Works, except as specifically permitted herein, is strictly prohibited. Dell, on behalf of itself and its licensors and suppliers, retains all rights not expressly granted herein.
- 5. Restrictions.** Except as otherwise provided herein or expressly agreed by Dell, Customer may not, and will not allow a third party to: (A) sell, lease, license, sublicense, assign, distribute or otherwise transfer or encumber in whole or in part the Software; (B) provide, make available to, or permit use of the Software in whole or in part by, any third party, including contractors, without Dell's prior written consent, unless such use by the third party is subject to the terms and conditions of this ELA and Customer is liable for any breach of this ELA by such third party; (C) copy, reproduce, republish, upload, post, transmit or distribute the Software in any way; (D) decompile, disassemble, reverse engineer, or otherwise attempt to derive source code (or underlying ideas, algorithms, structure or organization) from the Software program, in whole or in part; (E) modify or create derivative works based upon the Software; (F) use the Software on a service bureau, rental or managed services basis or permit other individuals or entities to create Internet "links" to the Software or "frame" or "mirror" the Software on any other server or wireless or Internet-based device; or (G) use the Software to create a competitive offering. Customer may not, and will not allow a third party to, use the Software program in excess of the number of licenses expressly authorized by Exhibit A. In addition, Customer may not share the results of any benchmarking activities without Dell's prior written consent.
- 6. Compliance.** Customer will certify in writing, upon reasonable request by Dell, Customer's compliance with the terms of this ELA, indicating the number of Software licenses deployed at that time. Customer grants Dell or an agent selected by Dell, the right to perform an audit of Customer's compliance with this ELA during normal business hours. Customer agrees to cooperate and provide Dell with all records reasonably related to Customer's compliance with this ELA. If, as a result of the audit, a deficiency of greater than five percent (5%) is found in the licensee fees paid, then Customer shall bear the total cost of the audit, in addition to any other liabilities Customer may have.
- 7. Support and Subscription Services Not Included.** Dell does not provide any maintenance or support services under this ELA. Maintenance and support services, if any, are provided under a separate agreement. Additionally, this ELA, in and of itself, does not entitle Customer to any Updates at any time in the future.
- 8. Termination.** Dell may terminate this ELA immediately and without prior notice if Customer fails to comply with any term or condition of this ELA or if Customer fails to timely pay for the licenses to the Software. In addition, Dell may terminate any license associated with Software distributed for free at any time in its sole discretion. In the event of termination of this ELA, all licenses granted hereunder shall automatically terminate and Customer must immediately cease use of the Software and return or destroy all copies of the Software. The parties recognize and agree that their obligations under Sections 4, 5, 11, 12, 13, 15, 16, 18 and 19 of this ELA, as well as obligations for payment, survive the cancellation, termination, and/or expiration of this ELA and/or the license granted hereunder.
- 9. Export, Import and Government Restrictions.** Customer is advised that the Software is subject to U.S. export laws as well as the laws of the country where it is delivered or used. Customer agrees to abide by these laws. Under these laws, the Software may

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not be sold, leased, or transferred to restricted countries (currently Cuba, Iran, North Korea, Sudan and Syria), restricted end-users, or for restricted end-uses. Customer specifically agrees that the Software will not be used for activities related to weapons of mass destruction, including but not limited to, activities related to the design, development, production or use of nuclear materials, nuclear facilities, or nuclear weapons, missiles or support of missile projects, or chemical or biological weapons. Customer understands that certain functionality of the Software, such as encryption or authentication, may be subject to import restrictions in the event Customer transfers the Software from the country of delivery and Customer is responsible for complying with applicable restrictions.

10. **Limited Warranty.** Dell has the right to grant the licenses to the Software, and such Software will substantially conform in material respects to the functional specifications and current documentation provided by Dell with the Software. This limited warranty is not transferable and extends only for thirty (30) days from the date of delivery of the Software. This limited warranty does not cover damages, defects, malfunctions or failures caused by any unauthorized modification by Customer, or Customer's agents, of the Software, any abuse, misuse or negligent acts of Customer, modification by Customer of any interfaces or any software or hardware interfacing with the Software, or any failure by Customer to follow Dell's installation, operation or maintenance instructions. EXCEPT FOR THE PRECEDING EXPRESS LIMITED WARRANTY, DELL MAKES, AND CUSTOMER RECEIVES, NO OTHER WARRANTIES RELATED TO THE SOFTWARE WHETHER EXPRESS, IMPLIED OR STATUTORY, AND DELL SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. DELL DOES NOT WARRANT THAT THE FUNCTIONS OF THE SOFTWARE WILL MEET CUSTOMER'S REQUIREMENTS OR THAT OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE. CUSTOMER ASSUMES RESPONSIBILITY FOR SELECTING THE SOFTWARE AND THE RESULTS ACHIEVED. CUSTOMER'S SOLE AND EXCLUSIVE REMEDY, AND DELL'S ENTIRE LIABILITY FOR BREACH OF THE WARRANTIES PROVIDED HEREIN, IS FOR DELL, AT ITS SOLE DISCRETION, TO EITHER USE COMMERCIAL REASONABLE EFFORTS TO REMEDY ANY NON-CONFORMANCE OR TO PROVIDE A REFUND OF THE LICENSE FEES PAID BY CUSTOMER TO DELL FOR THE SOFTWARE. THIS DISCLAIMER OF WARRANTY MAY NOT BE VALID IN SOME JURISDICTIONS AND CUSTOMER MAY HAVE WARRANTY RIGHTS UNDER LAW WHICH MAY NOT BE WAIVED OR DISCLAIMED -- ANY SUCH WARRANTY EXTENDS ONLY FOR THIRTY (30) DAYS FROM THE DATE OF DELIVERY OF THE SOFTWARE.

11. **Limitation of Liability.** DELL WILL NOT BE LIABLE FOR ANY INCIDENTAL, INDIRECT, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES, ARISING OUT OF OR IN CONNECTION WITH THIS EULA AND/OR THE SOFTWARE. DELL SHALL HAVE NO LIABILITY FOR THE FOLLOWING: (A) LOSS OF REVENUE, INCOME, PROFIT, OR SAVINGS, (B) LOST OR CORRUPTED DATA OR SOFTWARE, LOSS OF USE OF SYSTEM(S) OR NETWORK(S), OR THE RECOVERY OF SUCH, (C) LOSS OF BUSINESS OPPORTUNITY, (D) BUSINESS INTERRUPTION OR DOWNTIME, (E) LOSS OF GOODWILL OR REPUTATION, OR (F) SOFTWARE NOT BEING AVAILABLE FOR USE OR THE PROCUREMENT OF SUBSTITUTE SOFTWARE OR GOODS.

NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH IN THIS EULA, DELL'S TOTAL LIABILITY FOR ANY AND ALL CLAIMS ARISING OUT OF OR IN CONNECTION WITH THIS EULA AND/OR THE SOFTWARE SHALL NOT

EXCEED THE TOTAL AMOUNT RECEIVED BY DELL FOR THE PARTICULAR SOFTWARE GIVING RISE TO SUCH CLAIM(S). THIS PARAGRAPH SHALL NOT LIMIT CUSTOMER'S PAYMENT OBLIGATIONS OR LIABILITY FOR MISAPPROPRIATION OR INFRINGEMENT OF DELL'S INTELLECTUAL PROPERTY. DELL SHALL NOT BE LIABLE TO CUSTOMER FOR ANY CLAIM BROUGHT MORE THAN TWO YEARS AFTER THE CAUSE OF ACTION FOR SUCH CLAIM FIRST AROSE.

The foregoing limitations, exclusions and disclaimers shall apply, regardless of whether the claim for such damages is based in contract, warranty, strict liability, negligence, tort or otherwise, for any claim. Insofar as applicable law prohibits any limitation on liability herein, the parties agree that such limitation will be automatically modified, but only to the extent so as to make the limitation compliant with applicable law. The parties agree that the limitations on liabilities set forth herein are agreed allocations of risk and such limitations will apply notwithstanding the failure of essential purpose of any limited remedy and even if a party has been advised of the possibility of any such liability.

12. **Indemnification.** Dell shall defend and indemnify Customer against any third-party claim or action that the Software (specifically excluding third-party and open source software) infringes or misappropriates that third party's patent, copyright, trade secret, or other intellectual property rights ("Indemnified Claims"). In addition, if Dell receives prompt notice of an Indemnified Claim that, in Dell's reasonable opinion, is likely to result in an adverse ruling, then Dell shall at its sole discretion, (A) obtain a right for Customer to continue using such Software; (B) modify such Software; (C) replace such Software with a non-infringing substitute; or (D) provide a reasonable depreciated or pro rata refund for the allegedly infringing Software. Notwithstanding the foregoing, Dell shall have no obligation under this Section for indemnified Claims resulting or arising from: (i) modifications of the Software that were not performed by or on behalf of Dell; (ii) the operation, use, or combination with a third-party product, software or service (the combination of which causes the claimed infringement) of the Software; or (iii) Dell's compliance with Customer's specifications or directions, including the incorporation of any software or other materials or processes provided by or requested by Customer (collectively, "Excluded Indemnified Claims"). Dell's duty to indemnify and defend is contingent upon: (a) Customer providing Dell with prompt written notice of the third-party claim or action, (b) Dell having the right to solely control the defense and settlement of such claim or action, and (c) Customer's cooperation with Dell in defending and resolving such claim or action. This section states Customer's exclusive remedies for any third-party intellectual property claim or action, and nothing in this EULA or elsewhere will obligate Dell to provide any greater indemnity to Customer. Customer, at Customer's expense, shall defend and indemnify Dell against any claim, action or proceeding brought against Dell which arises from or is in any manner connected with Excluded Indemnified Claims.
13. **Confidentiality.** Customer agree to: (A) refrain from using Confidential Information except as necessary to exercise the rights herein and (B) use best efforts to preserve and protect the confidentiality of the Confidential Information. "Confidential Information" means any oral, written, graphic or machine-readable information disclosed by Dell that is (i) identified as confidential; (ii) designated in writing to be confidential or proprietary; or (iii) should be reasonably understood to be confidential. Confidential Information includes the Software and its trade secrets, including but not limited to source code, the development status of the Software, the appearance, content and flow of the user interface of the Software, and the content and documentation of the Software. Confidential information does not include information that is (a) publicly available other than through a breach of this EULA; (b)

known to Customer prior to such disclosure, or (c) subsequently lawfully obtained by Customer from a third party that has no obligations of confidentiality. Customer agrees that, without Dell's prior written consent, Customer will not grant access to any Dell Confidential Information to any persons or entities except for Customer's employees and agents who have a business need to have such access and who are obligated to maintain the confidentiality thereof as set forth herein. In some, limited circumstances, Dell may need to engage a third party to fulfill its obligations to Customer under this license. By using this software Customer agrees that Dell may provide Customer's information to such third party for that purpose. Any feedback or other information that is provided to Dell relating to the Software or this ELA shall be considered Dell Confidential Information. Such feedback shall be treated by Dell on a non-confidential and unrestricted basis, and Dell shall have full rights, title and ownership of such feedback.

14. **Open Source and Third Party Software.** A portion of the Software may contain or consist of open source or third party software, which Customer may use under the terms and conditions of the specific license under which the open source or third party software is distributed. THIS OPEN SOURCE AND THIRD PARTY SOFTWARE IS PROVIDED "AS IS" WITHOUT ANY WARRANTY, EXPRESS, IMPLIED, OR OTHERWISE, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. AS IT RELATES TO ANY AND ALL CLAIMS ARISING OUT OF OR IN CONNECTION WITH OPEN SOURCE OR THIRD PARTY SOFTWARE, DELL SHALL HAVE NO LIABILITY FOR ANY DIRECT, INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES. Under certain open source software licenses, Customer is also entitled to obtain the corresponding source files. Customer may find corresponding source files for the Software at <http://opensource.dell.com> or other locations that may be specified to Customer by Dell.
15. **Jurisdiction/Injunction.** This ELA is governed by the laws of the State of Texas, U.S.A. without regard to conflict of law principles. The United Nations Convention for the International Sale of Goods shall not apply. Customer agrees that money damages would be an inadequate remedy for Dell in the event of a breach or threatened breach by Customer of the provisions set forth in this ELA; therefore, in the event of a breach or threatened breach of any such provisions, Dell may, in addition to any other remedies afforded to it by law or equity, immediately obtain and enforce an injunction from any court of law or equity prohibiting Customer from

breaching such provisions. All rights and remedies afforded Dell by law shall be cumulative and not exclusive. THE PARTIES HEREBY UNCONDITIONALLY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION ARISING DIRECTLY OR INDIRECTLY OUT OF, RELATED TO, OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OR BREACH OF THIS ELA, AND/OR THE RELATIONSHIP THAT IS BEING ESTABLISHED AMONG THEM.


16. **No Waiver.** No waiver of breach or failure to exercise any option, right, or privilege under the terms of this ELA on any occasion shall be construed to be a waiver of a subsequent breach or right to exercise any option, right, or privilege.
17. **No Assignment.** Customer may not assign or transfer Customer's interests, rights or obligations under this ELA by written agreement, merger, consolidation, operation of law or otherwise, without the prior written consent of an authorized executive officer of Dell. Any attempt to assign this ELA by Customer shall be null and void.
18. **Entire Agreement.** Unless Customer has entered into another written agreement with respect to the Software which has been signed by Customer and an authorized representative of Dell and which conflicts with the terms of this ELA, Customer agrees that this ELA supersedes all prior written or oral agreements, warranties or representations, including any and all other click-wrap, shrink-wrap or similar licenses or agreements, with respect to the Software. No amendment to or modification of this ELA, in whole or in part, will be valid or binding unless it is in writing and executed by authorized representatives of both parties. If any term of this ELA is found to be invalid or unenforceable, the remaining provisions will remain effective. Customer agrees that any principle of construction or rule of law that provides that an agreement shall be construed against the drafter shall not apply to the terms and conditions of this ELA. Customer represents that it has read this ELA, has had the opportunity to review it with local counsel, understands it, and agrees to be bound by all terms and conditions stated herein.
19. **Notices.** Notice to Dell under this ELA must be in writing and sent to the address below or to such other address (including facsimile or e-mail) as specified in writing, and will be effective upon receipt.

Dell Inc., Attn: Dell Legal  
One Dell Way, Round Rock, Texas 78682

By the signature of the duly authorized representative below, Dell and Customer, intending to be legally bound, agree to all of the provisions of this Agreement.

ACCEPTED AND AGREED TO BY:

[U.S. Government Agency]
Signature
Name
Position
Date

<b>Dell Marketing LP</b>	
Signature	 Digitally signed by Dennis J Daley DN: c=US, o=DST ACES Business Representative, ou=DELL, cn=Dennis J Daley 0.9.2342.19200300.100.1.1-001E4733000 00FE24E28240000002A Date: 2012.07.08 10:23:03 -05'00'
Name	Dennis J. Daley
Position	Contracts Sr. Consultant
Date	April 20, 2012

## Exhibit A

### Description of Licensed Software

1. Operating, diagnostics and other software for Dell-branded information technology products, including, but not limited to the following named Dell product lines:
  - AppAssure
  - Compellent
  - KACE
  - EqualLogic
  - Force 10
  - SonicWall
  - Wyse
2. Use of the software is subject to the terms and conditions of the Dell Enterprise License Agreement to which this Exhibit A is attached ("ELA").
3. Purchase of the software is subject to the terms and conditions of Exhibit B of the ELA.

## Exhibit B

### Terms & Conditions Applicable to the Purchase or Use of Licensed Software by the U.S. Government

1. This Section applies whenever the Customer is the U.S. Federal Government, or any prime contractor or subcontractor (at any tier) under any contract, grant, cooperative agreement, or other activity with the U.S. Federal Government. In such case, the terms and conditions of this Exhibit B shall pertain to the Customer's use and disclosure of the Software and Documentation, and shall supersede any conflicting contractual terms or conditions. To the extent that it is held by a court or board of competent jurisdiction that any part of any provision of the ELA is invalid or unenforceable under applicable law, said part shall be ineffective to the extent of such invalidity or unenforceability only, without in any way affecting the remaining parts of said provision or the remaining provisions of said license agreement.
2. The software and documentation are "commercial items" as that term is defined at 48 C.F.R. 2.101; consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, all U.S. Government end users acquire the software and documentation with only those rights set forth herein. Sections 13 and 16 of this ELA shall not apply to the U.S. Federal Government but shall continue to apply to prime contractors and subcontractors of the U.S. federal government. Disputes with the U.S. Federal Government shall be subject to resolution pursuant to the Contract Disputes Act of 1978, as amended. All other provisions of this ELA remain in effect as written.
3. Purchase of Software licenses is subject to the terms and conditions of (a) U.S. General Services Administration Multiple Award Schedule 70 Contract GS-35F-4076D; or (b) other such U.S. Government Federal Acquisition Regulation Part 12 Commercial Item prime and/or subcontracts in which the Dell Enterprise License Agreement to which this Exhibit B is attached is incorporated either in its entirety or by reference, and all Delivery Orders and Task Orders issued thereunder which include the Exhibit A software.
4. Use of the software is subject to the terms and conditions of the Dell Enterprise License Agreement to which this Exhibit B is attached.
5. Listed below are changes to the Dell Enterprise License Agreement applicable to the purchase of licensed Software by the United States Government.

#### ELA Section

1. **General.** The definition of "Company" is Dell Products L.P. on behalf of Dell Marketing L.P. and / or Dell Federal Systems L.P.
2. **License.** In the event a separate license agreement accompanies or is referenced by an Update, the U.S. Government shall have a right, prior to delivery of the Update, to review such license agreement before accepting the terms and conditions contained therein.
3. **License Limitations.** The language "to which the U.S. Government will have a right to review before agreement to such terms and conditions;" is added to the last sentence.
5. **Restrictions.** In subsection (B), the phrase "and Customer is liable for any breach of this ELA by such third party" is deleted. The Government has no liability to third-parties under this ELA.
6. **Compliance.** This provision in the ELA is deleted and replaced with the following:

"Customer will certify in writing, upon reasonable request by Dell, Customer's compliance with the terms of this ELA, indicating the number of Software licenses deployed at that time. Customer grants Dell or an agent selected by Dell, the right to perform an audit of Customer's compliance with this ELA during normal business hours and in a manner that does not interfere unreasonably with your operations. Any auditor selected by Dell or an agent of Dell is subject to approval of the Government, which shall not be unreasonably withheld. As an alternative, Dell may require Customer to accurately complete a self-audit relating to the Software. In the event the audit finds a deficiency of greater than five percent (5%) in the licensee fees paid, then such shall be considered a change and resolved under the Changes clause of the applicable contract (FAR 52.212-4(c)). And in the event such a change



cannot be negotiated in a commercially reasonable time, the same shall be considered a dispute under Contract Disputes Act of 1978, as amended ("CDA")."

8. **Termination.** The termination provision is deleted and replaced with the following:  
"This ELA and the license granted to Customer to use the Software hereunder shall be terminated (i) by Company, if such remedy is granted after conclusion of the Contract Disputes Act dispute resolution process or if such remedy is otherwise available to Company under United States federal law; or (ii) by Customer, at its option in accordance with FAR 52.212-4. Upon any termination, Customer shall promptly return the Software and any copies thereof in any form. Company will not have any obligation to refund any portion of any license fee upon the termination of this ELA if after the Contract Disputes Act dispute resolution process a Court or administrative board determines that the End User materially breached any provision of this ELA. Sections 4, 5, 11, 12, 13, 15, 16, 18, 19 of this ELA, as well as Exhibit A payment obligations, shall survive termination, cancellation, and/or expiration of this ELA and/or the license granted hereunder."
11. **Limitation of Liability.** The language in this Section 11 is deleted and replaced with the following:  
"IN NO EVENT SHALL COMPANY BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR SIMILAR DAMAGES OF ANY KIND ARISING UNDER OR IN ANY WAY RELATED TO THE SOFTWARE OR THIS ELA EXCEPT AS IT RELATES TO INDEMNIFICATION FOR INFRINGEMENT REFERENCED IN SECTION 12 IN NO EVENT SHALL COMPANY'S AGGREGATE LIABILITY ARISING UNDER OR IN ANY WAY RELATED TO THE SOFTWARE OR THIS ELA EXCEED THE AGGREGATE LICENSE FEES PAID FOR THE LICENSE GRANTED HEREUNDER, EXCLUDING REPROCUREMENT COSTS. THE FOREGOING LIMITATIONS SHALL APPLY REGARDLESS OF THE FORM OF ANY CLAIM HEREUNDER, WHETHER FOR BREACH OF ANY WARRANTY, FOR BREACH OR REPUDIATION OF ANY OTHER TERM OR CONDITION OF THIS AGREEMENT OR ANY RELATED WRITING, FOR NEGLIGENCE, ON THE BASIS OF STRICT LIABILITY, OR OTHERWISE. This clause shall not impair the U.S. Government's right to recover for fraud or crimes arising out of or related to Company's Multiple Award Schedules Contract under any federal fraud statute, including the False Claims Act, 31 U.S.C. §§ 3729-3733."
12. **Indemnification.** Subparagraph (b) of this section is deleted and replaced with the following:  
"(b) Dell having the right to solely control the defense and settlement of such claim or action provided that for the U.S. Government the control of the defense is subject to 28 USC 516."  
The last sentence of this section, "Customer, at Customer's expense, shall defend and indemnify Dell against any claim, action or proceeding brought against Dell which arises from or is in any manner connected with Excluded Indemnified Claims" is deleted.
15. **Jurisdiction/Injunction.** This section does not apply to the Government, but shall apply to prime and subcontractors to the Government. Disputes with the Government shall be subject to resolution pursuant to the CDA.
17. **No Assignment.** This paragraph is deleted and number 17 is marked "Reserved."
18. **Entire Agreement.** The language in this Section 18 is deleted and replaced with the following:  
"This ELA (a) constitutes the entire agreement between the parties with respect to the licensing of the Software and supersedes any prior negotiations, proposals, representations and agreements relating specifically thereto; (b) may only be changed by a writing signed by the parties specifically referencing this ELA; (c) shall be interpreted in accordance with the federal laws of the United States of America; and (d) is not assignable, in whole or in part, by either party. Any prohibited assignment is null and void. Failure by either party to enforce any term hereof shall not be deemed a waiver. All claims arising out of or relating to this ELA shall be resolved in accordance with the Contracts Disputes Act of 1978. In the event any provision of this EULA is declared invalid, the remainder shall continue in binding effect."

## **DIAMANTI WARRANTY**

## **DIAMANTI END USER LICENSE AND WARRANTY AGREEMENT**

YOU SHOULD CAREFULLY READ THE FOLLOWING TERMS AND CONDITIONS BEFORE SIGNIFYING YOUR ACCEPTANCE BY DOWNLOADING, INSTALLING, COPYING, CONFIGURING, ACCESSING, DEPLOYING, USING THE SOFTWARE, EQUIPMENT AND/OR DIAMANTI SUPPORT. BY SO DOING, YOU ARE SIGNIFYING YOUR ACCEPTANCE AS “LICENSEE” OF THESE TERMS AND CONDITIONS. IF LICENSEE DOES NOT AGREE WITH THESE TERMS AND CONDITIONS, LICENSEE SHOULD NOT INSTALL OR USE THE SOFTWARE, EQUIPMENT OR DIAMANTI SUPPORT. IF LICENSEE IS ACCEPTING THESE TERMS AND CONDITIONS ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, THEN LICENSEE WARRANTS THAT LICENSEE HAS THE AUTHORITY TO SO BIND SUCH COMPANY OR LEGAL ENTITY.

Unless otherwise amended in writing specifically referencing this Agreement, this Agreement shall apply to any Software, Equipment or Documentation provided by Diamanti to Licensee, whether directly or indirectly.

### **DEFINITIONS**

1.1 “Agreement” means this End User License and Warranty Agreement.

1.2 “Documentation” means such manuals, documentation and any other supporting materials relating to the Software and Equipment as currently maintained by Diamanti and generally provided to its licensees and purchasers.

1.3 “Equipment” means Diamanti branded hardware, or hardware provided by Diamanti, to run the Software.

1.4 “Licensed Materials” means the Software and Documentation.

1.5 “Software” means the object code version of the computer software provided to Licensee under this Agreement, any extracts from such software, derivative works of such software or collective works constituting such software (such as subsequent releases) to the extent offered to Licensee under this Agreement, and the related Documentation. Software may include third party software licensed to Diamanti. Software shall not mean software subject to open source, GPL or similar licensing terms which may be included with the Software. Applicable copyright notices and open source, GPL or similar licensing terms can be found at [www.diamanti.com/thirdpartysoftware](http://www.diamanti.com/thirdpartysoftware).

### **SOFTWARE LICENSE**

2.1 License. Subject to the terms and conditions of this Agreement, Diamanti grants to Licensee a nonexclusive, nontransferable, nonsublicensable, royalty-free license to use the Software, subject to the following limitations:

(a) Licensee shall use the Software for its internal purposes only. In no event shall the Software be disclosed, made available to or used for the benefit of any third party; or sold, assigned, leased, resold or distributed or otherwise disposed of.

(b) The license granted hereunder is limited to use of the Software on Equipment.

(c) Licensee shall not copy the Software, except for archival or backup purposes or as required by normal installation procedures specified by Diamanti.

(d) Except to the extent permitted by applicable law, Licensee shall not copy, modify, translate, decompile, disassemble or otherwise reverse engineer, or otherwise determine or attempt to determine source code or protocols from, the executable code of the Software, or create any derivative works based upon the Software or Documentation, and Licensee shall not permit or authorize anyone else to do so. Licensee also agrees that any works created in violation of this subsection are derivative works and, as such, Licensee assigns all right, title and interest therein to Diamanti.

(e) Licensee shall not disclose to any third party any benchmarking or other test results concerning the performance or capability of the Software or Equipment without Diamanti's prior written consent.

(f) Licensee shall not use the Licensed Materials or Equipment in order to gain information that may assist Licensee to compete against Diamanti.

(g) Licensee shall only use those Software features paid for, or otherwise authorized by Diamanti, and shall not enable any unpaid for or unauthorized features by using a key to unlock the Software or otherwise accessing such features.

2.2 Documentation License. Diamanti will provide Licensee with Documentation for the Equipment and Software for its internal use. Licensee will keep the Documentation with the Equipment and not allow any unauthorized access to, copying of, or the creation of derivative works from, the Documentation. Licensee shall not remove any proprietary markings or legends placed upon or contained within the Documentation, nor add any proprietary markings or legends.

2.3 Ownership. Diamanti retains all right, title and interest, including, without limitation, all patent rights, copyrights, trademarks and trade secrets, in and to the Licensed Materials and any portion thereof, including, without limitation, any copy or derivative work of the Licensed Materials (or any portion thereof) and any update thereto. Any rights to the Licensed Materials not granted herein are reserved by Diamanti.

2.4 Equipment Transfer. This license shall automatically terminate in the event Licensee sells, assigns, or otherwise transfers the Equipment to a third party. In such event, Diamanti shall offer such third party a license, on its then standard terms and

conditions, to use the Software in connection with the Equipment, provided however, that such third party is not, in Diamanti's reasonable judgment, a competitor.

### 3. DELIVERY

The Software may come preinstalled on the Equipment or Diamanti may make the Software and other Licensed Materials available to Licensee for download via a secure download site.

### 4. SUPPORT AND MAINTENANCE

Diamanti Software and Equipment support obligations are set forth at <https://diamanti.com/eula-support-warranty/> and apply only in the event that Licensee has purchased support and Diamanti has accepted Licensee's purchase. No support, Software updates or upgrades are offered pursuant to this Agreement.

### 5. LIMITED WARRANTY

5.1.1 Equipment. Diamanti warrants that the Equipment will conform in all material respects with its published specifications for a period of one (1) year from delivery and in the case of SSD's, five (5) years from delivery (the "Equipment Warranty Period"). Customer's sole and exclusive remedy and the entire liability of Diamanti under this Section 5 will be the repair or replacement, at Diamanti's option, of any non-conforming Equipment or part thereof at no additional charge. Customer shall be responsible for the return of any non-conforming Equipment or part and Diamanti shall repair or replace the same within ten (10) business days and ship back to the Customer. Notwithstanding the foregoing, in the event Customer has purchased and paid for contemporaneously with its Equipment purchase, SSD component insurance to keep any non-conforming SSD, and Customer certifies (at a director level or above) that an SSD is defective and unusable, then Customer shall not be obliged to return the SSD and will receive a replacement SSD. The unexpired term of the Equipment Warranty Period applicable to the original Equipment shall apply to the repaired or replaced Equipment or part.

5.1.2 Software. For a period of ninety (90) days Diamanti will (a) repair or replace defective media on which any Software is furnished with the Equipment, caused by defects in materials and workmanship under normal use, and (b) use commercially reasonable efforts to correct or modify any such Software so as to conform in all material respects with its published specifications.

5.2 EXCEPT AS SPECIFIED IN THIS SECTION 5.1, ALL EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS, AND WARRANTIES RELATING TO THE EQUIPMENT AND SOFTWARE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, FITNESS FOR A

PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, ARE HEREBY DISCLAIMED TO THE EXTENT ALLOWED BY APPLICABLE LAW.

## 6. TERM AND TERMINATION

This Agreement shall commence on the earlier of the date of Licensee's first use of the Software and shall continue in effect until terminated pursuant to the terms hereof. Either party may terminate this Agreement immediately upon written notice to the other party if the other party is in breach of this Agreement or fails to perform any of its duties or obligations hereunder (a "Default") and fails to cure such Default within thirty (30) days after receipt of written notice from the non-defaulting party specifying the occurrence or existence of the Default. Upon termination of this Agreement, the provisions of Sections 2.1 and 2.3 and Sections 5, 6, 7, 8 and 9 shall survive; provided, however, if Diamanti terminates this Agreement pursuant to this Section 6, the licenses granted in Section 2.1 shall terminate on the date of termination of this Agreement and shall not survive. Except as otherwise set forth herein, Licensee's license pursuant to Section 2.1 shall survive expiration or termination of this Agreement subject to Licensee's continued compliance with all of the terms and conditions contained herein.

## 7. LIMITATION OF LIABILITY

7.1 THE TOTAL LIABILITY OF DIAMANTI AND ITS SUPPLIERS, DISTRIBUTORS AND CONTRACTORS ARISING OUT OF OR RELATED TO THIS AGREEMENT SHALL NOT EXCEED THE AMOUNTS PAID BY LICENSEE FOR THE EQUIPMENT AND LICENSED MATERIALS. THIS LIMITATION OF LIABILITY IS CUMULATIVE AND NOT PER INCIDENT.

7.2 EXCEPT FOR A BREACH OF SECTION 2.1, IN NO EVENT SHALL A PARTY OR ITS SUPPLIERS OR CONTRACTORS BE LIABLE FOR ANY LOSS OF USE, INTERRUPTION OF BUSINESS, LOST PROFITS, LOST DATA, RECOVERY OF DATA, OR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) STRICT LIABILITY OR OTHERWISE, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. DIAMANTI SHALL HAVE NO LIABILITY WITH RESPECT TO CLAIMS RELATING TO OR ARISING FROM THE USE OF NON-DIAMANTI PRODUCTS AND SERVICES, EVEN IF DIAMANTI HAS RECOMMENDED, REFERRED OR INTRODUCED LICENSEE TO SUCH PRODUCTS AND SERVICES.

## 8. INTELLECTUAL PROPERTY INDEMNITY

8.1 Subject to the limitations set forth in this Section 8 Diamanti shall defend or, at its option, settle any claim or action against Licensee and hold Licensee harmless from any

and all liabilities, damages, expenses, settlements and costs (including reasonable attorneys' fees) finally awarded against Licensee or reached in a settlement by Diamanti on Licensee's behalf, arising from or occurring as a result of any third party claim or action alleging that the Software or Equipment infringes any United States patent or copyright.

8.2 Diamanti's obligation to indemnify Licensee under this Section 8 shall be subject to Licensee: (i) promptly notifying Diamanti in writing of first learning of the claim or action giving rise to the indemnity; (ii) providing Diamanti with sole and exclusive control over the defense and/or settlement of such action or claim; and (iii) providing Diamanti with proper and full information and reasonable assistance to defend and/or settle any such claim or action. Diamanti shall not be responsible for indemnifying Licensee with respect to costs incurred, or amounts paid in any settlement, unless Diamanti approved such costs or settlements in advance.

8.3 Diamanti will have no liability under this Section 8 for any claim or action where such claim or action results from (i) combination, operation or use of the Software or Equipment with other hardware or software not provided by Diamanti; (ii) modification of the Software or Equipment unless such modification was made or authorized by Diamanti; or (iii) compliance with Licensee's designs, specifications or instructions. Notwithstanding anything to the contrary, Diamanti shall not be liable for any claim based on Licensee's use of the Software or Equipment after Diamanti has informed Licensee of modifications of the Software or Equipment required to avoid such claims and offered to implement those modifications, if such claim would have been avoided by implementation of Diamanti's suggestions.

8.4 If the Software and/or Equipment becomes or is likely to become the subject of an infringement claim or action, Diamanti may at its sole option: (i) procure, at no cost to Licensee, the right to continue using the Software and/or Equipment; (ii) replace or modify the Software and/or Equipment to render it/them non-infringing; or (iii) if, in Diamanti's reasonable opinion, neither (i) nor (ii) above are commercially feasible, immediately terminate Diamanti's obligations (and Licensee's rights) under this Agreement with regard to such Software and/or Equipment, and, if Licensee returns such Software and/or Equipment to Diamanti, refund to Licensee the price originally paid by Licensee to Diamanti for such Software and/or Equipment as depreciated or amortized by an equal annual amount over three (3) years.

8.5 THE FOREGOING STATES THE ENTIRE LIABILITY AND OBLIGATIONS OF DIAMANTI AND THE EXCLUSIVE REMEDY OF LICENSEE WITH RESPECT TO ANY ALLEGED OR ACTUAL INFRINGEMENT OF PATENTS OR COPYRIGHTS, BY THE SOFTWARE AND EQUIPMENT.

## 9. GENERAL

9.1 Assignment. Licensee may not assign this Agreement or any of its rights or obligations under this Agreement, by operation of law or otherwise, without the prior written consent of Diamanti. This Agreement shall bind each party and its permitted successors and assignees. Any assignment in contravention of this Section 9.1 shall be null and void and of no force or effect.

9.2 Disputes. This Agreement shall be governed by and construed in accordance with the laws of California. The UN Convention on Contracts for the International Sale of Goods shall not apply. This Agreement is the entire agreement of the parties, and supersedes all prior or contemporaneous agreements, communications or representations, written or oral, between the parties with respect to the subject matter of this Agreement and represents the complete integration of the parties' agreement. Any different or additional terms of any related purchase order, confirmation, quote or similar ordering document, even if signed by the parties after the date hereof, shall have no force or effect on this Agreement. If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the remaining provisions shall not be affected or impaired. This Agreement may be modified only by a written agreement executed by authorized officers of each party. No delay or omission to exercise any right or remedy accruing to a party upon any breach or default of the other party shall impair that right or remedy, or be construed to be a waiver of any breach or default.

9.3 Hazardous Use Restriction. The Software and Equipment are not designed for use, and Licensee agrees not to use, the Software and Equipment for the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, and life support or weapons systems, or any other system whose failure could lead to injury, death, environmental damage, or mass destruction.

9.4 Force Majeure. Except for the obligation to pay monies due and owing, neither party shall be liable for any delay or failure in performance due to events outside the defaulting party's reasonable control, including without limitation acts of God, labor disputes, shortages of supplies, fire, war, disruption related to terrorism, epidemics, or delays of common carriers. The obligations and rights of the excused party shall be extended on a day to day basis for the time period equal to the period of the excusable delay.

9.5 Compliance with Laws. Licensee hereby acknowledges that the Licensed Materials and Equipment supplied by Diamanti are subject to export controls under the laws and regulations of the United States and other countries. Licensee shall comply with such laws and regulations and agrees not to export, re-export or transfer the Licensed



Materials and Equipment without first obtaining all required U.S. Government and other relevant government authorizations or licenses.

#### **DIAMANTI SUPPORT AGREEMENT**

BY USING OR RECEIVING DIAMANTI SUPPORT SERVICES (“SUPPORT”), YOU (A) REPRESENT THAT YOU MAY BIND YOURSELF, OR IF YOU ARE APPROVING ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE RIGHT TO BIND THAT COMPANY OR LEGAL ENTITY (COLLECTIVELY “CUSTOMER”); (B) REPRESENT THAT CUSTOMER HAS READ AND UNDERSTANDS THIS AGREEMENT; (C) REPRESENT AND WARRANT THAT ANY INFORMATION THAT CUSTOMER PROVIDES DIAMANTI WILL BE ACCURATE AND MAY BE RELIED UPON BY DIAMANTI; AND (D) AGREE TO BE BOUND BY THIS AGREEMENT. THIS AGREEMENT APPLIES TO SUPPORT PURCHASED BY CUSTOMER FOR THE PRODUCT(S) THAT CUSTOMER HAS RECEIVED, EITHER DIRECTLY FROM DIAMANTI OR FROM A RESELLER, AS FURTHER DEFINED BELOW.

#### 1. DEFINITIONS

1.1 “Documentation” means such manuals, documentation and any other supporting materials relating to the Software as currently maintained by Diamanti and generally provided to its licensees.

1.2 “Error” means any reproduceable failure of the Equipment or Software to perform any material function as set forth in Documentation.

1.3 “Equipment” means Diamanti branded hardware, or hardware provided by Diamanti, to run the Software.

1.4 “Licensed Materials” means the Software and Documentation.

1.5 “Permanent Solution” means a resolution to a problem that causes the Equipment or Software to substantially conform with specifications.

1.6 “Reseller” means a third party that is authorized to resell Equipment, Licensed Materials and Support to Customer.

1.7 “Software” means the object code version of the computer software provided to Licensee under this Agreement, any extracts from such software, derivative works of such software or collective works constituting such software (such as subsequent releases) to the extent offered to Licensee under this Agreement, and the related Documentation. Software may include third party software licensed to Diamanti. Software shall not mean software subject to open source, GPL or similar licensing terms

which may be included with the Software. Applicable copyright notices and open source, GPL or similar licensing terms can be found at [www.diamanti.com/thirdpartysoftware](http://www.diamanti.com/thirdpartysoftware).

1.8 “Software Upgrades/Enhancements” means any new release of Software providing error corrections, improved usability, improved performance, and/or enhancements, each of which are distributed on a when-and-if-available basis free of charge to Customer receiving Software maintenance. Software Upgrade/Enhancement shall not include Software whether currently existing or developed in the future, which is marketed and offered by Diamanti to its customers generally as a separate product.

1.9 “Support Term” means the term of Support (e.g., one-year, three-years or five-years).

1.10 “Work Around” means a temporary resolution that restores the service and operation of the Equipment or Software without material loss of functionality.

## 2. TERM OF SUPPORT

The Support Term shall commence upon shipment of the Equipment and/or Software and, subject to timely payment, shall continue through the Support Term. Support is non-cancelable and non-transferable.

## 3. SOFTWARE SUPPORT

During the Support Term:

3.1 Diamanti shall (a) repair or replace defective media on which any Software is furnished, caused by defects in materials and workmanship under normal use, and (b) use commercially reasonable efforts to correct or modify any Software so as to conform in all material respects with its specifications. In this regard, Diamanti may provide Software Upgrades/Enhancements to correct or modify the documentation, or provide a Permanent Solution or Work Around (as further described below) to the Software, all at no additional charge to Customer. Diamanti does not warrant that Customer’s use of the Software will be uninterrupted or error free.

3.2 Diamanti will provide Customer with any Software Upgrades/Enhancements for the Software at no additional charge. Software Upgrades/Enhancements, bug fixes, Permanent Solutions and Work Arounds may be made available electronically.

3.3 Permanent Solutions. Diamanti shall use commercially reasonable efforts to deliver a Permanent Solution to Customer in Diamanti’s next regularly scheduled Software Upgrade/Enhancement. A Permanent Solution may include a patch, if such patch can be deployed in the Software without affecting service or operation. If such a patch

cannot be provided, Diamanti shall use commercially reasonable efforts to provide a Work Around.

3.4 Work Arounds. A Work Around may consist of a patch or instructions on how to avoid the problem. If possible, a Work Around shall be capable of being installed, without undue interruption or degradation of service or operation, in the Software.

#### 4. SUPPORT SERVICES

4.1 Diamanti offers the following Support services:

4.1.1 Developer Support Service. Diamanti will provide telephone help desk support subject to the targeted response times below, between the hours of 9 AM to 5 PM PST, Monday through Friday. Any necessary replacement part(s) will be dispatched to arrive within three (3) business days provided that determination (see Section 4.4) is made before 3 PM PST that any replacement part(s) are required in order for the Equipment to conform to its published specifications.

4.1.2 Production Support Service. Diamanti will provide telephone help desk support subject to the targeted response times below, twenty-four (24) hours a day, seven (7) days per week. Any necessary replacement part(s) will be dispatched to arrive the next business day provided that determination (see Section 4.4) is made before 3 PM PST that any replacement part(s) are required in order for the Equipment to conform to its published specifications.

4.1.3 Premium Support Service. Diamanti will provide telephone help desk support subject to the targeted responses time below, twenty-four (24) hours a day, seven (7) days per week. Any necessary replacement part(s) will be dispatched to arrive within four (4) hours after determining (see Section 4.4) that any replacement part(s) are required in order for the Equipment to conform to its published specifications. Alternatively, Customer shall permit Diamanti to store parts at the site where the relevant Equipment is located in order for Diamanti to meet the said response time.

4.2 Defective parts must be returned pursuant to Diamanti's return material authorization ("RMA") policy located on Diamanti's support portal. Diamanti reserves the right to charge Customer the cost of any replacement part if Customer fails to comply with its RMA policy. Notwithstanding the foregoing, in the event Customer has purchased and paid for contemporaneously with its Equipment purchase, SSD component insurance to keep a non-conforming SSD, and Customer certifies (at a director level or above) that an SSD is defective and unusable, then Customer shall not be obliged to return the SSD and will receive a replacement SSD. Returned parts shall become the property of Diamanti.

4.3 Response Times. Diamanti targets to provide responses for new cases in the timeframes outlined below based on the severity of the case:

Case Priority	Developer	Production	Premium
Severity 1	4 hours*	2 hours	1 hour
Severity 2	8 hours*	4 hours	2 hours
Severity 3	Next Business Day	8 hours	4 hours
Severity 4	Next Business Day	16 hours	8 hours

\*Cases opened prior to 1:00 PM PST on a business day will be answered the same day. Cases opened after 1:00 PM PST may be answered on that business day or the next business day.

The case severity priority definitions are as follows:

Severity 1: Equipment has stopped working and is down.

Severity 2: Equipment is working but in a degraded state.

Severity 3: Equipment configuration issues.

Severity 4: Information and Enhancement requests.

4.4 Determination. For purposes of Section 4.1, determination that Equipment replacement parts are required will be made by a Diamanti Customer Support Engineer.

## 5. PROBLEM REPORTING

Diamanti will provide portal, email and telephone support to Customer on non-conformance issues relating to the Equipment and Software in accordance with the Response Timeframes set forth in Section 4.3.

Customers may notify Diamanti by telephone at US Toll Free +1-855-516-3767 or +1-408-805-3870 (International), by email ([support@diamanti.com](mailto:support@diamanti.com)), or by Diamanti support portal and shall provide (i) Customer name, email address, phone number, serial number(s) of the appliance(s) being reported, and (ii) a description of the problem encountered and how to repeat the condition which brought about the problem. Severity

1 and Severity 2 issues (defined in Section 4.3) must be opened by calling Diamanti customer support. Severity 1 and 2 cases cannot be opened via email or portal.

## 6. EXCLUSIONS

6.1 Diamanti has no obligations to perform Support in the event of any abuse, misuse, accident, alteration including alteration, modification and/or installation of unauthorized equipment or software, neglect, unauthorized maintenance, repair, installation or movement, or exposure to any condition or operating environment beyond Diamanti's recommended physical, power, functional constraints or storage requirements (including temperature and/or humidity ranges).

6.2 The costs of configuration (after initial base configuration), reconfiguration, installation, de-installation, relocation, certification, supplies, accessories, media (unless covered by Section 3.1 above) and other expendables are also excluded and will be charged at Diamanti's current prices in effect at the time such costs are incurred.

## 7. CUSTOMER RESPONSIBILITIES

7.1 Diamanti's Support obligations are subject to:

1. Customer's designation of personnel who have sufficient skill and training in using the Equipment and Software and who contact Diamanti for support ("Designated Personnel") after first attempting to resolve the issue themselves;
2. Customer providing Diamanti reasonable access to Customer's site and/or network and personnel as Diamanti reasonably requests to assist Diamanti in performing the Support;
3. Customer installation of Upgrades/Enhancements and recommended Equipment replacement parts, as reasonably directed by Diamanti;
4. Customer maintaining in place and complying with all licenses required with respect to the Software.

7.2 Customer shall back-up any data or other information stored or contained in or on any Equipment, part or Software returned to Diamanti, and Diamanti excludes any liability for the loss of the same while in Diamanti's possession.

## 8. LIABILITY

- EXCLUSION OF CERTAIN LOSSES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL LOSSES OR DAMAGES

WHATSOEVER, OR FOR ANY LOSS OF GOODWILL, LOST PROFITS, LOSS OF BUSINESS OR LOST OPPORTUNITIES IN ANY WAY RELATING TO THIS AGREEMENT, EVEN IF A PARTY HAS BEEN NOTIFIED OF, OR REASONABLY COULD HAVE FORESEEN, THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES OCCURRING, AND REGARDLESS OF WHETHER SUCH LIABILITY IS BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE.

- LIMITATION OF LIABILITY. IN NO EVENT SHALL THE AGGREGATE LIABILITY OF DIAMANTI EXCEED THE FEES PAID BY CUSTOMER FOR SUPPORT IN THE 12 MONTHS PRECEEDING THE DATE OF THE CLAIM. FOR PURPOSES OF THIS SECTION, A "CLAIM" SHALL MEAN, COLLECTIVELY, ALL CAUSES OF ACTION, DAMAGES, CLAIMS OR DISPUTES OR SIMILAR REQUESTS FOR COMPENSATION THAT ARE RELATED TO OR ARISE FROM THIS AGREEMENT AND FROM A PARTICULAR EVENT, ACT, OMISSION, FAILURE OR ROOT CAUSE.

## 9. GENERAL

9.1 Assignment. Customer may not assign this Agreement or any of its rights or obligations under this Agreement, by operation of law or otherwise, without the prior written consent of Diamanti. This Agreement shall bind each party and its permitted successors and assigns. Any assignment in contravention of this Section 9.1 shall be null and void and of no force or effect.

9.2 Disputes. This Agreement shall be governed by and construed in accordance with the laws of California. The UN Convention on Contracts for the International Sale of Goods shall not apply. This Agreement is the entire agreement of the parties, and supersedes all prior or contemporaneous agreements, communications or representations, written or oral, between the parties with respect to the subject matter of this Agreement and represents the complete integration of the parties' agreement. Any different or additional terms of any related purchase order, confirmation, quote or similar ordering document, even if signed by the parties after the date hereof, shall have no force or effect on this Agreement. If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the remaining provisions shall not be affected or impaired. This Agreement may be modified only by a written agreement executed by authorized officers of each party. No delay or omission to exercise any right or remedy

accruing to a party upon any breach or default of the other party shall impair that right or remedy, or be construed to be a waiver of any breach or default.

9.3 Force Majeure. Except for the obligation to pay monies due and owing, neither party shall be liable for any delay or failure in performance due to events outside the defaulting party's reasonable control, including without limitation acts of God, labor disputes, shortages of supplies, fire, war, disruption related to terrorism, epidemics, or delays of common carriers. The obligations and rights of the excused party shall be extended on a day to day basis for the time period equal to the period of the excusable delay.

**EMC EULA  
WARRANTY & MAINTENANCE TERMS**



## End User Software License Agreement For Use with GSA Schedule 70

\_\_\_\_\_, located at \_\_\_\_\_, (“Licensor”), and \_\_\_\_\_, with a principal place of business at \_\_\_\_\_ (“Customer”), agree that this End User Software License Agreement (“EULA”) shall govern any Software listed on an Order accepted by Licensor after the date of last signature below (the “Effective Date”).

### 1. DEFINITIONS.

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

B. “Products” mean “Equipment” (which is the hardware delivered by LICENSOR to Customer) and/or “Software” (which is any programming code provided by LICENSOR to Customer as a standard product, also including microcode, firmware and operating system software).

C. “Product Notice” means the notice by which LICENSOR informs Customer of product-specific use rights and restrictions, warranty periods, warranty upgrades and maintenance (support) terms. Product Notices may be delivered in an LICENSOR quote, otherwise in writing and/or a posting on the applicable LICENSOR website, currently located at [http://www.emc.com/products/warranty\\_maintenance/index.jsp](http://www.emc.com/products/warranty_maintenance/index.jsp)

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

E. “Eligible Ordering Activities” are those agencies and activities authorized under 552.238-78 Scope of Contract (Eligible Ordering Activities) and GSA Order ADM 4800.2G, February 16, 2011, to use GSA Schedule 70. An Eligible Ordering Activity is a “Customer”. Eligible Ordering Activities that are Executive agencies (as defined in FAR Subpart 2.1), including non-appropriated fund activities as prescribed in 41 CFR 101-26.000, are referred to as “Executive Customers”. All other Eligible Ordering Activities are referred to as “Other Customers”.

### 2. LICENSE TERMS.

A. **General License Grant.** LICENSOR grants to Customer a nonexclusive and nontransferable (except as otherwise permitted herein) license (with no right to sublicense) to use (i) the Software for Customer’s internal business purposes; and (ii) the Documentation related to Software for the purpose of supporting Customer’s use of the Software. Licenses granted to Customer shall, unless otherwise indicated on the LICENSOR quote, be perpetual and commence on Delivery of the physical media or the date Customer is notified of electronic availability, as applicable.

B. **Licensing Models.** Software is licensed for use only in accordance with the commercial terms and restrictions of the Software’s relevant licensing model, which are stated in the Product Notice and/or LICENSOR quote. For example, the licensing model may provide that Software is licensed for use solely (i) for a certain number of licensing units; (ii) on or in connection with certain equipment, or a CPU, network or other

hardware environment; and/or (iii) for a specified amount of storage capacity. Microcode, firmware or operating system software required to enable the Equipment with which it is shipped to perform its basic functions, is licensed for use solely on such Equipment.

C. **License Restrictions.** All Software licenses granted herein are for use of object code only. Customer is permitted to copy the Software as necessary to install and run it in accordance with the license, but otherwise for back-up purposes only. Customer may copy Documentation insofar as reasonably necessary in connection with Customer’s authorized internal use of the Software. Customer shall not, without LICENSOR’s prior written consent (i) use Software in a service bureau, application service provider or similar capacity; or (ii) disclose to any third party the results of any comparative or competitive analyses, benchmark testing or analyses of LICENSOR Products performed by or on behalf of Customer; (iii) make available Software in any form to anyone other than Customer’s employees or contractors; or (iv) transfer Software to an Affiliate or a third party.

D. **Software Releases.** Software Releases shall be subject to the license terms applicable to Software.

E. **Audit Rights.** LICENSOR shall have the right to audit Customer’s usage of Software to confirm compliance with the agreed terms. Such audit is subject to reasonable advance notice by LICENSOR and shall not unreasonably interfere with Customer’s business activities. Customer will provide LICENSOR with the support required to perform such audit and will, without prejudice to other rights of LICENSOR, address any non-compliant situations identified by the audit by forthwith procuring additional licenses. If the Customer is an Executive Customer non-compliant situations are subject to paragraph 2.F. Disputes.

F. **Disputes.** For a EULA with an Executive Customer LICENSOR shall comply with FAR 52.212-4 (d) Disputes for requests for equitable adjustment, claims, appeals or actions arising under this EULA, including Executive Customer breaches of the terms governing use of the Software. EULA’s with Other Customers are not subject FAR 52.212-4 (d) Disputes.

G. **Reserved Rights.** All rights not expressly granted to Customer are reserved. In particular, no title to, or ownership of, the Software is transferred to Customer. Customer shall reproduce and include copyright and other proprietary notices on and in any copies of the Software. Unless expressly permitted by applicable mandatory law, Customer shall not modify, enhance, supplement, create derivative works from, reverse assemble, reverse engineer, decompile or otherwise reduce to human readable form the Software without the manufacturer’s prior

written consent, nor shall Customer permit any third party to do the same.

**H. Other License Terms.** If a particular Product is provided with a "clickwrap" agreement included as part of the installation and/or download process, or a "shrinkwrap" agreement included in the packaging for the Product, the terms of such clickwrap or shrinkwrap agreement shall, in case of conflict with the terms of this EULA, (i) prevail with regard to Products for which LICENSOR is not the licensor; and (ii) not prevail with regard to Products for which LICENSOR is the licensor.

### 3. PRODUCT WARRANTY.

**A. Software Warranty.** LICENSOR warrants that Software will substantially conform to the applicable Documentation for such Software and that any media will be free from manufacturing defects in materials and workmanship until the expiration of the warranty period. LICENSOR does not warrant that the operation of Software shall be uninterrupted or error free, that all defects can be corrected, or that Software meets Customer's requirements, except if expressly warranted by LICENSOR in its quote. Support Services for Software are available for separate purchase and the Support Options are identified at the Product Notice.

**B. Warranty Duration.** Unless otherwise stated on the LICENSOR quote, the warranty period for Products shall be as set forth at the Product Notice. Equipment warranty commences upon Delivery. Software warranty commences upon Delivery of the media or the date Customer is notified of electronic availability, as applicable. Equipment upgrades are warranted from Delivery until the end of the warranty period for the Equipment into which such upgrades are installed.

**C. Customer Remedies.** LICENSOR's entire liability and Customer's exclusive remedies under the warranties described in this section shall be for LICENSOR, at its option, to remedy the non-compliance or to replace the affected Product. If LICENSOR is unable to effect such within a reasonable time, then LICENSOR shall refund the amount paid by Customer for the Product concerned as depreciated on a straight line basis over a five (5) year period, upon return of such Product to LICENSOR. All replaced Products or portions thereof shall be returned to and become the property of LICENSOR. If such replacement is not so returned, Customer shall pay LICENSOR's then current spare parts price therefore. If the Customer is an Executive Customer, LICENSOR claims for non-returned Products are subject to paragraph 2.F. Disputes.

LICENSOR shall have no liability hereunder after expiration of the applicable warranty period.

**D. Warranty Exclusions.** Warranty does not cover problems that arise from (i) accident or neglect by Customer or any third party; (ii) any third party items or services with which the Product is used or other causes beyond LICENSOR's control; (iii) installation, operation or use not in accordance with LICENSOR's instructions or the applicable Documentation; (iv) use in an environment, in a manner or for a purpose for which the Product was not designed; (v) modification, alteration or repair by anyone other than LICENSOR or its authorized representatives; or (vi) in case of Equipment only, causes not attributable to normal wear and tear. LICENSOR has no obligation whatsoever for Software installed or used beyond the licensed use, for Equipment which was moved from the

Installation Site without LICENSOR's consent or whose original identification marks have been altered or removed. Removal or disablement of Equipment's remote support capabilities during the warranty period requires reasonable notice to LICENSOR. Such removal or disablement, or improper use or failure to use applicable Customer Support Tools shall be subject to a surcharge in accordance with LICENSOR's then current standard rates.

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

**4. INDEMNITY.** LICENSOR shall (i) defend Customer against any third party claim that a Product or Service infringes a patent or copyright enforceable in a country that is a signatory to the Berne Convention; and (ii) pay the resulting costs and damages finally awarded against Customer by a court of competent jurisdiction or the amounts stated in a written settlement negotiated by LICENSOR. The foregoing obligations are subject to the following: Customer (a) notifies LICENSOR promptly in writing of such claim; (b)(1) if Customer is an entity for which the Department of Justice (DoJ) has the statutory right to exercise sole control over the defense, DoJ shall have that right, provided that DoJ shall consult appropriately with LICENSOR and/or EMC Corporation, and LICENSOR and/or EMC Corporation shall have the right to intervene through its own counsel and at its own expense; (b)(2) for all other Customers, Customer grants LICENSOR sole control over the defense and settlement thereof; (c) reasonably cooperates in response to an LICENSOR request for assistance; and (d) is not in material breach of this EULA. Should any such Product or Service become, or in LICENSOR's opinion be likely to become, the subject of such a claim, LICENSOR may, at its option and expense, (1) procure for Customer the right to make continued use thereof; (2) replace or modify such so that it becomes non-infringing; (3) request return of the Product and, upon receipt thereof, refund the price paid by Customer, less straight-line depreciation based on a five (5) year useful life for Products; or (4) discontinue the Service and refund the portion of any pre-paid Service fee that corresponds to the period of Service discontinuation. LICENSOR shall have no liability to the extent that the alleged infringement arises out of or relates to: (A) the use or combination of a Product or Service with third party products or services; (B) use for a purpose or in a manner for which the Product or Service was not designed; (C) any modification made by any person other than LICENSOR or its authorized representatives; (D) any modifications to a Product or Service made by LICENSOR pursuant to Customer's specific instructions; (E) any technology owned or licensed by Customer from third parties; or (F) use of any older version of the Software when use of a newer Software Release made available to Customer would have avoided the infringement. THIS SECTION STATES CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND LICENSOR'S ENTIRE LIABILITY FOR THIRD PARTY INFRINGEMENT CLAIMS.

## 5. LIMITATION OF LIABILITY.

**A. Limitation on Direct Damages.** EXCEPT WITH RESPECT TO CLAIMS ARISING UNDER SECTION 4 ABOVE, LICENSOR'S TOTAL LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR ANY CLAIM OF ANY TYPE WHATSOEVER, ARISING OUT OF PRODUCT OR SERVICE PROVIDED HEREUNDER, SHALL BE LIMITED TO PROVEN DIRECT DAMAGES CAUSED BY LICENSOR'S SOLE NEGLIGENCE IN AN AMOUNT NOT TO EXCEED (i) US\$1,000,000, FOR DAMAGE TO REAL OR TANGIBLE PERSONAL PROPERTY; AND (ii) THE PRICE PAID BY CUSTOMER TO LICENSOR FOR THE SPECIFIC SERVICE (CALCULATED ON AN ANNUAL BASIS, WHEN APPLICABLE) OR PRODUCT FROM WHICH SUCH CLAIM ARISES, FOR DAMAGE OF ANY TYPE NOT IDENTIFIED IN (i) ABOVE OR OTHERWISE EXCLUDED HEREUNDER.

**B. No Indirect Damages.** EXCEPT WITH RESPECT TO CLAIMS REGARDING VIOLATION OF LICENSOR'S INTELLECTUAL PROPERTY RIGHTS OR CLAIMS ARISING UNDER SECTION 4 ABOVE, NEITHER CUSTOMER NOR LICENSOR SHALL HAVE LIABILITY TO THE OTHER FOR ANY SPECIAL, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, OR INDIRECT DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, REVENUES, DATA AND/OR USE), EVEN IF ADVISED OF THE POSSIBILITY THEREOF.

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

**D. Limitation Period.** Unless otherwise required by applicable law, the limitation period for claims for damages shall be eighteen (18) months after the cause of action accrues, unless statutory law provides for a shorter limitation period.]

**E. Suppliers.** The foregoing limitations shall also apply in favor of LICENSOR's suppliers.

**6. EXPORT CONTROL.** The Products, Services and the technology included therein provided under this EULA are subject to governmental restrictions on (i) exports from the U.S.; (ii) exports from other countries in which such Products and technology included therein may be produced or located; (iii) disclosures of technology to foreign persons; (iv) exports from abroad of derivative products thereof; and (v) the importation and/or use of such Products and technology included therein outside of the United States or other countries (collectively, "Export Laws"). Customer shall comply with all Export Laws. Diversion contrary to U.S. law or other Export Laws is expressly prohibited.

**7. TERM AND TERMINATION.** This EULA takes effect on the Effective Date and continues until terminated in accordance with the following:

**A. EULAs with Executive Customers** may be (i) terminated for cause pursuant to FAR 52.212-4(m) or (ii) for convenience pursuant to FAR 52.212-4 (l).

**B. For EULAs with Other Customers** LICENSOR may terminate licenses for cause if Customer breaches the terms governing use of the Software and fails to cure within thirty (30) days after receipt of LICENSOR's written notice thereof. Upon termination of a license, Customer shall cease all use and return or certify destruction of the applicable Software (including copies) to LICENSOR. Any provision that by its nature or context is intended to survive any termination or expiration, including but not limited to provisions relating to payment of outstanding fees, confidentiality and liability, shall so survive.

## 8. MISCELLANEOUS.

**A. References.** LICENSOR may identify Customer for reference purposes unless and until Customer expressly objects in writing.

**B. Notices.** Any notices hereunder shall be in writing.

**C. Entire Agreement.** This EULA and each purchase order (i) comprise the complete statement of the agreement of the parties with regard to the subject matter thereof; and (ii) may be modified only in writing. All terms of any purchase order or similar document provided by Customer, including but not limited to any pre-printed terms thereon and any terms that are inconsistent or conflict with this EULA and/or LICENSOR quote, shall be null and void and of no legal force or effect, even if LICENSOR does not expressly reject to such terms when accepting a purchase order or similar document provided by Customer; however, terms in such document deviating from a LICENSOR quote do become binding upon the parties when expressly accepted by LICENSOR in writing in an order acknowledgement or similar document.

**D. Force Majeure.** Except for payment of fees, neither party shall be liable under this EULA because of a failure or delay in performing its obligations due to any force majeure event, including strikes, riots, insurrection, terrorism, fires, natural disasters, acts of God, war, governmental action, or any other cause which is beyond the reasonable control of such party.

**E. Assignment.** Customer shall not assign this EULA or a purchase order or any right herein or delegate any performance without LICENSOR's prior written consent, which consent shall not be unreasonably withheld. LICENSOR may use LICENSOR Affiliates or other sufficiently qualified subcontractors to provide Services to Customer, provided that LICENSOR shall remain responsible to Customer for the performance thereof.

**F. Governing Law.** To the extent not preempted by federal law or regulation, this EULA is governed by the laws of the Commonwealth of Massachusetts. To the extent permitted by law, the courts of the Commonwealth of Massachusetts shall be exclusively competent to rule on disputes arising out of or in connection with this EULA and all purchase orders. The U.N. Convention on Contracts for the International Sale of Goods does not apply.

**G. Waiver.** No waiver shall be deemed a waiver of any prior or subsequent default hereunder.

IN WITNESS WHEREOF, the parties have caused this Software License Agreement to be signed on the respective dates indicated below.

**Licensor:** \_\_\_\_\_

**Licensee:** \_\_\_\_\_

**By:** \_\_\_\_\_

**By:** \_\_\_\_\_

**Name (Print):** \_\_\_\_\_

**Name (Print):** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Date:** \_\_\_\_\_

EMC Corporation (“EMC” or “Dell EMC”) provides a variety of warranty and maintenance support offerings for all Dell EMC products. Maintenance terms are set forth in the Dell EMC Product Warranty and Maintenance Table that is incorporated in the GSA Schedule. The following is a general summary of those terms.<sup>1</sup>

**Dell EMC Product Support Availability.** Dell EMC’s product support lifecycle is designed to help customers effectively manage their technology investments. Dell EMC’s product lifecycle policy specifies the support duration (the “Standard Support” period) and End-of-Standard-Support (EOSS) date for most products. Dell EMC intends, subject to change at Dell EMC’s discretion, to offer product support under Dell EMC’s standard product maintenance terms and conditions during a product’s Standard Support period. Once a product reaches its EOSS date, Dell EMC may, at its discretion, offer Post Standard Support for certain hardware models. Additional information on Dell EMC’s support lifecycle policy and Post Standard Support for Dell EMC hardware products can be found on the specific Dell EMC product page, located by searching within the **Support by Product** section of the Dell EMC Online Support site. This information is subject to change at Dell EMC’s discretion.

Standard Support <sup>2</sup>	Post Standard Support (HW)/ Extended Support (SW) <sup>3</sup>
<p>Standard Support begins when a product is Generally Available (GA), or Ready To Ship (RTS).</p> <p>Standard Dell EMC maintenance and support services (i.e., phone support, maintenance, access to new features, technology or fixes, etc.) made available by Dell EMC during the Standard Support period for Products as specified in the applicable Product Notice. Historically referred to as Dell EMC “Continuous Coverage Product Maintenance (CCPM)”.</p>	<p>Post Standard Support may be available for of Dell EMC hardware models, at Dell EMC’s discretion, upon the expiration of the Standard Support period to assist customers needing additional time to migrate to a currently supported platform.</p> <p>Post Standard Support requires a current Dell EMC maintenance contract to be in place at EOSS for the associated product, or the equipment must be recertified by Dell EMC.</p>
<p>Operating Software and Layered Application Software</p>	<p>Extended Support may be available for Dell EMC Operating Environment Software or Layered Application Software not at the current or N-1 release, with some reduction in service content or coverage. Incremental pricing may apply.</p>
<p>For some Dell EMC Stand-alone software products that are independent of Dell EMC hardware releases, it is Dell EMC’s intention, subject to change at Dell EMC’s discretion, to support the current and immediately prior software release for the period of three (3) years from the release’s GA date. Dell EMC endeavors to publish the applicable EOSS date(s) for this software at GA. This three-</p>	<p>Extended Support may be available for older Stand-alone software releases. Extended Support, when available, is generally sold in six- (6) month increments and consists of a reduced level of support. Incremental pricing may apply. Specific terms and conditions for Extended Support will vary by product.</p> <p>Extended Support requires a current EMC maintenance contract to be in place for the associated software.</p>

<sup>1</sup> This is a general description of Dell EMC warranty and maintenance offerings only. This general description does not modify EMC Warranty or Maintenance terms that are incorporated in the GSA schedule. Please consult the Dell [EMC Product Warranty and Maintenance Table](#) for details.

<sup>2</sup> Certain terms, limitations and exclusions apply to Dell EMC’s support lifecycle policy. In some cases, resolution of an issue may be addressed by requiring a move to a more recent release.

<sup>3</sup> **For GSA orders Extended Support is available on an Open Market Basis Only.** If Extended Support is not available or purchased, End-of-Service Life (EOSL) of a product occurs on the End-of Standard-Support date.

year period is referred to as the Standard Support period for the applicable release.	
For some Dell EMC hardware products, it is Dell EMC's intention, subject to change at Dell EMC's discretion, to make available Dell EMC's Standard Support for the period of five (5) years after the applicable End-of-Life (EOL) date of the hardware. The EOL date refers to the date that Dell EMC has discontinued a model number of Dell EMC hardware or software as a product offering, and has removed such model number from Dell EMC's pricing/quoting systems.	Operating Environment and Layered Application Software maintenance are not available after the associated equipment is past End of Standard Support.
For some platform software products, it is EMC's intention to support the current and immediately prior software release for a period that is coterminous with the related hardware.	

## **Definitions**

**General Availability (GA), (may also be called Ready-To-Ship - RTS).** The date when a Product (including each new release of a software Product) is orderable and shippable.

**End of Life (EOL).** EMC has discontinued as a Product offering, and removed from pricing/quoting systems, a model number of EMC Equipment or EMC Stand-alone Software, Operating Environment Software, or Layered Application Software (which includes its most current and all prior release designations).

**End-of-Life (EOL) Date.** EMC may discontinue a Product offering at its discretion subject to any preexisting contractual commitments. The EOL date refers to the date that EMC has discontinued a model number of EMC hardware or software as a product offering and has removed such model number from EMC's pricing/quoting systems. Products that have reached their EOL date are no longer available for purchase but are eligible for maintenance renewal until the End-of-Standard Support date (see table above). To distinguish products that are eligible for maintenance renewal only the following note is attached to the product description: **"MAINTENANCE AVAILABLE ONLY. PRODUCT NOT AVAILABLE FOR SALE."**

**End of Standard Support (EOSS).** The date after which Standard Support is no longer available.

**Post Standard Support.** A type of support for Dell EMC Equipment which Dell EMC may, at its discretion, make available upon the expiration of the Standard Support period to assist customers needing additional time to migrate to currently supported equipment. Incremental pricing may apply.

**Extended Support.** A type of support for software releases which Dell EMC may, at its discretion, make available upon the expiration of the Standard Support period for that release to assist customers needing additional time to migrate to a currently supported release. Extended Support can be made available on eligible Dell EMC Operating Environment Software, Layered Application Software, and Stand-alone Software releases, with some reduction in service content or coverage. Incremental pricing may apply.

**End of Service Life (EOSL).** The date after which EMC has discontinued Standard Support and Post Standard Support/ Extended Support (if available) for a Product offering but may continue to offer limited support and/or maintenance only on a time and materials basis, subject to resource availability.

**End-of-Service Life (EOSL) Date.** Products that have reached their EOSL date are permanently removed from the GSA Schedule price list.

**EMC End-of-Service Life Notification.** If Extended Support is not available, End-of-Service Life (EOSL) of a product occurs on the End-of-Standard-Support date. Dell EMC endeavors to give customers notice of a product's End of Service Life to enable them to plan for the retirement of their Dell EMC products. This provides customers with the opportunity to smoothly transition to a more advanced and/or currently supported EMC product. Additional information on EOSS and EOSL dates for EMC products can be found by searching for the specific EMC product within the Support by Product section of the EMC Online Support site.

**Coterminous.** Ending at the same time

**Equipment.** Dell EMC Hardware

**Layered Application Software** (Operates with Operating Environment Software). Separately licensed software Products or features that operate with Operating Environment Software. Examples include MirrorView, SnapView, and SAN Copy in a CLARiiON array, and SRDF or TimeFinder Software in a Symmetrix array. It is supported on Dell EMC equipment and may be supported on non-Dell EMC equipment in conjunction with Dell EMC equipment.

**Major Release.** A full distribution of Stand-alone Software, Operating Environment Software, or Layered Application Software that includes features and enhancements. The most recent (current) Major Release is referred to as “N”, with the previous releases “N-1,” “N-2,” etc.

**Hot Fix.** Restricted availability code correction which should not include new features.

**Equipment Warranty.** Current Dell EMC equipment products are sold with limited warranties. Dell EMC equipment (hardware) that previously sold with warranties are currently End of Life; in some instances, upgrades may still be purchased; support for upgrades of these warranty products are covered under the support contract of the equipment they are installed in.

**Software Warranty.** The software warranty covers the media only for ninety (90) days from the date of shipment, or the date of electronic availability, as applicable. Limited warranty of the equipment does not cover software support.

**Support Levels.** Dell EMC offers five support levels: Basic, ProSupport Next Business Day (NBD) (formerly Enhanced), Pro Support with Mission Critical (4HR/MC) (formerly Premium), Pro Support Plus-NBD, and ProSupport Plus (4HR/MC). The descriptions of support options that are incorporated in the GSA schedule along with the support levels for each product, response times, extent of coverage, response times, severity levels and other information can be found in the Dell EMC Product Warranty and Maintenance Table. Not all support levels are available for every product. Details on each level can be found at <http://www.emc.com/customer-services/customer-service-options.htm>

**Equipment Maintenance.** For products with limited warranty, equipment maintenance begins at the same time as warranty begins. Equipment maintenance can be purchased at the time of original product purchase.

**Software Maintenance.** Software maintenance is purchased and provides the rights to new software releases as made generally available by Dell EMC for the period of software maintenance coverage purchased. Software Maintenance is invoiced at the time of purchase and prepaid.

**Maintenance Renewals.** For products that have not reached EOSS, EMC provides customers with the option to renew maintenance, both equipment and software. At EOSS, Post Standard Support may be offered at Next Business Day or 4-hour response options. Once a product reaches EOSL, support will no longer be available, and maintenance may not be renewed.

**Equipment Maintenance Renewals.** When the original warranty or original equipment maintenance period ends, EMC may provide GSA customers with the option to purchase continued equipment support through the maintenance renewal process, until the EOSL date.

**Software Maintenance Renewals.** When the initial period of prepaid software maintenance ends, software maintenance may be renewed, until the EOSL date.

**Equipment Upgrades.** Warranty and maintenance for equipment upgrades will be priced at the same support level (Basic, Basic, ProSupport-Next Business Day (NBD), and Pro Support with Mission Critical (MC), Pro Support Plus-NBD, and ProSupport Plus with MC) that applies to the system in which the upgrade equipment is installed. The applicable warranty or maintenance period will be co-terminus with the warranty or maintenance period that applies to the system in which the upgrade equipment is installed. Annual maintenance prices are prorated on a monthly basis to conform to the co-terminus end date.

### **Maintenance and Maintenance Renewal Pricing.**

The **Annual Maintenance List Price (AMLPL)** for Dell EMC equipment and software maintenance, and equipment and software maintenance renewals ***is priced as a percentage of*** (not discount off) the product list price. As set forth in Table 2 attached, the percentages vary by Component Type within each major Product and Product Family. A limited number of components are priced on a fixed dollar basis.

The annual maintenance list price rates in Table 2, are for 12 months of support. The total maintenance list price for system configuration is determined as follows:

1. The commercial list price of each component product is multiplied by the quantity of the product (extended component list price).
2. The extended component list price is multiplied by the applicable maintenance list price rate (percentage) from the rate table attached for the desired level of support (maintenance list price).
3. The maintenance list price is multiplied by the number of years / months of support required. (duration)
4. The individual component maintenance list prices are summed using an aggregating model number, at point of sale.
5. The GSA net price for maintenance is calculated by applying the GSA discount (*discount off maintenance list*) to the total maintenance list price. **The GSA discounts are set forth in Table 1 below.**

When circumstances require, annual prices can be pro-rated to the actual term of support.

The sum of component level maintenance pricing will appear on the quote under one of several aggregating model numbers that include (but are not limited to) the following examples:

<u>Aggregating Model Number</u>	<u>General Description</u>
M-PS-HW-001	Sum of ProSupport W/NBD-Hardware Support
M-PS-SW-001	Sum of ProSupport W/NBD-Software Support
M-PSM-HW-001	Sum of ProSupport 4HR/MC HW Support
M-PSM-SW-001	Sum of ProSupport 4HR/MC SW Support
M-PSP-HW-001	Sum of ProSupport Plus 4HR/MC Hardware Support
M-PSP-SW-001	Sum of ProSupport Plus 4HR/MC Hardware Support

Because these model numbers only serve to sum up and aggregate component maintenance list prices on a quote, these model numbers do not represent any intrinsic, discreet service or have a unique list price. Aggregating model numbers do not appear on the GSA schedule price list. These models are not open market items because they only serve to sum individual maintenance prices for products that are included on the GSA schedule. Other maintenance aggregating model numbers are used in the quoting system. Dell EMC reserves the right to change maintenance aggregating model numbers without notice.

**Pricing:**

**Prepaid Maintenance Pricing.** Also referred to as point-of-sale maintenance, this maintenance is purchased in the initial order and is calculated within the Dell EMC quoting systems. The Dell EMC reseller can provide a Dell EMC “Product Warranty and Maintenance Schedule” for each quote to validate the maintenance calculations substantially in the form of the following illustration. This illustration does not represent actual list prices or discounts.

Model	Description	Qty	Pre-Sold Maint Months	Total Coverage Months	Maintenance Model	Maint List Price(USD)	Total Maint Price(USD)
M-ENHSW-001	ENHANCED SOFTWARE SUPPORT	1				5,900.00	5,310.00
ABC	Software Title 1	1	36	36	M-ENHSW-001	3,000.00	2,700.00
DEF	Software Title 2	1	36	36	M-ENHSW-001	1,700.00	1,530.00
GHI	Software Title 3	1	36	36	M-ENHSW-001	1,200.00	1,080.00



**Renewal Maintenance Pricing.** Also referred to as renewal maintenance, this maintenance is offered for previously purchased systems and products installed in specific customer locations. Renewal quotes are based on information from Dell EMC installed base systems, as well as customer provided information. Because maintenance renewal quotes are highly individualized for particular installations of Dell EMC products, renewal quotes are supported by detailed spreadsheets provided with the renewal quote. The “Product Warranty and Maintenance Schedule” is not available for maintenance renewal quotes, and aggregating model numbers are not used in quoting.

**Table 1  
Standard Transfer GSA Discounts**

<b>Discount Class</b>	<b>Description</b>	<b>Prepaid Maintenance Included in Original Order</b>
A	Hardware – Enterprise (Symmetrix, Celerra)	44.32%
B	Hardware – Mid-Tier (CLARiiON, Centera, Atmos, NAS, Ericsson, Gemed)	35.04%
C	Hardware – Connectrix	36.20%
D1	Software – Enterprise Platform, Mid-Tier Platform, Multi-Platform/Open	24.76%
D2	Software – Enterprise Platform, Mid-Tier Platform, Multi-Platform/Open	35.04%
D3	Software – Enterprise Platform, Mid-Tier Platform, Multi-Platform/Open	24.76%
DD-1	Data Domain Flash Enabled Hardware and Software	23.62%
DE	Software Maintenance - Data Domain; BRS Products (other than Atmos, Centera, and Data Domain)	33.88%
DH and DM	Software Maintenance - Data Domain; BRS Products (other than Atmos, Centera, and Data Domain)	30.40%
DS	DSSD	21.90%
E	EMC Third Party Hardware, Software and Switches	24.76%
EN-H	Hardware – VMAX 10K/20K/40K	24.76%
EN-S	Software – VMAX 10K/20k/40K	24.76%
ES-1	VMAX2 Hardware, Software and Maintenance	21.90%
ES-AF	VMAX AFA - All Flash; Optional Software Maintenance	21.90%
ES-P1		21.90%
IS	Isilon Hardware & Software Maintenance	21.34%
IS2		21.34%
J	Hardware & Software Maintenance – Flash (VXRail)	33.74%
P	Pivotal – Software and Maintenance, DCA Hardware Maintenance	15.30%
PE	Hardware Maintenance - BRS Products (other than Atmos, Centera, and Data Domain)	33.88%
PH and PM	Hardware Maintenance - BRS Products (other than Atmos, Centera, and Data Domain)	30.40%
UE	Unified Entry Level – Hardware & Software	33.88%
UM	VNX2 hardware, Software and Maintenance	35.04%
UM-1	Unity – (Hybrid); Optional Software Maintenance	30.40%
UM-F1	Unity All Flash; Optional Software Maintenance	30.40%
UM-H	Hardware Maintenance – VNX 2	27.40%
UM-S	Software Maintenance – VNX 2	24.76%
V	Hardware & Software Maintenance – ViPR, VDSC, & ECS	16.40%
VPLEX	Hardware & Software Maintenance - VPLEX	40.84%
XT	Hardware Maintenance - XtremeIO	28.18%

**Maintenance Renewals: GSA Discount 10.93% for all Categories**

## **ENET WARRANTY**

ENET Solutions, Inc. ("ENET Solutions") warrants to the original purchaser of authorized ENET Solutions' products only, that during the applicable warranty period as described below, that the product will be: (a) free from material defects in manufacture, (b) fit for its normal intended use, and (c) will conform to any of ENET Solutions' applicable published specifications.

Applicable Limited Warranty Period: Optical Transceivers -

Lifetime Warranty Network Cables - Lifetime Warranty Network

Memory - Lifetime Warranty Media Converters - 3 Year

Warranty

The warranty period will vary by specific product, and will be the longest of: the applicable replacement warranty period described above.

## **EXAGRID WARRANTY & SUPPORT**



## ExaGrid® Customer Support & Maintenance

ExaGrid's customer support and maintenance services are designed to ensure that your ExaGrid system stays up and running to meet your data protection needs. The following information outlines the valuable aspects of the support and maintenance program, including a description of the difference between the ExaGrid Systems Support and Maintenance program and the product's base warranty.

### Support and Maintenance

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Coverage: All hardware, software and support coverage listed below

### Support Response

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Requirement: Current annual customer maintenance and support renewal  
Hours of Operation: 8:00 a.m. to 5:00 p.m., Monday – Friday, local customer time for North America (optional 7x24 support available)  
Methods: Phone or email support  
Response Time: 80% of phone calls and emails will be responded to in less than an hour

### Self Monitoring, Automatic Notification, and Remote Support

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Requirement: Current annual customer maintenance and support renewal  
Requirement: Valid remote access from ExaGrid to the ExaGrid system  
Service: Monitor any alerts including pre-defined thresholds  
Remotely analyze and diagnose problems  
Reconciliation: Many problems are quickly resolved without customer intervention  
ExaGrid does not commit to what percentage of problems it can resolve without customer intervention

### Hardware Maintenance

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Requirement: Current annual customer maintenance and support renewal  
Program: All failed hardware components are shipped for next business day delivery and are replaced by the customer  
100% of the hardware is covered  
- disk drive, power supply, server, included network components

### Software Maintenance

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Requirement: Current annual customer maintenance and support renewal  
Program: All versions (point and full) are included at no charge  
There are no additional charges

### Contact Information

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Support Email Address: support@exagrid.com  
Support Phone Number: 800-868-6985 option 2



## ExaGrid® Cost-Effective Disk-based Backup™

The table below summarizes and compares the Base Warranty to ExaGrid's Standard Customer Support and Maintenance Program.

Feature	Base Warranty	ExaGrid Customer Support and Maintenance
Support Response – Phone	Not Included	Included
Hours of Coverage	Not included	8 AM to 5 PM local customer time (optional 7x24 support available)
Length of Coverage	Not included	Period of support and maintenance
Response Time	Not Included	Maximum of 1 hour for 80% of calls
Support Response – Email	Limited	Included
Length of Coverage	90 days	Period of support and maintenance
Response Time	Up to 2 business days	Maximum of 1 hour for 80% of calls
Hardware Maintenance	Return to Factory	Advanced Replacement
Length of Coverage	1 year from purchase	Period of support and maintenance
Response Time	Customer return to factory.	All failed components advanced ship
Software Maintenance	Limited	Included
Length of Coverage	90 days (e-mail support only)	Period of support and maintenance
Response Time	Bug fixes only	All major and minor releases

ExaGrid Systems, Inc. | 2000 West Park Drive | Westborough, MA 01581 | 800.868.6985 | [www.exagrid.com](http://www.exagrid.com)

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# **FUJITSU WARRANTY**

# Limited Warranty Summary

## Fujitsu Scanner Products

### Limited Warranty Summary for Fujitsu Scanner Products

Locate your specific product model from the list below to identify your Limited Warranty period and applicable service method. For a complete description of the end user Limited Warranty, please refer to the Limited Warranty and Services Guide for Fujitsu Imaging Products included with the original product packaging.

Model	Limited Warranty Period/ Service Method
ScanSnap S1100 Series ScanSnap S1300 Series ScanSnap S1500 Series ScanSnap N1800 S-5015C S-6110	1 Year Depot Service
f-6130 Series f-6230 Series f-6140 Series f-6240 Series	1 Year Advance Exchange Service
f-4340C Series f-5530C Series f-6670 Series f-6770 Series f-6010N	3 Months On-Site Service
f-5950 f-6800 Series	3 Months On-Site Service

To upgrade your standard warranty or to purchase post warranty support, call your local Fujitsu Authorized Reseller or contact Fujitsu at (800) 626-4686.

### Fujitsu Computer Products of America, Inc.

<http://us.fujitsu.com/fcpa>

1250 East Arques Avenue Sunnyvale, CA 94085-5401, (800)626-4686 (888)425-8228 info@fcpa.fujitsu.com

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\*PA93004-Y85020\*



# **HONEYWALL WARRANTY**



## **HONEYWELL PRODUCTIVITY PRODUCTS**

**9680 Old Bailes Road**

Ft. Mill, South Carolina 29707

[www.honeywell.com](http://www.honeywell.com)

### **Who is covered by the warranty?**

Products offered by Honeywell Safety and Productivity Solutions are covered for a defined period of time with a Limited Warranty. Honeywell extends this warranty only to the first end-user of the product. This warranty is non-transferable.

### **What's covered by the warranty?**

This warranty covers each product and warrants them to be free from defects in workmanship, under normal use and service, for the defined period of time from the date of purchase by the first end-user. Under this warranty, Honeywell will repair or replace, at its option, any unit that fails to perform according to Honeywell' published specifications during the warranty period.

Products offered by Honeywell Safety and Productivity Solutions are covered for a defined period of time with a Limited Warranty. Honeywell extends this warranty only to the first end-user of the product. This warranty is non-transferable. This warranty covers each product and warrants them to be free from defects in workmanship, under normal use and service, for the defined period of time from the date of purchase by the first end-user. Under this warranty, Honeywell will repair or replace, at its option, any unit that fails to perform according to Honeywell' published specifications during the warranty period.

### **What's not covered by the warranty?**

The warranty does not cover software or damage to the product caused by modification, alteration, misapplication, misuse of, or physical abuse to the product; or damage due to repair or service to the product by anyone other than an Authorized Honeywell Safety and Productivity Solutions Service Center. This warranty also excludes any damage to the product caused by circumstances outside of Honeywell' control, such as, but not limited to, lightning or fluctuation in electrical power.

### **Acquiring warranty service**

Should the product prove to be defective within the warranty period, return the product, as described in the RMA procedures that follow, and Honeywell will, at its option, repair or replace the product, to whatever extent Honeywell deems necessary to restore the product to proper operating condition, without any charge to you.

If you purchased the product from an Authorized Honeywell Reseller, contact the Reseller with the unit's serial number. Your Reseller will contact Honeywell, on your behalf, to arrange for the unit to be serviced.

If you purchased the product directly from Honeywell, or have been instructed by your Reseller to contact Honeywell Safety and Productivity Solutions directly, call the Customer Service Department in your area to request a Repair Maintenance Authorization (RMA) number. Failure to obtain an RMA number before shipping your product to the repair facility will delay the processing of your repair.

When calling for service at any of our repair facilities, please be prepared to give the following information:

Customer ID

Product's type

Brief description of problem

Serial Number and/or Date Code and/or dated Proof-of-Purchase.

(Serial numbers and/or date codes are found in various places on our products. Please have your unit in hand when you call, and a representative will help you find the number or date code.)

If your equipment is still covered under the initial end user's product warranty, please notify the Customer Service Representative when you call. For your protection, we recommend you insure any equipment being sent to Honeywell. Place the product in its original packaging with a copy of your original invoice to avoid possible service delays and ship the product prepaid to the appropriate address. Please ensure that the RMA number is clearly visible on the address label.

# HP WARRANTY

# HP Networking Product Warranty & Support Summary (December 2013)

Products		Warranty duration <sup>1</sup>	Advance replacement delivery <sup>2</sup>	Business Hours Technical Support <sup>3</sup>	24x7 Technical Support <sup>3</sup> (After Aug. 1, 2013)	Software/OS Releases <sup>4</sup>
Switches	Modular					
	129xx, 125xx, 119xx, 95xx	1 year	10 days	1 year	N/A	As long as owned <sup>4</sup>
	105xx, 75xx	1 year	10 days	1 year	1 year	As long as owned <sup>4</sup>
	82xxzl, 54xxzl, 42xxvl	Lifetime <sup>5</sup>	NBD	As long as owned <sup>5</sup>	3 years	As long as owned <sup>4</sup>
	Fixed-configuration					
	59xx/AF, 583x/AF, 582x/AF	1 year	10 days	1 year	N/A	As long as owned <sup>4</sup>
	66xx, 580x/AF	Lifetime <sup>5</sup>	NBD	As long as owned <sup>5</sup>	N/A	As long as owned <sup>4</sup>
	62xx/yl, 55xx, 51xx, 38xx, 36xx, 35xx/yl, 31xx, 29xx/al, 281x, 26xx, 25xx/G	Lifetime <sup>5</sup>	NBD	As long as owned <sup>5</sup>	3 years	As long as owned <sup>4</sup>
	Smart Managed					
	1910, 181x, 17xx	Lifetime <sup>5</sup>	NBD	As long as owned <sup>5</sup>	3 years	As long as owned <sup>4</sup>
	190x	3 years	NBD	3 years	3 years	As long as owned <sup>4</sup>
	IntelliJack Switches	3 years	NBD	3 years	3 years	As long as owned <sup>4</sup>
	Unmanaged					
	1410	Lifetime <sup>5</sup>	NBD	As long as owned <sup>5</sup>	3 years	N/A
1405	3 years	NBD	3 years	3 years	N/A	
Wireless LAN	Indoor Access Points					
	425, M220	Lifetime <sup>5</sup>	NBD	As long as owned <sup>5</sup>	3 years	As long as owned <sup>4</sup>
	MSM46x/430/422/410, MSM3x0	Lifetime <sup>5</sup>	NBD	3 years <sup>7</sup>	3 years	3 years <sup>7</sup>
	M200	Lifetime <sup>5</sup>	NBD	As long as owned <sup>5</sup>	3 years	3 years <sup>7</sup>
	Controllers					
	MSM765 zl <sup>6</sup>	Lifetime <sup>5</sup>	NBD	3 years <sup>7</sup>	3 years	3 years <sup>7</sup>
	MSM775 zl, MSM720	Lifetime <sup>5</sup>	NBD	As long as owned <sup>5</sup>	3 years	As long as owned <sup>4</sup>
	MSM760, MSM710	1 year	NBD	1 year	1 year	1 year <sup>7</sup>
	10500/7500 20G Unified Wired-WLAN Module	1 year	10 days	1 year	1 year	As long as owned <sup>4</sup>
	HP RF Manager Controller	1 year	NBD	1 year	1 year	1 year <sup>7</sup>
	WXxxxx	1 year	30 days	1 year	1 year	As long as owned <sup>4</sup>
	Other Access devices					
	HP 830 Unified Wired-WLAN Switch	Lifetime <sup>5</sup>	NBD	As long as owned <sup>5</sup>	3 years	As long as owned <sup>4</sup>
	MSM4xx-R, MSM3xx-R Outdoor Access Points	1 year	NBD	1 year	1 year	1 year <sup>7</sup>
M111 Wireless Client Bridge	1 year	NBD	1 year	1 year	1 year <sup>7</sup>	
MSM317 Wireless Access Devices	Lifetime <sup>5</sup>	NBD	3 years	3 years	3 years <sup>7</sup>	
MSM415 RF Security Sensor	Lifetime <sup>5</sup>	NBD	3 years	3 years	3 years <sup>7</sup>	
30xx Wireless Switch	1 year	30 days	1 year	1 year	As long as owned <sup>4</sup>	
Routers	Routers					
	88xx, HSR68xx	1 year	10 days	1 year	N/A	As long as owned <sup>4</sup>
	HSR66xx, 66xx, MSR50, MSR4000, MSR3000, MSR30	1 year	10 days	1 year	1 year	As long as owned <sup>4</sup>
	MSR9xx, MSR2000, MSR20	1 year	NBD	1 year	1 year	As long as owned <sup>4</sup>
Management	Network Management					
	Intelligent Management Center	90 days	N/A	90 days	N/A	90 days (bug fix only)
	PCM+ Network Management (IDM, MM & NIM)(Purchased after February 1, 2009)	90 days	N/A	1 year	N/A	As long as owned (bug fix only for assessed version) 1 year (All releases)
	PCM+Network Management (IDM, MM & NIM)(Purchased before February 1, 2009)	90 days	N/A	As long as owned <sup>5</sup>	N/A	As long as owned <sup>4</sup>
Additional Networking Products	AllianceONE Products					
	HP AllianceONE Services/Advanced/Extended Services zl modules <sup>6</sup>	Lifetime <sup>6</sup>	NBD	As long as owned <sup>6</sup>	3 years	As long as owned <sup>6</sup>
	Sangoma Voice Cards	Lifetime <sup>5</sup>	NBD	As long as owned <sup>5</sup>	N/A	As long as owned <sup>6</sup>
	HP Voice Products					
	VCX voice and communication products	1 year	30 days	90 days	N/A	90 days (bug fix only)
	41xx, 35xx, 31xx IP phones	1 year	30 days	90 days	N/A	90 days (bug fix only)
	Other Software					
	Premium License (When purchased separately for 82xx, E66xx, 54xx & 35xx switches)	N/A	N/A	1 year	N/A	As long as owned <sup>4</sup> (Maintenance releases only) 1 year (All releases)
	HP Security Appliances					
	S80xxF, S30xxF, S10xxF Next Generation Firewall Appliance	1 year	30 days	1 year	N/A	None
F5000, F/S1000-A/E/S VPN Firewall, U200-A/C/M/S/CS UTM	1 year	30 days	1 year	N/A	As long as owned <sup>4</sup>	
HP Transceivers						
X244, X242, X132, X131, X129, X122, X121, X119, X112, X111	Lifetime <sup>5</sup>	NBD	As long as owned <sup>5</sup>	N/A	N/A	
X240, X170, X160, X140, X135, X130, X125, X124, X120, X115, X114, X110	1 year	30 days	1 year	N/A	N/A	

1) Includes coverage of any built-in fans and power supplies for the entire warranty period. Removable power supplies, modules and accessories such as antennas, fans, power cords, etc. may have different warranty coverage than the host device. See the HP Networking Warranty Coverage Quick Reference at [www.hp.com/networking/warranty/quickref](http://www.hp.com/networking/warranty/quickref) for more details.  
 2) Response time is based on commercially reasonable effort and subject to a daily shipment cutoff time. In some countries and regions and under certain supplier constraints, response time may vary. Contact your local HP service organization for response time availability in your area. NBD=Next Business Day.  
 3) Warranty technical support is provided during local HP business hours for the entire warranty period and includes phone and electronic case management. Many products purchased after August 1, 2013 include up to 3 years of 24x7 technical support as noted. See product's Hewlett-Packard Limited Warranty Statement for additional coverage details. Extended coverage services are available.

4) Includes all software/OS releases offered for the specific products listed, when and if available, for as long as you own the product, except where noted. Some software releases may require additional hardware to be installed.  
 5) For as long as you own the product. You may be required to provide proof of purchase or lease as a condition of receiving warranty service.  
 6) Hardware warranty, technical support and all software releases provided for hardware and the ONE Service OS only, when and if available, for as long as you own the product. See product specific documentation for application support. 5 year warranty on the disk drive in the HP Alliance One Advanced Services and Services zl Modules, HP Alliance One Ext zl Mod w/Rtrb Stnd, HP MSM765zl; Mobility Controller, HP Surv Rch Com zl Mod pwrby Mft Lync.  
 7) Products purchased before August 1, 2013 include 1 year of technical support and 1 year (bug fix only).

The most current version of this document is available at [www.hp.com/networking/warrantysummary](http://www.hp.com/networking/warrantysummary)  
 HP Networking product warranty policy details are available at [www.hp.com/networking/warranty](http://www.hp.com/networking/warranty)  
 Information on services for HP Networking products can be found at [www.hp.com/networking/services](http://www.hp.com/networking/services)

The information contained herein is subject to change without notice. The only warranties for HP products and services are set forth in the express warranty statements accompanying such products and services. Nothing herein should be construed as constituting an additional warranty. HP shall not be liable for technical or editorial errors or omissions contained herein.



## HP Warranty Information

This document contains warranty information for HP products, including Compaq, Digital and Tandem branded products.

Note: Some products detailed are normally only supported directly by the HP Customer Services organisation. This document provides summary information. Please refer to the warranty statement shipped with product for a detailed explanation of the warranty terms associated with a particular product.

### Limited warranty

This Limited Warranty applies only to HP-branded and Compaq-branded hardware products (collectively referred to in this document as "HP Hardware Products") sold by or leased from Hewlett-Packard Company, its worldwide subsidiaries, affiliates, authorized resellers, or country distributors (collectively referred to in this Limited Warranty as "HP") with this Limited Warranty. The term "HP Hardware Product" is limited to the hardware components and required firmware. The term "HP Hardware Product" DOES NOT include any software applications or programs; non-HP products or non-HP branded peripherals. All non-HP products or non-HP branded peripherals external to the HP Hardware Product— such as external storage subsystems, displays, printers and other peripherals— are provided "AS IS" without HP warranty. However, non-HP manufacturers and suppliers, or publishers may provide their own warranties directly.

HP guarantees that the HP Hardware Products that you have purchased or leased from HP are free from defects in materials or workmanship under normal use during the Limited Warranty Period. The Limited Warranty Period starts on the date of purchase or lease from HP. Your dated sales or delivery receipt, showing the date of purchase or lease of the product, is your proof of the purchase or lease date. You may be required to provide proof of purchase or lease as a condition of receiving warranty service. You are entitled to hardware warranty service according to the terms and conditions of this document if a repair to your HP Hardware Product is required within the Limited Warranty Period.

During the Limited Warranty Period, HP will, at its discretion, repair or replace any defective component. All component parts or hardware products removed under this Limited Warranty become the property of HP. In the unlikely event that your HP Hardware Product has recurring failures, HP, at its sole discretion, may elect to provide you with (a) a replacement unit of HP's choosing that is the same or equivalent to your HP Hardware Product in performance or (b) to give you a refund of your purchase price or lease payments (less interest) instead of a replacement. This is your exclusive remedy for defective products.

It is mandatory that the unit product number and serial number be made available when requesting a warranty service event. Failure to do so may result in the event being deemed out of warranty by HP or, HP's Authorised Service Providers, and therefore chargeable to the requester.

Unless otherwise stated, and to the extent permitted by local law, new HP Hardware Products may be manufactured using new materials or new and used materials equivalent to new in performance and reliability. HP may repair or replace HP Hardware Products (a) with new or previously used products or parts equivalent to new in performance and reliability, or (b) with equivalent products to an original product that has been discontinued. Replacement parts are warranted to be free from defects in material or workmanship for ninety (90) days or, for the remainder of the Limited Warranty Period of the HP Hardware Product they are replacing or in which they are installed, whichever is longer.

### Notes:

- Products external to the system processor (CPU) box, such as external storage subsystems, printers and other peripherals, are covered by the applicable warranty for those products or options.
- An effective repair does not necessarily require the replacement of a defective part. For example, cleaning the heads of a floppy drive or updating revision levels of ROM BIOS on a PCA board are activities that in many instances deliver an effective repair.
- BIOS/Firmware upgrades are not covered under the basic warranty Terms & Conditions. Firmware that is an integral part of the option hardware board is not automatically upgraded

when new versions of firmware are released.

Where a specific hardware product problem is found to be caused by a superseded BIOS/firmware revision on an HP component, HP will either bring the firmware up to the latest revision, by exchanging the affected component under warranty, or will recommend that the customer upgrade the firmware using Flash-ROM where appropriate. It is essentially the responsibility of the customer to:

1. Ensure that their software is compatible with the latest BIOS/firmware revision.
  2. Upgrade their firmware to keep it synchronised with the new software releases.
- HP fully understands the concerns raised by customers with regards to the security of any data which may be contained on a hard disk being sent for repair. HP's procedures for handling these items start by acknowledging that all such disks may contain sensitive business or technological information and that all appropriate security is in place to safeguard that information.
1. The procedure for handling returned units is as follows:
  2. The documents accompanying a returned item, record the Authorised Service Provider name and ID number, the serial number of the machine it was removed from and a description of the fault.
  3. Using the first two pieces of information for warranty verification only, the unit is then transferred to HP in Scotland, where it is mixed with units from all over Europe, Middle East and Africa for return to the repair vendor.
  4. The repair of the item in no way depends on HP's ability to read any user data contained on the disk.
  5. During the testing/repair cycle, the disks will have a destructive pattern written onto them that will erase all previously held user data.
  6. If the media is damaged, it is removed and scrapped.

Note: HP does not support the use of degaussers to erase data on the disks. Doing so will invalidate the warranty as the degaussing will also erase other data on the disk which is required to format the disk and ensure it operates appropriately, for example sector alignment data, error correction logic, bad sector files and the geometry of the drive.

Even with the above processes, customers may still be reluctant to return defective disks due to confidential data contained on the disks. Customers who wish to retain the original disk will be required to purchase a replacement disk to affect the repair or, purchase the "Defective Material Retention" service offer.

- All marking and/or branding of HP products must be removable. If the marked or branded product can not be refurbished by HP for use (eg. the branding or tagging removed), then the customer may require to purchase a replacement part or unit. Where marking and/or branding cannot be removed, then the Part credit element of a service event may not be paid.

### **Exclusions**

HP does not guarantee that the operation of this product will be uninterrupted or error-free. HP is not responsible for damage that occurs as a result of your failure to follow the instructions intended for the HP hardware product.

This Limited Warranty does not apply to expendable or consumable parts and does not extend to any product from which:

The serial number has been removed, damaged or rendered defective;

- (a) as a result of accident, misuse, abuse, contamination, improper or inadequate maintenance or calibration or other external causes;
- (b) by operation outside the usage parameters stated in the user documentation that shipped with the product (including burned monitor screens and incorrect input voltage);
- (c) by software, interfacing, parts or supplies not supplied by HP

- (d) improper site preparation or maintenance
- (e) virus infection
- (f) loss or damage in transit
- (g) by modification or service by anyone other than
  - (i) HP
  - (ii) an HP authorized service provider
  - (iii) your own installation of end-user replaceable HP or HP approved parts if available for your product in the servicing country or region.

HP IS NOT RESPONSIBLE FOR DAMAGE TO OR LOSS OF ANY PROGRAMS, DATA, OR REMOVABLE STORAGE MEDIA. HP IS NOT RESPONSIBLE FOR THE RESTORATION OR REINSTALLATION OF ANY PROGRAMS OR DATA OTHER THAN SOFTWARE INSTALLED BY HP WHEN THE PRODUCT IS MANUFACTURED.

Before returning any unit for service, be sure to back up data and remove any confidential, proprietary, or personal information..

HP is not responsible for any interoperability or compatibility issues that may arise when (1) products, software, or options not supported by HP are used; (2) configurations not supported by HP are used; (3) parts intended for one system are installed in another system of different make or model

### **Limitation of liability**

If the HP hardware product fails to work as warranted above, HP's maximum liability under the limited warranty is expressly limited to the lesser of the price paid for the product or the cost of repair or replacement of any hardware components that malfunction in conditions of normal use. Except as indicated above, in no event will HP be liable for any damages caused by the product or the failure of the product or perform, including any lost profits or savings, business interruption, loss of use or any other commercial or economic loss of any kind, or special, incremental, or consequential damages. HP is not liable for any claim made by a third party or made by you for the third party. This limitation of liability applies whether damages are sought, or a claim made, under this limited warranty or as a tort claim (including negligence and strict product liability), a contract claim or any other claim. This limitation in liability cannot be waived or amended by any person. This limitation of liability will be effective even if you have advised HP, or an authorized representative of HP, of the possibility of any such damages or even if such possibility were reasonably foreseeable. This limitation of liability, however, will not apply to claims for personal injury.

This limited liability gives specific legal rights. You may also have other rights that may vary from state to state or from country to country. You are advised to consult applicable state or country laws for a full determination of rights.

If HP determines that damage/failure that exists is not covered by the warranty -- i.e. failure of Non-HP memory or options etc. -- the end user will be contacted to determine whether such damage/failure should be repaired for a charge or whether the Product should be returned to the end user as received. All associated transportation and handling costs are charged to the customer.

HP's warranty obligation extends only to products, options, and parts manufactured or distributed by HP, Compaq, Digital or Tandem under their respective brand names. HP in this statement is the sales subsidiary of Hewlett Packard Corporation in the country where the claim is first raised; if no subsidiary exists in the country, it is Hewlett Packard Corporation GmbH in Munich, Germany.

### **Customer responsibilities**

To enable HP to provide the best possible support and service during the Limited Warranty Period, you will be required to:



- Maintain a proper and adequate environment, and use the HP Hardware Product in accordance with the instructions furnished.
- Verify configurations, load most recent firmware, install software patches, run HP diagnostics and utilities, and implement temporary procedures or workarounds provided by HP while HP works on permanent solutions.
- Allow HP to keep resident on your systems or sites certain system and network diagnosis and maintenance tools to facilitate the performance of warranty support (collectively referred to as "Proprietary Service Tools"); Proprietary Service Tools are and remain the sole and exclusive property of HP. Additionally, you will:
  - Use the Proprietary Service Tools only during the applicable warranty period and only as allowed by HP
  - Install, maintain, and support Proprietary Service Tools, including any required updates and patches
  - Provide remote connectivity through an HP-approved communications line, if required
  - Assist HP in running the Proprietary Service Tools
  - Use the electronic data transfer capability to inform HP of events identified by the software
  - Purchase HP-specified remote connection hardware for systems with remote diagnosis service, if required
  - Return the Proprietary Service Tools or allow HP to remove these Proprietary Service Tools upon termination of warranty support
  - Not sell, transfer, assign, pledge, or in any way encumber or convey the Proprietary Service Tools

In some cases, HP may require additional software such as drivers and agents to be loaded on your system in order to take advantage of these support solutions and capabilities.

- Use HP remote support solutions where applicable. HP strongly encourages you to use available support technologies provided by HP. If you choose not to deploy available remote support capabilities, you may incur additional costs due to increased support resource requirements.
- Cooperate with HP in attempting to resolve the problem over the telephone. This may involve performing routine diagnostic procedures, installing additional software updates or patches, removing third-party options, and/or substituting options.
- Make periodic backup copies of your files, data, or programs stored on your hard drive or other storage devices as a precaution against possible failures, alteration, or loss. Before returning any HP Hardware Product for warranty support, back up your files, data, and programs, and remove any confidential, proprietary, or personal information.
- Maintain a procedure to reconstruct your lost or altered files, data, or programs that is not dependent on the HP Hardware Product under warranty support.
- Notify HP if you use HP Hardware Products in an environment that poses a potential health or safety hazard to HP employees or subcontractors. HP may require you to maintain such products under HP supervision and may postpone warranty service until you remedy such hazards.
- Perform additional tasks as defined within each type of warranty service listed below and any other actions that HP may reasonably request in order to best perform the warranty support.

#### **Types of hardware warranty service**

Listed below are the types of warranty services that may be applicable to the HP Hardware Product you have purchased. For more details, refer to the "[Limited warranty period](#)" section.

#### **Customer self repair**

HP products are designed with many Customer Self Repair (CSR) parts to minimize repair time and allow for greater flexibility in performing defective parts replacement. If during the diagnosis period, HP identifies that the repair can be accomplished by the use of a CSR part, HP will ship that part directly to you for replacement. There are two categories of CSR parts:

- Parts for which customer self repair is mandatory. If you request HP to replace these parts, you will be charged for the travel and labor costs of this service.
- Parts for which customer self repair is optional. These parts are also designed for customer

self repair. If, however, you require that HP replace them for you, this may be done at no additional charge under the type of warranty service designated for your product.

Based on availability and where geography permits, CSR parts will be shipped for next business day delivery. Same-day or four-hour delivery may be offered at an additional charge where geography permits. If assistance is required, you can call the HP Technical Support Center and a technician will help you over the phone. HP specifies in the materials shipped with a replacement CSR part whether a defective part must be returned to HP. In cases where it is required to return the defective part to HP, you must ship the defective part back to HP within a defined period of time, normally five (5) business days. The defective part must be returned with the associated documentation in the provided shipping material. Failure to return the defective part may result in HP billing you for the replacement. With a customer self repair, HP will pay all shipping and part return costs and determine the courier/carrier to be used.

#### **Parts only warranty service**

Your HP Limited Warranty may include a parts only warranty service. Under the terms of parts only service, HP will provide replacement parts free of charge. If HP carries out the repair, labor and logistics costs are at your expense.

#### **Advanced unit replacement warranty service**

Your HP Limited Warranty may include an advanced unit replacement warranty service. Under the terms of the advanced unit replacement warranty service, HP will ship a replacement unit directly to you if the HP Hardware Product you purchased is diagnosed as defective. On receiving the replacement unit, you will be required to return the defective unit back to HP, in the packaging that arrives with the replacement unit, within a defined period of time, normally five (5) days. HP will incur all shipping and insurance costs to return the defective unit to HP. Failure to return the defective unit may result in HP billing you for the replacement unit.

#### **Pick up and return warranty service**

Your HP Limited Warranty may include a pick up and return warranty service. Under the terms of pick up and return service, HP will pick up the defective unit from your location, repair it, and return it to your location. HP will incur all repair, logistics, and insurance costs for this type of service.

#### **Mail-in warranty service**

Your HP Limited Warranty may include a mail-in warranty service. Under the terms of mail-in service, you will be required to ship your HP Hardware Product to an authorized service location for warranty repair. You must prepay any shipping charges, taxes, or duties associated with transportation of the product to the repair location. In addition, you are responsible for insuring any product you ship, and you assume risk of loss during shipping. HP will return the repaired product to you and incur all logistics and insurance costs to return the product to you.

#### **Carry-in warranty service**

Your HP Limited Warranty may include a carry-in warranty service. Under the terms of carry-in service, you will be required to deliver your HP Hardware Product to an authorized service location for warranty repair. You must prepay any shipping charges, taxes, or duties associated with transportation of the product to and from the service location. In addition, you are responsible for insuring any product shipped or returned to an authorized service location, and you assume risk of loss during shipping.

#### **On-site warranty service**

Your HP Limited Warranty may include an on-site warranty service. Under the terms of on-site service, HP may, at its sole discretion, determine if a defect can be repaired:

- Remotely
- By the use of a CSR part
- By a service call at the location of the defective unit

If HP ultimately determines that an on-site service call is required to repair a defect, the call will be scheduled during standard office hours unless otherwise stated for the HP Hardware Product you purchased. Standard office hours are typically 08:00 to 17:00, Monday through Friday, but may vary with local business practices. If the location of the defective unit is outside the customary service zone (typically 50km), response times may be longer or there may be additional charges. To locate the nearest HP authorized service provider, refer to the HP website at [www.hp.com/support](http://www.hp.com/support). In order to receive on-site support, you must:

- Have a representative present when HP provides warranty services at your site
- Notify HP if products are being used in an environment which poses a potential health or safety hazard to HP employees or subcontractors
- Subject to its reasonable security requirements, provide HP with sufficient, free, and safe access to and use of all facilities, information, and systems determined necessary by HP to provide timely support
- Ensure that all manufacturers labels (such as serial numbers) are in place, accessible, and legible
- Maintain an environment consistent with product specifications and supported configurations

Listed below are the types of warranty services that may be applicable to the HP Hardware Product you have purchased. For more details, refer to the "[Limited warranty period](#)" section.

#### **Options limited warranty**

The Limited Warranty terms and conditions for most HP-branded options (HP Options) are as set forth in the Limited Warranty applicable to the HP Option and are included in the HP Option product packaging. If your HP Option is installed in an HP Hardware Product, HP may provide warranty service for either the period specified in the warranty documents (HP Option Limited Warranty Period) that shipped with the HP Option or for the remaining warranty period of the HP Hardware Product in which the HP Option is being installed, whichever period is the longer unless stated otherwise in the "[Limited warranty period](#)" section. In all cases, the warranty period of the HP Option will not exceed three (3) years from the date you purchased the HP Option. The HP Option Limited Warranty Period starts from the date of purchase from HP or an HP authorized reseller. Your dated sales or delivery receipt, showing the date of purchase of the HP Option, is your warranty start date. See your HP Option Limited Warranty for more details. Non-HP options are provided "AS IS". However, non-HP manufacturers and suppliers may provide warranties directly to you.

#### **Spare parts**

All HP spare parts (see Notes 1 and 2 below) that are used to replace defective parts in a HP product are entitled to:

- the remaining service period of the product in which it is installed; or
- 90 days parts replacement warranty, whichever is greater.

This may include free on-site repair if the HP product is entitled to on-site warranty. See Table - Warranty Services Table.

**NOTE 1:** The replacement spare part must be a genuine HP spare part.

**NOTE 2:** This does not include Spare Rechargeable Battery Packs, Spare Compaq Netelligent Products and Network Interface Cards, Microcom Integrated Access Devices, and Compaq External Modems (see below).

Spare Compaq Rechargeable Battery Packs are entitled to a 12 month Parts-only Warranty. Spare Compaq Netelligent, Compaq External Modems and Microcom Integrated Access Products are entitled to the remaining warranty of the replaced product as shown in Table. They do **not** adopt the remaining service period of the product to which they are connected and or any warranty services to which the product is entitled (this/which may include free on-site repair). Spare Netelligent Network Interface Cards receive lifetime Parts-only Warranty.

**NOTE:** Spare Part, provided that the replacement part is a genuine HP spare part, purchased to repair "Out of Warranty" machines are entitled to 90 days parts-only warranty from date of sale of the spare part to the End User. It is a requirement that an End User Proof of Purchase is provided when claiming spare part warranty. Validation of the spare part warranty will be made against this Proof of

Purchase. This may be dependent on local country legislation.

### Software limited warranty

Except as provide in the applicable software end-user license or program license agreement, or if otherwise provided under local law, software products, including any software products, freeware (as defined below) or operating systems preinstalled by HP are provided "AS IS" and with all faults, and HP hereby disclaims all other warranties and conditions, either express, implied, or statutory, including, but not limited to, warranties of title and non-infringement, any implied warranties, duties or conditions of merchantability, of fitness for a particular purpose, and lack of viruses.

Some states/jurisdictions do not allow exclusion of implied warranties or limitations on the duration of implied warranties, so the above disclaimer may not apply to you in its entirety. To the maximum permitted by applicable law, in no event shall HP or its suppliers be liable for any special, incidental, indirect, or consequential damages whatsoever (including, but not limited to, damages for loss of profits or confidential or other information, for business interruption, for personal injury, for loss of privacy arising out of or in any way related to the use or inability to use the software product, even if HP or any supplier has been advised of the potential of such damages and even if the remedy fails of its essential purpose.. Some states/jurisdictions do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation or exclusion may not apply to you.

HP's only warranty obligations with respect to software distributed by HP under the HP brand name are set forth in the applicable end-user license or program license agreement provided with that software. If the removable media on which HP distributes the software proves to be defective in materials or workmanship within ninety (90) days of purchase, your sole remedy shall be to return the removable media to HP for replacement. For blank tape removable media please refer to the following

website: <http://h20000.www2.hp.com/bizsupport/TechSupport/Document.jsp?objectID=lpq50101>

It is your responsibility to contact non-HP manufacturers or suppliers for their warranty support.

### Freeware operating systems and applications

HP does not provide support for software provided under public license by third parties, including operating systems or applications ("Freeware"). Support for Freeware provided with HP Hardware Products is provided by the Freeware vendor. Please refer to the Freeware operating system or other Freeware application support statement included with your HP Hardware Product

**Note:** If the removable media on which HP distributes the software proves to be defective in materials or workmanship within ninety (90) days of purchase, the sole remedy shall be to return the removable media to HP for replacement. For blank tape removable media please refer to the following web site.

<http://h20000.www2.hp.com/bizsupport/TechSupport/Document.jsp?objectID=lpq50101>

### Support for initial setup

Electronic or telephone support for initial setup is available from HP for ninety (90) days from date of purchase. See "Contacting HP" for online resources and telephone support.

Support includes:

- Answering installation questions (how-to, first steps, and prerequisites)
- Setting up and configuring software and options supplied or purchased with HP Hardware Products (how-to and first steps)
- Interpreting system error messages
- Isolating system problems
- Obtaining support pack information or updates for software purchased or supplied with HP Hardware Products

Support does NOT include assistance with:

- Generating or diagnosing user-generated programs or source codes

- Installation of non-HP products
- System optimization, customization, and network configuration.

#### **Limited warranty transfer to another country**

Under the HP Global Limited Warranty program, products may be purchased in one country/region and transferred to another country/region, where HP or its authorized service providers offer warranty service for the same product model number without voiding the warranty. Warranty terms, service availability, and service response times may vary from country to country or region to region. Standard warranty service response time is subject to change due to local parts availability. When the product has been transferred to another country it will be entitled to the same warranty as if the product had been purchased in the country to which it has been transferred.

HP is not responsible for any tariffs or duties that may be incurred in transferring the products. Transfer of the products may be covered by export controls issued by the United States or other governments.

#### **HP's Warranty Service Delivery Methods.**

HP delivers warranty service on HP products via several delivery methods. Warranty service is provided during normal business hours, excluding local holidays, and is based on commercially reasonable efforts by HP or an HP Service Provider. Unless otherwise stated, all responses are measured from the time the customer calls HP or until HP has established a mutually acceptable time for support to be performed.

The definitions of HP's Warranty Service Delivery methods are detailed below:

**On site Same Business Day:** HP aims to ensure that a customer problem will be responded to within 4 hours, following the end users first notification of equipment failure. Unless otherwise stated, all responses are measured from the time the customer calls, or a mutually acceptable time for support to be performed has been established, or HP has begun to provide support or remote diagnostics. This is available on a 24 hour x 7 day basis with a work through until resolution of the problem.

**On site One Business Day:** HP aims to ensure that the product will be operational by the end of the next business day following the end users first notification of equipment failure. Unless otherwise stated, all responses are measured from the time the customer calls, or a mutually acceptable time for support to be performed has been established, or HP has begun to provide support or remote diagnostics.  
For example: Customer reports the failure of a Systems product at any time during business hours on Monday, the product will be fixed by the end of business day on Tuesday.

**On site Two Business Day:** HP aims to ensure that the product will be operational by the end of the second business day following the end users first notification of equipment failure. Unless otherwise stated, all responses are measured from the time the customer calls, or a mutually acceptable time for support to be performed has been established, or HP has begun to provide support or remote diagnostics.  
For example: Customer reports the failure of a Business Desktop product at any time during business hours on Monday, the product will be fixed by the end of business day on Wednesday.

**Carry-in Two Business Day:** HP aims to ensure that the product will be operational and available to the end user within two business days following arrival of the faulty equipment at the service providers workshop location.  
For example: Customer delivers a faulty product to a carry-in repair centre at any time during business hours on Monday, the product will be available for collection by the end of business day on Wednesday.

**Carry-in Five Business Day:** HP aims to ensure that the product will be operational and available to the end user within five business days following arrival of the faulty equipment at the service provider's workshop location.  
For example: Customer delivers a faulty product to a carry-in repair centre at any time during

business hours on Monday, the product will be available for collection by the end of business day on the following Monday.

**Mail-in Five Business Day:** HP aims to ensure that the product will be operational and returned to the end user within five business days following arrival of the faulty equipment at a HP Service Centre for repair.

For example: Customer delivers a faulty product to a Mail-in centre at any time during business hours on Monday, the product will be returned to the customer by the end of business day on Tuesday of the following week.

**Pick Up & Return Two Business Day:** HP aims to ensure that the product will be operational and returned to the end user within two business days following the pick up of the faulty equipment from the customer.

For example: HP or an HP Service Provider pick up the defective unit from the customer any time during business hours on Monday, the product will be delivered back to the customer by the end of business day on Wednesday.

**Pick Up & Return Five Business Day:** HP aims to ensure that the product will be operational and returned to the end user within five business days following the pick up of the faulty equipment from the customer..

For example: HP or an HP Service Provider pick up the defective unit from the customer any time during business hours on Monday, the product will be delivered back to the customer by the end of business day on Friday.

#### **HP Care Pack Services Information**

HP also offers extended/upgraded services under the name of Care Pack. A wide range of Care pack services is available to cover most current HP products. It is the customer's responsibility to register each Care pack with HP so that the related hardware is automatically allocated the correct extended/upgraded service by the EMEA service management system. Refer to the following site for more details.

<http://h41111.www4.hp.com/hps/carepack/uk/en/index.html>

#### **HP Care Pack Services Information**

##### **Requirements**

##### **HP Warranty Services**

The following Warranty Services tables provide a general summary of the warranty offerings for HP products. The warranty documents provided with the goods at time of sale provide details of the actual warranty terms. Please refer to the notes at the end of the table for clarification of terminology, delivery methods and additional information.

##### **Key to Warranty**

Please refer to the Warranty methods section above for an explanation of terms.

**SBD** = Onsite Same business day,

**1BD** = Onsite One business day,

**2BD** = Onsite second business day,

**5BD** = Onsite fifth business day,

**PuR** = Pick Up and Return,

**POW** = parts only warranty.

## **INFINIDAT EULA AND COD OFFERING**

## **Infinidat End User License Agreement**

**IMPORTANT – PLEASE READ CAREFULLY: THIS IS A LEGAL AGREEMENT ("AGREEMENT") BETWEEN INFINIDAT WHICH MEANS (I) INFINIDAT, INC. IF YOU ARE LOCATED IN THE UNITED STATES; (II) INFINIDAT LTD. IF YOU ARE LOCATED OUTSIDE OF THE UNITED STATES AND IN A COUNTRY IN WHICH INFINIDAT LTD. DOES NOT HAVE A SUBSIDIARY; (III) THE LOCAL INFINIDAT LTD. SUBSIDIARY IF YOU ARE LOCATED OUTSIDE OF UNITED STATES AND IN A COUNTRY IN WHICH INFINIDAT LTD. HAS A LOCAL SUBSIDIARY ("INFINIDAT", "OUR", "US" OR "WE") AND YOU, AS AN AUTHORIZED REPRESENTATIVE OF AN ENTITY ("YOU" OR "YOUR"), THAT HAS OBTAINED THE PRODUCT, AS DEFINED BELOW, DIRECTLY FROM INFINIDAT OR FROM AN AUTHORIZED INFINIDAT PARTNER .**

**BY EXECUTING THE PURCHASE ORDER, YOU ACCEPT THIS AGREEMENT AND AGREE TO BE BOUND BY ITS TERMS.**

**THIS AGREEMENT SHALL GOVERN YOUR USE OF THE PRODUCT UNLESS YOU HAVE A SEPARATE WRITTEN AGREEMENT IN EFFECT WITH INFINIDAT THAT SPECIFICALLY GOVERNS THE SUBJECT MATTER HEREOF AND IS EXPLICITLY STATED TO TAKE PRIORITY.**

**IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE RIGHT, AUTHORITY AND CAPACITY TO DO SO AND BIND SUCH ENTITY TO THIS AGREEMENT, AND IN WHICH CASE THE TERMS "YOU" OR "YOUR" SHALL REFER TO SUCH ENTITY.**

### **Definitions**

**"Affiliate"** means any corporation, company or other business entity that directly or indirectly, controls, is controlled by, or is under common control with Infinidat.

**"Documentation"** means our user manuals, instructions and similar materials that are delivered with the Product, including any updates or supplements thereto.

**"Enhancement"** means an update (such as a fix or patch), modification, improvement, addition and/or customization to a Product, including those resulting in new features and functionality.

**"Intellectual Property Rights"** means all rights, titles and interests in, to and under patents, inventions, discoveries, copyrights, trademarks, trade names, trade dress, technical information, data, know-how, show-how, trade secrets, designs, drawings, models, specifications, formulas, methods, techniques, processes, databases, software, code, algorithms, architecture, records, documentation, and other similar intellectual and industrial property, in any form and embodied in any media, whether capable of protection or not, whether registered or unregistered, and including all applications, registrations, renewals, extensions, continuations, divisions or reissues thereof.

**"Laws"** means any applicable laws, statutes, ordinances, rules and regulations of any jurisdiction (including for the avoidance of doubt any Federal, state, provincial or local laws).

**"Product"** means, collectively, the hardware and Software, and any Enhancement thereto provided by Infinidat at any time.

**"Proprietary Legends"** means any copyright, trademark, patent, or other proprietary legend, notice or designation.

**"Software"** means the Infinidat proprietary software product licensed and provided at any time, including firmware embedded in the, software programs provided by Infinidat and any Enhancement thereto.

**License.** Subject to the terms and conditions of this Agreement, Infinidat hereby grants you a limited, nonexclusive, nontransferable, non-sublicensable, revocable (solely in accordance with the termination provisions below)



license, to (i) use, in object code only, the Software for your internal business purposes only; and (ii) use the Documentation solely in connection with your use of the Product (collectively, the "License").

**Limited License Capacity.** If the Products are subject to a specified capacity limit, you are only authorized to use the Software at or below the limit you paid for. Infinidat or its authorized partner, may invoice you, and you shall pay, for the additional capacity in the Product after your usage exceeds the specified capacity limit three times in a 30-day period, even if usage subsequently falls below that limit. You shall enable the Product's phone home feature to allow us to monitor capacity usage. We reserve the right to inspect or otherwise verify compliance with this Section.

**License Restrictions.** Except to the extent expressly permitted otherwise in this Agreement, or expressly mandated otherwise by applicable Law, you shall not, and shall not permit or encourage any third party (including, without limitation, your personnel) to, do any of the following without obtaining the prior express written consent of Infinidat: (i) copy or reproduce the Software; (ii) sell, assign, lease, lend, rent, distribute, sublicense, or make available the Software to any third party, or otherwise use the Software to operate in, or as, a time-sharing, outsourcing, or service bureau environment; (iii) modify, alter, adapt, arrange, translate, decompile, disassemble, reverse engineer, or otherwise attempt to derive the source code (or the underlying structure, sequence or organization) of, the Software; (iv) reverse engineer or disassemble the Product's hardware; (v) integrate, incorporate, include, or bundle the Software into or with any other hardware or software; (vi) remove, alter, or conceal, in whole or in part, any Proprietary Legends displayed or contained on/in the Product; (vii) circumvent, disable or otherwise interfere with security-related features of the Software, or with features that are intended to prevent or restrict the use thereof; (viii) make a derivative work of the Software, or use the Software to develop any service or product that is the same as, or substantially similar to, the Software; (ix) use the Software to perform comparisons or other "benchmarking" activities, either alone or in connection with any other software or hardware, or disclose or publish the results thereof or other performance information; x) use the Software for any inappropriate purpose (as Infinidat shall determine in its sole and absolute discretion), or contrary to any Law.

**Ownership.** INFINIDAT DOES NOT SELL OR TRANSFER TITLE, AND SHALL NOT BE DEEMED TO HAVE SOLD OR TRANSFERRED TITLE, IN ANY SOFTWARE TO YOU. As between you and Infinidat, Infinidat is and shall remain the sole and exclusive owner of all Intellectual Property Rights in, to and under the Product and the Documentation. Infinidat reserves all rights not expressly granted hereunder, and nothing in this Agreement constitutes a waiver of Infinidat's Intellectual Property Rights under any Law.

#### **Limited Software Warranty**

**Software Warranty.** Infinidat warrants that for a period of ninety (90) days, commencing on the date that the Product is delivered to you, and subject to the terms and conditions of this Section 6, the Software components included in the Product will substantially comply with the applicable specifications set out in the Documentation (the "Software Warranty").

**Warranty Service.** If you notify us in writing within the applicable Software Warranty periods as specified above (the "Warranty Period"), of a warranty claim, we will make commercially reasonable efforts to provide a fix, patch or workaround, which may be included in a future Software release, at no additional charge to you. No services provided by us under this Section 6.2 shall be deemed to re-commence any Warranty Period, and any repairs, fixes or replacement parts provided as part of the foregoing warranty service are warranted for the remainder of the applicable Warranty Period, as then in effect.

**Warranty Service Exclusions.** Warranty services described herein above exclude, and Infinidat shall have no responsibility hereunder to repair, replace, fix or provide any support or any other remedial services for, any and all of the following: (a) Products that have been altered, reconfigured or modified by you or any third party other than Infinidat's authorized customer support personnel; (b) Software that has been incorporated or bundled with other software or hardware not provided or approved in writing by Infinidat; (c) Products not installed by Infinidat's authorized customer support personnel, and which have not been operated, repaired or maintained in accordance with Infinidat's instructions; (d) Products which have been operated outside of the environmental specifications for the Product; (d) damage to the hardware or Software caused by your negligence, abuse or use other than as specified in the Documentation, or by natural disasters or other factors beyond the control of Infinidat; or (e) Software problems not reproducible by Infinidat.

**Your Warranty Responsibilities.** As a condition to Infinidat's obligations under this Section, you agree that if Infinidat determines that in order to perform its Product Warranty services it must do so at your premises on which the Product is located and/or remotely, you must provide free, safe and sufficient access to your facilities and the Product and any associated computer equipment on which the Product is installed. For the avoidance of any doubt, the License referenced herein, together with the warranty remain valid only on the basis of Infinidat's ability to remotely control/ access and/or control the Product as may be required at any time. As part of this remote access the Product will send to Infinidat monitoring data information on a regular basis.

**High Risk Activities.** You acknowledge that the Product is not specifically designed or intended for use in environments in which the failure of the Product could lead directly to death, personal injury, or severe physical or property damage, including, without limitation, any nuclear, chemical or weapons production facility or activity, aircraft control devices, aerospace equipment, or medical life support equipment (collectively, "High Risk Activities"). Without limiting the generality of the Warranty Disclaimer referenced below, Infinidat expressly disclaims any express or implied warranty of fitness for High Risk Activities, and any liability for any damage arising as a result of the use of the Product in any High Risk Activity.

**INFINIDAT MAKES NO REPRESENTATION, WARRANTY, GUARANTEE OR CONDITION (a) THAT THE SOFTWARE WILL OPERATE IN THE COMBINATIONS WHICH YOU MAY SELECT FOR USE; (b) THAT YOUR USE OF THE PRODUCT WILL MEET YOUR EXPECTATIONS BE ERROR-FREE AND THAT ANY ERROR CONDITIONS WILL BE CORRECTED.**

**THIS AGREEMENT DOES NOT LIMIT OR DISCLAIM ANY OF THE WARRANTIES SPECIFIED IN THE GSA SCHEDULE 70 CONTRACT UNDER FAR 52.212-4(O). IN THE EVENT OF A BREACH OF WARRANTY, THE U.S. GOVERNMENT RESERVES ALL RIGHTS AND REMEDIES UNDER THE CONTRACT, THE FEDERAL ACQUISITION REGULATIONS, AND THE CONTRACT DISPUTES ACT, 41 U.S.C. 7101-7109.**

**Third Party Software.** The Software may contain third party, including open source, software ("Third Party Software") and you acknowledge there may be third party terms and conditions ("Third Party Terms"). In such a case, upon receipt of a written request from you, we will make available a list of any such Third Party Software and related Third Party Terms in the Documentation, and will use commercially reasonable efforts to comply with any reasonable request you submit to us for exercising your rights under such Third Party Terms. Notwithstanding anything in this Agreement to the contrary, Infinidat does not make any representation, warranty, guarantee, condition, and does not undertake any defense or indemnification, with respect to any Third Party Software.

#### **Indemnification**

**In the event of any claim, action, proceeding or suit by a third party against you claiming that the Product infringes such third party's U.S. patent or copyright (an "Infringement Claim"), Infinidat shall defend and hold you harmless against the Infringement Claim, and will pay (a) the amounts awarded (and then-currently payable) against you in such Infringement Claim (to the extent of such infringement); or (b) the amounts agreed to settle such Infringement Claim.**

**Our obligations under this Section shall only apply if you (a) promptly notify us in writing of the Infringement Claim; (b) fully cooperate with us in, but permit us to assume control of, the defense and/or settlement of the Infringement Claim; and (c) refrain from admitting any liability, or otherwise compromising the defense of any part of the Infringement Claim, without our prior express written consent. Infinidat agrees not to settle any Infringement Claim without your prior express written consent, not to be unreasonably withheld, conditioned or delayed. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516.**

**Should the Product (or any part thereof) become, or in our opinion be likely to become, the subject of any Infringement Claim, then you hereby permit us, at our option and expense, to either (a) procure for you the right to continue using the Product or such part (as the case may be); or (b) replace or modify the Product (or affected part thereof) so that it becomes non-infringing, while maintaining substantially the**

same functionality. If neither (a) nor (b) is commercially practicable, then we may, in our sole and absolute discretion, terminate your rights under this Agreement with respect to the Product, and: (x) refund to you on a pro rata basis the Fees paid by you to Infinidat or its authorized reseller or distributor (as the case may be) with respect to the Product, subject to a 3 year straight-line depreciation schedule; and (y) in the case of Support Services purchased directly from Infinidat, provide a refund of any periodic fees paid to Infinidat for any portion of such Support Services not yet received with respect to the affected portion of the Product.

Infinidat shall have no obligation or liability with respect to an Infringement Claim that is based upon or results from: (a) the combination of the Product (or part thereof) with any equipment, hardware, firmware, or software not furnished or approved in writing by Infinidat, if there would have been no infringement but for such combination; (b) any modification to/of the Product (or part thereof) not performed by Infinidat; (c) unauthorized use of the Product (or part thereof); (d) your failure to install or have installed any Enhancements to the Product provided by Infinidat, if installation of such Enhancement would have avoided the infringement; and/or (e) our compliance with your specifications, designs and/or instructions. This (Indemnification) states the entire obligation and liability of Infinidat, and your sole and exclusive remedy, with respect to an Infringement Claim.

**Limitation of Liability.** IN NO EVENT WILL INFINIDAT OR ITS AFFILIATES OR BE LIABLE FOR: (I) ANY CONSEQUENTIAL, INDIRECT, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES; (II) ANY LOSS OF PROFITS, LOSS OF BUSINESS, BUSINESS INTERRUPTION, LOSS OF REVENUE, OR LOSS OF ANTICIPATED SAVINGS; (III) ANY LOSS OR CORRUPTION OF, OR DAMAGE TO, DATA, REPUTATION, OR GOODWILL; AND/OR (IV) THE COST OF PROCURING ANY SUBSTITUTE GOODS OR SERVICES. THE TOTAL CUMULATIVE LIABILITY OF INFINIDAT AND ITS AFFILIATES UNDER, OR OTHERWISE IN CONNECTION WITH, THIS AGREEMENT SHALL NOT EXCEED (A) THE AMOUNT PAID BY YOU TO, AND ACTUALLY RECEIVED BY, INFINIDAT OR AN AUTHORIZED PARTNER FOR THE PRODUCT IN WHICH THE LIABILITY WAS INCURRED, OR (B) IF NO SINGLE QUOTE IS SO APPLICABLE, THE AMOUNT OF FEES (IF ANY) PAID BY YOU, AND ACTUALLY RECEIVED BY, INFINIDAT OR AN AUTHORIZED PARTNER DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH LIABILITY. THE FOREGOING EXCLUSIONS AND LIMITATIONS SHALL APPLY: (x) EVEN IF INFINIDAT OR ITS AFFILIATES HAVE BEEN ADVISED, OR SHOULD HAVE BEEN AWARE, OF THE POSSIBILITY OF LOSSES OR DAMAGES; (y) EVEN IF ANY REMEDY IN THIS AGREEMENT FAILS OF ITS ESSENTIAL PURPOSE; and (z) REGARDLESS OF THE THEORY OR BASIS OF LIABILITY (SUCH AS, BUT NOT LIMITED TO, BREACH OF CONTRACT OR WARRANTY, NEGLIGENCE, STRICT LIABILITY, PRODUCT LIABILITY OR TORT). SOME JURISDICTIONS MAY NOT ALLOW THE LIMITATION OR EXCLUSION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES FOR THE PRODUCTS, SO THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO YOU WHERE, AND TO THE EXTENT THAT, APPLICABLE LAW REQUIRES SUCH LIABILITY. THIS AGREEMENT SHALL NOT IMPAIR THE U.S. GOVERNMENT'S RIGHT TO RECOVER FOR FRAUD OR CRIMES ARISING OUT OF OR RELATED TO THIS CONTRACT UNDER ANY FEDERAL FRAUD STATUTE, INCLUDING THE FALSE CLAIMS ACT, 31 U.S.C. 3729-3733. FURTHERMORE, THIS CLAUSE SHALL NOT IMPAIR NOR PREJUDICE THE U.S. GOVERNMENT'S RIGHT TO EXPRESS REMEDIES PROVIDED IN THE GSA SCHEDULE CONTRACT (E.G., CLAUSE 552.238-75 – PRICE REDUCTIONS, CLAUSE 52.212-4(H) – PATENT INDEMNIFICATION, AND GSAR 552.215-72 – PRICE ADJUSTMENT – FAILURE TO PROVIDE ACCURATE INFORMATION).

**Confidentiality.** During the Term, each party may have access to certain information of the other party, whether furnished before or after your entering into this Agreement, and in any form or media and regardless of the manner in which furnished (collectively, "Confidential Information"). The receiving party agrees: (x) not to disclose the disclosing party's Confidential Information to any third parties other than to its employees, consultants or Affiliates on a strict "need to know" basis only; (y) not to use or reproduce any of the disclosing party's Confidential Information for any purposes except to exercise its rights and perform its obligations under this Agreement; (z) use at least reasonable care to keep and protect the disclosing party's Confidential Information confidential. Notwithstanding the foregoing, the disclosing party may disclose Confidential Information if required by law provided that the receiving party has given the disclosing party prompt notice. Infinidat 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.

**Term and Termination.** This EULA shall be applicable for the entire duration of the License period granted to you under the purchase documents and as applicable, those clauses that inherently apply post termination, shall accordingly be valid for a period of seven years, following the termination of any License.

**Export Controls.** You shall comply with all, and shall be solely responsible for obtaining all required authorizations and licenses from applicable government authorities under, Export Control Laws, in connection with your use of the Product and Documentation.

**US Government Rights.** To the extent applicable it is confirmed that the Software is "commercial computer software" and the Documentation is "commercial computer software documentation," pursuant FAR Section 12.212, as applicable. If you are an agency, department, employee or other entity of the United States Government, then your access to and use of any part of the Software and/or the Documentation shall be subject solely to the terms and conditions of this Agreement.

**Assignment.** This License Agreement and any rights or obligations hereunder: (a) may not be assigned, sublicensed or otherwise transferred by you without the express prior written consent of Infinidat. Subject to the foregoing, this Agreement shall bind and benefit and be enforceable by each party and its respective successors and permitted assigns. Any prohibited assignment shall be null and void.

**Governing Law and Jurisdiction.** This Agreement shall be governed by, and construed exclusively in accordance with (i) the Federal laws of the United States. The U.N. Convention on Contracts for International Sale of Goods shall not apply to the Agreement.

#### **General**

**Entire Agreement.** This License, together with the underlying GSA Schedule Contract, Schedule Pricelist and Purchase Order(s) (i) constitutes the entire agreement between the parties with respect to the subject matter hereof; and (ii) may be modified only by a writing signed by both parties.

**Notice.** You agree that Infinidat may send you notices by email, by regular mail, and/or via postings on or through the Infinidat Website. You agree to send all notices to Infinidat General Counsel, Infinidat Ltd, Hemnofim 9, Herziliya, Israel

**Waiver.** No failure or delay by either party in exercising or enforcing any right, power or remedy under this Agreement (or otherwise at law or in equity) will operate as a waiver thereof. Waivers shall apply only in the specific instance in which given. Any waiver by Infinidat of any provision of this Agreement shall only be valid if in writing, duly signed, and sent to you via regular mail.

**Severability.** If any court of law that has jurisdiction rules that any provision of this Agreement is invalid, then such invalid provision will not affect any of the remaining provisions of this Agreement, which shall remain in full force and effect.

#### INFINIDAT GSA COD OFFERRING

When purchasing INFINIDAT Model numbers with COD the item being purchased is a quantity 1 TB useable capacity of the specific storage array. Minimum initial capacity purchases are required per model and defined in the below table.

Family	Model #	Minimum Base Capacity	Full Capacity	Remaining Capacity
F2000	F2230ACC24COD	150	248	98
	F2240ACC24COD	200	331	131
	F2260ACC24COD	250	499	249
F4000	F4240ACC24COD	300	682	382
	F4260ACC24COD	350	1024	674
F6000	F6230ACC24COD	400	1035	635
	F6240ACC24COD	500	1380	880
	F6260ACC24COD	600	2074	1474
	F6280ACC24COD	700	2765	2065

- For example, if customer purchases an INFINIDAT F2260 under the COD model, they would have to order a quantity of 250 of Model # F2260ACC24COD. This purchase entitles the customer to be able to use up to 250 TB on the F2260. If the customer desires they can purchase an additional 249TB on that system. There is no obligation to purchase additional capacity.
- For Products with full storage capacity of 1PB or higher, any such additional storage capacity purchased shall be in increments of at least 50 TBs, rounded up. For Products with full storage capacity lower than 1PB, any such additional storage capacity purchased shall be in increments of at least 25 TBs, rounded up. Any purchase above 80% full Product’s storage capacity will automatically require purchase of 100% of Product's storage capacity.

The initial purchase includes hardware, software 3 years support for the capacity purchased. Additional capacity purchases would include hardware, software and co-terminus maintenance.

## **JABRA WARRANTY**

# WARRANTY & SERVICE INFORMATION

## BUSINESS PRODUCTS

Limited One (1), Two (2) or Three (3) Year Warranty

GN Netcom, Inc. ("GN") warrants to the first end-user purchasing the product from a distributor or reseller ("GN Partner"), that the product shall be free from defects in materials and workmanship subject to the terms set forth below ("Warranty") for a period of ("Warranty Period"):

- **Cordless products:** one (1) year from the date the products have been purchased
- **Corded products:** two (2) years from the date the products have been purchased
- **BIZ 2400:** three (3) years from the date the products have been purchased

If the product is sold or otherwise transferred to another party, the Warranty will automatically terminate prior to expiration. Furthermore, the Warranty will terminate immediately if the product is (a) altered, repaired, or maintained by anyone other than GN or a GN Partner which is authorized to do GN warranty work, whether or not successful, or (b) being used together with non-GN branded or certified accessories or other peripheral equipment.

During the Warranty Period, GN will, at GN's sole discretion (a) repair the product using new or refurbished parts, (b) replace the product with a new or refurbished product, or (b) refund the purchase price paid ("Warranty Service"). The Warranty sets forth the extent and limit of GN's obligations towards the end-user except as modified by applicable law.

Warranty on replaced or repaired products is twelve (12) months, OR the rest of the original Warranty Period, whatever is longest.

As part of GN's efforts to reduce environmental waste the product may consist of reconditioned equipment that contain used components, some of which may have been reworked. The used components meet GN's high quality standards and comply with GN's product performance and reliability specifications. Defective parts or products replaced by or returned to GN during the Warranty Period become the property of GN.

**How to Obtain Warranty Service**To obtain Warranty Service, please contact the GN Partner from which the product was purchased.

The product must be returned in its original packaging, if possible, or packaging affording an equal degree of protection. During the Warranty Period, except where prohibited by applicable law, the end-user will bear the cost of shipping the product to GN or such other place as GN may direct. If the product is covered by the Warranty, GN will bear the cost of return shipping after service has been completed. Return shipping will be charged to the end-user for products not covered by the Warranty or requiring no warranty repair. Damage occurred during shipment is deemed the responsibility of the carrier, and any claim should be made directly to said carrier.

The following information must be presented to obtain Warranty Service:

1. The defective product,

2. The end-user's name, company name if applicable, address, Email address and telephone number,
3. A description of the problem, and
4. Proof of purchase which clearly indicates the name and address of the GN Partner, date of purchase, product type and model number. Without proof of purchase, the Warranty Period will commence on the date labeled on the product.

Consumable Components and Accessories Exempt From Warranty Limited-life consumable components and accessories subject to normal wear and tear are exempt from Warranty, unless they are found to be defective or broken upon purchase of the product. This includes among others:

- Basic QD to modular plug cords
- Basic QD to device specific plug cords
- Basic USB cords
- Adapter plugs
- LINK Mobile cords
- Modular RJ9 to RJ9 cords
- Busylight
- Headbands
- Neckbands
- Ear cushions
- Ear tips
- Ear hooks
- Headset stands
- Microphone windscreens
- Decorative finishes
- Foam products
- Removable batteries

Consumable components and accessories that malfunction within fourteen (14) days after they have been purchased are deemed to have been defective or broken upon purchase.

Limitations of Warranty This Warranty only applies to products purchased for use, not for resale. This Warranty is invalid if the factory-applied serial number, date code label, and/or product label has been altered or removed from the product.

This Warranty only applies to defective factory material and factory workmanship and does not cover defects or damages caused by or attributable to (a) improper storage or faulty installation and operation;



misuse or abuse; accident or neglect, (b) contact with any liquid, (c) use of the product or accessories for commercial purposes, or subjecting the product or accessories to improper or abnormal usage or conditions, or (d) other acts which are not the fault of GN, including matters attributable to a GN Partner.

This Warranty does not apply to products which have not been charged for six (6) months. If the battery in a product has not been charged for a period of six (6) months, the product might not function or regain its full potential and long-term performance. GN does not offer any warranty for such performance.

It is the end-user's responsibility to operate and care for the product in accordance with the instructions and specifications supplied with the product. Repairs resulting from failure to do so are not covered by the Warranty.

REPAIRS, REPLACEMENTS OR REFUNDING AS PROVIDED UNDER THIS WARRANTY ARE THE EXCLUSIVE REMEDY OF THE END-USER. NEITHER GN NOR YOUR GN PARTNER SHALL BE LIABLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES FOR BREACH OF ANY EXPRESS OR IMPLIED WARRANTY ON THE PRODUCT, INCLUDING WITHOUT LIMITATION COMMERCIAL LOSS, INCIDENTAL EXPENSES, LOSS OF TIME, OR INCONVENIENCE. EXCEPT TO THE EXTENT PROHIBITED BY LAW, THIS WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER EXPRESS AND IMPLIED WARRANTIES WHATSOEVER, INCLUDING BUT NOT LIMITED TO THE WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PRACTICAL PURPOSE.

NOTE!The Warranty gives the end-user specific legal rights. The end-user may also have other rights which vary from state to state or country to country. Some jurisdictions do not allow the exclusion or limitation of incidental or consequential damages or implied warranties, so the above exclusions may not apply. The Warranty does not affect statutory legal rights under applicable national or local laws.

## WARRANTY AND SERVICE INFORMATION CONSUMER PRODUCTS

**In-warranty returns**We strive to solve your problem in a fast and professional manner. You find the solution to most product issues on our online web support or by calling our customer support. In case we are not able to solve your problem here and you have a product covered by our Warranty terms (see below), our customer support will guide you to easiest way of returning your headset. You will always need your receipt or other proof of purchase to claim warranty.

**One-Year Warranty**A limited one-year warranty applies to all Jabra mobile products.

**Warranty terms**Limited One (1) Year Warranty GN Netcom, Inc. / GN Netcom A/S ("GN") warrants this product to be free from defects in materials and workmanship (subject to the terms set forth below) for a period of one (1) year from the date of purchase ("Warranty Period"). During the Warranty Period, GN will repair or replace (at GN's sole discretion) this product or any defective parts ("Warranty Service"). If repair or replacement is not commercially practicable or cannot be timely made, GN may choose to refund to you the purchase price paid for the affected product. Repair or replacement under the terms of this Warranty does not give right to any extension or a new beginning of the period of warranty.

**Claims under the Warranty** To obtain Warranty Service, please contact the GN dealer from which you purchased this product or visit Contact for further information about customer support. You will need to return the product to the dealer in either its original packaging or packaging affording an equal degree of protection. The following information must be presented to obtain Warranty Service: (a) the product, (b)

proof of purchase, which clearly indicates the name and address of the dealer, the date of purchase and the product type, and (c) reason for return. As part of GN's efforts to reduce environmental waste you understand that the product may consist of reconditioned equipment that contains used components, some of which have been reworked. The used components all live up to GN's high quality standards and comply with GN's product performance and reliability specifications. You understand that replaced parts or components will become the property of GN.

**Limitation of Warranty**This Warranty is only valid for the original purchaser and will automatically terminate prior to expiration if this product is sold or otherwise transferred to another party. The warranty provided by GN in this statement applies only to products purchased for use, and not for resale. It does not apply to open box purchases, which are sold "as is" and without any warranty. Specifically exempt from warranty are limited-life consumable components subject to normal wear and tear, such as microphone windscreens, ear cushions, modular plugs, ear tips, decorative finishes, batteries, and other accessories. This Warranty is invalid if the factory-applied serial number, date code label, or product label has been altered or removed from the product. This Warranty does not cover defects or damages that result from: (a) improper storage, misuse or abuse, accident or neglect, such as physical damage (cracks, scratches, etc.) to the surface of the product resulting from misuse; (b) contact with liquid, water, rain, extreme humidity or heavy perspiration, sand, dirt or the like, extreme heat, or food; (c) use of the product or accessories for commercial purposes or subjecting the product or accessories to abnormal usage or conditions; or (d) other acts which are not the fault of GN. This Warranty does not cover damage due to improper operation, maintenance or installation, or attempted repair by anyone other than GN or a GN dealer which is authorized to do GN warranty work. Any unauthorized repairs will void this Warranty. This Warranty does not cover defects or damages that result from the use of non-GN branded or certified products, accessories, or other peripheral equipment, nor does this Warranty apply to products which have not been charged for six (6) months. If the battery in a product has not been charged for a period of six (6) months, the product might not function or regain its full potential and long-term performance. GN does not offer any warranty for such performance.

REPAIRS OR REPLACEMENTS AS PROVIDED UNDER THIS WARRANTY ARE THE EXCLUSIVE REMEDY OF THE BUYER. GN SHALL NOT BE LIABLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES FOR BREACH OF ANY EXPRESS OR IMPLIED WARRANTY ON THIS PRODUCT. EXCEPT TO THE EXTENT PROHIBITED BY LAW, THIS WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER EXPRESS AND IMPLIED WARRANTIES WHATSOEVER, INCLUDING BUT NOT LIMITED TO THE WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PRACTICAL PURPOSE.

**NOTE:**This Warranty gives you specific legal rights. You may have other rights which vary from location to location. Some jurisdictions do not allow the exclusion or limitation of incidental or consequential damages or implied warranties, so the above exclusions may not apply to you. This Warranty does not affect your legal statutory rights under your applicable national or local laws.

The Bluetooth® word mark and logos are owned by the Bluetooth SIG, Inc. and any use of such marks by GN Netcom A/S is under license. Other trademarks and trade names are those of their respective owners.

For North America the following terms also applyFCC:

This device complies with part 15 of the FCC rules. Operation is subject to the following two conditions: (1) This device may not cause harmful interference, and (2) This device must accept any interference received, including interference that may cause undesired operation. Users are not permitted to make changes or modify the device in any way. Changes or modifications not expressly approved by Jabra (GN Netcom, Inc.) will void the user's authority to operate the equipment. This equipment has been tested and

found to comply with the limits for a Class B digital device, pursuant to part 15 of the FCC Rules. These limits are designed to provide reasonable protection against harmful interference in a residential installation. This equipment generates, uses and can radiate radio frequency energy and, if not installed and used in accordance with the instructions, may cause harmful interference to radio communications. However, there is no guarantee that interference will not occur in a particular installation. If this equipment does cause harmful interference to radio or television reception, which can be determined by turning the equipment off and on, the user is encouraged to try to correct the interference by one or more of the following measures:

- Reorient or relocate the receiving antenna.
- Increase the separation between the equipment and receiver.
- Connect the equipment into an outlet on a circuit different from that to which the receiver is connected.
- Consult the dealer or an experienced radio/TV technician for help.

The device and its antenna must not be co-located or operating in conjunction with any other antenna or transmitter. This headset, like other radio devices, emits radio frequency electromagnetic energy. The level of energy emitted by this device, however, is less than the electromagnetic energy emitted by other wireless devices such as mobile phones. The headset operates within the guidelines found in radio frequency safety standards and recommendations. These standards and recommendations reflect the consensus of the scientific community and result from deliberations of panels and committees of scientists who continually review and interpret the extensive research literature.

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IC

Operation is subject to the following two conditions (1) This device may not cause interference and (2) This device must accept any interference, including interference that may cause undesired operation of the device. The term "IC:" before the certification/registration number only signifies that registration was performed based on a Declaration of Conformity indicating that Industry Canada technical specifications were met. It does not imply that Industry Canada approved the equipment. This device complies with RSS210 of Industry Canada.

**CAUTION** Exposure to Radio Frequency Radiation. The installer of this radio equipment must ensure that the antenna is located or pointed such that it does not emit RF field in excess of Health Canada limits for the general population. Consult Safety Code 6, obtainable from Health Canada's website <http://www.hc-sc.ca>.

## **JUNIPER EULA**

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

**JUNIPER NETWORKS, INC.**

**JUNIPER NETWORKS, INC. LICENSE, WARRANTY AND SUPPORT TERMS**

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

feature is 'locked' or key-restricted or even of the feature can be activated or used without a Juniper-issued product activation key.

- m. **“Software”** means an instance of a program, module, feature, function, service, application, operation, or capability of the Juniper or Juniper-supplied software either (i) identified in an Entitlement as licensed to Ordering Activity or (ii) made available to Ordering Activity by Juniper or a Juniper-authorized reseller for Evaluation Use. “Software” may also consist of an instance either of a Separately Licensable Feature distributed in combination with other Software and or of an Update of other Software.
  - n. **“Subscriber”** is a Device, individual, Ordering Activity billing record or other identity that is recognized by the Software as authorized (presently, in the past or in the future) to receive services, usage, access or content which were, are or could be provided, managed, distributed, provisioned, billed or otherwise enabled by the Software.
  - o. **“Subscription License”** means a license to Software with respect to which the Entitlement states a finite, fixed term of use for the Software and either identifies the license as a “subscription” or expressly includes the right to Updates throughout the fixed term of use without need to purchase a separate Support Contract.
  - p. **“Support Contract”** means a support services contract that includes rights to receive certain Updates of the Software, which contract is either (i) a Juniper-issued contract purchased by Ordering Activity either from Juniper or from a Juniper-authorized reseller, or (ii) a support services contract issued by a support services provider to Ordering Activity under authorization granted by Juniper.
  - q. **“Update”** means Software that is an update, upgrade, bug fix or other new releases of other Software. Updates are either **“Major Releases”** (meaning a revision of Software as determined by Juniper Networks to have significant additional functionality or improved performance) or **“Minor Releases”** (meaning a bug fix, maintenance release, service release or a revision of a software application as determined by Juniper Networks to be limited to minor additional functionality or corrections of errors). An Entitlement to Updates may for certain cases exclude Major Releases.
  - r. **“Usage Monitor”** means a network management appliance or application software furnished to Ordering Activity (or approved in writing) by Juniper for monitoring use of the Software.
  - s. **“User”** means Device, individual, Ordering Activity billing record or other identity usable to gain access to any Software functionality (whether or not such account is restricted to a particular Device). User may be an individual or another Device. In counting Users for purposes of measuring usage against the licensed number of “Authorized Users” or “Concurrent Users,” if a User can access the Software through another User each such User shall be counted separately,
2. **License Grant.** Subject to payment of the applicable GSA fees and subject to the terms of this Attachment A, Contractor grants to Ordering Activity a non-exclusive and non-transferable license, without right to sublicense, to use the Software, in executable form only, and only within the restrictions and subject to the conditions set forth in the Entitlement and those set forth in this Attachment A. Unless otherwise expressly provided in the Entitlement:
- a. **Embedded Software.** Ordering Activity shall use Embedded Software solely for execution on the unit of Juniper equipment originally delivered to Ordering Activity with such Software installed. Any Update of such Embedded Software that Ordering Activity has licensed under a Support Contract may be loaded and executed only on the Juniper equipment on which the originally licensed Embedded Software is authorized to execute. Further, if Ordering Activity also licenses any Separately Licensable Feature combined with or incorporated in the Embedded Software (whether in dormant or active form), Ordering Activity may use such Separately Licensable Feature only for execution on the Juniper equipment on which the Embedded Software is authorized to execute. The license term for any such Separately Licensable Feature or Update shall be as specified in its own Entitlement. Notwithstanding any other provision of this Attachment A, except as may otherwise be required by applicable law, no license is granted for installation or use of any Embedded Software or associated Update or Separately Licensable Feature on any Juniper equipment resold by anyone who is not an authorized reseller of such equipment.
  - b. **Single Instance/Single Device.** Except to the extent otherwise explicitly stated in the Entitlement (including, without limitation, where the Entitlement states that the license is a “Network License”) Ordering Activity shall use a single instance of the Software on a single Device and the quantity of all applicable Licensed Units shall be one (1).
  - c. **Non-transferability of Licensed Units.** Unless expressly permitted by the Entitlement, quantities of Licensed Units purchased separately are not allowed to be transferred or allocated between or among different licenses or instances of the Software.
  - d. **Separately Licensable Features and Updates.** Unless otherwise expressly stated in an Entitlement purchased by Ordering Activity, a license to a particular release of Software shall not entitle Ordering Activity to receive or use any Separately Licensable Feature delivered in combination with that Software or any Update of that Software.
  - e. **Network License.** If the Entitlement specifies that it is a Network License, Ordering Activity may allocate the applicable Licensed Units across the licensed number of Software instances provided that (i) such instances are all running on the Ordering Activity Network specified in Ordering Activity’s Entitlement; (ii) the total number of Licensed

Units does not exceed the number licensed under that Entitlement and (iii) a Usage Monitor is used to validate (i) and (ii) and to report such usage to Juniper. Ordering Activity shall not alter or disable the Usage Monitor at any time during the term of the network license and shall not disable, alter or destroy the Usage Monitor, its connection to Juniper or any data collected by such Usage Monitor. If the network license is granted as to a particular number of Licensed Units, then all licensed copies of the software in the Ordering Activity Network may not be used to support in the aggregate more than that number of Licensed Units.

- f. Updates.** Except as expressly provided below in Section 2.f, below, with respect to Subscription Licenses or as otherwise expressly provided in an Entitlement or Support Contract, Ordering Activity shall have no rights in any Update to Software, nor any rights to support services associated with such Software.
- g. Subscription License.** In case of a Subscription License of Software, Contractor through Juniper Networks shall make available to Ordering Activity during the term of the Subscription License the Supported Updates (as defined below) solely for support of the Ordering Activity's licensed copy(ies) of such Software during the term of the Subscription License, subject to the terms and conditions set forth below:

  - i. As used herein, "Supported Updates" as of any particular time during the term of the Subscription License means any Update of such Software then available generally to Ordering Activities who have purchased a Subscription License to such Software.
  - ii. Rights in Supported Updates. For each Supported Update, the Ordering Activity's rights in such Update will be subject to the same terms, restrictions and conditions as apply to the Software (including without limitation the terms, restrictions or conditions on use set forth in this Attachment A and in any "Entitlement" as it applies to the Software).
- h. Specific license terms applicable to particular products:**

  - i. Junos Space Software. If this license is granted in fulfillment of a Ordering Activity purchase order (or associated fulfillment documentation) placed with Contractor or any Contractor-authorized reseller or support services provider (including any Operate Specialist) for any package of Junos Space Software, then Ordering Activity is authorized to use Junos Space in a networked environment on the Ordering Activity Network identified in the Entitlement solely to manage Devices in such Ordering Activity Network, but only to the extent of Licensed Units specified in the Entitlement. If, instead, Ordering Activity's license in a package of Junos Space Software is granted in fulfillment of a feature of a Support Contract, the scope of the license shall be as set forth in that Support Contract, an associated Service Description Document or another associated Entitlement.
  - ii. Steel-Belted Radius or Odyssey Access Client Software – Ordering Activity shall use such Software on a single computer containing a single physical random access memory space and containing any number of processors. Use of the Steel-Belted Radius or IMS AAA Software on multiple computers or virtual machines (e.g., Solaris zones) requires multiple licenses, regardless of whether such computers or virtualizations are physically contained on a single chassis.

    - 1. The Global Enterprise Edition of the Steel-Belted Radius Software may be used by Ordering Activity only to manage access to Ordering Activity's enterprise network. Specifically, service-provider Ordering Activities are expressly prohibited from using the Global Enterprise Edition of the Steel-Belted Radius Software to support any commercial network access services.
- i. If the Entitlement specifies "Research and Development Use", then Ordering Activity may only use the Software in Ordering Activity's own internal lab activities for research and development, excluding (A) research and development activities conducted as a paid contractor on behalf of a third party, and (B) any use of Software supporting, or installed or incorporated in whole or in part in, a product or service made commercially available or supporting live network traffic in the ordinary course of Ordering Activity's business.
- j. If the Entitlement specifies "Lab Use", then Ordering Activity may only use the Software in Ordering Activity's own internal lab activities to evaluate and test network setup and configuration and feature testing, but excluding (A) lab testing or other activities conducted as a paid contractor on behalf of a third party, and (B) any use of Software supporting, or installed or incorporated in whole or in part in, a product or service made commercially available or supporting live network traffic in the ordinary course of Ordering Activity's business.
- k. If there is no Entitlement, or if there is an Entitlement that specifies "Evaluation", "Demonstration" or "Trial" use then Ordering Activity may only use the Software for its internal evaluation or qualification of the Software (or the equipment in which it is embedded) and only in a development or test network environment in contemplation of potential future licensing for a commercial or other use.
- l. Except to the extent otherwise required by applicable law or expressly provided in the Entitlement, this license is not sublicensable, transferable or assignable by Ordering Activity and any attempted sublicense, transfer or assignment shall be null and void.

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



- g.** Disclaimer of implied Warranties. EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION, TO THE EXTENT PERMITTED BY LAW CONTRACTOR DISCLAIMS ALL WARRANTIES IN AND TO THE SOFTWARE (WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE), INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT, SATISFACTORY QUALITY, NON-INTERFERENCE, ACCURACY OF INFORMATIONAL CONTENT, OR ARISING FROM A COURSE OF DEALING, LAW, USAGE, OR TRADE PRACTICE. TO THE EXTENT AN IMPLIED WARRANTY CANNOT BE EXCLUDED, SUCH WARRANTY IS LIMITED IN DURATION TO THE EXPRESS WARRANTY PERIOD. BECAUSE SOME STATES OR JURISDICTIONS DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, THE ABOVE LIMITATION MAY NOT APPLY. THIS WARRANTY GIVES ORDERING ACTIVITY SPECIFIC LEGAL RIGHTS, AND ORDERING ACTIVITY MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM JURISDICTION TO JURISDICTION. This disclaimer and exclusion shall apply even if the express warranty fails of its essential purpose.

## **EXHIBIT A – STANDARD PRODUCT WARRANTY POLICY**

### **Warranty Start Date:**

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

### **Limited Hardware Warranty:**

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

### **Limited 90-day Software Media Warranty:**

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

### **Restrictions:**

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

### **Dead on Arrival ("DOA"):**

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

### **Hardware Return Procedures:**

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

### **Disclaimer:**

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

## **EXHIBIT B – JUNIPER CARE AND JUNIPER CARE PLUS**

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

- a) "Advance Hardware Replacement Support Plan" means an advance hardware replacement support plan as described herein that has been purchased by Ordering Activity.
- b) "Attachment A" means (1) these Support Terms and Conditions.
- c) "Authorized Reseller" means an authorized reseller of Juniper Networks products, so authorized in exchange for its agreement to resell only such Juniper Networks product that it has purchased either directly from Juniper Networks or from a Juniper Networks-authorized distributor.
- d) "Business Day" in connection with a particular JTAC facility, Service Manager or other Juniper Networks resource supporting Juniper Networks Services means Monday through Friday, 8:00 a.m. to 5:00 p.m., in the time zone where such resource is located, excluding local holidays.
- e) "CSC" means Juniper Networks' Customer Support Center. The CSC is a web-based service that allows Operate Specialist to access a database of Software Releases, technical tools, frequently asked questions, Documentation, technical updates, Product information, pre-released Product information, bug reporting, and bug resolution. The CSC is available at the URL: <http://www.juniper.net/support>.
- f) "Documentation" means operating manuals, user instructions, technical literature and other written materials ordinarily provided by Juniper Networks with Product or Services.
- g) "Ordering Activity" means the person or organization that originally purchases, leases or licenses Product and Services from Juniper Networks or an Authorized Reseller for use in such person's or organization's own business operations and not for further distribution or sale.
- h) "Hardware" means tangible systems, assemblies, components, accessories and like tangible goods that Juniper Networks has released for sale and spare parts therefor available from Juniper Networks for use in repairing or replacing Hardware that is defective.
- i) "JTAC" means Juniper Networks' local Technical Assistance Center in the applicable geographic region.
- j) "Juniper Networks" means: Juniper Networks (U.S.), Inc. and/or its authorized service representative(s) if Services will be provided in North America, Central America or South America.
- k) "Juniper Networks Services" means services purchasable by Ordering Activity from Juniper Networks or its Authorized Reseller and to be rendered by Juniper Networks for Ordering Activity.
- l) "Problem Resolution" means a resolution to a Problem that (i) causes Software and/or Hardware to substantially conform with the relevant Documentation; and/or, (ii) restores the service and operation of the Product without a material loss of functionality. Any Problem Resolution required hereunder will be delivered in Juniper Networks' next regularly scheduled major Supported Release.
- m) "Priority 1 Problem" means any fault in a supported Product that causes a catastrophic impact to an Ordering Activity's mission critical functionality. Examples of Priority 1 Problems include issues that cause the total loss or continuous instability of mission critical functionality such as the complete failure of an Ordering Activity's production network or system.
- n) "Priority 2 Problem" means any fault in a supported Product that causes a significant impact to an Ordering Activity's mission critical functionality. Examples of Priority 2 Problems include issues that are significantly impairing, but do not cause a total loss of mission critical functionality or intermittent issues that significantly affect mission critical functionality.
- o) "Priority 3 Problem" means any fault in a supported Product that causes minimal performance impact to business operations. Examples of Priority 3 Problems include issues in Products that do not impact mission critical functionality, non-repeated issues that temporarily impacted mission critical functionality but have since recovered, issues seen in a test or pre-production environment that would normally cause significant adverse impact to a Product, or work-around in place for Priority 1 or Priority 2 issues.
- p) "Priority 4 Problem" means any non-conformance to Documentation that has no impact on business operations. Examples of Priority 4 Problems include information requests, standard questions on configuration or functionality of Products, non-urgent RMA requests or cosmetic defects.
- q) "Problem" means a Priority 1 Problem, Priority 2 Problem, Priority 3 Problem, or Priority 4 Problem.
- r) "Problem Report" means a description of the Problem encountered when Ordering Activity submits a request to Juniper Networks for technical support. Each Problem Report will include a description of how to replicate the

condition that brought about the Problem whenever possible, all available diagnostic information, and a priority level as mutually determined by Ordering Activity and Juniper Networks consistent with the Problem priority levels defined herein. Ordering Activity shall submit Problems Reports consistent with the Problem Report template which can be found in the JTAC User Guide at URL <https://www.juniper.net/customers/support/downloads/710059.pdf>.

- s) "Product(s)" means the Juniper Networks Hardware, Software and Documentation, or any part thereof, that is covered under valid and active Juniper Networks Care Service Contract purchased by Ordering Activity from Contractor.
- t) "SDD" means a Services Description Document posted at <http://www.juniper.net/support/guidelines.html>, provided for informational purposes only and referencing this Exhibit B of this Attachment A as governing terms for the services described therein.
- u) "Service Contract" or "Juniper Networks Service Contract" means any bundle of Juniper Networks Services purchasable by Ordering Activity which services bundles are described in the Services Offerings for Ordering Activities Website that are offered by Juniper Networks to Ordering Activities for the applicable Services Contract term, but excluding Resident Engineering, Resident Consultant or other on-site professional services, which are covered under separate services terms and conditions. As described in applicable SDD's, a Services Contract may also include a license of Software for the Services Contract term; provided that any such Software is subject to the terms of this Attachment A.
- v) "Site" means the Ordering Activity physical location where the Hardware is installed.
- w) "Software" means the machine-readable object code licensed and delivered by Juniper Networks to Ordering Activity, either directly or through Juniper Networks' Authorized Resellers, whether embedded in the Hardware or delivered separately, and includes Software Releases.
- x) "Software Release" means a new production release of Software made generally available by Juniper Networks for use by Ordering Activity.
- y) "Supported Release" at any time means any Software Release then still supported under Juniper Networks' then-current software EOL and EOS Notification Policy and Procedures (<http://www.juniper.net/support/eol/#software>; provided for informational purposes only); PROVIDED HOWEVER, that for Perpetual License Software (as defined in the SDD for Care Support services) licensed to a particular Ordering Activity, Supported Release excludes "Major Releases" (as defined in that same SDD) released after the Major Release that is deliverable with the underlying perpetual license purchased by the Ordering Activity.
- z) "Work-Around" means a temporary resolution of a Problem that restores the service and operation of a Product without material loss of functionality. A Work-Around may consist of a patch or instructions on how to avoid a Problem.

## 2. Contractor's Support Obligations.

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

- a) Hardware Repair/Replacement. Contractor through Juniper Networks will use commercially reasonable efforts to provide Hardware repair/replacement in accordance with the Hardware replacement support option purchased by Ordering Activity, subject to the terms set forth in Section 4. All returned Hardware must be returned in accordance with Juniper Networks' RMA process described in this Attachment A. Juniper Networks is not responsible for transportation or customs delays.
- b) Technical Support. In accordance with Section 5, Contractor through Juniper Networks will use its commercially reasonable efforts to:
  - i) Provide Ordering Activity access to all Supported Releases and related Documentation that Ordering Activity has licensed from Juniper Networks upon their general commercial release;
  - ii) Provide Ordering Activity with access to JTAC staff, who will work with Ordering Activity to determine an appropriate priority level for each Problem and respond to each Problem accordingly, including escalating the Problem through Juniper Networks management as needed; and
  - iii) Post web-based reports to the Customer Support Center.
- c) On-Site Support. If Ordering Activity has purchased a Juniper Networks Services Contract that includes on-site support (not available in all Territories), then, upon Ordering Activity's request, Contractor through Juniper Networks will use its commercially reasonable efforts promptly to dispatch a technician to the affected Site. If Ordering Activity requires on-site support but has not purchased a Juniper Networks Services Contract that includes on-site support, then, upon Ordering Activity's request and subject to payment of then-applicable GSA fees, Contractor through Juniper Networks will use commercially reasonable efforts to dispatch a technician to the affected site within a timeframe to be determined by

Juniper Networks based upon the availability of resources. In such case, Ordering Activity will be billed at Contractor's then-applicable GSA rates for time and materials, and for reasonable travel and living expenses. In either case, provision of onsite support is subject to the following limitations:

- i) On-site support is limited to Hardware replacement only; Contractor through Juniper Networks does not provide On-site assistance for software troubleshooting, or any software related issues.
  - ii) On-site support may not be available for some Juniper Networks products or in some geographic regions and may require a "set-up" period before they can be made available to Ordering Activity. During such set-up period, Contractor through Juniper Networks will use commercially reasonable efforts to provide to Ordering Activity the closest available service with respect to such product line or in such geographic region. Next Day On-site is provided in the regional time zone of the Ordering Activity Site.
  - iii) For the Juniper Networks -IDP and Secure Access product lines, Contractor through Juniper Networks will only provide assistance with the delivery and initial set up of the Hardware. Ordering Activity is responsible for the reconfiguration and/or allowing JTAC access to the device to restore the Hardware to its last saved configuration status. Ordering Activity is responsible for maintaining a backup of the configuration that can be used to restore the device.
  - iv) Ordering Activity acknowledges that Contractor through Juniper Networks intends to subcontract to local affiliates or third parties the performance of On-site Support in certain countries.
- d) End of Life Procedures and End of Support. Contractor through Juniper Networks shall abide by the EOL and EOS Notification Policy and Procedures (<http://www.juniper.net/support/eol/>).
- e) Exclusions. Contractor through Juniper Networks is not obligated to provide any of the following:
- i) third-party devices (hardware, software cabling, etc. not provided by Juniper Networks or Problems associated with or arising directly or indirectly from such components;
  - ii) Problems with Product that have been installed by any party other than (A) Juniper Networks or (B) a party authorized by Juniper Networks; Problems with Product that have been modified without Juniper Networks' written consent by any person (including unauthorized modifications by Operate Specialist);
  - iii) Problems relating to incompatibility of the Product with third-party devices;
  - iv) Product that is damaged other than through the negligence or willful misconduct of Juniper Networks or its employees
  - v) Problems caused by the use of the Product other than in accordance with applicable Documentation
  - vi) problems with Products where Ordering Activity did not provide the required Product information set forth in Section 3 f);
  - vii) problems caused by the misuse or abuse of Product generally;
  - viii) Problems with Software that is not a Supported Release;
  - ix) Problems with Products that were not purchased directly from Juniper Networks or any authorized Juniper Networks reseller unless such products have been inspected, repaired and certified by Juniper Networks prior to the commencement of any Juniper Networks Services.
  - vi) problems with Products or parts thereof that are past their End of Life date, as provided in subsection 2(d) above.

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

### **3. Contractor Obligations.**

- a) Maintaining Supported Releases. All Supported Releases provided to Ordering Activity shall be subject to the terms of this Attachment A. Ordering Activity is not required to install every Supported Release as they become available from Juniper Networks. However, Ordering Activity acknowledges that in order to obtain Support for problems with Software that is not a Supported Release and which cannot be corrected by implementation of a pre-existing Work Around or Problem Resolution, it may be required to upgrade to a Supported Release to address any such problems.
- b) Network Access. For any Problem identified as a Priority 1 Problem, Ordering Activity will provide Contractor through Juniper Networks or its authorized service representative access to the affected network environment, and will assign a technical contact for Juniper Networks. Furthermore, if Juniper Networks determines that its technical personnel need access to the Ordering Activity's network in order to remotely diagnose a problem, Ordering Activity will ensure that

Juniper Networks' personnel have the necessary level of authorized access to such network as long as Contractor complies with Ordering Activity's security requirements. Ordering Activity shall have the right to observe such access.

- c) Staffing. Ordering Activity shall maintain a reasonable number of support engineers who are trained on Juniper Networks Products. Ordering Activity's support engineers must be proficient in the operation of the Products and be able to perform basic Hardware and Software configuration and troubleshooting. All communication to Contractor through Juniper Networks' engineers of customer issues and responses will be conducted in English. Ordering Activity shall pay for Support rendered by Juniper Networks due to modifications not authorized by Juniper Networks at Contractor's then prevailing GSA rates for time and materials.
- d) Decommissioned Hardware. Ordering Activity may elect to cover all or none of its Product under this Attachment A except that, effective at the end of each annual term of this Attachment A, Ordering Activity may exclude Product that it has permanently decommissioned and identified in a written notice to Contractor through Juniper Networks at least 30 days prior to such decommission. In addition, Juniper Networks will grant Ordering Activity a pro-rated credit for any pre-paid support on Products that are permanently decommissioned or accidentally destroyed during an annual support term and Ordering Activity may use such credit for future service orders only.
- e) Configuration Files. Ordering Activity is responsible to maintain a backup of the configuration that can be used to restore the device.
- f) Product Information. In order for Contractor through Juniper Networks to provide the appropriate level of Support promptly and efficiently, Ordering Activity must provide to Juniper Networks the following information for each Product under a Support plan:
  - i) product license key or serial number;
  - ii) configuration;
  - iii) installation address; and
  - iv) Site contact person.

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

#### **4. Hardware Repair/Replacement.**

- a) Hardware Return Procedure. In the event of Hardware failure, Ordering Activity must contact JTAC for Hardware failure validation and troubleshooting. After JTAC has validated the Hardware failure, Ordering Activity will receive a Return Material Authorization (RMA) number. To ensure proper tracking and handling of returned Hardware or parts, all Hardware returned to Contractor through Juniper Networks must have a RMA number assigned prior to their return. Ordering Activities who are not under any Support Plan may purchase Support from Contractor at Contractor's then prevailing GSA rates for time and materials. Hardware returns that are improperly packaged or do not include required information and RMA numbers will not be accepted and will be returned at Ordering Activity's expense.
- b) Hardware Replacement. If Ordering Activity has purchased a Hardware Replacement Support Plan, then Contractor through Juniper Networks will provide replacement part(s) to Ordering Activity in accordance with the Hardware Replacement Support Plan selected by Ordering Activity and include a return kit with each replacement part. Provided in each return kit will be a return instruction sheet, prepaid air bill, and a reprinted return label, as applicable. Ordering Activity must follow the return instructions to return the defective Hardware or parts within 10 business days of failure or pay the purchase price of replacement parts for any Hardware.

#### **5. Technical Support.**

- a) Supported Releases. Contractor through Juniper Networks will make available Supported Releases and applicable Documentation, if any, to Ordering Activity as such releases become generally commercially available. Such Supported Releases shall be subject to the same Every Supported Release will be accompanied by written installation instructions. Ordering Activity's rights in Supported Releases are subject to this Attachment A.
- b) Access to JTAC. Ordering Activity's access to the JTAC shall be by telephone or web-based. The parties shall use reasonable efforts to establish security measures for the electronic exchange of Problem Reports and other information
- c) Web-Based Technical Support. Contractor through Juniper Networks shall post to the Ordering Activity Support Center, on a regular basis, a report listing the following information:
  - i) bugs, errors, or deficiencies in the Software, and the classification of each;

- ii) any resolutions or fixes; and
  - iii) any available Work Arouns.
- d) Technical Support Procedures. For each request by Ordering Activity for Technical Support from Contractor through Juniper Networks, Ordering Activity shall provide Juniper Networks with a Problem Report. Juniper Networks shall identify each discrete issue relating to a Problem Report with a unique "Case Number" for tracking purposes. Upon request by Ordering Activity, Juniper Networks shall provide a "Status Report" on any Problem logged for Ordering Activity provided that Ordering Activity identifies the particular Problem by the Case Number assigned to it by Juniper Networks. For Problems that have been resolved, the Status Report shall include the Case Number, the closing resolution for the Problem, the expected date that a Problem Resolution will be released, and a description of any known Work Around. For Problems that have not yet been resolved, the Status Report shall include the Case Number, a Problem resolution plan, and a description of any known Work Around. Each Problem logged for Ordering Activity shall remain open until closure notification is received from Juniper Networks and accepted by Ordering Activity. By mutual agreement between Ordering Activity and Juniper Networks, Problems shall be categorized and handled according to the procedures set forth below:
- i) P1 – Priority 1 Problems. If the Problem is identified as a Priority 1 Problem, the Juniper Networks' Ordering Activity Service duty manager will be immediately notified of any Priority 1 Problems to ensure engagement of all appropriate resources. Contractor through Juniper Networks and Ordering Activity shall work continuously (on a 24x7x365 basis), and shall use all commercially reasonable efforts, to work with Ordering Activity's dedicated resources to resolve the Priority 1 Problem until a Work Around or a Problem Resolution is successfully implemented. If a Priority 1 Problem is not resolved within a maximum of 1 hour from the time it is classified as such by Juniper Networks, Juniper Networks' Ordering Activity Service will confer with the appropriate Juniper Networks' engineering subject-matter expert. If a Problem Resolution is successfully implemented, but such Problem Resolution cannot be deployed in a Product operating in Ordering Activity's network without affecting service or operation, Juniper Networks shall use commercially reasonable efforts to provide Ordering Activity with a Work Around. If a Work Around is successfully implemented, a Priority 1 Problem shall be reclassified to the appropriate priority level. Subject to the foregoing, Juniper Networks will use all commercially reasonable efforts to deliver a workaround solution within 24 hours of the Priority 1 Problem having been observed or reproduced by Juniper Networks.
  - ii) P2 – Priority 2 Problems. If the problem is classified as a Priority 2 Problem, Contractor through Juniper Networks and Ordering Activity shall work full-time during normal business hours (extending to 24 hours per day as needed), and shall use all commercially reasonable efforts, until a Work Around or Problem Resolution is successfully implemented. If a Problem Resolution is successfully implemented, but such Problem Resolution cannot be deployed in a Product operating in Ordering Activity's network without affecting service or operation, Juniper Networks shall use commercially reasonable efforts to provide Ordering Activity with a Work Around. Subject to the preceding sentence, Juniper Networks will use all commercially reasonable efforts to provide a Work Around or Problem Resolution within 5 calendar days of a Priority 2 Problem being reported to Juniper Networks by Ordering Activity.
  - iii) P3 – Priority 3 Problems. If a problem is classified as a Priority 3 Problem, Contractor through Juniper Networks and Ordering Activity shall work full-time during normal business hours, and shall use all commercially reasonable efforts, until a Work Around or Problem Resolution is successfully implemented. If a Problem Resolution is successfully implemented, but such Problem Resolution cannot be deployed in a Product operating in Ordering Activity's network without affecting service or operation, Juniper Networks shall use commercially reasonable efforts to provide Ordering Activity with a Work Around. Subject to the preceding sentence, Juniper Networks will use all commercially reasonable efforts to provide a Work Around or a Problem Resolution within 30 calendar days of a Priority 3 Problem being reported to Juniper Networks by Ordering Activity.
  - iv) P4 – Priority 4 Problems. Contractor through Juniper Networks shall use commercially reasonable efforts to work with Ordering Activity during normal business hours to provide information or assistance as requested. Juniper Networks will use all commercially reasonable efforts to provide a Work Around, Problem Resolution or other requested assistance within 90 calendar days of a Priority 4 Problem being reported to Juniper Networks by Ordering Activity.

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

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

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

**Hardware Repair/Replacement Support**

**Return-to-Factory**

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

**Next-Day (not available in all jurisdictions)**

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

**Same-Day (not available in all jurisdictions)**

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

**Onsite (not available in all jurisdictions)**

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



# **KODAK WARRANTY**

## Warranty for KODAK Scanners

Published 10/13/2010 01:42 PM | Updated 04/19/2011 10:10 AM | Answer ID 19411

What are the warranty guidelines for my KODAK Scanner?

### Limited Warranty

Kodak warrants your KODAK Scanner to be free from malfunctions and defects in both materials and workmanship for one year from the date of purchase.

THIS WARRANTY APPLIES ONLY TO EQUIPMENT PURCHASED IN THE UNITED STATES.

### Limited Warranty Coverage

This warranty will be honored within the geographical location that the product was purchased.

If this equipment does not function properly during the warranty period due to defects in material or workmanship, Kodak will, at its option, either repair or replace the equipment without charge, subject to the conditions and limitations stated herein. Such repair service will include all labor as well as any necessary adjustments and/or replacement parts.

If replacement parts are used in making repairs, these parts may be remanufactured, or may contain remanufactured materials. If it is necessary to replace the entire system, it may be replaced with a remanufactured system.

### Limitations

Warranty service will not be provided without dated proof of purchase. Please return the Warranty Registration card within 30 days of purchase.

This warranty becomes null and void if you fail to pack your scanner in a manner consistent with the original product packaging and damage occurs during product shipment.

This warranty does not cover: circumstances beyond Kodak's control; service or parts to correct problems resulting from the use of attachments, accessories, or alterations not marketed by Kodak; service required as the result of unauthorized modifications or service; misuse or abuse; failure to follow Kodak's operating, maintenance, or repackaging instructions; failure to use items supplied by Kodak (such as adapters and cables).

Kodak makes no other warranties, express, implied, or of merchantability or fitness for a particular purpose for this equipment or software.

Repair or replacement without charge is Kodak's only obligation under this warranty. KODAK WILL NOT BE RESPONSIBLE FOR ANY SPECIAL CONSEQUENTIAL OR INCIDENTAL DAMAGES RESULTING FROM THE PURCHASE, USE, OR IMPROPER FUNCTIONING OF THIS EQUIPMENT REGARDLESS OF THE CAUSE. SUCH DAMAGES FOR WHICH KODAK WILL NOT BE RESPONSIBLE INCLUDE, BUT ARE NOT LIMITED TO, LOSS OF REVENUE OR PROFIT, DOWNTIME COSTS, LOSS OF USE OF YOUR SCANNER, COST OF ANY SUBSTITUTE EQUIPMENT, FACILITIES, OR SERVICES, OR CLAIMS OF YOUR CUSTOMERS FOR SUCH DAMAGES.

### Outside the United States

In countries other than the United States, warranty terms may be different. Unless a specific Kodak warranty is communicated to the purchaser in writing by Kodak, no warranty or liability exists even though defect, damage, or loss may be by negligence or other act of Kodak.

# **LENOVO WARRANTY**

**lenovo** FOR  
THOSE  
WHO DO.

## LENOVO® WARRANTY SERVICES PROTECT YOUR INVESTMENT

Lenovo's comprehensive end-to-end portfolio includes flexible Warranty Service options to meet the variable support needs across your organization. We provide fixed-term, fixed-cost service solutions that allow you to accurately budget for equipment expenses and match refresh cycles and critical support needs. Lenovo offers a worldwide single source solution that helps you realize your objectives for cost efficiency, improved service levels and end-user productivity and satisfaction, wherever you are.

Lenovo's award-winning Warranty Service is provided by Lenovo-trained technicians, using Lenovo Qualified parts, giving your organization the high standards of quality and customer care you've come to expect from Lenovo. You get the peace of mind to know your assets are protected, and your IT staff the freedom to focus on critical business objectives.

### WARRANTY EXTENSIONS AND UPGRADES

Lenovo® offers a wide range of warranty options for your Think, Idea and Lenovo branded systems, dependent on the machine type and base warranty. These options can be selected at the time of purchase or within the term of initial base warranty coverage.

- **Warranty Extensions** are available for periods of up to five years (depending on your system) giving you a fixed-term, fixed-cost service solution that enables you to accurately budget for equipment expenses
- **Warranty Upgrades** allow you to vary response time and level of service to match your critical support needs

Depending on the initial base warranty of the system, service plans are available with the following standard service levels:

SERVICE OFFERING	DESCRIPTION
Carry-in or Mail-in Service <sup>(1)</sup>	Parts and labor repair coverage where the customer is responsible for shipping (including packaging) or delivery to authorized warranty provider or repair center.
Depot or Courier Service	Parts and labor repair coverage where shipping (including packaging) or delivery to the repair center is paid for by Lenovo.
Onsite/In-Home Service <sup>(2)</sup>	Parts and labor repair coverage where labor is provided onsite at your place of business. <ul style="list-style-type: none"> <li>• If Lenovo determines your product problem is covered by the product warranty and cannot be resolved over the telephone, a technician will be dispatched to arrive onsite, typically the next day.</li> </ul> Onsite + Tech Install of CRUs (Customer Replaceable Unit Parts) broadens your coverage to include onsite technician installation of CRU parts.
International Warranty Service (IWS) <sup>(3)</sup>	PC repair coverage for customers who require a critical warranty repair while travelling internationally <a href="http://www.lenovo.com/internationalwarranty">www.lenovo.com/internationalwarranty</a>

Additional Service level upgrades may be available in specific countries for a given Lenovo system. Special arrangements are possible upon request.

### BENEFITS

- Lenovo's flexible warranty options are designed to fit the varying needs within an organization
- Match service coverage duration with the expected lifecycle of your PCs
- Minimize unplanned operating and maintenance expenses
- Increase uptime and productivity for you, your business or end-users
- Consistent service levels for multi-national organizations, in-region and local-language support
- Convenient onsite or next business day service options
- Lenovo's tech support has been recognized around the globe as consistently best-in-class from industry sources like TBR, Laptop Magazine, PC Magazine and IDC Dataquest
- Exceptional machines deserve exceptional service and only Lenovo backs them up with award-winning capabilities and Lenovo-certified technicians.

Lenovo Warranty Service is part of a comprehensive portfolio of Lenovo's award-winning services that support the entire lifecycle of your PCs. For more information on this, or other service offerings, please call 1-866-968-4465 or visit: [www.lenovo.com/warranty/US](http://www.lenovo.com/warranty/US)

Lenovo Services.

(1) Carry-in or mail in service may not be available in all regions. (2) Service is available during Lenovo's normal in-country business hours. Calls received after 4:00pm local time will require an additional business day for service dispatch. On-site service is available in metropolitan areas only. Next day Service is not guaranteed. (3) International Warranty Service is available, but regional differences in service level may apply. All products and offers are subject to availability. Lenovo reserves the right to alter product offerings and specifications at any time, without notice. Lenovo makes every effort to ensure accuracy of all information but is not liable or responsible for any editorial, photographic or typographic errors. All images are for illustration purposes only. For full Lenovo product, service and warranty specifications visit [www.lenovo.com](http://www.lenovo.com). The following are trademarks or registered trademarks of Lenovo: Lenovo, the Lenovo logo, ThinkPad, For Those Who Do and ThinkPlus. Other company, product and service name may be trademarks or service marks of others. ©2012 Lenovo. All rights reserved.



PRODUCTS DEALS SUPPORT

## LenovoEMC Network Storage Service Plans

### LENOVOEMC NETWORK STORAGE SERVICE PLANS

Protect your investment with a LenovoEMC Service Plan.



#### Premium Service Plans

24x7 technical support with 4 hour onsite service.

[Learn More](#)

- 24x7 technical support
- 4 hour parts replacement
- Expedited advance exchange
- Highest priority with technical support



#### Enhanced Service Plans

24x7 technical support with next day onsite service.

[Learn More](#)

- 24x7 technical support
- Next business day parts replacement
- Expedited advance exchange
- Priority with technical support

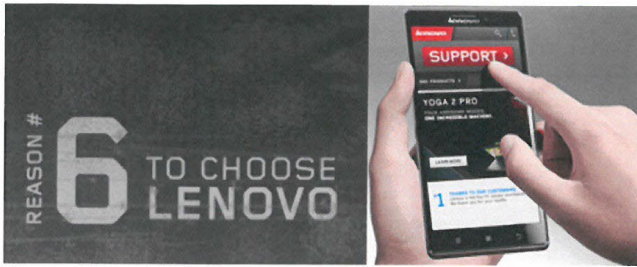


#### Extended Service Plans

24x7 technical support & extends your warranty for 5 years.

[Learn More](#)

- 24x7 technical support
- Advance exchange
- Priority with technical support



## SUPPORT.

With thousands of support reps in 18 locations worldwide and a deep bench of level-2 technical experts, we're able to get you quick and knowledgeable help when you need it. We're consistently ranked as a top provider of customer support in surveys.

[SEE MORE REASONS](#) ►

### Convenient Payment Options



**Limits:** Limit 5 per customer. Offers valid from Lenovo in the US only. Lenovo may increase or decrease these limits, from time to time, for certain offerings.

**Ship date:** Shipping times listed are estimates based on production time and product availability. An estimated ship date will be posted on our order status site after your order is placed. Ship dates do not include delivery times which will vary depending on the delivery method selected at checkout. Lenovo is not responsible for delays outside of our immediate control, including delays related to order processing, credit issues, inclement weather, or unexpected increase in demand. To obtain the latest information about the availability of a specific part number, please call the phone number listed in the masthead at the top of this page.

**Next Day Shipping:** Products ship within the next business day (excl. bank holidays and weekends) for orders which have been placed prior to 3pm ET and which are prepaid in full or payment approved. Limited quantities are available. Software and accessories will be shipped separately and may have a different estimated ship date.

**Availability:** Offers, prices, specifications and availability may change without notice. Lenovo will contact you and cancel your order if the product becomes unavailable or if there was a pricing or typographic error. Products advertised may be subject to limited availability, depending on inventory levels and demand. Lenovo strives to provide a reasonable quantity of products to accommodate estimated consumer demand.

**General:** [Review key information provided by Microsoft](#) that may apply to your system purchase, including details on Windows 10, Windows 8, Windows 7, and potential upgrades/downgrades. Lenovo makes no representation or warranty regarding third-party products or services.

**Trademarks:** Lenovo, ThinkPad, ThinkCentre, ThinkStation and the Lenovo logo are trademarks of Lenovo. Microsoft, Windows, Windows NT, and the Windows logo are trademarks of Microsoft Corporation. Ultrabook, Celeron, Celeron Inside, Core Inside, Intel, Intel Logo, Intel Atom, Intel Atom Inside, Intel Core, Intel Inside, Intel Inside Logo, Intel vPro, Itanium, Itanium Inside, Pentium, Pentium Inside, vPro Inside, Xeon, Xeon Phi, and Xeon Inside are trademarks of Intel Corporation in the U.S. and/or other countries. Other company, product or service names may be trademarks or service marks of others.

**Warranty:** For a copy of applicable warranties, write to: Lenovo Warranty Information, 1009 Think Place, Morrisville, NC, 27560. Lenovo makes no representation or warranty regarding third party products or services. The Lenovo Limited Warranty applies only to Lenovo hardware products purchased for your own use, and does not transfer upon resale.

**Battery:** These systems do not support batteries that are not genuine Lenovo-made or authorized. Systems will continue to boot, but may not charge unauthorized batteries. Attention: Lenovo has no responsibility for the performance or safety of unauthorized batteries, and provides no warranties for failures or damage arising out of their use. Battery life (and recharge times) will vary based on many factors, including system settings and usage.

**Pricing:** Does not include tax, shipping and handling, or recycling fees. Reseller prices may vary. Savings referenced off regular Lenovo web prices.

**Windows 10 Upgrade from Microsoft:** Offer is available for qualified Windows 7 and Windows 8.1 devices (including devices you already own). Please visit [www.windows.com/windows10upgrade](http://www.windows.com/windows10upgrade) for the complete terms and conditions regarding this offer and to check your eligibility. This upgrade is being offered by Microsoft.

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SUPPORT**

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# LEXMARK WARRANTY

# Lexmark End User Statement of Limited Warranty for Supplies

Lexmark International, Inc. Lexington, KY

Warranty Coverage: Lexmark warrants that on the date of original purchase this Product will be free from defects in material or workmanship. If, during the warranty period, this Product is found to be defective in material or workmanship, it will be exchanged or repaired at Lexmark's option.

## Warranty Period:

The Warranty Period for each Product is shown in the section entitled "Products Covered by the Lexmark Limited Warranty", and starts on the date of original purchase.

## Not Covered:

Warranty Service does not include repair or exchange when the problem results from accident, disaster, misuse, abuse, non-Lexmark modification (including refilling, tampered with in any way or remanufacturing), improper storage, malfunctioning equipment, laser print cartridges which are simply empty as a result of normal use, or normal wear and tear. Character or page yield is also not covered by warranty service, as it is influenced by customer application, printer contrast settings, operating environments, printer condition, and paper type.

## Obtaining Warranty Service:

To obtain Warranty Service during the warranty period complete the End User Warranty Claim Form, attach a print sample illustrating the defect and return the Product along with proof of purchase and the completed Warranty Claim Form to the place of original purchase. If the End User Warranty Claim Form is not available, then please provide name, address, phone number, place of purchase, brief description of the problem, and a print sample, and return the Product along with proof of purchase to the place of original purchase. If the Product was purchased directly from Lexmark, you must return it to Lexmark to obtain warranty service. Should you have any warranty questions, please call, toll-free, 1-800-438-2468 for assistance.

***For warranty service returns, please do NOT use the Lexmark Cartridge Collection Program shipping labels or its return address.***

This limited warranty applies only to Product purchased and located in the United States and/or Puerto Rico.

## Other Information:

THE ABOVE WARRANTIES ARE EXCLUSIVE AND NO OTHER WARRANTY, WHETHER WRITTEN OR ORAL, IS EXPRESSED OR IMPLIED AND LEXMARK SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTIES OR CONDITION OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR SATISFACTORY QUALITY.

Some states do not allow limitations on how long an implied warranty lasts, so the above limitations may not apply to you. This warranty gives you specific legal rights, and you may also have other rights, which vary from state to state, province to province, country to country.

**Limitation of Remedies:**

Your sole remedy under this Statement of Limited Warranty shall be Lexmark's performance of warranty service. For any claim concerning performance or nonperformance by Lexmark under this statement, or for any claim related to this product, you shall be entitled to recover actual damages up to the limits indicated in the following paragraph.

Lexmark's liability for damages to you for any cause whatsoever arising out of or related to this Statement of Limited Warranty or for any other claim related to this Product shall be limited to the amount that you paid for the Product at the time of original purchase. In no event will Lexmark be liable to you for any lost profits, lost savings, or other incidental or consequential damages even if 1) Lexmark, 2) a Lexmark Authorized Reseller, 3) any other reseller who purchased this product from a Lexmark Authorized Wholesaler has been advised of the possibility of such damages, or for any claim you based on a third party claim. Some states do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation or exclusion may not apply to you.

# **MICROSOFT SURFACE TERMS & CONDITIONS**

**Appendix A**  
**Microsoft Surface Terms and Conditions**

THESE MICROSOFT SURFACE TERMS AND CONDITIONS APPLY TO MICROSOFT SURFACE PRODUCTS THAT YOU ORDER FROM THE CONTRACTOR UNDER THE CONTRACTOR'S GSA SCHEDULE CONTRACT (THE "CONTRACT"). THESE MICROSOFT SURFACE TERMS AND CONDITIONS SHALL TAKE PRECEDENCE OVER ANY CONFLICTING TERMS IN AN ORDER OR ORDERING DOCUMENTATION.

BY USING YOUR MICROSOFT SURFACE PURCHASED FROM CONTRACTOR OR CONTRACTOR'S AUTHORIZED DEALER ("MICROSOFT HARDWARE"), OR MICROSOFT BRANDED ACCESSORY PURCHASED FROM CONTRACTOR OR AN AUTHORIZED CONTRACTOR DEALER ("ACCESSORY"), YOU AGREE TO THESE SURFACE TERMS AND CONDITIONS.

**1. Software**

You are solely responsible for ensuring you are properly licensed for all software, including Microsoft products and third party products you install and use on the Microsoft Hardware.

**2. Warranty**

This warranty gives You specific legal rights

- A. (a) For **1 year** from the date You purchased Your Microsoft Hardware or Accessory from Contractor or its authorized dealer ("Warranty Period"), Microsoft warrants, only to You, that the Microsoft Hardware or Accessory will not malfunction due to a defect in materials or workmanship under Normal Use Conditions.
- (b) This is the only warranty Microsoft gives for Your Microsoft Hardware or Accessory. Microsoft gives no other guarantee, warranty, or condition. No one else may give any guarantee, warranty, or condition on Microsoft's behalf.
- (c) MICROSOFT DISCLAIMS ALL OTHER WARRANTIES INCLUDE ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE
- (d) **Other Definitions.** "You" means the entity purchasing the Microsoft Hardware or Accessory. "Normal Use Conditions" means ordinary consumer use under normal conditions according to the instruction manual.

**B. How to Get Warranty Service**

- (a) Before starting the warranty process, please use the troubleshooting tips at [www.microsoft.com/surface/support](http://www.microsoft.com/surface/support).
- (b) If the troubleshooting tips do not resolve Your problem, then follow the online process at [www.microsoft.com/surface/warranty](http://www.microsoft.com/surface/warranty).
- (c) **Back up Your Hard Drive and Delete Confidential Information.** Before sending Your Microsoft Hardware or Accessory to Microsoft or taking it to the Contractor or its authorized dealer for service, be sure to:
- i. BACK UP YOUR HARD DISK DRIVE AND KEEP A COPY OF ANY DATA (INCLUDING PHOTOGRAPHS, DOCUMENTS, VIDEO, MUSIC, ETC.) OR PROGRAMS YOU WANT TO SAVE. MICROSOFT OR RESELLERS ARE NOT RESPONSIBLE FOR YOUR DATA OR PROGRAMS AND MAY ERASE THEM.
  - ii. DELETE ANYTHING YOU CONSIDER CONFIDENTIAL. MICROSOFT, RETAILERS, OR RESELLERS ARE NOT RESPONSIBLE FOR YOUR PRIVACY IF YOU LEAVE CONFIDENTIAL INFORMATION ON YOUR DEVICE.
- For more information, please see: [www.microsoft.com/surface/warranty](http://www.microsoft.com/surface/warranty).

**C. Microsoft's Responsibility**

- (a) After You return Your Microsoft Hardware or Accessory to Microsoft or the Contractor or its authorized dealer, Microsoft or the reseller will inspect it.
- (b) If Microsoft or the Contractor determines that the Microsoft Hardware or Accessory malfunctioned due to a defect in materials or workmanship during the Warranty Period under Normal Use Conditions, Microsoft or the reseller will (at its option) repair or replace it, or refund the purchase price to You through your Contractor. Repair may use new or refurbished parts. Replacement may be with a new or refurbished unit.
- (c) After repair or replacement, Your Microsoft Hardware or Accessory will be covered by this warranty for the longer of the remainder of Your original Warranty Period, or 90 days after Contractor or its authorized dealer ships it to You.

(d) MICROSOFT'S RESPONSIBILITY TO REPAIR OR REPLACE YOUR MICROSOFT HARDWARE OR ACCESSORY, OR TO REFUND THE PURCHASE PRICE, IS YOUR EXCLUSIVE REMEDY.

(e) If Your Microsoft Hardware or Accessory malfunctions after the Warranty Period expires, there is no warranty of any kind. After the Warranty Period expires, Microsoft may charge You a fee for its efforts to diagnose and service any problems.

**D. Warranty Exclusions**

(a) Microsoft is not responsible and this warranty does not apply if Your Microsoft Hardware or Accessory is:

- i. damaged by use with products not sold or licensed by Microsoft;
- ii. opened, modified, or tampered with (including, for example, any attempt to defeat or circumvent any Microsoft technical limitation or security mechanism, etc.), or its serial number is altered or removed;
- iii. damaged by any external cause (including, for example, by being dropped, exposed to liquid, used with inadequate ventilation, etc., acts of God, power surge, misuse, abuse, negligence, accident, mishandling, misapplication, failure to follow instructions in the instruction manual, or other causes unrelated to defects in the Microsoft Hardware or Accessory);
- iv. scratched, dented, etc. or shows other cosmetic damage; or
- v. repaired, modified, or altered by anyone other than Microsoft or an authorized reseller

(b) Microsoft is not responsible and this warranty does not apply if Your Microsoft Hardware is used with an operating system other than the Windows operating system preinstalled in Your Microsoft Hardware, or any contemporaneous or later version of that operating system.

(c) This warranty does not apply to consumable parts that are designed to diminish over time, including normal wear and tear, unless the failure has occurred due to a defect in materials or workmanship.

(d) Microsoft does not guarantee that Your use of the Microsoft Hardware or Accessory will be uninterrupted, timely, secure, or error-free, or that data loss will not occur.

**E. EXCLUSION OF CERTAIN DAMAGES**

MICROSOFT IS NOT RESPONSIBLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES; ANY LOSS OF DATA, PRIVACY, CONFIDENTIALITY, OR PROFITS; OR ANY INABILITY TO USE YOUR MICROSOFT HARDWARE OR ACCESSORY. THESE EXCLUSIONS APPLY EVEN IF MICROSOFT HAS BEEN ADVISED OF THE POSSIBILITY OF THESE DAMAGES, AND EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

**F. Additional Terms**

If You attempt to defeat or circumvent any Microsoft Hardware or Accessory technical limitation or security system, You may cause Your Microsoft Hardware or Accessory to stop working permanently. You will also void Your warranty, and make Your Microsoft Hardware or Accessory ineligible for authorized repair, even for a fee.

H. All parts of this warranty apply to the maximum extent permitted by law or unless prohibited by law.

I. This warranty is valid only in the United States of America.

**3. Miscellaneous**

A. Microsoft's address in the United States: Microsoft Corporation, One Microsoft Way, Redmond, WA 98052.

B. If a court holds any provision of these Microsoft Surface Terms and Conditions to be illegal, invalid, or unenforceable, the rest of the document will remain in effect and will be amended to give effect to the eliminated provision to the maximum extent possible.

C. Any breach of these Microsoft Surface Terms and Conditions, including Your obligations set forth herein, shall be handled in accordance with the Contracts Disputes Act (41 U.S.C. §§7101-7109).

D. For Microsoft Surface Products, system software uses significant storage space; Your storage capacity will be less. See [Surface.com/storage](http://Surface.com/storage) 1 GB = 1 billion bytes

E. All section and subsection headings used in these Microsoft Surface Terms and Conditions are for convenience only and shall not affect the interpretation of this agreement.

## **NETAPTIBLES TERMS & CONDITIONS**



NETPATIBLES has the industry's leading LIFETIME WARRANTY for advanced networking components.

NETPATIBLES products carry a lifetime warranty, reflecting our confidence in our best-in-class product quality and that we stand 100% behind our customer's needs for network reliability.

We understand the demands of your network operations and this is why we provide the support and service your business deserves for all of our products.

We warrant our products against all manufacturer defects in material and workmanship for the lifetime of the product(s).

In the unexpected event you encounter an issue of a defect or damage appears under normal use, contact our support team and we will repair your product or replace it.

To submit a claim email [support@netpatibles.com](mailto:support@netpatibles.com) or call 888-800-5930



# **NEXSAN WARRANTY & SUPPORT**



WARRANTY PROGRAM  
SERVICE & SUPPORT

## NEXSAN E-SERIES™ NEXSAN BEAST/BOY

### WARRANTY GENERAL TERMS

Nexsan warrants that its Hardware Products are free from defects in material and workmanship for 3 years from date of shipment or contract purchase, and will conform to the applicable Nexsan specifications, under normal use and service, for the applicable warranty period of 3 years. All warranties begin upon original shipment date from Nexsan. (Software is covered under a separate warranty)

Nexsan's sole and exclusive obligations under its warranty are to repair or replace, at Nexsan's option, the nonconforming system or component, or to issue customer a refund for the purchase price of the equipment.

ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ARISING BY LAW OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARE HEREBY DISCLAIMED. THE WARRANTY REMEDIES STATED HEREIN ARE EXCLUSIVE. Nexsan shall not be responsible or liable for any consequential, indirect or special damages to any party, including lost profits, lost savings, lost data and loss of reputation, even if Nexsan has been advised of the possibility of such damages. Nexsan strongly urges all customers to take precautions to protect against data loss, particularly mission critical data, and to properly archive and backup data.

Any Nexsan warranty shall immediately be null and void if, in Nexsan's sole judgment, the unit has been altered or repaired other than with authorization from Nexsan and by its approved procedures, has been subject to misuse, abuse, negligence or accident, damaged by excess voltage, damaged in shipment, subjected to improper environmental conditions, or had its serial numbers and/or other marking altered, defaced or removed. Normal user preventative maintenance is the responsibility of the Purchaser and is excluded from this warranty.

Nexsan uses specific drive models, revision levels, and specially screened drives to ensure proper operation and reliability of the Nexsan Storage array. Drives not supplied by Nexsan can cause the array to function less than optimally or not at all and will therefore, in all cases, cause the warranty to terminate. Some levels of Nexsan firmware may prevent drives not supplied by Nexsan to be recognized by the array.

In the event of a failure during the warranty or any contracted support period the end-user may contact Nexsan Technical Services during standard Nexsan Business Hours, 8:00AM to 5:00PM Monday through Friday, at the Nexsan Regional Support Center nearest to the product location and a Nexsan engineer will assist in diagnoses and resolution. Please refer to our "Contact Technical Support" web page for complete information on how to contact your closest Nexsan regional support center or call +1 760 690 1111. Customers may also contact Nexsan Technical Services via email at support@nexsan.com. All support requests via email are addressed during standard Nexsan Business Hours.

Nexsan will make available free of charge to the original registered owner of the Product any Nexsan Software updates and maintenance releases which are issued during the warranty, or contracted support period. Major releases are not included in any support level. These updates are available on [www.Nexsan.com](http://www.Nexsan.com) and may only be available if the system has been registered through the on-line or GUI process.

Nexsan provides advance replacement of any identified defective hardware component during the warranty period. Replacement components will be advance shipped within one business day. Deliveries are normally shipped via standard two day freight. Actual delivery times may vary depending upon location.

Customers that do not wish to replace defective components can arrange for the entire storage device to be shipped, at customer's expense, to Nexsan for diagnosis and repair or alternatively can request on-site professional services from Nexsan. If professional services are requested a quote will be provided to the customer.

Available Support Upgrades: See our "Service and Support Programs" web page for details of these offerings

- Basic level warranty extension
- Enterprise Next Business Day onsite support
- Premium 7x24x4 onsite support
- On Site Spares Kit (OSSK)
- Nexsan Professional Services

## NEXSAN SERVICE AND SUPPORT PROGRAMS

### Nexsan E-Series, Nexsan E5000 Family, Beast, Boy

Choose the Nexsan Service and Support Program that fits your organization and get the highest performance out of your Nexsan storage systems while protecting your investment. Nexsan offers Basic, Enterprise, Premium and Concierge programs above the Standard Warranty to provide a selection of service and support features for any sized organization or IT team. Contact your Nexsan sales representative or visit [www.nexsan.com](http://www.nexsan.com) to learn more about which service and support options best meet your needs.

	BASIC	ENTERPRISE	PREMIUM	CONCIERGE
Phone and Email Support	Nexsan Business Hours	7x24	7x24	7x24
Severity Level 1 / 2 / 3 (remote) Response Times	4 hrs / 8 hrs / 8 hrs Business Hours	4 hrs / 4 hrs / 8 hrs 7x24 Hours	2 hrs / 4 hrs / 4 hrs 7x24 Hours	1 hr / 2 hrs / 2 hrs 7x24 Hours
Firmware and/or Software Updates (bug fixes, minor releases)	Yes	Yes	Yes	Yes
Firmware and/or Software Upgrades (new features, major releases)	No	Yes	Yes	Yes
Parts Deployment	Advance Parts Replacement (Self-installed FRU)	Arrive with On-site Technician	Arrive with On-site Technician	Arrive with On-site Technician
Parts Timeframe	Ship within 1 Business Day	On-site 5x9 Next Business Day	On-site 7x24 4-hour Response	On-site 7x24 4-hour Response
Nexsan E5000 Concierge Support Suite	No			Yes Nexsan E5000 Only

The Nexsan E5000 Concierge Support Suite covers the E5000 head and any attached Nexsan E-Series storage systems.

#### NEXSAN E5000 CONCIERGE SUPPORT INCLUDES A SUITE OF ADDED SERVICES:

Hardware monitoring, auto-dispatch, personal Technical Account Manager, rapid answers, monthly health check, capacity and performance review twice per year.

PRODUCT WARRANTY				
Boy / Beast 36 months	Nexsan E-Series 36 months	Nexsan E5300 / E5500 HW 36 months	Nexsan E5100 HW 12 months	Nexsan E5000 Family Software 90 days

# NEXSAN SERVICE AND SUPPORT PROGRAMS

Nexsan E-Series, Nexsan E5000 Family, Beast, Boy

## STANDARD WARRANTY

The Standard Warranty includes free firmware and software updates (bug fixes, minor releases) and covers all Nexsan supplied hardware components. Once a Return Material Authorization (RMA) is issued, replacement components are advance-shipped within one business day. An RMA can be obtained by phone, fax or email. Warranty period varies by product. See product Warranty for more information. Warranty extensions may be purchased for current products still under Warranty. (Some restrictions apply)

## NEXSAN REGULAR BUSINESS HOUR PHONE AND EMAIL SUPPORT

All Nexsan support centers are staffed by Senior Technical Engineers to answer questions, issue RMAs and provide onsite service if required. Nexsan regular business hour support provides standard English language support, available by phone Monday - Friday during Nexsan Business Hours 9:00 am to 5:00 pm local time at global support centers in San Diego, California (US), Derby (UK) and Tokyo Japan. Email support at [support@nexsan.com](mailto:support@nexsan.com) or through [www.nexsan.com/support](http://www.nexsan.com/support). Email requests are addressed during Nexsan Business Hours. Enterprise, Premium and Concierge Support customers receive a hotline for dedicated 24x7 service. Our globally connected call tracking and communication system ensures the same level of quality support worldwide.

## BASIC SUPPORT

Nexsan customers who prefer to perform simple hardware replacement themselves and do not need 24x7 care choose Basic support. As needed, replacement parts are advance-shipped within one business day of diagnosis of a hardware fault. Basic support includes Nexsan Technical Support by phone and email during standard Nexsan Business Hours. Software upgrades are available for an additional charge. Software/Firmware Updates are free.

Nexsan E-Series, SATABoy and SATABeast RAID products include Basic Support in the Standard Warranty.

## ONSITE MAINTENANCE

Enterprise, Premium and Concierge programs include options for onsite maintenance and parts replacement by one of our Nexsan-trained, world-class global and regional service partners.

## ENTERPRISE SUPPORT

Nexsan customers who want to simplify maintenance and ensure overall system availability, choose Nexsan Enterprise support for an enhanced level of service.

It includes 24x7 phone and email support and next-business-day onsite hardware replacement, following diagnosis of a hardware issue. Software and firmware upgrades and updates are also included. (Note: on-site support is not available on Nexsan holidays. See [Nexsan.com/support](http://Nexsan.com/support) for details)

## PREMIUM SUPPORT

Nexsan customers who require infrastructure operation 24x7x365 choose Premium support for fast, 24x7 response and onsite hardware replacement. Once a hardware issue is diagnosed by phone, a Nexsan Technical Engineer arrives onsite, within 4 hours, if needed.

Premium support also offers enhanced response times to software support issues and an exclusive support hotline for around-the-clock access. Software/firmware updates and upgrades are included.

## CONCIERGE SUPPORT

Nexsan E5000 Concierge support offers proactive managed services to ensure all the Nexsan storage as part of your E5000 system is always in peak operating condition. In addition to the features of the Premium support program you receive 24x7 hardware monitoring and automatic dispatch. Your assigned Technical Account Manager is intimately familiar with your installation and can provide rapid answers to questions. Nexsan conducts monthly health checks to keep your system in peak condition, as well as capacity and performance reviews twice a year. Personalized Concierge service offers the ultimate in support availability and ease.

## NEXSAN PROFESSIONAL SERVICES

In addition to world-class support programs, Nexsan offers professional services to assist with solution design, installation and implementation. Onsite specialists work with you to configure your system, integrate it into your environment and even perform application and data migration. Nexsan Professional Services are priced at daily rates and can be scheduled for any number of days. Web-assist professional services for advanced remote assistance are also available. Contact your Nexsan sales representative or the Nexsan Technical Services Group for more information.



**OVERLAND WARRANTY TERMS AND CONDITIONS**



Search

## Global Service Programs: Warranty Terms and Conditions

These Terms and Conditions of Warranty, Service and Support ("Terms and Conditions") cover services provided by Overland to customers ("Customers") who have purchased products ("Products") from Overland Storage, Inc. ("Overland").

### Limited Hardware Warranty

Overland warrants that Overland or its designated third party service provider ("Service Provider") will repair or exchange, at Overland's option and without charge to Customer, each Product failing to function properly under normal use during the Limited Warranty Period (the "Limited Warranty"). The "Limited Warranty Period" starts on the date of shipment from Overland or on the purchase date from an Overland authorized reseller and continues for the applicable time specified at the "[Warranty Coverage and Service Options](#)" web page or for any period during which Overland agrees to extend such Limited Warranty Period. Customer's dated sales or delivery receipt is Customer's proof of the purchase date. Customer may be required to provide proof of purchase as a condition of receiving warranty service. Customer means the original end-user purchaser of the Product. This Limited Warranty is extended to the original end-user purchaser only and is not transferable.

Your Limited Warranty is NOT in effect until Overland receives your completed Warranty Registration via the Product Self Support section on Overland's web site at [support.overlandstorage.com](http://support.overlandstorage.com) and it is processed by Overland. Processing may take up to 15 business days after receipt of your Warranty Registration by Overland.

Overland Storage warrants that the software functionality for specified Overland Products will substantially conform to its published specifications for a period of time as specified at the "[Warranty Coverage and Service Options](#)", web page from the receipt of the equipment containing the software or receipt of access to the software. This limited warranty extends only to the end customer as the original licensee. Overland Storage will comply with all applicable laws, rules and regulations in connection with its activities under the published End User License Agreement (EULA). Refer to the EULA for your product for the complete statement of warranty.

Any Product, which Overland has authorized to be replaced must be returned to Overland per the terms of the specific warranty. For Return to Factory (RTF) Replacement material, Customer must first ship the product to Overland at the Customer's expense. Once Overland receives the part, the repaired or replaced item will be shipped to Customer, at Overland's expense.

For Advanced Warranty Replacement material, the customer is obligated to return the replaced material within the stated timeframe in order to maintain the Limited Warranty entitlement. Failure to comply will result in suspension of your Limited Warranty and grant Overland the right to invoice the Customer, at current list price, for the replacement material. All returned parts or Products become the property of Overland. Overland, at its discretion, may use new, refurbished, or reconditioned replacement parts to perform any warranty repair or replacement of its Products or provide a replacement unit of Overland's choosing that is at least equivalent to the Product in hardware performance. Overland reserves the right, at its sole discretion, to refund the purchase price instead of replacing the Product.

Other terms and conditions relating to duration, scope and procedures of the Limited Warranty are available on the [Global Service Programs: Service Options Details](#) page.

### Upgraded Warranty Coverage and Additional Purchased Services

In addition to the Limited Warranty applicable to all Products during the Limited Warranty Period, Customer may purchase, upon payment of the applicable fees, extended terms of the Limited Warranty Period, additional, or upgraded warranties, on-site service, and other maintenance or installation services and support ("Purchased Services") all as set forth on the "[Warranty Coverage and Service Options](#)" web page (any such purchased services being referred to as the "Services"). Purchased Services are valid to the original end-user purchaser only and are not transferable or refundable.

If Customer has purchased any Services set forth on the "[Warranty Coverage and Service Options](#)" web page, Overland or its Service Provider will provide the Services, commencing the date that Overland receives and processes your purchase order for such Services ("Service Start Date"). Processing your purchase order may take up to 15 business days after receipt of your purchase order by Overland.

Services may include mandatory engineering changes, maintenance updates, releases or upgrade versions of the Products, if any, to the Customer, but installation of recommended non-mandatory changes, updates, releases, or upgrade versions will subject Customer to additional charges.

Overland or the Service Provider will use commercially reasonable efforts to respond to Customer's request for Services within the response time set forth under the "[Warranty Coverage and Service Options](#)" web page, measured from the time Overland or its Authorized Service Provider has determined that the Services are required. Overland or the Service Provider will use reasonable care to assure that all services are performed in a workmanlike manner by competent and trained individuals utilizing generally accepted industry standards and practices.

If any Purchased Services coverage was not originally provided or purchased with the Products, or if Services coverage has lapsed, or if ownership of the product has been transferred to other than the original end user purchaser, Overland or the Service Provider may require an inspection of the Products before the Service Start Date and as a condition to providing the Services. Customer will bear the expense of such inspection, as well as the expense of the repair should the inspection reveal any failure of the Product to function properly or any conditions listed as Exclusions below.

### Technical and Telephone Support

If Customer receives support as set forth on the "[Warranty Coverage and Service Options](#)" web page. Such support will include:

Access to the Product Self Support section on Overland's web site at [support.overlandstorage.com](http://support.overlandstorage.com).

Web self support includes FAQ's, User Guides, Application Notes and other information designed to maximize the benefit of your Product and enable the Customer to resolve

### RESOURCES

Service Resources
OverlandCare
OverlandCare Support Programs Datasheet
Optional Programs
Warranty Coverage and Service Options
Warranty Terms and Conditions
Service FAQ's
Service Center Locator
Repair Services and Spares



issues without the need for additional assistance. This feature is generally available 7x24x365.

Tier 1 Telephone consultation assistance shall be available 24x7x365 concerning the basic installation, application and operation of the Products:

Tier 1 Telephone consultation assistance will include initial information gathering and verification of entitlements and may include, answering basic product installation, configuration or usage questions, initial failure information gathering (including gathering product log files), answer general "how to" questions;

Tier 2 and 3 technical telephone support will be provided during Overland's standard business hours (excluding legal holidays observed by Overland or its authorized service representative) at no additional cost for Hardware failures occurring during the Telephone Technical Support Period specified at the "[Warranty Coverage and Service Options](#)" web page. Technical telephone support provided after the first 90 days of the Warranty Period, outside the Warranty Period or for exclusions to this Product Limited Warranty may be provided on an as-available basis for a per incident charge. Credit card deposits may be requested in such cases unless Upgraded Warranty coverage or Additional Purchased Services are in effect. The deposit will be refunded if the Defect is a Hardware failure identified within the Warranty Period. "Defect" means the Product is not performing in accordance with Overland's published specifications, the nonconformity is covered by the Product Limited Warranty and the nonconformity is reproducible. For more details on the Overland "Out of Warranty" Services, go to this link "[Overland Out of Warranty Services](#)".

Tier 2 and 3 telephone consultation assistance will include failure isolation and identification; providing standard fixes and workarounds to known failures; utilize support lab equipment to replicate customer problems if necessary; apply advanced troubleshooting techniques to the extent required to determine root cause and final resolution of customer issues; work with the customer to apply the resolution and confirm return to correct operating conditions

If a customer requires Tier 2 and 3 phone support outside of Overland standard business hours, the must purchase the appropriate Support Coverage that provides this Tier 2 and 3 support 24x7x365 and as specified at the "[Warranty Coverage and Service Options](#)" web page

#### Product Location

If Customer receives support as set forth on the "[Warranty Coverage and Service Options](#)" web page, the Services will be provided only at the location initially designated by Customer at the time of product registration. Services will not be provided at any other location, unless Overland agrees to such other location. On-site support services may not be available for products located within private residences.

If Customer wishes to relocate the Products, it will give 30-day prior, written notice to Overland and resumption of Services on such Products will be subject to Overland's consent and the payment by Customer of additional charges as determined by Overland. Additional charges or change of service level according to Overland's then-current policies and pricing may also apply if the Product is relocated to a geographic location in which Overland Services are available at a price different from that paid or where available service levels vary from the original location. No refund will be made of any Purchased Services.

Any product requiring support within 15 days following such relocation or notice thereof will be analyzed to determine if a coverage exclusion for installation or damage shall apply.

#### On-Site Services

For any on-site Services, Customer will provide to the personnel providing the Services, at Customer's expense and at the scheduled time and at other reasonable times and for reasonable time increments: (i) full and free access to the Products and the use of any product, attachment, documentation, software, diagnostics or other equipment necessary to provide Service; and (ii) adequate and safe working and storage space and facilities as reasonably needed by personnel providing Services, including, without limitation, adequate heat, light, ventilation and electrical current and outlets. Customer will be solely responsible to move furniture, equipment, stored materials or any other objects as required while Services personnel are at Customer's premises.

#### Third Party Software

Third Party Software may be included in the Products. Third Party Software is any third party, free or open source software provided by Overland but separately licensed. Third Party Software may not be covered by Purchased Services. Customer may be able to purchase Supplemental Software Service for Third Party Software. In order to purchase the Supplemental Software Service, Customer must purchase and at all time maintain a current valid support entitlement for the Overland hardware Product on which the Third Party Software runs.

#### Exclusions

Overland will have no obligation to provide any warranty or Services for, or may in Overland's sole discretion charge additional fees for: (a) altered or modified Products or Products from which the serial number or any warranty seal has been removed or that have been damaged or rendered defective; (b) Products that are damaged as a result of repairs by anyone other than Overland or its Service Provider, accident, misuse, abuse, or other external causes or not related to any Product error; (c) Products incorporated into other products not manufactured by Overland or that have parts or accessories that have not been provided or installed by Overland or its Service Provider; (d) Products used other than as specified in the Overland's user manual or specifications or operated outside the usage parameters stated in the user documentation; (e) expendable or consumable parts or media, wire, or cables; (f) repainting or refinishing; or (g) installation, configuration or relocation of the Products.

Products returned and found in good working order or covered by one of the foregoing exclusions will be subject to an additional service charge. If any unauthorized new equipment specifications, attachments, features, unauthorized or unapproved firmware or other changes are made or added to any of the Products after the Service Start Date, Overland may cancel the Service or adjust the specified charges.

#### Charges and Obligations

Overland will invoice and Customer will pay Overland the applicable Services fee or other charges set forth on and according to any terms listed on the Expanded Warranty Coverage and Service Options or on any applicable invoice. Services fees listed are exclusive of any taxes that may apply.

Overland may suspend or cancel Services if Customer fails to make payment or breaches any provision of these Terms and Conditions or any term or condition set forth under the Expanded Warranty Coverage and Service Options and such nonpayment is not remedied within 30 days after the original due date or such breach is not remedied within 30 days after the date of Overland's notice of the breach. FAILURE TO RETURN ANY DEFECTIVE MATERIAL WITHIN 15 DAYS OF RECEIPT OF ITS REPLACEMENT SHALL BE CONSIDERED A BREACH AND WILL RESULT IN SUSPENSION OF THIS AGREEMENT UNTIL SUCH MATERIAL IS RETURNED OR PURCHASED. If Overland suspends or cancels Services for Customer's failure to return Advance Warranty Replaced material or to pay Overland on the due date, then in order to reinstate or renew Services (if allowed by Overland), Customer must first pay Overland the applicable Services fee and any reinstatement charge listed under the Expanded Warranty Coverage and Service Options. No portion of any charges for Services will be prorated or refunded to Customer in the event the Services are terminated prior to the end of the term then in effect.

#### Data and Privacy

IT IS CUSTOMER'S SOLE RESPONSIBILITY TO MAKE BACK-UP COPIES OF CUSTOMER'S DATA AND TO ENSURE THAT ALL OF ITS DATA AND FILES ARE ADEQUATELY DUPLICATED AND DOCUMENTED. BEFORE ALLOWING SERVICE OF ANY PRODUCT, CUSTOMER MUST BACK-UP DATA AND REMOVE ANY OF CUSTOMER'S CONFIDENTIAL, PROPRIETARY, OR PERSONAL INFORMATION. NEITHER OVERLAND NOR ITS SERVICE PROVIDER WILL BE LIABLE FOR ANY CONFIDENTIAL OR PRIVATE INFORMATION OR DATA CONTAINED IN ANY PRODUCT, HARDWARE, SOFTWARE OR MEDIA. NEITHER OVERLAND NOR ITS SERVICE PROVIDER WILL HAVE ANY LIABILITY ARISING OUT OF ANY DAMAGE TO OR LOSS OF SUCH DATA WHILE THE PRODUCT IS IN OVERLAND'S OR THE SERVICE PROVIDER'S POSSESSION. OVERLAND AND/OR THE SERVICE PROVIDER WILL NOT BE RESPONSIBLE FOR THE BACK-UP, SAVING, OFFLOADING, RECOVERY, RESTORATION OR REINSTALLATION OF ANY PROGRAMS OR DATA OTHER THAN SOFTWARE INSTALLED BY OVERLAND WHEN THE PRODUCT IS MANUFACTURED.

#### Disclaimers

OVERLAND AND/OR THE SERVICE PROVIDER WILL NOT BE RESPONSIBLE FOR TECHNICAL SERVICES OF ANY SORT RELATED TO SYSTEM DESIGN OR

OPERATION, PROGRAMMING OR SOFTWARE NOT SOLD BY OVERLAND. NEITHER OVERLAND NOR ITS SERVICE PROVIDER WILL BE LIABLE FOR ANY CLAIM MADE BY A THIRD PARTY OR MADE BY CUSTOMER FOR A THIRD PARTY OR FOR ANY DAMAGE THAT OCCURS AS A RESULT OF CUSTOMER'S FAILURE TO FOLLOW THE INSTRUCTIONS THAT CAME WITH THE PRODUCT.

EXCEPT AS EXPRESSLY SET FORTH IN THESE TERMS AND CONDITIONS, OVERLAND MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. OVERLAND DOES NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE PRODUCTS WILL MEET THE CUSTOMERS' REQUIREMENTS OR BE UNINTERRUPTED OR ERROR-FREE. LAWS FROM TIME TO TIME IN FORCE IN THE RELEVANT MARKET MAY IMPLY WARRANTIES WHICH CANNOT BE EXCLUDED OR WHICH CAN ONLY BE EXCLUDED TO A LIMITED EXTENT, IN WHICH CASE, OVERLAND LIMITS ITS AND ITS SERVICE PROVIDER'S LIABILITY TO THE EXTENT PERMITTED BY LAW. IF OVERLAND CANNOT EXCLUDE ANY WARRANTY IMPLIED BY LAW, THIS WARRANTY SHALL BE READ AND CONSTRUED SUBJECT TO SUCH STATUTORY PROVISIONS.

Overland Storage products may be manufactured from new parts, or new and used parts. Unless specifically identified as "used" or "refurbished" all Overland Storage products shall be covered by their specific standard warranty entitlement at the time of customer purchase.

#### Limitations of Liability

UNDER NO CIRCUMSTANCES WILL OVERLAND, ITS SERVICE PROVIDER OR EITHER'S AFFILIATES, EMPLOYEES, OFFICERS, DIRECTORS OR AGENTS BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE, OR INCIDENTAL DAMAGES, WHETHER FORESEEABLE OR UNFORESEEABLE, (INCLUDING, BUT NOT LIMITED TO, CLAIMS FOR LOSS OF DATA, GOODWILL, INCONVENIENCE, DELAY, PROFITS, USE OF MONEY OR USE OF THE OVERLAND PRODUCTS, INTERRUPTION IN USE OR AVAILABILITY OF DATA.

OVERLAND'S AND THE SERVICE PROVIDER'S ENTIRE LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR CLAIMS RELATED TO OR ARISING OUT OF THESE TERMS AND CONDITIONS FOR ANY CAUSE AND DESPITE THE FORM OF ACTION, WHETHER IN CONTRACT OR IN TORT, STATUTORY OR OTHERWISE, INCLUDING NEGLIGENCE AND STRICT LIABILITY, WILL NOT EXCEED THE AMOUNT OF THE SERVICE FEES THAT CUSTOMER PAID TO OVERLAND DURING THE PARTICULAR TERM IN WHICH SUCH DAMAGE OCCURRED. THIS LIMITATION OF LIABILITY WILL BE EFFECTIVE EVEN IF CUSTOMER HAS ADVISED OVERLAND OR ITS SERVICE PROVIDER OF THE POSSIBILITY OF ANY SUCH DAMAGES.

THESE TERMS AND CONDITIONS GIVES CUSTOMER SPECIFIC LEGAL RIGHTS. CUSTOMER MAY ALSO HAVE OTHER RIGHTS THAT MAY VARY FROM STATE TO STATE OR FROM COUNTRY TO COUNTRY. CUSTOMER IS ADVISED TO CONSULT APPLICABLE STATE OR COUNTRY LAWS FOR A FULL DETERMINATION OF CUSTOMER'S RIGHTS. SOME STATES OR COUNTRIES DO NOT ALLOW A LIMITATION ON HOW LONG AN IMPLIED WARRANTY LASTS OR THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES FOR CONSUMER PRODUCTS. IN SUCH STATES OR COUNTRIES, SOME EXCLUSIONS OR LIMITATIONS OF THESE TERMS AND CONDITIONS MAY NOT APPLY TO CUSTOMER.

#### General Terms

Neither Overland nor the Service Provider is responsible for failure to fulfill its obligations pursuant to these Terms and Conditions due to acts of God, labor disputes, shortages of parts or materials or any other causes similar or dissimilar, beyond its reasonable control.

These Terms and Conditions and the Expanded Warranty Coverage and Service Options together constitute the complete and exclusive agreement regarding the warranty and service terms and conditions of Overland branded Product. These Terms and Conditions supersede any prior agreements or representations—including representations made in Overland sales literature or advice given to Customer by Overland, an Overland authorized reseller, or an agent or employee thereof—that may have been made in connection with Customer's purchase of the Product. No change to the conditions of these Terms and Conditions is valid unless it is made in writing and signed by an authorized representative of Overland. Overland may in its sole discretion modify the Terms and Conditions at any time and from time to time. If any provision of these Terms and Conditions is held invalid by any law or regulation of any government or by any court, such invalidity will not affect the enforceability of other provisions in these Terms and Conditions.

These Terms and Conditions will be governed by the laws of the State of California. Any legal suit, action or proceeding arising out of or relating to these Terms and Conditions will be commenced in a federal or state court in the County of San Diego, California, and each party hereto irrevocably submits to the exclusive jurisdiction and venue of any such court in any such suit, action or proceeding.

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# PANASONIC WARRANTY

## 12. General Information

### 12.4 Limited Warranty

PANASONIC CONSUMER ELECTRONICS COMPANY,  
DIVISION OF MATSUSHITA ELECTRIC  
CORPORATION OF AMERICA  
One Panasonic Way,  
Secaucus, New Jersey 07094

PANASONIC SALES COMPANY,  
DIVISION OF MATSUSHITA  
ELECTRIC OF PUERTO RICO, INC.,  
Ave. 65 de Infantería, Km. 9.5  
San Gabriel Industrial Park,  
Carolina, Puerto Rico 00985

### Panasonic Facsimile Product Limited Warranty

#### Limited Warranty Coverage

If your product does not work properly because of a defect in materials or workmanship, Panasonic Consumer Electronics Company or Panasonic Sales Company (collectively referred to as "the warrantor") will, for the length of the period indicated on the chart below, which starts with the date of original purchase ("Limited Warranty period"), at its option either (a) repair your product with new or refurbished parts, or (b) replace it with a new or a refurbished product. The decision to repair or replace will be made by the warrantor.

FAX categories	Parts	Labor
Thermal Transfer Facsimile	6 Months	6 Months
Laser Facsimile	1 (one) Year	1 (one) Year

Batteries, antennas, optional accessories (such as additional handsets), ink film, toner cartridge, drum unit, and ink cartridge (as may be applicable), and cosmetic parts (cabinet) are not warranted under this Limited Warranty.

During the "Labor" Limited Warranty period there will be no charge for labor. During the "Parts" Limited Warranty period, there will be no charge for parts. You must carry-in or mail-in your product during the Limited Warranty period. This Limited Warranty only applies to products purchased and serviced in the United States or Puerto Rico. This Limited Warranty is extended only to the original purchaser and only covers products purchased as new. A purchase receipt or other proof of the original purchase date is required for Limited Warranty service.

#### Carry-In or Mail-In Service

For Carry-In or Mail-In Service in the United States call 1-800-HELP-FAX (1-800-435-7329)  
For assistance in Puerto Rico call Panasonic Sales Company (787)-750-4300 or fax (787)-768-2910.

#### Limited Warranty Limits And Exclusions

This Limited Warranty ONLY COVERS failures due to defects in materials or workmanship, and DOES NOT COVER normal wear and tear or cosmetic damage. The Limited Warranty ALSO DOES NOT COVER damages which occurred in shipment, or failures which are caused by products not supplied by the warrantor such as non Panasonic ink film, toner cartridge or drum unit, or failures which result from accidents, misuse, abuse, neglect, mishandling, misapplication, alteration, faulty installation, set-up adjustments, signal reception problems, misadjustment of consumer controls, improper maintenance, power line surge, improper voltage supply, lightning damage, modification, or commercial use (such as in a hotel, office, restaurant, or other business), rental use of the product, service by anyone other than a Factory Servicer or other Authorized Servicer, or damage that is attributable to acts of God.

**THERE ARE NO EXPRESS WARRANTIES EXCEPT AS LISTED UNDER "LIMITED WARRANTY COVERAGE". THE WARRANTOR IS NOT LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES RESULTING FROM THE USE OF THIS PRODUCT, OR ARISING OUT OF ANY BREACH OF THIS LIMITED WARRANTY.** (As examples, this excludes damages for lost time, cost of having someone remove or re-install an installed unit if applicable, or travel to and from the servicer. The items listed are not exclusive, but are for illustration only.) **ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING THE WARRANTY OF MERCHANTABILITY, ARE LIMITED TO THE PERIOD OF THE LIMITED WARRANTY.**

# **POLYCOM EULA**

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**ATTACHMENT A  
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS  
POLYCOM, INC.**

**POLYCOM, INC. LICENSE, WARRANTY AND SUPPORT TERMS**

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1. **GRANT OF LICENSE.** Subject to the terms of this Attachment A, Contractor grants to you a non-exclusive, non-transferable, revocable license to install and use the SOFTWARE PRODUCT solely on the POLYCOM product with which this SOFTWARE PRODUCT is supplied (the "PRODUCT"). Ordering Activity (herein also referred to as "You" or "Your") may use the SOFTWARE PRODUCT only in connection with the use of the PRODUCT subject to the following terms and the proprietary notices, labels or marks on the SOFTWARE PRODUCT or media upon which the SOFTWARE PRODUCT is provided. You are not permitted to lease, rent, distribute, assign, sell or sublicense the SOFTWARE PRODUCT, in whole or in part, or to use the SOFTWARE PRODUCT in a time-sharing, subscription service, hosting or outsourcing arrangement or in any other unauthorized manner. Further, no license is granted to you in the human readable code of the SOFTWARE PRODUCT (source code). Except as expressly provided below, this Attachment A does not grant you any rights to patents, copyrights, trade secrets, trademarks, or any other rights in respect to the SOFTWARE PRODUCT. You are solely responsible for use of the PRODUCT and the SOFTWARE PRODUCT by your agents, contractors, outsourcers, customers and suppliers and their compliance with this Attachment A.
2. **OTHER RIGHTS AND LIMITATIONS.**
  - 2.1. **Limitations on Reverse Engineering, Decompilation, and Disassembly.** You may not reverse engineer, decompile, modify or disassemble the SOFTWARE PRODUCT or otherwise reduce the SOFTWARE PRODUCT to human-perceivable form in whole or in part, except and only to the extent that such activity is expressly permitted by a third party license or applicable laws. The foregoing includes but is not limited to review of data structures or similar materials produced by SOFTWARE PRODUCT. The SOFTWARE PRODUCT is licensed as a single product. Its component parts may not be separated for use on more than one PRODUCT. You may not use the SOFTWARE PRODUCT for any illegal purpose or conduct.
  - 2.2. **Back-up.** Except as expressly provided for under this Attachment A you may not copy the SOFTWARE PRODUCT; except, however, you may keep one copy of the SOFTWARE PRODUCT and, if applicable, one copy of any previous version, for back-up purposes, only to be used in the event of failure of the original. All copies of the SOFTWARE PRODUCT must be marked with the proprietary notices provided on the original SOFTWARE PRODUCT. You may not reproduce the supporting documentation accompanying the SOFTWARE PRODUCT.
  - 2.3. **No Modifications.** You may not modify, translate or create derivative works of the SOFTWARE PRODUCT.
  - 2.4. **Proprietary Notices.** You may not remove or obscure any proprietary notices, identification, label or trademarks on or in the SOFTWARE PRODUCT or the supporting documentation.
  - 2.5. **Software Transfer.** You may permanently transfer all of your rights under this Attachment A solely in connection with transfer of the PRODUCT, provided you retain no copies, you transfer all of the SOFTWARE PRODUCT (including all component parts, the media and printed materials, any upgrades or updates, this Attachment A, and, if applicable, the Certificate of Authenticity), and the recipient agrees to the terms of this Attachment A. If the SOFTWARE PRODUCT is an upgrade or update, any transfer must include all prior versions of the SOFTWARE PRODUCT. However, if the SOFTWARE PRODUCT is marked "Not for Resale" or "NFR", you may not resell it or otherwise transfer it for value.
  - 2.6. **Copyright.** All title and copyrights in and to the SOFTWARE PRODUCT (including but not limited to any images, photographs, animations, video, audio, music, text, programs and "applets" incorporated into the SOFTWARE PRODUCT), the accompanying printed materials, and any copies of the SOFTWARE PRODUCT are owned by POLYCOM or its suppliers. Title, ownership rights, and intellectual property rights in the SOFTWARE PRODUCT shall remain in POLYCOM or its suppliers. Title and related rights in the content accessed through the SOFTWARE PRODUCT is the property of such content owner and may be protected by applicable law. This Attachment A gives you no rights in such content.

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- 2.7. **Dual-Media Software.** You may receive the SOFTWARE PRODUCT in more than one medium. Regardless of the type or size of medium you receive, you may use only one medium that is appropriate for your single PRODUCT. You may not use or install the other medium on another PRODUCT.
  - 2.8. **Reservation of Rights.** POLYCOM and its suppliers reserve all rights in the SOFTWARE PRODUCT not expressly granted to you in this Attachment A.
  - 2.9. **Additional Obligations.** You are responsible for all equipment and any third party fees (such as carrier charges, internet fees, or provider or airtime charges) necessary to access the SOFTWARE PRODUCT.
  - 2.10. **Additional Software.** You may not install, access, or use any software on the PRODUCT unless such software was provided by or otherwise authorized by POLYCOM. Contractor through POLYCOM may, in its sole discretion and in accordance with this Attachment A or other applicable licenses, allow you to download and install certain support software on the PRODUCT, such as anti-virus software.
  - 2.11. **Benchmark Tests.** You may not publish the results of any benchmark tests run on the PRODUCT, SOFTWARE PRODUCT, or any component of the SOFTWARE PRODUCT without written permission from Polycom.
3. **SUPPORT SERVICES.** Contractor through POLYCOM may provide you with support services related to the SOFTWARE PRODUCT ("SUPPORT SERVICES"). Use of SUPPORT SERVICES is governed by the POLYCOM policies and programs described in the POLYCOM-provided materials. Any supplemental software code provided to you as part of the SUPPORT SERVICES is considered part of the SOFTWARE PRODUCT and is subject to the terms and conditions of this Attachment A. With respect to technical information you provide to POLYCOM as part of the SUPPORT SERVICES, POLYCOM may use such information for its business purposes, including for product support and development. POLYCOM will not utilize such technical information in a form that personally identifies you.
  4. **UPGRADES.** If the SOFTWARE PRODUCT is labeled as an upgrade or update, you must be properly licensed to use the software identified by POLYCOM as being eligible for the upgrade or update in order to use the SOFTWARE PRODUCT. A SOFTWARE PRODUCT labeled as an upgrade or update replaces and/or supplements the software that formed the basis for your eligibility for the upgrade or update. You may use the resulting upgraded/updated SOFTWARE PRODUCT only in accordance with the terms of this Attachment A. If the SOFTWARE PRODUCT is an upgrade or update of a component of a package of software programs that you licensed as a single product, the SOFTWARE PRODUCT may be used and transferred only as part of that single SOFTWARE PRODUCT package and may not be separated for use on more than one PRODUCT. You shall maintain the SOFTWARE PRODUCT replaced by the upgrade or update solely for use as an archival copy for recovery purposes for the updated PRODUCT.
5. **WARRANTY AND WARRANTY EXCLUSIONS.**
    - 5.1. **Limited Warranty.** Contractor warrants that (a) the SOFTWARE PRODUCT will perform substantially in accordance with the accompanying documentation for a period of ninety (90) days from the date of shipment by POLYCOM, and (b) any SUPPORT SERVICES provided by Contractor through POLYCOM shall be substantially as described in applicable written materials provided to you by POLYCOM. This warranty is valid only for the original purchaser. **CONTRACTOR DOES NOT WARRANT THAT YOUR USE OF THE SOFTWARE PRODUCT WILL BE UNINTERRUPTED OR ERROR FREE, OR THAT ALL DEFECTS IN THE SOFTWARE PRODUCT WILL BE CORRECTED. YOU ASSUME FULL RESPONSIBILITY FOR THE SELECTION OF THE SOFTWARE PRODUCT TO ACHIEVE YOUR INTENDED RESULTS AND FOR THE INSTALLATION, USE AND RESULTS OBTAINED FROM THE SOFTWARE PRODUCT. CONTRACTOR'S OBLIGATION UNDER THIS EXPRESS WARRANTY SHALL BE, AT CONTRACTOR'S OPTION AND EXPENSE, TO REFUND THE PURCHASE PRICE PAID BY YOU FOR ANY DEFECTIVE SOFTWARE PRODUCT WHICH IS RETURNED TO POLYCOM WITH A COPY OF YOUR RECEIPT, OR TO REPLACE ANY DEFECTIVE MEDIA WITH SOFTWARE WHICH SUBSTANTIALLY CONFORMS TO APPLICABLE POLYCOM PUBLISHED SPECIFICATIONS. Any replacement SOFTWARE PRODUCT will be warranted for the remainder of the original warranty period or thirty (30) days, whichever is longer.**
    - 5.2. **Warranties Exclusive.** IF THE SOFTWARE PRODUCT DOES NOT OPERATE AS WARRANTED ABOVE, YOUR REMEDY FOR BREACH OF THAT WARRANTY SHALL BE REPAIR, REPLACEMENT, OR REFUND OF THE PURCHASE PRICE PAID, AT CONTRACTOR'S OPTION. TO THE FULL EXTENT ALLOWED BY LAW, THE FOREGOING WARRANTIES AND REMEDIES ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER WARRANTIES, TERMS, OR CONDITIONS, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES, TERMS, OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, CORRESPONDENCE WITH DESCRIPTION, AND NON-INFRINGEMENT, ALL OF WHICH ARE EXPRESSLY DISCLAIMED. CONTRACTOR NEITHER ASSUMES NOR AUTHORIZES ANY OTHER PERSON TO ASSUME FOR IT ANY OTHER LIABILITY IN CONNECTION WITH THE SALE, INSTALLATION, MAINTENANCE OR USE OF THE SOFTWARE PRODUCT. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM POLYCOM OR THROUGH OR FROM THE SOFTWARE PRODUCT SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THIS ATTACHMENT A.

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NEITHER CONTRACTOR NOR ITS SUPPLIERS SHALL BE LIABLE UNDER THIS WARRANTY IF ITS TESTING AND EXAMINATION DISCLOSE THAT THE ALLEGED DEFECT OR MALFUNCTION IN THE SOFTWARE PRODUCT DOES NOT EXIST OR WAS CAUSED BY YOUR OR ANY THIRD PARTY'S MISUSE, NEGLIGENCE, IMPROPER INSTALLATION OR TESTING, UNAUTHORIZED ATTEMPTS TO MODIFY THE SOFTWARE PRODUCT, OR ANY OTHER CAUSE BEYOND THE RANGE OF THE INTENDED USE, OR BY ACCIDENT, FIRE, LIGHTNING, POWER CUTS OR OUTAGES, OTHER HAZARDS, OR ACTS OF GOD.

**6. MISCELLANEOUS.**

- 6.1. U.S. Government Restricted Rights. The software and documentation provided by Polycom pursuant to this Attachment A are "Commercial Items," as the term is defined at 48 C.F.R. §2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation," as such terms are used in 48 C.F.R. §12.212 or 48 C.F.R. §227.7202, as applicable. Consistent with 48 C.F.R. §12.212 or 48 C.F.R. §§227.7202-1 through 227.7202-4, as applicable, the Commercial Computer Software and Commercial Computer Software Documentation are licensed to United States Government end users (1) only as Commercial Items and (2) with only those rights as are granted to all other users pursuant to the terms of this Attachment A.
- 6.2. High Risk Activities. The SOFTWARE PRODUCT is not fault-tolerant and is not designed or Intended for use in hazardous environments requiring fail-safe performance, including without limitation, in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, weapons systems, direct life-support machines, or any other application in which the failure of the SOFTWARE PRODUCT could lead directly to death, personal injury, or severe physical or property damage (collectively, "High Risk Activities"). CONTRACTOR AND ITS SUPPLIERS EXPRESSLY DISCLAIM ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS FOR HIGH RISK ACTIVITIES.
- 6.3. Third Party Software. The SOFTWARE PRODUCT may be distributed with software governed by licenses from third parties ("Third Party Software" and "Third Party License"). More information on Third Party Licenses included in the SOFTWARE PRODUCT can be found in the documentation for each PRODUCT. Contractor makes no representation or warranty concerning Third Party Software and shall have no obligation or liability with respect to Third Party Software. If the Third Party Licenses include licenses that provide for the availability of source code and the corresponding source code is not included with the PRODUCT, then check the documentation supplied with each PRODUCT to learn how to obtain such source code.

**POLYCOM WARRANTY GUIDE**

Use the chart below to determine the warranty periods applicable to Polycom's Limited Warranty for products. The Terms and Conditions are listed on page two.

Product Family	Software Warranty (bug fixes only)	Hardware Warranty (return to factory repair)	Hardware Warranty (repair cycle time)
<b>VIDEO ENDPOINTS</b>			
HDX®	90 days	1 year	30 days
QDX™ 6000	90 days	1 year	30 days
CMA® Desktop	90 days	1 year	30 days
Video peripherals (purchased from Polycom)	90 days	1 year	30 days
<b>VOICE</b>			
PSTN desktop and conference phones	90 days	1 year	30 days
VoIP desktop and conference phones	90 days	1 year	30 days
Communicator products	90 days	1 year	30 days
SoundStructure™ products	90 days	1 year	30 days
Vortex products	90 days	2 years	30 days
<b>UC INTELLIGENT CORE™</b>			
RMX® series	90 days	1 year	30 days
RSS™ 4000, Polycom Accordent Solutions	90 days	1 year	30 days
CMA® and DMA™	90 days	1 year	30 days
VBP® security solutions	90 days	1 year	30 days
<b>TELEPRESENCE and VERTICAL SOLUTIONS</b>			
RPX™, OTX™, and ATX™	90 days	1 year	30 days
Custom products	90 days	1 year	30 days
Halo Series	90 days	1 year	30 days
<b>HARDWARE UPGRADES and RMAS</b>			
All products	90 days or balance of original product warranty period, whichever is longer.	90 days or balance of original product warranty period, whichever is longer.	

THE PRECEDING CHART IS A SUMMARY OF THE WARRANTY PERIODS APPLICABLE TO POLYCOM'S LIMITED WARRANTY FOR PRODUCTS. THE TERMS AND CONDITIONS APPLICABLE TO POLYCOM'S LIMITED WARRANTY ARE AS SET FORTH  
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BELOW (AND ARE ALSO INCLUDED IN THE DOCUMENTATION PACKAGED WITH NEW POLYCOM PRODUCTS):

**LIMITED WARRANTY.** Contractor warrants to the end user ("Ordering Activity") that the product will be free from defects in workmanship and materials, under normal use and service, for one year, or such longer period as Polycom may announce publicly from time to time for particular products, from the date of purchase from Contractor or its authorized reseller. Contractor's obligation under this express warranty shall be, at Contractor's option and expense, to repair the defective product or part, deliver to Ordering Activity an equivalent product or part to replace the defective item, or if neither of the two foregoing options is reasonably available, Contractor may, in its discretion, refund to Ordering Activity the purchase price paid for the defective product. All products that are replaced will become the property of Polycom. Replacement products or parts may be new or reconditioned. Contractor warrants any replaced or repaired product or part for ninety (90) days from shipment, or the remainder of the initial warranty period, whichever is longer.

Products returned to Polycom must be sent prepaid and packaged appropriately for safe shipment, and it is recommended that they be insured or sent by a method that provides for tracking of the package. Responsibility for loss or damage does not transfer to Polycom until the returned item is received by Polycom. The repaired or replaced item will be shipped to Ordering Activity, at Polycom's expense, not later than thirty (30) days after Polycom receives the defective product, and Polycom will retain risk of loss or damage until the item is delivered to Ordering Activity.

**EXCLUSIONS.** Contractor will not be liable under this limited warranty if its testing and examination disclose that the alleged defect or malfunction in the product does not exist or results from:

- Failure to follow Polycom's installation, operation, or maintenance instructions.
- Unauthorized product modification or alteration.
- Unauthorized use of common carrier communication services accessed through the product.
- Abuse, misuse, negligent acts or omissions of Ordering Activity and persons under Ordering Activity's control; or
- Acts of third parties, acts of God, accident, fire, lightning, power surges or outages, or other hazards.

**WARRANTY EXCLUSIVE.** IF A POLYCOM PRODUCT DOES NOT OPERATE AS WARRANTED ABOVE, ORDERING ACTIVITY'S REMEDY FOR BREACH OF THAT WARRANTY SHALL BE REPAIR, REPLACEMENT, OR REFUND OF THE PURCHASE PRICE PAID, AT CONTRACTOR'S OPTION. TO THE FULL EXTENT ALLOWED BY LAW, THE FOREGOING WARRANTIES AND REMEDIES ARE IN LIEU OF ALL OTHER WARRANTIES, TERMS, OR CONDITIONS, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES, TERMS, OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, CORRESPONDENCE WITH DESCRIPTION, AND NON-INFRINGEMENT, ALL OF WHICH ARE EXPRESSLY DISCLAIMED. CONTRACTOR NEITHER ASSUMES NOR AUTHORIZES ANY OTHER PERSON TO ASSUME FOR IT ANY OTHER LIABILITY IN CONNECTION WITH THE SALE, INSTALLATION, MAINTENANCE OR USE OF ITS PRODUCTS.

#### **POLYCOM SERVICE PROGRAM TERMS AND CONDITIONS**

##### 1. Definitions

The following terms shall have the following meanings hereunder:

"Polycom" shall mean Polycom, Inc., Polycom (Netherlands) B.V., Polycom (United Kingdom) Limited, or Polycom Asia Pacific Pte Ltd (each individually referred herein as "Polycom") as applicable.

"Polycom Products" means the Polycom branded products and/or product families generally made available in the marketplace.

"Polycom Reseller" means a value added reseller or distributor authorized to resell Polycom Products.

"Polycom Resource Center" means the Polycom resource center website currently located at <http://extranet.polycom.com>.

"Polycom Web Site" means the Polycom public website currently located at [www.polycom.com](http://www.polycom.com).

"Service Period" has the meaning given to that term in Section 4 below.

"Services" means the Polycom branded services provided under a relevant Service Program.

"Service Programs" means those Polycom service program offerings defined through Polycom Service Descriptions that are typically made available through the Polycom Resource Center (PRC).

"Software" means those Polycom Products that are software products and any software included with Polycom Products.

"Software Options" means optional functionality or features of Software that may be selected at the time of purchase or at a later time, and for which Polycom charges separately.

"Update" means Software for which Polycom has provided fixes or minor revisions to correct errors or defects in the existing operation of the Software in accordance with the published Product specifications, and which is limited to those updates that Polycom generally provides to its support Services customers at no charge. Updates do not include Upgrades or Software Options.

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"Upgrade" means new releases of the Software which contains enhancements improving the functionality or capabilities of the Software, which Polycom makes generally available to its support Services customers. Upgrades do not include Software Options.

2. **Service Period.** For those Service Programs that cover a Polycom Product for a defined period of time (the "Service Period"), the Service Period shall be the 12-month period (or such other period of time as specified on an Order) beginning on the date of the purchase order (or such other date as specified in the Service Program) for the applicable Service Program.

3. **Services Availability.** Unless otherwise provided in any Service Program, Services will be provided during Polycom's then-current published ordinary business hours Monday through Friday, exclusive of Polycom holidays.

4. **Ordering Activity Obligations.**

- a. Ordering Activity (herein also referred to as "You" or "Your") shall have the continuing obligation to keep all Polycom Products under a Maintenance Service Program at either the then-current Software version or previous major Software version release.
- b. If applicable, you will provide Contractor through Polycom personnel with access to the Polycom Products and adequate working space (including heat, light, ventilation, electric current and outlets) at no charge to Polycom. All Ordering Activity environments must be free from all risks to health and safety (except to the extent notified to Polycom in writing and specifically accepted in writing by Polycom).
- c. If applicable, you will maintain, at your expense, the installation site and provide the necessary utility services for use of the Polycom Product in accordance with Polycom's applicable published specifications.
- d. You will be responsible for replacing, at your own expense, any and all consumable items used in connection with the Polycom Products, including without limitation, bulbs and batteries.
- e. Contractor through Polycom strongly recommends that you install and use a current, reputable anti-virus program in connection with any PC-based, open-architecture Polycom Product, and that you regularly update and run such anti-virus program, especially in connection with the emergence of any new viruses and/or 'worms'. Repair or restoration of any Polycom Product damaged or 'infected' by viruses is not covered under this Attachment A or the Service Programs.
- f. You are solely responsible for backing up your data. Contractor through Polycom will not under any circumstances have a duty to back up your data or to restore data that is lost in the course of Polycom's provision of Services, or otherwise. Polycom will not be liable for the loss of your data, whatever the reason for the loss, including without limitation as a result of Polycom's negligence. The preceding limitation applies to any cause of action, whether based in contract, tort, or any other theory.
- g. You are solely responsible for any additional Ordering Activity obligations or responsibilities as identified in an applicable Service Program.

5. **Software Updates, Upgrades and Options.** For Software covered under a Service Program, you will receive Updates and/or Upgrades as specified in the applicable Service Program description. For the latest Updates and Upgrades available for your Software, if any, please visit the Polycom Resource Center. Updates are provided on a fix on fail basis. That is, to obtain an available Update the customer must call Contractor through Polycom to report a specific customer product failure (identified by Polycom Product serial number) exhibiting a problem, which the Update corrects. Polycom will configure the Update according to the Software record of the registered Polycom Product. Software Options are not provided under any Service Program and must be purchased separately.

6. **Replacement Parts.** Replacement parts provided pursuant to a Service Program will be either new parts or parts equivalent in performance to new parts when used with the Polycom Product, and are warranted for ninety (90) days from shipment or the remainder of the initial warranty period, whichever is longer. Parts removed from Polycom Products for replacement will become the property of Polycom, and must be received back to the local Polycom service facility (as the same is listed on the pre-addressed return package provided by Polycom) within five (5) business days of receipt of the replacement part, or you will be invoiced the full list price for the replaced part.

7. **Service Program Exclusions.** Service Programs do not cover any of the following: (i) electrical work external to the Polycom Product; (ii) repair or replacement of damage to or defects in the Polycom Product resulting from causes external to the Polycom Product, including disaster, fire, accident, neglect, misuse, vandalism, water, power surges, lightning, or failure of the installation site to conform to Polycom applicable specifications; or resulting from use of the Polycom Product for other than intended purposes; or use of the Polycom Product with items not provided or approved by Polycom; or resulting from the performance of maintenance or the attempted repair of an item of a Polycom Product by persons other than Polycom employees or persons authorized by Polycom; (iii) furnishing supplies or accessories, or painting or refinishing the Polycom Product; (iv) Services in connection with the relocation of the Polycom Product, or the addition or removal of items of equipment or parts, attachments, features, from or to other devices not furnished by Polycom, including communications devices, video devices, audio devices, networks or links; and (v) Services in connection with computer viruses or conflicts involving software that is not installed or introduced by Polycom.

8. **Recertification.** If you wish to order a Service Program for a Polycom Product, and such system is not covered by a current Service Program, Contractor through Polycom may require that the Polycom Product pass an inspection and/or re-certification by Polycom and/or that the Polycom Product be brought up to the latest software version level.

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9. Intellectual Property. Each party shall retain all right, title and interest in and to, and possession of their respective pre-existing intellectual property. Furthermore, Polycom shall retain all right, title and interest in and to, and possession of, any know-how, technical information, specifications, documents, ideas, concepts, methods, processes, techniques and inventions developed or created by or on behalf of Polycom relating to Services performed under or in relation to a Service Program.

10. WARRANTY.

CONTRACTOR WARRANTS FOR NINETY (90) DAYS FROM THE PERFORMANCE OF ANY SERVICES BY CONTRACTOR THROUGH POLYCOM PURSUANT TO THESE TERMS AND CONDITIONS, EXCLUDING VNOC SERVICES, THAT SUCH SERVICES SHALL BE PERFORMED IN A WORKMANLIKE MANNER CONSISTENT WITH GENERALLY ACCEPTED INDUSTRY STANDARDS. POLYCOM MAKES NO OTHER WARRANTY, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR OF MERCHANTABILITY. CONTRACTOR MAKES NO WARRANTY THAT OPERATION OF THE POLYCOM PRODUCT SERVICED WILL BE UNINTERRUPTED OR ERROR FREE. IN NO EVENT WILL CONTRACTOR BE LIABLE FOR ANY DELAY IN FURNISHING SERVICES. ORDERING ACTIVITY MUST REPORT IN WRITING ANY BREACH OF THIS WARRANTY TO CONTRACTOR DURING THE ABOVE WARRANTY PERIOD, AND ORDERING ACTIVITY'S REMEDY AND CONTRACTOR'S LIABILITY FOR ANY BREACH OF SUCH WARRANTY SHALL BE TO RE-PERFORM THE SERVICES, OR IF CONTRACTOR IS UNABLE TO RE-PERFORM THE SERVICES AS WARRANTED, ORDERING ACTIVITY SHALL BE ENTITLED TO RECOVER THE PRORATED FEES PAID TO CONTRACTOR FOR THE NONCONFORMING SERVICES.

**PROPRIETARY AND CONFIDENTIAL**

# **QUANTUM WARRANTY & TERMS & CONDITIONS**

## 12. General Information

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Some states do not allow the exclusion or limitation of incidental or consequential damages, or limitations on how long an implied Limited Warranty lasts, so the exclusions may not apply to you.

This Limited Warranty gives you specific legal rights and you may also have other rights which vary from state to state. If a problem with this product develops during or after the Limited Warranty period, you may contact your dealer or Servicenter. If the problem is not handled to your satisfaction, then write to the warrantor's Consumer Affairs Department at the addresses listed for the warrantor.

### **PARTS AND SERVICE WHICH ARE NOT COVERED BY THIS LIMITED WARRANTY ARE YOUR RESPONSIBILITY.**

#### **For In Limited Warranty product service**

- Call toll-free 1-800-HELP-FAX (1-800-435-7329) for the location of an authorized servicenter.

**For out of Limited Warranty technical and troubleshooting support: Panasonic offers two value based, cost effective, solutions:**

**1. Panasonic Continued Services 900 fee based support: 1-900-FAX-HELP (1-900-329-4357)**

This exceptional service is charged directly to your telephone bill at only \$2.49 per minute.

**2. Panasonic Premier Service Club (PPSC): 1-800-435-7329**

PPSC provides toll free troubleshooting support at only \$7.99 for a one time sampler or \$23.95 for a one year or 5 call membership. These services are billed directly to your major credit card.

#### **When you ship the product**

- Carefully pack your unit, preferably in the original carton.
- Attach a letter, detailing the symptom or problem, to the outside of the carton.
- Send the unit to an authorized servicenter, prepaid and adequately insured.
- Do not send your unit to the Panasonic Consumer Electronics Company or to any executive or regional sales office. These locations do not repair consumer products.

Both of these comprehensive programs provide real time, live agent support for customers who are not eligible for coverage under the limited warranty.

Terms and prices are subject to change without notice.

The warranty information included in this document applies to products sold to end-users by Quantum or one of its authorized Value-Added Resellers (VARs) or Distributors. Service contract upgrades to higher response levels are also available for selected products. For additional warranty details and post-warranty service/support options, please contact your Quantum Authorized Reseller or local Quantum Representative, or visit <http://www.quantum.com/supportoptions>.

### End-User Warranty Period

Product	Standard Limited Warranty	Installation Requirement
SuperLoader 3, SuperLoader 3A (-YF Models)	One-year 5x9 Phone Support with Rapid Exchange. <sup>1,2</sup>	Customer Installable
SuperLoader 3 (-YE Models)	Three-year 5x9 Phone Support with Rapid Exchange. <sup>1,2</sup>	Customer Installable
Scalar i40/Scalar i80	One-year Next Business Parts Replacement. <sup>2</sup>	Customer Installable
Scalar i500	One-year Next Business Parts Replacement. <sup>2</sup>	Customer Installable
Scalar i2000, Scalar i8000, Scalar 10K, PX720	One-year Bronze on-site service: 5x9 next business day response. <sup>2</sup>	Installation Required by Quantum or Authorized Quantum Provider
DXi4500 Series	One-year Bronze on-site service: 5x9 next business day response. <sup>2</sup>	Customer Installable
DXi4601 Series	One-year Bronze on-site service: 5x9 next business day response. <sup>2</sup>	Customer Installable
DXi6500 Series	One-year Bronze on-site service: 5x9 next business day response. <sup>2</sup>	Customer Installable
DXi6700 Series	One-year Bronze on-site service: 5x9 next business day response. <sup>2</sup>	Customer Installable
DXi7500	One-year Bronze on-site service: 5x9 next business day response on the Hardware components. <sup>3,2</sup> 90 Day 5x9 Phone Support on the Software. <sup>5</sup>	Installation Required by Quantum or Authorized Quantum Provider
DXi8500	One-year Bronze on-site service: 5x9 next business day response. <sup>2,4</sup>	Installation Required by Quantum or Authorized Quantum Provider
vmPRO 4000 Series	One-year Bronze on-site service: 5x9 next business day response. <sup>2,4</sup>	Customer Installable
vmPRO SmartView, SmartMotion	90 days concurrent with one-year Software Silver Support Plan (5x9 Phone Support) required with purchase of Product. <sup>4</sup>	Customer Installable
StorNext, StorNext FX	90 Day 5x9 Phone Support. <sup>4</sup>	Installation Required by Quantum or Authorized Quantum Provider
StorNext M330	One-year Bronze on-site service: 5x9 next business day response. <sup>2,4</sup>	Installation Required by Quantum or Authorized Quantum Provider
StorNext Archive Enabled Library (AEL)	One-year concurrent with one-year Gold Support Plan (7x24x4) required to be purchased with purchase of Product. <sup>2,4</sup>	
Vision	90 Day 5x9 Phone Support. <sup>5</sup>	Installation Required by Quantum or Authorized Quantum Provider
Q-EKM, QKM, and Scalar Key Manager	Three-year 5x9 phone support. <sup>5</sup>	Installation Required by Quantum or Authorized Quantum Provider
Removable Disk Products	Three-year 5x9 Phone Support with Rapid Exchange. <sup>1</sup>	Customer Installable
Quantum Standalone Tape Drives	Three-year 5x9 Phone Support with Rapid Exchange. <sup>1</sup>	Customer Installable
SDLT8000A Standalone Tape Drives	One-year 5x9 Phone Support with Rapid Exchange. <sup>1</sup>	Customer Installable
Third Party Hardware or Software Products sold by Quantum	Unless specified above, all third party hardware and software is provided AS IS. However, the non-Quantum supplier or publisher may provide their own warranty.	

<sup>1</sup> Rapid Exchange: Quantum reserves the right to choose, at its sole discretion, Rapid Exchange of the whole unit or failing part, where available.

<sup>2</sup> Warranty support is available and comes standard with the product in the following Quantum Direct Countries: Australia, Austria, Belgium, Canada, China, Cyprus, Czech Republic, Denmark, Finland, France, Germany, Greece, Guernsey, Hong Kong, Hungary, Ireland, Italy, Japan, Jersey, South Korea, Latvia, Lithuania, Luxembourg, Macau, Mexico, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Singapore, Slovakia, Slovenia, Spain, Sweden, Switzerland, Taiwan, United Arab Emirates, United Kingdom, United States. Warranty support may not be available in Island locations. Customer may purchase warranty level support directly from Quantum or through a local Authorized Service Provider in the following Quantum Indirect Countries: Andorra, Argentina, Aruba, The Bahamas, Bahrain, Barbados, Belarus, Bermuda, Bolivia, Bosnia and Herzegovina, Botswana, Brazil, Bulgaria, Chile, Costa Rica, Croatia, Dominican Republic, Ecuador, Egypt, El Salvador, Estonia, Ethiopia, Fiji, French Guiana, Gabon, Gambia, Ghana, Gibraltar, Guadeloupe, Guam, Guatemala, Honduras, India, Indonesia, Isle of Man, Israel, Jamaica, Jordan, Kazakhstan, Kenya, Kuwait, Liechtenstein, Macedonia, Madagascar, Malta, Martinique, Moldova, Morocco, Namibia, Nigeria, Oman, Pakistan, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Puerto Rico, Qatar, Russia, Saudi Arabia, Serbia and Montenegro, South Africa, Sri Lanka, Thailand, Trinidad and Tobago, Tunisia, Turkey, Uganda, Ukraine, Uruguay, Venezuela, Vietnam, Zambia, Zimbabwe. Customers may be asked to act as the importer of record. Warranty support is not available in the following countries at this time: Afghanistan, Akrotiri, Albania, Algeria, American Samoa, Angola, Anguilla, Antarctica, Antigua and Barbuda, Armenia, Ashmore and Carter Islands, Azerbaijan, Bangladesh, Belize, Benin, Bhutan, British Virgin Islands, Burkina Faso, Burundi, Cambodia, Cameroon, Cape Verde, Cayman Islands, Central African Republic, Chad, Christmas Island, Comoros, Democratic Republic of Congo, Republic of the Congo, Cook Islands, Cote d'Ivoire, Djibouti, Equatorial Guinea, Eritrea, Europa Island, Falkland Islands, Faroe Islands, French Polynesia, Gionoso Islands, Greenland, Grenada, Guinea, Guinea-Bissau, Guyana, Haiti, Iceland, Iraq, Kyrgyzstan, Laos, Lesotho, Liberia, Libya, Malawi, Maldives, Mali, Mauritania Myanmar, Mauritius, Mayotte, Mongolia, Montserrat, Mozambique, Nauru, Nepal, New Caledonia, Nicaragua, Niger, Niue, Palau, Reunion, Rwanda, Samoa, Senegal, Seychelles, Sierra Leone, Somalia, Suriname, Swaziland, Tajikistan, Timor-Leste, Togo, Tokelau, Tonga, Turkmenistan, Tuvalu, Uzbekistan, Vanuatu, Wallis and Futuna, Western Sahara, Yemen. Prohibited Countries: Cuba, Iran, Syria, Sudan, and North Korea.

<sup>3</sup> Guardian One-year On-site: with StorageCare Guardian installed, 5x9 next business day target response for the chassis, raid controllers and Opticon adapters; and Rapid Exchange for the power supplies, fans and disk drives.

<sup>4</sup> Software term of service must co-terminate with hardware service.



## Worldwide End-User Standard Limited Product Warranty

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### End-User Hardware Limited Warranty Worldwide

#### Warranty Limitations

For the time periods set forth with the specific Product, Quantum warrants to the original End User (you) that the Product (excluding expendable parts and covers) you have purchased from Quantum or a Quantum authorized Reseller is free from defects in material and workmanship under normal use.

THIS LIMITED WARRANTY DOES NOT APPLY TO ANY PRODUCTS OR PARTS FROM WHICH THE SERIAL NUMBER HAS BEEN REMOVED OR ALTERED OR THAT HAVE BEEN DAMAGED OR RENDERED DEFECTIVE:

- (i) AS A RESULT OF ACCIDENT, MISUSE OR ABUSE;
- (ii) BY THE USE OF PARTS OR MEDIA PRODUCTS NOT APPROVED, MANUFACTURED OR SOLD BY QUANTUM, OR NOT CONFORMING TO QUANTUM'S SPECIFICATIONS;
- (iii) BY MODIFICATION WITHOUT THE WRITTEN PERMISSION OF QUANTUM;
- (iv) AS A RESULT OF INSTALLATION OR SERVICE BY ANYONE OTHER THAN QUANTUM, AN AUTHORIZED QUANTUM SERVICE CENTER, OR A QUANTUM SERVICE PROVIDER CERTIFIED TO PERFORM SUCH WORK.
- (v) AS A RESULT OF FAILURES DUE TO A PRODUCT FOR WHICH QUANTUM IS NOT RESPONSIBLE
- (vi) AS A RESULT OF USE IN AN ENVIRONMENT FOR WHICH THE PRODUCT WAS NOT DESIGNED.

When Quantum releases a critical update to a hardware or firmware component to the product, in-warranty or uplifted support will only be provided for six months on the previous version. After the six-month period, support will be provided on a time and material basis.

#### Disclaimer of Warranties

EXCEPT AS EXPRESSLY STATED HEREIN, QUANTUM EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF DESIGN, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR TITLE, ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE, OR ANY WARRANTIES OF NON-INFRINGEMENT OF ANY THIRD PARTY'S PATENT(S), TRADE SECRET(S), COPYRIGHT(S), OR OTHER INTELLECTUAL PROPERTY RIGHT(S). IN THE EVENT THE PRODUCT, PART OR REPAIR IS NOT FREE FROM DEFECTS AS WARRANTED ABOVE, END-USER'S SOLE REMEDY SHALL BE REPAIR OR REPLACEMENT AT QUANTUM'S DISCRETION AS PROVIDED ABOVE.

NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY QUANTUM OR QUANTUM'S AUTHORIZED REPRESENTATIVE SHALL CREATE ANY WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF THIS LIMITED WARRANTY.

QUANTUM DOES NOT WARRANT THAT OPERATION OF THE PRODUCT WILL BE UNINTERRUPTED OR ERROR FREE OR THAT THE FUNCTIONS CONTAINED IN THE PRODUCTS WILL OPERATE IN COMBINATIONS THAT MAY BE SELECTED FOR USE BY THE YOU.

QUANTUM PRODUCTS ARE MANUFACTURED USING NEW MATERIALS OR NEW AND USED MATERIALS EQUIVALENT TO NEW IN PERFORMANCE AND RELIABILITY.

#### Limitation of Liability

UNDER NO CIRCUMSTANCES, INCLUDING NEGLIGENCE, SHALL QUANTUM OR QUANTUM'S SUPPLIERS BE LIABLE TO END-USER, FOR ANY INJURIES, DAMAGE TO OR REPLACEMENT OF PRODUCT OR PROPERTY, COSTS FOR RECOVERING, REPROGRAMMING, OR REPRODUCING ANY PROGRAM OR DATA USED WITH THE PRODUCT, OR ANY SPECIAL, INDIRECT, INCIDENTAL, ECONOMIC OR CONSEQUENTIAL DAMAGES OR CLAIMS FOR LOSS OF BUSINESS OR LOSS OF PROFITS WHATSOEVER, EVEN IF QUANTUM WAS ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE. SOME STATES DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU. IN NO EVENT SHALL QUANTUM'S TOTAL LIABILITY TO YOU FOR ALL DAMAGES, LOSSES, AND CAUSES OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE AMOUNT PAID BY YOU FOR THE PRODUCT.

ALL QUANTUM PRODUCTS ARE COVERED BY A WORLDWIDE LIMITED WARRANTY. THIS LIMITED WARRANTY GIVES YOU SPECIFIC RIGHTS. YOU MAY HAVE OTHER RIGHTS THAT MAY VARY FROM STATE TO STATE OR COUNTRY TO COUNTRY.

*Quantum shall not be responsible for any handling fees, delays as a result of customs, import duties or tariffs.*

## **Quantum Sales and Support Terms and Conditions**

These Quantum Sales and Support Terms and Conditions ("Terms and Conditions") set forth the terms governing the purchase of Quantum hardware and software (collectively "Products") from Quantum, the limited warranty provided thereon, and the provision of services (including Support Services and Other Services as defined herein) ("Services") by Quantum. Previously executed reseller, distributor, master purchase, master services agreement, or a similar document setting forth terms of purchase and/or services from Quantum by Customer in effect at the time of purchase will take precedence over these Terms and Conditions. Otherwise, Quantum's assent to any agreement between Quantum and the purchaser ("Customer") for any sale of Products or Services in connection with a Quantum Sales Quote ("Quote") is expressly conditioned on Customer's assent to these Terms and Conditions. Customer's assent will be conclusively presumed if Customer responds by issuance of a purchasing document. Any different, conflicting, or additional terms in Customer's purchasing document are objected to and deemed rejected unless expressly approved by an officer of Quantum in writing.

### **1. QUOTE**

The accuracy of a Quote is dependent largely upon factors at Customer's site and the particulars of Customer's specific network and hardware configuration. Quantum does not warrant the accuracy of its Quotes in terms of configuration, cabling, porting, and other details specific to Customer's network. Pricing may differ based upon configuration at the installation site. Service pricing may change based upon changes in configuration or site location.

### **2. DELIVERY**

Delivery of Products will be FCA Quantum's manufacturing facility (INCOTERMS 2010). Title and risk of loss or damage to the Products shall shift to Customer upon release to the initial carrier for holding or shipment. Customer hereby grants Quantum a purchase-money security interest in all Products to secure payment of the purchase price and any other charges due to Quantum. If delivery of the Products to the initial carrier is delayed in excess of twenty Business Days, Customer may cancel the order involved upon notice to Quantum prior to shipment. Such cancellation right is Customer's sole remedy for any delay or failure in delivery by Quantum.

### **3. PRICES AND PAYMENT**

**3.1 Generally:** Pricing will be valid for thirty days unless a different term is set forth in writing. Customer agrees to pay to Quantum the purchase price for the Products and/or the Services set forth in the Sales Quote. The price is exclusive of, and Customer agrees to pay, any applicable federal, state, local or foreign sales or use taxes, tariffs, customs, duties and other governmental charges, and shipping charges.

**3.2 Fees for Other Services:** Quantum will invoice Customer at Quantum's standard published hourly rates for performance of Other Services as defined herein. All such charges will include actual travel time and travel expenses, as well as costs incurred due to waiting, rescheduling, or other accommodations made as a result of lack of availability or preparation by the Customer for services scheduled. Quantum will provide an estimate of total costs prior to performance of Other Services. This estimate shall be non-binding unless otherwise specified in writing.

**3.3 Service Re-Enrollment Fee:** To the extent that Customer fails to maintain a current and continuous Support Contract with Quantum or a Quantum Authorized Service Provider, Quantum may assess a reasonable re-enrollment fee in addition to the fees for the upcoming Support Term.

**3.4 Payment:** For purchases made directly to Quantum, Customer shall either prepay or complete a credit application ([www.quantum.com/credit](http://www.quantum.com/credit)) requesting payment terms. Qualified Customers shall make payment in full within thirty days from the date of the invoice in the currency quoted. Payment terms are not guaranteed and are subject to approval and ongoing credit history. Any amount not paid by the due date will be subject to a finance charge at the rate equal to the lesser of 1.5% per month or the maximum rate allowed by law. However, payment of such finance charge will not cure Customer's default for late payment. For purchases made through a Quantum Authorized Reseller, Customer shall pay the Reseller pursuant to the terms between the Customer and the Reseller.

### **4. CANCELLATION**

Subject to Quantum's prior written approval, Customer may cancel an order, or any portion thereof, for standard Products at any time prior to thirty days before shipment when shipment is not delayed. This cancellation right is subject to a cancellation charge of fifteen percent of the purchase price.

### **5. THIRD PARTY PRODUCT**

Product sold to Customer by Quantum that is the branded product of a third party ("Third Party Product"), regardless of whether it is identified as Third Party Product on the sales quote issued by Vendor, shall be warranted directly to Customer by the third party. Notwithstanding any provision herein, subject to any non-excluded rights that you may have under the laws in your country, Quantum makes no representations or warranties regarding Third Party Product, and shall have no ongoing obligations to Customer for the support or maintenance of Third Party Product unless expressly agreed to in writing.

### **6. LIMITED PRODUCT WARRANTY**

SUBJECT TO THE LIMITATIONS SET FORTH BELOW, QUANTUM WARRANTS THAT PRODUCTS WILL PERFORM IN ACCORDANCE WITH PRODUCT SPECIFICATIONS FOR THE APPLICABLE PRODUCT WARRANTY PERIOD PUBLISHED BY QUANTUM COMMENCING AT THE TIME OF SHIPMENT. SUBJECT TO ANY NON-EXCLUDABLE RIGHTS THAT YOU MAY HAVE UNDER THE LAWS IN YOUR COUNTRY, CUSTOMER'S SOLE AND EXCLUSIVE REMEDY SHOULD PRODUCT FAIL TO PERFORM ACCORDING TO PRODUCT SPECIFICATIONS, IS REPAIR, REPLACEMENT, OR ACCEPTANCE OF RETURN OF THE DEFECTIVE PRODUCT, AT QUANTUM'S SOLE DISCRETION.

### **7. LIMITED SERVICES WARRANTY**

SUBJECT TO THE LIMITATIONS SET FORTH BELOW, QUANTUM WARRANTS THAT THE SERVICES PROVIDED UNDER THESE TERMS AND CONDITIONS WILL BE FREE FROM DEFECTS IN MATERIALS OR WORKMANSHIP FOR THIRTY DAYS FROM THE DATE SUCH SERVICES ARE RENDERED, OR THE REMAINING TERM OF THE THEN CURRENT AND PAID FOR SUPPORT SERVICE PERIOD, WHICHEVER IS LONGER, AND WILL BE PERFORMED BY FULLY TRAINED AND COMPETENT PERSONNEL



IN ACCORDANCE WITH INDUSTRY STANDARD TECHNICAL AND PROFESSIONAL PRACTICES AND PROCEDURES. IF A DEFECT COVERED UNDER THIS WARRANTY IS FOUND AND REPORTED TO QUANTUM, SUBJECT TO ANY NON-EXCLUDABLE RIGHTS THAT YOU MAY HAVE UNDER THE LAWS IN YOUR COUNTRY, QUANTUM WILL, AS ITS SOLE RESPONSIBILITY AND LIABILITY AND AS CUSTOMER'S SOLE AND EXCLUSIVE REMEDY, USE COMMERCIALY REASONABLE MEANS TO CORRECT SUCH DEFECT OR REFUND TO CUSTOMER THE SUMS PAID BY CUSTOMER FOR THE DEFECTIVE SERVICES.

#### **8. DISCLAIMERS, AND LIMITATIONS ON LIABILITY**

THE FOREGOING WARRANTY SHALL BE VOIDED IF THE PRODUCT IS NOT PROPERLY INSTALLED, USED, OR MODIFIED BY A PERSON OTHER THAN QUANTUM OR QUANTUM AUTHORIZED SERVICE PROVIDER AFTER SERVICES ARE PROVIDED. THIS CLAUSE 8 IS SUBJECT TO ANY NON-EXCLUDABLE RIGHTS THAT YOU MAY HAVE UNDER THE LAWS IN YOUR COUNTRY. THE WARRANTIES EXPRESSED HEREIN ARE THE ONLY WARRANTIES MADE BY QUANTUM WITH RESPECT TO THE PRODUCTS AND SERVICES. QUANTUM DOES NOT WARRANT THAT THE PRODUCTS OR SERVICES WILL MEET ALL CUSTOMER REQUIREMENTS, OR THAT THEY WILL BE UNINTERRUPTED OR ERROR FREE. QUANTUM EXPRESSLY DISCLAIMS AND EXCLUDES ALL OTHER WARRANTIES, OBLIGATIONS, LIABILITIES, CUSTOMER'S RIGHTS AND REMEDIES, EXPRESS OR IMPLIED, ORAL OR WRITTEN, ARISING BY LAW OR OTHERWISE INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, AND FITNESS FOR A PARTICULAR PURPOSE AND THOSE ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING AND USAGE OF TRADE. IN NO EVENT SHALL QUANTUM BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES INCLUDING WITHOUT LIMITATION, LOSS OF USE, LOSS OR ALTERATION OF DATA, DELAYS OR LOST PROFITS OR SAVINGS RELATED TO THE PRODUCTS, THE USE OR LOSS OF USE THEREOF, EVEN IF QUANTUM IS AWARE OF THE POSSIBILITY OF SUCH DAMAGES, AND EVEN IF THE EXCLUSIVE REMEDIES STATED HEREIN FAIL OF THEIR ESSENTIAL PURPOSE. CUSTOMER'S RIGHTS AS STATED HEREIN ARE ITS EXCLUSIVE REMEDIES. EXCEPT FOR QUANTUM'S LIABILITY BASED UPON GROSS NEGLIGENCE, WILLFUL MISCONDUCT AND/OR A VIOLATION OF LAW, QUANTUM'S CUMULATIVE LIABILITY FOR ANY CLAIMS ARISING IN CONNECTION WITH THESE TERMS AND CONDITIONS MAY NOT EXCEED THE MOST RECENT ANNUAL FEE OR THE PRICE PAID FOR THE PRODUCT. Quantum and their subsidiaries, directors, officers, employees and providers shall in no way be liable for any and all actions, causes of action, liability, claims, suits, judgments, liens, awards or damages of any kind and nature whatsoever (hereinafter referred to as "Claims") for property damage, personal injury or death (including without limitation claims brought by and liabilities to employees of Customer or Quantum or to any other persons) and expenses, costs of litigation and reasonable attorneys fees related thereto, to the extent such claims arise from any negligent act or omission or willful misconduct of Customer or any of Customer's employees, agents, buyers or contractors (except for Quantum) arising out of or in any way relating to Quantum's presence on Customer's designated premises for the purposes of providing Services hereunder. No action, whether based on contract, strict liability, or tort, including any action based on negligence, arising out of the performance of services under these Terms and Conditions, may be brought by either party more than one (1) year after such cause of action accrued.

#### **9. PROPRIETARY INFORMATION**

Pursuant to these Terms and Conditions, each party (the "disclosing party") may occasionally provide the other (the "receiving party") with its confidential and/or proprietary information (e.g., equipment, services, components, instruction manuals or installation information, trade secrets, know-how, ideas, concepts and methodologies, customers, prices, operations and plans and data, etc.) ("Proprietary Information"). The receiving party acknowledges that use or disclosure of Proprietary Information of the disclosing party in any unauthorized manner will destroy its value to the disclosing party. Unless the disclosing party agrees otherwise in writing, the receiving party (including its employees, agents and contractors) (i) will not sell, disclose, copy or reproduce any Proprietary Information of the disclosing party; (ii) will only permit or allow access to Proprietary Information of the disclosing party to those employees or third parties who require such access in order to perform work on the disclosing party's behalf pursuant to these Terms and Conditions; (iii) agrees to protect the Proprietary Information of the disclosing party as carefully as it would protect its own proprietary information but never less than a reasonable standard of care; (iv) agrees to be responsible for any unauthorized use or disclosure of Proprietary Information of the disclosing party by any of its employees, agents or contractors; and (v) agrees to leave intact all copyright patent, trademark and similar notices in connection with the Proprietary Information of the disclosing party. The parties agree to return all Proprietary Information to the disclosing party upon the termination of these Terms and Conditions.

#### **10. INTELLECTUAL PROPERTY**

Customer agrees and acknowledges that Quantum, its suppliers and its licensors are the owners of all right, title and interest in and to Quantum-provided hardware and/or software, and all intellectual property therein, and that Customer shall not obtain or claim any ownership interest in any Quantum-provided hardware and/or software, and all intellectual property therein. Customer agrees and acknowledges that any Quantum hardware and/or software contains the valuable trade secrets and confidential information of Quantum, its suppliers and its licensors, which have been developed at great expense. Customer shall not (i) obscure, alter or remove any patent, copyright, trademark, or service mark marking or legend contained on or in any Quantum-provided hardware or software, (ii) use any Quantum-provided hardware or software except as licensed, or permit or enable any third party to make such use, unless Quantum provides its prior written consent to such use, (iii) copy, distribute or transmit all or any portion of any Quantum-provided hardware or software, (iv) have any other rights or licenses with respect to any Quantum-provided hardware or software, or any intellectual property therein, (v) cause or permit the disclosure, copying, renting, licensing, sublicensing, leasing, dissemination, transfer or other distribution of any Quantum-provided hardware or software by any means or in any form, without the prior written consent of Quantum. Customer shall not reverse engineer, decompile or disassemble any Quantum-provided hardware and/or software or otherwise reduce any Quantum-provided software to human readable form. Customer must provide access to Quantum to allow Quantum to remove any Quantum-provided hardware or software, when and if requested by Quantum.

#### **11. INFRINGEMENT INDEMNIFICATION**

Quantum will indemnify Customer for any damages and costs finally awarded against Customer on the grounds that the Products, in the form and condition delivered by Quantum to Customer hereunder, infringe any valid United States patents or copyrights of any third party, provided that Customer notifies Quantum in writing of any such claim within ten days after learning thereof and that Customer

gives Quantum full control over the defense and settlement of the claim and fully cooperates with Quantum with respect thereto. If any such claim is brought or appears to Quantum likely to be brought, Quantum may at its option replace or modify the Products to make them non-infringing, obtain rights for Customer to continue using Products, or refund to Customer, upon the return of the Products at issue and termination of any licenses, the price paid there for, less twenty percent for each year which has passed since the date of delivery hereunder. Customer shall discontinue all use of any portion of the Products that has been replaced or modified or for which such a refund has been tendered. Quantum's obligations hereunder shall not apply to any claim based on Quantum's following Customer's specifications or requests, the use of the Products to practice a process not recommended by Quantum or in conjunction with items not supplied by Quantum, and Customer shall similarly indemnify Quantum with respect to any such claims. THE FOREGOING STATES QUANTUM'S SOLE RESPONSIBILITY, AND CUSTOMER'S SOLE REMEDY, FOR ANY INFRINGEMENTS OF ANY PROPRIETARY RIGHTS.

#### **12. INDEMNIFICATION BY CUSTOMER**

Customer shall defend (with counsel approved in advance in writing by Quantum), indemnify and hold Quantum, and its employees, agents, owners, affiliates and customers harmless from and against any and all actions, claims, damages, liabilities, and losses arising from (i) the use, sale, or manufacture by Quantum, Customer or any third party of any of the Products produced, in whole or in part, to Customer's specifications; or (ii) any breach hereof by, or any actions or omissions of Customer or its agents or contractors in connection with the Products or Services.

#### **13. IMPORT/EXPORT/RE-EXPORT COMPLIANCE**

Customer shall not unless otherwise authorized by the U.S. Government, supply Products to entities identified on restricted lists (such as Denied Parties List, Debarred Parties, Specially Designated Nationals, Terrorists, Narcotics Traffickers, Blocked Persons and Vessels, or Entity List). Customer shall not ship or transfer Product, either directly or indirectly, to the countries identified as restricted in the U.S. Export Administration Regulations, without written approval from the United States Bureau of Industry and Security. Customer will comply with the export and re-export restrictions set forth in any export license (if applicable) or license exception used to ship Products. Terms of sale or other specific agreement will denote the Importer of Record. Importer of Record shall not violate any import laws, rules, or regulations of the United States and/or any other applicable country. Importer of Record is responsible for all Customs duties and other Customs related fees. Importer of Record is eligible for duty drawback rights to the Products. Quantum shall mark each Product with the country of origin in compliance with the marking requirements of the United States.

#### **14. EXCLUDED USES**

Customer acknowledges that Products are not designed, manufactured or intended for use in connection with the design, construction, maintenance or operation of any nuclear facility, life support system, aircraft, or aircraft communication, control or ground support system. Quantum will have no liability for any claims or damages arising from such use, and Customer will indemnify, defend (with counsel approved in advance in writing by Quantum) and hold harmless Quantum against any and all claims, costs, damages, expenses and liabilities arising out of or in connection with any such use.

#### **15. SOFTWARE LICENSE**

Any software Products acquired hereunder are licensed, not sold, to Customer by Quantum and/or its licensors under the terms of the license agreement included within the software or the software package for use solely on the Designated System. Use of Software beyond the Designated System (i.e. exceeding the number of clients or capacity designated at the time of sale) shall constitute violation of the License. If used or acquired by the U.S. government, then the U.S. government acknowledges that (a) the software constitutes "commercial computer software" and accompanying documentation constitutes "commercial computer software documentation" for purposes of 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-3, as applicable, and (b) the U.S. government's rights are limited to those specifically granted to Customer pursuant to said license agreement. The contractor/manufacture is Quantum, 1650 Technology Drive, San Jose, CA 95110.

#### **16. SERVICES**

**16.1 Definitions:** In addition to terms defined elsewhere in these Terms and Conditions, the following terms will have the following specified meanings when used throughout these Terms and Conditions: "Business Day" means any day except a weekend day or a holiday observed by Quantum; "Business Hours" means hours between 8:00 a.m. and 5:00 p.m. local time on a Business Day; "Critical Error" means any Software Error that is an emergency condition and that causes the Software to completely fail to function in accordance with its applicable Documentation and where there is no work-around to temporarily resolve or lessen the problem; "Designated System" means the specific capacity, hardware, workstations, servers, and/or devices enabled by one instance or copy of Software that is specified by Quantum at the time the Software is licensed; "Documentation" means technical manuals describing the operation and use of Software; "Error" means any reproducible failure of the Software to substantially comply with its specifications as set forth in the applicable Documentation; "Feature Upgrades" means Software changes resulting in new functionality or features and for which Quantum separately charges its customers in the normal course of its business. "Firmware" means software that resides in or is embedded in hardware, such as programmable read-only memory, and is not separately licensed by Quantum; "Major Error" means any Software Error that causes one or more material components of the Software to fail to function as specified in its applicable Documentation; "Minor Error" means any Software Error that is not a Major Error that causes one or more components of the Software to fail to function as specified in its applicable Documentation; "Other Services" means services requested by Customer that are excluded or not provided by these Terms and Conditions as part of Support Services; "Release" means changes to Software that Quantum designates as bug fixes, or as minor or incremental updates; "Support Contract" means an agreement governed by these Terms and Conditions for Quantum to provide Support Services on designated Product. "Support Services" means repair, adjustments, and part replacements for the covered Quantum Product to bring Product in compliance with Product warranty, or as Quantum deems necessary due to normal Product usage during the Support Term. Support Services do not include services identified as Other Services; "Software" means the Quantum branded software designated at the time of sale and sold and licensed separately for a Designated System. Software does not include any third party software; and "Support Term" means the period of the fully paid Support Contract.

**16.2 Selection of Provider:** Quantum shall determine, in its sole and absolute discretion, whether Quantum will provide the Support Services to Customer or whether Quantum will select a third party subcontractor to perform the Support Services. All requests for Support Services or communication regarding status or maintenance of the Product shall be made to Quantum.

**16.3 Support Contract Term and Termination:** Support Contracts will commence upon issuance of a purchase order by Customer, and will continue for the duration of the purchased Support Term unless and until terminated in accordance with the terms herein. With the exception of warranty service provided hereunder, either party may terminate the Support Contract at any time for convenience by giving the other party ninety days written notice of termination. If Customer terminates the Support Term for convenience, it shall pay Quantum for all services performed and expenses incurred through the date of termination, and Quantum will refund to Customer that portion of the fee paid by Customer for the balance of the then-current Support Term. If a multi-year discount was given, the prepay discount shall be added back into the contract price and then a credit will be derived based on the list price. Quantum will not be obligated to provide any Support Services, Releases, or other support after the end of the Support Contract. If either party commits a material breach of or default, then the other party must give the other party a reasonable opportunity to cure the breach or default. If the other party fails to timely cure the specified breach or default, then the Support Term will terminate upon receipt of notice of termination.

**16.4 Hardware Support Services:**

The level of service provided during the warranty period for each hardware Product can be found at [www.Quantum.com](http://www.Quantum.com). Uplifted and/or extended Support Services shall be available for purchase, and provided on an on-call basis in accordance with the level of Support purchased by the Customer. Support for hardware Products may be purchased at the following levels subject to regional availability and Product applicability (more details available at [www.Quantum.com](http://www.Quantum.com) or from your Quantum service sales representative):

Rapid Exchange:	Advance replacement of Product once problem has been diagnosed. Product is shipped within two Business Days after diagnosis.
NBD Parts Replacement:	5x9 telephone support (Monday-Friday, 8AM-5PM local time). Next Business Day CRU delivery. CRU replacement by Customer. Next Business Day onsite FRU replacement by Quantum.
Bronze:	5x9 telephone support (Monday-Friday, 8AM-5PM local time). Next Business Day response for on-site support. CRU/FRU replacement by Quantum.
Silver:	5x9 telephone support (Monday-Friday, 8AM-5PM local time). On-site support Monday through Friday with a four-hour target response time after remote problem diagnosis. CRU/FRU replacement by Quantum.
NBD Gold:	7x24 Phone Support (Monday to Sunday, 24 hrs). Next Business Day on-site support. CRU/FRU replacement by Quantum.
Gold:	7x24 telephone support (Monday-Sunday, 24 hours). On-site support provided 7x24 with a four-hour target response time after remote problem diagnosis. CRU/FRU replacement by Quantum.
Platinum:	Customized support plan. Provides for 7x24 telephone support (Monday-Sunday, 24 hours). On-site support provided 24x365 with a two-hour target response time after remote problem diagnosis. CRU/FRU replacement by Quantum.

During the term of the applicable Product warranty and/or Support Term, Quantum will provide Support Services to Customer. The Support Services shall include unscheduled, on-call Support Services during the hours specified above for the level of Support purchased ("Designated Working Hours"), provided after receipt of notice from Customer that Product is malfunctioning or otherwise appears to require support and after Quantum technical support has determined that an on-site visit is necessary. Support on additional equipment is not covered by these Terms and Conditions. Service on a Quantum recognized holiday will be deferred to the next Quantum Business Day unless 7x24 support is purchased. Recognition of holidays is per custom in each country. A list of Quantum holidays is available upon request from your local service representative. The above reference time frames shall not apply to delivery of non-critical spare parts to remote locations.

**16.4.1 Part Replacement:** Replaceable parts (as determined by Quantum) shall be designated as either a Customer Replaceable Unit ("CRU") or a Field Replaceable Unit ("FRU"). CRU's shall be replaced by Customer unless CRU replacement by Quantum is purchased pursuant to a Support Contract. FRU's shall be replaced by Quantum. Subject to any non-excludable rights that you may have under the laws in your country, replacement parts shall be either new or reconditioned, and shipped or replaced in accordance with the terms of the level of service purchased. The Product or parts of Product that are removed or replaced, either by Customer or Quantum will become property of Quantum and returned to Quantum. All replacement parts shipped to Customer shall be shipped DAP Customer site in accordance with INCOTERMS 2010. All replaced parts returned to Quantum by Customer shall be shipped DAP designated Quantum return facility in accordance with INCOTERMS 2010. Risk of loss while parts are in the care, custody, and control of Customer shall be with Customer. Damage to, loss of, or failure to return replaced parts shall be charged to the Customer and may result in withholding of support until resolution. Subject to any non-excludable rights that you may have under the laws in your country, IN ORDER TO HAVE ACCESS TO SPARE PARTS, PRODUCT MUST BE COVERED UNDER WARRANTY OR A THEN-CURRENT SUPPORT CONTRACT.

**16.4.2 Exclusions:** Hardware Support Services do not include: (a) installation or maintenance of any device not quoted by Quantum, including but not limited to wiring, electrical conduits, peripherals, or accessories; (b) replacement of parts and/or services to repair damage resulting from accident, neglect or misuse on the part of a party other than Quantum, or modification of Product not approved, authorized or directed by Quantum; (c) replacement of parts and/or services to repair damage resulting from any act of God, including

but not limited to storms, fires, floods, and earthquakes; (d) replacement of parts and/or services to repair damage caused by failure to provide or maintain adequate or appropriate electrical power, air conditioning, humidity controls, electrical surge protection, or other facilities or environmental conditions unless such failure is caused by the negligent act or omission of Quantum; (e) replacement or reconditioning of Product which Quantum reasonably believes cannot be reliably maintained or repaired because of excessive wear or deterioration not resulting from any negligent act or omission on the part of Quantum; (f) replacement of parts or repair required because Customer or third parties (excluding Quantum), without the approval, authorization, or direction of Quantum, performed services on, modified, adjusted, or moved Product; (g) services in connection with removal, relocation or reinstallation of Product; (h) furnishing or replacing expendable supplies, including media such as cassettes, unless damaged by Quantum; (i) services on Product which Customer has moved without notifying Quantum pursuant to Section 1.5; (j) services performed outside of Designated Working Hours or after the term of these Terms and Conditions; provided, however, that if Quantum begins to perform services which would otherwise be covered Support Services less than two hours before the end of Designated Working Hours, the first two hours immediately following Designated Working Hours are considered covered by these Terms and Conditions; (k) services requested after unauthorized resale, transfer, or other assignment (actual or constructive) of Product to an entity other than Customer; and (l) services required as a result of use of the Product beyond its rated capacity or not in accordance with specifications. WITH THE EXCEPTION OF EVENTS SPECIFIED IN (A), (G), (H), AND (J) ABOVE, THE OCCURRENCE OF ANY OF THESE EVENTS SHALL RENDER THE WARRANTY VOID AND/OR SUBJECT AN EXTENDED SUPPORT CONTRACT TO TERMINATION. Service requested for any of the above exclusions shall be considered Other Services.

**16.4.3 Movement of Product:** If Customer plans to move the Product, or delete any part of the Product from a Support Services contract, Customer must provide Quantum with 30 days prior written notice. If Customer requests that Quantum dismantle, supervise, inspect, remove or reinstall the Product as part of any move, Quantum will provide a quote for such services. Whether Product is moved by Customer or Quantum, Customer shall be responsible for shipment of Product to new location. Considering the new location of the Product, Quantum may, in its sole discretion: (i) continue performance of Support Services with the condition that Customer is responsible for any additional mileage charges; (ii) terminate the Support Services contract; or (iii) designate a different provider. Movement of Product that is designated non-customer installable as designated by Quantum without notifying Quantum prior to the move, shall void the Product warranty and/or any then current Support Contract. Manufacturer supplied packaging is required to move all or partial units to a new location to ensure safe transit and can be purchased from Quantum if not retained by Customer. Inadequate packaging may void the warranty, subject a support contract to termination and/or require Customer to recertify unit at Customer's cost.

**16.4.4 Customer Responsibilities:** In addition to responsibilities for fees hereunder, Customer will be responsible for: (a) properly using and controlling access to the Product; (b) permitting Quantum's access to Customer's facilities consistent with Customer's security and operational requirements; (c) promptly notifying Quantum if Customer becomes aware of any unsafe conditions or hazardous materials to which Quantum's personnel may be exposed at any of Customer's facilities; (d) complying with all applicable government laws and regulations; (e) providing prompt notice to Quantum of any malfunction or request for services for the Product; and (f) providing full and accurate Product and service installation descriptions as necessary to allow Quantum to fulfill its duties hereunder.

**16.4.5 Firmware:** Changes to Firmware which Quantum designates as bug fixes, improvements, or incremental updates are covered under the terms of these Terms and Conditions. The Customer is required to maintain the product at no more than one Firmware revision removed from current production Firmware level to ensure proper operation and servicing for the product. The Customer may be required to upgrade Firmware to latest released level prior to making any CRU or FRU replacements. Quantum will provide Customer with access to non-billable library updates and bug fixes through Quantum's web site for Product under warranty or current Support Contract. Firmware changes that Quantum designates as upgrades, and for which Quantum normally charges its customers, will be provided to Customer for the applicable fee. Quantum will provide Customer with information on any upgrade charges prior to installation of the upgrade. Quantum will also be willing to perform the Firmware upgrade when allowed remote access to the customer's system through the Remote Management Utility ("RMU"). At Quantum's discretion and upon prior notice to Customer, an additional fee may be levied for Firmware upgrades requiring an onsite visit, either as a result of a library not having an RMU, or as a result of Customer's request.

## **16.5 Software Support Services:**

The level of service provided during the warranty period for each Product can be found at [www.Quantum.com](http://www.Quantum.com). Uplifted and/or extended Support Services shall be available for purchase, and provided on an on-call basis in accordance with the level of Support purchased by the Customer. Support for Software Products may be purchased at the following levels subject to regional availability and Product applicability (more details available at [www.Quantum.com](http://www.Quantum.com) or from your Quantum service sales representative):

<u>Silver:</u>	5x9 telephone support (Monday-Friday, 8AM-5PM local time).
<u>Gold:</u>	7x24 telephone support (Monday-Sunday, 24 hours).
<u>Platinum:</u>	Customized support plan. Provides for 7x24 telephone support (Monday-Sunday, 24 hours)

**16.5.1 Telephone Support:** Quantum will provide telephone support to assist Customer in the use of the Software during regular Business Hours. Telephone support will include the following: (i) assistance in identifying and verifying causes of suspected Errors; (ii) work-arounds for identified Errors; (iii) assistance related to questions regarding Software installation and configuration; and, (iv) assistance related to questions regarding differences between Software versions. Upon purchase of upgraded 7x24 Support Services, Quantum will also provide telephone support during non-Business Hours on Critical Errors only, including holidays.

**16.5.2 Error Corrections:** Quantum will use commercially reasonable efforts to correct any Errors reported by Customer (e.g., by providing a workaround or correction in a Release). If Customer encounters an Error with the Software, Customer must sufficiently define the Error to Quantum so that Quantum can reproduce the reported Error. After receipt of any such written notice of an Error from Customer, Quantum will promptly notify Customer if Quantum cannot reproduce the Error. If Quantum cannot reproduce the Error, Customer will provide such additional information regarding the Error as Quantum may request in order to assist Quantum with reproducing the Error. Customer will provide a separate written notice for each Error encountered by Customer. In its notice of an

Error, Customer will reasonably classify for Quantum the initial priority of the Error. Customer will use the nature of the Error and Customer's business circumstances to initially classify each Error. Customer will classify each Error as a Critical Error, Major Error or Minor Error. To the extent that Quantum disagrees with any Error classification provided by Customer, Quantum will promptly advise Customer of the revised classification of any Error.

**16.5.3 New Releases and Feature Upgrades.** During such periods that Customer purchases Support Services hereunder and pays all fees in connection therewith, Quantum will make available to Customer any and all new Releases at no additional charge to Customer. Customer will install any and all new Releases within a reasonable time after receipt of such new Release. Support is available only for the Release that is currently shipping and the immediately prior Release. Support for the immediate prior Release shall be available for no longer than 12 months after a new Release is generally available. Any new Release delivered to Customer under these Terms and Conditions will assume the Support Term of designated Software. Quantum will provide Customer with access to new Releases through Quantum's web site (www.Quantum.com). These new Releases and/or patches will be customer installable, with technical assistance available from Quantum's Technical Assistance Center. New Releases containing Feature Upgrades will be available without cost under this section, but will not contain the functionality of the Feature Upgrade unless the Feature Upgrade is purchased at Quantum's then-current list price. Quantum will provide Customer with information on any Feature Upgrade charges prior to installation or activation of the Feature Upgrade. Quantum on-site installation services for new Releases and/or Feature Upgrades shall be available to Customer for a fee, and shall be considered Other Services.

**16.5.4 Exclusions.** Software Support Services do not include: (i) physical installation or removal of the Software at or from any Customer site; (ii) visits to any Customer site; (iii) any electrical, mechanical or other work with hardware, accessories or other devices associated with the use of the Software; or, (iv) any work with any third party equipment or software. Quantum has no obligation to correct any Error resulting from: (i) use not in accordance with these Terms and Conditions or the Documentation; (ii) modification, damage, misuse or other action of Customer or any third party; (iii) combination of the Software with any goods, services or items provided by Customer or any third party; or (iv) any failure of Customer to comply with these Terms and Conditions or Documentation. Quantum will not be responsible for correcting Errors if Customer fails to implement any Error correction or Releases made available by Quantum. Service requested for any of the above exclusions shall be considered Other Services.

**16.5.5 Customer's Responsibilities.** Upon Quantum's request, Customer will provide Quantum remote access to Customer's computer systems as reasonably required for Quantum to perform the Support Services and its other obligations hereunder. Except as otherwise set forth in these Terms and Conditions, Customer will provide all hardware, software, services and other items necessary to operate the Software.

**17. Notices:** All notices, demands, and other communications called for or required by these Terms and Conditions shall be in writing and shall be addressed to the parties at their respective corporate headquarter addresses or to such other address as a party may subsequently designate by ten days' advance written notice to the other party except as otherwise provided in these Terms and Conditions.

**18. Integration and Modifications:** Each party acknowledges that it has read these Terms and Conditions, understands it, and agrees to be bound by it. The parties further agree that these Terms and Conditions are the complete and exclusive statement of the agreement of the parties with respect to the subject matter hereof, and that it supersedes and merges all prior proposals, understandings, and agreements, whether oral or written, between the parties with respect to the subject matter hereof. Any provisions or conditions of any purchase order or other document submitted by Customer which are in any way inconsistent with or in addition to the terms and conditions set forth in these Terms and Conditions rejected and shall not be binding upon Quantum. No waiver or modification of these Terms and Conditions or of any provision contained herein shall be valid unless in writing and duly executed by Quantum and Customer.

**19. Choice of Law:** These Terms and Conditions shall be governed by and construed in accordance with the laws of the State of California, USA without regard to any conflict of laws rules thereof. In the event of any dispute arising under these Terms and Conditions, the parties agree to the exclusive jurisdiction of the courts located in Santa Clara County, California. The United Nations Convention on Contracts for the International Sale of Goods shall not apply.

**20. Severability and Waiver:** In the event that any provision of these Terms and Conditions is held to be invalid, illegal, or unenforceable, such provision shall be enforced to the maximum extent permitted by applicable law and the remaining provisions shall continue in full force and effect. Failure or delay on the part of any party in exercising any rights, power, or privileges under these Terms and Conditions shall not be deemed a waiver of any exercise of any right, power or privilege.

**21. Force Majeure:** Neither party will be liable hereunder for, or be considered to be in breach of or default under these Terms and Conditions on account of, any delay or failures to perform as required by these Terms and Conditions if such delay or failure is due in whole or substantial part to causes or conditions beyond such party's reasonable control which render timely performance hereunder commercially impracticable, including without limitation strikes, riots, wars, government regulations or acts, acts of God or the elements, fire, flood, material shortages or other causes. The existence of such causes of delay shall justify extension of the time of performance to the extent reasonably necessary to enable such party to satisfy its obligation hereunder after the cause of delay has been removed.

**22. Assignment:** Neither party may assign its benefits or delegate its obligations under these Terms and Conditions without the advance written consent of the other party unless in the context of a sale of all or substantially all of the assigning parties' assets to another entity who is not a competitor to the non-assigning party and who has a reasonably acceptable credit rating.

## **ROLAND WARRANTY**



**Inkjet Printers**  
+ Printer/Cutters

**Vinyl Cutters**  
+ Print Trimmers

**Rotary Engravers**  
+ Impact Printers

**Benchtop Mills**  
+ 3D Scanners



**WARRANTIES**

OVERVIEW

**STANDARD TERMS & CONDITIONS** **INKJET 2 YEAR WARRANTY**

With Roland limited warranties, you get not only extensive coverage of your device, but the best service and support in the industry. All products come standard with the manufacturers warranty outlined below, with upgrade options available on many products.

To maximize your warranty, [Register Today](#)

Wide-format Inkjets	2 years	Automatically includes a one-year manufacturers warranty. Add the second year of warranty to qualified models (does not include VersaCMM SP series or VersaStudio BN-20), free when you register your machine and use Roland inks exclusively. <a href="#">More info.</a>
BN-20 Printer/Cutter	1 year	Automatically includes a one-year manufacturer's warranty when you register your machine and use Roland inks exclusively. <a href="#">More info.</a>
GX-24 Cutters	2 years	Automatically includes a 1-year manufacturers warranty. Add the second year of warranty, free when you register your machine within 60 days of purchase.
GX Pro Cutters	3 years	Automatically includes a two-year manufacturers warranty. Add the third year of warranty, free when you register your machine within 60 days of purchase.
EGX Engravers	2 years	
MPX Photo Impact Printers	1 year	
DWX Milling Machines	2 years	
MDX Milling Machines	1 year	
LPX Scanners	1 year	

**STANDARD WARRANTY TERMS & CONDITIONS**

**Roland Protection Plus Extended Warranties**

Learn how inexpensive it is to prevent unhappy surprises once your original equipment warranty expires.

**INKJET EXTENDED WARRANTIES**

**NON-INKJET EXTENDED WARRANTIES**

**Free Software & Firmware Updates Come Standard with Ownership of Your Roland**

Roland is unique in offering valuable free upgrades to our customers in appreciation for their loyalty and support. For instance, the Free Pure Print Performance Upgrade featuring revolutionary Roland Intelligent Pass Control technology gives existing VersaCMM and AdvancedJET owners the powerful technology to achieve the exceptional image quality and productivity their businesses require.

Likewise, existing MDX-40 and MDX-40K milling machine customers qualify for free performance upgrades, enabling them to update their hardware with all the new software and firmware features and capabilities of the MDX-40A free of charge.

We encourage you to register your machine to maximize your Roland ownership experience, and stay posted for future examples of our unmatched commitment to your business success.



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## **RUBRIK EULA**

## RUBRIK END USER AGREEMENT

### **IMPORTANT: PLEASE READ BEFORE INSTALLATION OR USE OF THE RUBRIK, INC. (“RUBRIK”) PRODUCT (AS DEFINED BELOW).**

**PURCHASE OF HARDWARE.** 1.1 This Agreement is entered into in connection with the End User’s purchase of Rubrik’s converged data management solution consisting of on-premises hardware and software (individually, “**Hardware**,” “**Software**” or, collectively, “**Product**”) that End User has purchased from Rubrik, in accordance with the purchase order or other order form pursuant to which the Product is delivered to the End User (“Order Form”).

1.2 Software is licensed and not sold. Software consists of Rubrik’s standard embedded software, its virtual appliance (“**Virtual Appliance**”) and certain available subscription software add-ons offering enhanced features and functionality (“**Software Add-ons**”). Software excludes third party software provided with the Software. Third party software may be governed by separate license terms which are available on request and applicable provision of this Agreement.

1.3 Title and risk of loss for the Hardware pass to End User upon delivery thereof by Rubrik to a common carrier.

### **RIGHT TO USE THE SOFTWARE.**

**Software License Grant.** Subject to the terms of this Agreement, Rubrik hereby grants End User a limited, non-sublicensable, non-transferable, non-exclusive license to use:

- the Software (including the third party software) in conjunction with and to operate the Hardware only for End User’s internal business purposes in accordance with the user manuals, training materials, product descriptions and specifications and other printed information relating to the Product, as in effect and generally available from Rubrik, in written or electronic form (expressly excluding marketing and sales collateral and materials) (“Documentation”) and and third party license terms; and
- the Documentation to operate the Product only as expressly permitted herein.

**Scope of License.** For clarity, the license granted herein only applies to that Software and/or features and functionality for which End User has procured a valid license and paid the corresponding fees, and only during the relevant subscription terms (or, if no term is designated, until terminated in accordance with Section 0).

**Proprietary Rights.** As between the parties, title, ownership rights, and intellectual property rights in and to the Software, third party software and Documentation, and any copies or portions thereof, shall remain in Rubrik and its suppliers or licensors. The Software and Documentation are protected by the copyright and other intellectual property laws, and this Agreement does not grant End User any rights not expressly granted herein.

### **USE OF THE HARDWARE, SOFTWARE AND DOCUMENTATION.**

**Certain Restrictions.** Except as expressly and unambiguously permitted by this Agreement, End User shall not, nor permit anyone else to, directly or indirectly:

- copy, modify, or distribute the Software or Documentation;
- reverse engineer, disassemble, decompile or otherwise attempt to discover the source code or structure, sequence and organization of the Software or Hardware (except where the foregoing is expressly prohibited by applicable local law, and then only to the extent so prohibited);
- rent, lease, or use the Hardware or Software for timesharing or service bureau purposes, or otherwise use the Hardware or Software on behalf of any third party (including as part of a managed service offering);
- remove or obscure any proprietary notices on the Hardware, Software or Documentation and include such notices on all authorized copies of the Software or Documentation;

- use the Hardware or Software for performing comparisons or other “benchmarking” activities, either alone or in connection with any hardware or software; or
- use the Hardware or Software for any purpose not expressly and unambiguously authorized herein (including, without limitation, for any purpose competitive with Rubrik).

**However, the foregoing is not intended to limit or modify the terms of any applicable license that applies to third party software.**

**Support Services.** Except for limited Product Warranty (as described in Rubrik’s Support Services Policy), this Agreement does not entitle End User to any technical support, updates, upgrades, patches, enhancements, new versions, new functionality or fixes for the Product. End User may purchase Support Services from Rubrik (as described in Rubrik’s Support Policy) which will be performed in accordance with the Rubrik’s Support Services Policy.

**3.3 Reporting; Feedback.** End User acknowledges the Software contains automated reporting routines that generate and report to Rubrik de-personalized metrics and statistics regarding the performance of the Product to report problems and issues with the Product and provide information back to Rubrik (“Report”) Rubrik will own all right, title and interest in and to any data and information it so collects (and End User hereby makes all assignments necessary to accomplish such ownership). End User may from time to time provide suggestions, comments for enhancements or functionality or other feedback (“Feedback”) to Rubrik with respect to the Product for which End User grants Rubrik, without charge or accounting, the full, unencumbered, paid-up, perpetual, irrevocable right and license to use, share, modify, commercialize and otherwise fully exercise and exploit such Feedback and all related intellectual property or other rights (and to allow others to do so) for any purpose in connection with its products and services.

**CONFIDENTIALITY.** End User acknowledges that the Product including its features and functionality, and all Documentation and other related information are confidential to Rubrik, its suppliers and licensors (“Confidential Information”), and End User agrees at all times to protect and preserve in strict confidence all such Confidential Information and use it only as expressly permitted herein. End User agrees not to permit or authorize access to or disclosure of any such Confidential Information to any person other than employees of End User who are bound in writing to terms no less restrictive than this Agreement and have a need to know such Confidential Information to use the Product as permitted by this Agreement except when required by law to disclose (i.e. FOIA). End User will notify Rubrik promptly of any unauthorized disclosure or use of Confidential Information, remains liable and responsible for any unauthorized use or disclosure of Confidential Information and will undertake all reasonably required remedial action at Rubrik’s request.

#### **FEES.**

**Payment and Taxes.** End User shall pay Rubrik ) the applicable purchase price for the Rubrik Solution and for Support Services as set forth in the applicable Order Form. All amounts are non-refundable and payable in US dollars on the date they come due without set-off or deduction.

**Audit.** During the term hereof and for a minimum of three (3) years thereafter, Rubrik or an independent third party auditor selected by Rubrik shall have the right to reasonably inspect and audit End User’s facilities, systems and relevant books and records to confirm End User’s compliance with the terms of this Agreement subject to any security requirements. If such audits disclose that End User has installed, accessed, used, or otherwise permitted access to the Product in a manner that is not permitted by the terms of this Agreement

#### **DISCLAIMERS.**

**DISCLAIMERS.** EXCEPT AS EXPRESSLY STATED HEREIN, RUBRIK, ITS SUPPLIERS AND LICENSORS, DISCLAIM ALL WARRANTIES WITH RESPECT TO THE RUBRIK SOLUTION AND DOCUMENTATION, WHETHER EXPRESS OR IMPLIED BY OPERATION OF LAW, REPRESENTATION, STATEMENTS, OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT. END USER ACKNOWLEDGES AND AGREES THAT RUBRIK, ITS SUPPLIERS AND LICENSORS, DO NOT WARRANT THAT THE PRODUCT OR DOCUMENTATION WILL MEET END USER’S REQUIREMENTS, BE UNINTERRUPTED, TIMELY, SECURE OR ERROR FREE. RUBRIK, ITS SUPPLIERS AND LICENSORS, DO NOT MAKE ANY WARRANTY AS TO THE RESULTS WHICH

MAY BE OBTAINED FROM THE USE OF THE PRODUCT OR DOCUMENTATION. This clause does not limit or disclaim any of the warranties specified in the GSA Schedule 70 contract under FAR 52.212-4(o). In the event of a breach of warranty, the U.S. Government reserves all rights and remedies under the contract, the Federal Acquisition Regulations, and the Contract Disputes Act, 41 U.S.C. 7101-7109.

**LIMITATION OF LIABILITY.** UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY, INCLUDING, BUT NOT LIMITED TO, TORT, CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, SHALL RUBRIK OR ITS SUPPLIERS, LICENSORS OR PARTNERS BE LIABLE TO END USER OR ANY OTHER PERSON FOR ANY OF THE FOLLOWING:

- ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY CHARACTER INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, LOSS OF GOODWILL, WORK STOPPAGE, ACCURACY OF RESULTS, COMPUTER FAILURE OR MALFUNCTION, OR LOSS OR CORRUPTION OF DATA OR THE COST OF COVER; OR
- ANY AMOUNT IN THE AGGREGATE IN EXCESS OF THE FEES PAID BY END USER FOR THE APPLICABLE PRODUCT IN THE TWELVE (12) MONTHS PRECEDING THE DATE THE CLAIM AROSE, OR, IF GREATER, ONE THOUSAND DOLLARS (\$1,000).

THE FOREGOING LIMITATIONS SHALL APPLY EVEN IF RUBRIK SHALL HAVE BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES. However, the foregoing limitations 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.

**INDEMNITY.** Rubrik agrees to defend to the extent permitted by 28 U.S.C. 516 or settle, at Rubrik's option, a third party claim or cause of action against the End User alleging that the Product infringes or misappropriates a U.S. patent or copyright of such third party ("**Claim**") and to pay damages finally awarded against the End User or to pay settlement amounts directly resulting from such Claim, provided Rubrik is promptly notified of such Claim, is given sole control of the defense and settlement of the Claim and End User provides to Rubrik all reasonable assistance. Rubrik will not be responsible for any settlement it does not approve in writing. The foregoing obligations do not apply with respect to any Hardware or Software or portions or components thereof:

- **not supplied by Rubrik;**
- **made in whole or in part in accordance with End User specifications;**
- **modified after delivery by Rubrik;**
- **combined with other products, processes or materials where the alleged infringement relates to such combination;**
- **where End User continues allegedly infringing activity after being notified thereof or after being informed of modifications that would have avoided the alleged infringement; or**
- **where End User's use of such Hardware or Software is not strictly in accordance with this Agreement.**

If any such infringement claim arises, Rubrik may, at its sole option and expense, (a) replace or modify the affected Hardware or Software to make it non-infringing with no less functionality, (b) procure a license for End User's continued use of the affected Hardware or Software or (c) if neither of the foregoing is commercially practicable, require the return of the affected Hardware or Software, and terminate this Agreement and End User's rights hereunder. The provisions of this Section 8 set forth Rubrik's sole and exclusive obligations, and End User's sole and exclusive remedies, with respect to any claims of infringement or misappropriation of third party intellectual property rights of any kind.

#### **TERM AND TERMINATION.**

**Term.** This Agreement shall continue until the end of the applicable license term designated by Rubrik or as otherwise terminated as set forth in this section.

**Termination.**

**Effects of Termination.** Upon termination of this Agreement for any reason, the license granted hereunder will terminate and End User shall destroy and remove from all computers, hard drives, networks and other storage media all copies of the Software and documentation and shall so certify to Rubrik that such actions have occurred. Sections 0, 0, 0, 0, 0 0, 0, 0, 0 and 0, and all accrued rights to payment, shall survive termination of this Agreement.

**GOVERNMENT USE.** If End User is part of an agency, department, or other entity of the United States Government ("Government"), the use, duplication, reproduction, release, modification, disclosure or transfer of the Software is restricted in accordance with the Federal Acquisition Regulations as applied to civilian agencies and the Defense Federal Acquisition Regulation Supplement as applied to military agencies. The Software is a "commercial item," "commercial computer software" and "commercial computer software documentation." In accordance with such provisions, any use of the Software by the Government shall be governed solely by the terms of this Agreement.

**COMPLIANCE AND EXPORT CONTROLS.** End User will comply with all applicable laws and regulations, including, without limitation, the all privacy laws, regulations and directives and the U.S. Foreign Corrupt Practices Act (including, without limitation, not offering any inducement, whether money or goods or services, to any government official, employee, candidate or party). End User shall comply with all export laws and restrictions and regulations of the Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control ("OFAC"), or other United States or foreign agency or authority, and End User shall not export, or allow the export or re-export of the Hardware or Software or any related technical information in violation of any such restrictions, laws or regulations. End User represents and warrants that End User is not located in, under the control of, or a national or resident of any restricted country.

**MISCELLANEOUS.** Written notice is effective when delivered or rejected at the address a party last notified the other party in writing. Rubrik's third party suppliers or licensors are third party beneficiaries hereunder with respect to their respective product or software and reserve the right to assert claims for infringement or misappropriation of their intellectual property rights by Reseller or its End User. This Agreement represents the complete agreement concerning the Product between the parties, to the exclusion of any pre-printed or contrary terms of any End User purchase order (or similar document), and supersedes all prior agreements and representations between them. This Agreement may be amended only by a writing executed by both parties. If any provision of this Agreement is held to be unenforceable for any reason, such provision shall be reformed only to the extent necessary to make it enforceable. The failure of Rubrik to act with respect to a breach of this Agreement by End User or others does not constitute a waiver and shall not limit Rubrik's rights with respect to such breach or any subsequent breaches. This Agreement is personal to End User and may not be assigned or transferred for any reason whatsoever, without Rubrik's consent, and any action or conduct in violation of the foregoing shall be void and without effect. Rubrik expressly reserves the right to assign this Agreement and to delegate any of its obligations hereunder. This Agreement shall be governed by and construed under the federal laws of the United States, and The U.N. Convention on Contracts for the International Sale of Goods shall not apply.

## **RUBRIK MAINTENANCE AND PRICING TERMS**

RUBRIK Corporation provides a variety of warranty and maintenance support offerings for all RUBRIK products. Maintenance terms are set forth in the RUBRIK Product Warranty and Maintenance Table that is incorporated in the GSA Schedule. The following is a general summary of those terms.

The **Maintenance List Price (MLP)** for RUBRIK equipment and software maintenance, warranty upgrades, and equipment and software maintenance renewals **is priced as a percentage of** (not discount off) the product list price. As set forth in the table below, the percentages vary by Service Type within each Hardware and Software Product. A limited number of components are priced on a fixed dollar basis.

The annual maintenance list price rates are provided in Table 1. The total maintenance list price for system configuration is determined as follows:

1. The commercial list price of each component product is multiplied by the quantity of the product (extended component list price).
2. The extended component list price is multiplied by the applicable maintenance list price rate (percentage) from the rate tables attached for the desired level of support (maintenance list price).
3. The maintenance list price is multiplied by the number of units of support required. (duration)
4. The individual component maintenance list prices are summed using a Services model number, at point of sale.
5. The GSA net price for maintenance is calculated by applying the GSA discount (*discount off maintenance list*) to the total maintenance list price.  
**The GSA discounts are set forth in Table 1 below.**

When circumstances require, annual prices can be pro-rated to the actual term of support.

#### Pricing:

**Prepaid Maintenance Pricing.** Also referred to as point-of-sale maintenance, this maintenance is purchased in the initial order and is calculated within the RUBRIK quoting systems.

**Renewal Maintenance Pricing.** Also referred to as renewal maintenance, this maintenance is offered for previously purchased systems and products installed in specific customer locations. Renewal quotes are based on information from RUBRIK installed base systems, as well as customer provided information. Because maintenance renewal quotes are highly individualized for particular installations of RUBRIK products, renewal quotes are supported by detailed spreadsheets provided with the renewal quote.

Maintenance/Support SKU	Description	SIN	GSA Price
RBK-SVC-PREM-SW	Premium Support for RCDM software, prepay Percent of RCDM software Minimum 12 months	511210	7.08%
RBK-SVC-PREM-HW	Premium Support for hardware, prepay Percent of hardware Minimum 12 months	811212	7.08%
RBK-POL-RADAR-UNL-FNDN-PA RBK-POL-RADAR-UNL-FNDN	<p>One (1) month of Polaris Radar unlimited add-on to Foundation, incl. Polaris GPS and Premium Support, subscription pay per year 45% of monthly list price of Go Foundation Pay Annual 45% of monthly list price of Foundation for 3rd party HW Pay Annual Minimum 12 months</p> <p>One (1) month of Polaris Radar unlimited add-on to Foundation, incl. Polaris GPS and Premium Support, subscription prepay 45% of monthly list price of Go Foundation 45% of monthly list price of Foundation for 3rd party HW Minimum 12 months</p>	511210 511210	7.08% 7.08%
RBK-POL-RADAR-UNL-RCDM RBK-POL-RADAR-UNL-FNDN-ADDON-NODE-PA	<p>One (1) month of Polaris Radar unlimited add-on to RCDM, incl. Polaris GPS and Premium Support, subscription prepay 1.67% of RCDM list price Minimum 12 months</p> <p>One (1) month of Polaris Radar unlimited add-on node to Foundation, incl. Polaris GPS and Premium Support, subscription pay per year 45% of monthly list price of Go Foundation Add-On Node Pay Annual Minimum 12 months</p>	511210 511210	7.08% 7.08%
RBK-POL-RADAR-UNL-FNDN-ADDON-NODE	One (1) month of Polaris Radar unlimited add-on node to Foundation, incl. Polaris GPS and Premium Support, subscription prepay 45% of monthly list price of Foundation Add-On Node Minimum 12 months	511210	7.08%



RBK-POL-RADAR-UNL-RCDM-ADDON-NODE	One (1) month of Polaris Radar unlimited add-on node to RCDM, incl. Polaris GPS and Premium Support, subscription prepay 1.67% of RCDM Add-On Node list price Minimum 12 months	511210	7.08%
RBK-CLON-UNL-FNDN-PA	One (1) month of CloudOn Unlimited add-on to Foundation, incl. Premium Support, subscription pay per year 39% of monthly list price of Rubrik Go Foundation Pay Annual 39% of monthly list price of Foundation for 3rd party HW Pay Annual Minimum 12 months	511210	7.08%
RBK-CLON-UNL-FNDN	One (1) month of CloudOn Unlimited add-on to Foundation, incl. Premium Support, subscription prepay 39% of monthly list price of Rubrik Go Foundation 39% of monthly list price of Foundation for 3rd party HW Minimum 12 months	511210	7.08%
RBK-CLON-UNL-RCDM RBK-CLON-UNL-FNDN-ADDON-NODE-PA	One (1) month of CloudOn Unlimited add-on to RCDM, incl. Premium Support, subscription prepay 1.34% of RCDM list price Minimum 12 months	511210 511210	7.08% 7.08%
	One (1) month of CloudOn Unlimited add-on node to Foundation, incl. Premium Support, subscription pay per year 39% of monthly list price of Rubrik Go Foundation Add-On Node Pay Annual Minimum 12 months		
RBK-CLON-UNL-FNDN-ADDON-NODE	One (1) month of CloudOn Unlimited add-on node to Foundation, incl. Premium Support, subscription prepay 39% of monthly list price of Rubrik Go Foundation Add-On Node Minimum 12 months	511210	7.08%

RBK-CLON-UNL-RCDM-ADDON-NODE	One (1) month of CloudOn Unlimited add-on node to RCDM, incl. Premium Support, subscription prepay 1.34% of RCDM Add-On Node list price Minimum 12 months	511210	7.08%
RBK-SVC-L3-SW	L3 Support for RCDM software, prepay Percent of RCDM Software Minimum 12 months	511210	7.08%
RBK-SVC-L3-HW	L3 Support for hardware, prepay Percent of Hardware Minimum 12 months	811212	7.08%
RBK-POL-RADAR-UNL-FNDN-PA-L3	One (1) month of Polaris Radar unlimited add-on to Foundation, incl. Polaris GPS and L3 Support, subscription pay per year	511210	7.08%
RBK-POL-RADAR-UNL-FNDN-L3	One (1) month of Polaris Radar unlimited add-on to Foundation, incl. Polaris GPS and L3 Support, subscription prepay 45% of monthly list price of Go Foundation L3 Minimum 12 months	511210	7.08%
RBK-POL-RADAR-UNL-RCDM-L3	One (1) month of Polaris Radar unlimited add-on to RCDM, incl. Polaris GPS and L3 Support, subscription prepay 1.59% of RCDM list price Minimum 12 months	511210	7.08%
RBK-POL-RADAR-UNL-FNDN-ADDON-NODE-PA-L3	One (1) month of Polaris Radar unlimited add-on node to Foundation, incl. Polaris GPS and L3 Support, subscription pay per year 45% of monthly list price of Go Foundation L3 Add-On Node Pay Annual Minimum 12 months	511210	7.08%

RBK-POL-RADAR-UNL-FNDN-ADDON-NODE-L3	One (1) month of Polaris Radar unlimited add-on node to Foundation, incl. Polaris GPS and L3 Support, subscription prepay 45% of monthly list price of Go Foundation L3 Add-On Node Minimum 12 months	511210	7.08%
RBK-POL-RADAR-UNL-RCDM-ADDON-NODE-L3	One (1) month of Polaris Radar unlimited add-on node to RCDM, incl. Polaris GPS and L3 Support, subscription prepay 1.59% of RCDM Add-On Node list price Minimum 12 months	511210	7.08%
RBK-CLON-UNL-FNDN-PA-L3	One (1) month of CloudOn Unlimited add-on to Foundation, incl. L3 Support, subscription pay per year 39% of monthly list price of Rubrik Go Foundation L3 Pay Annual Minimum 12 months	511210	7.08%
RBK-CLON-UNL-FNDN-L3	One (1) month of CloudOn Unlimited add-on to Foundation, incl. L3 Support, subscription prepay 39% of monthly list price of Rubrik Go Foundation L3 Minimum 12 months	511210	7.08%
RBK-CLON-UNL-RCDM-L3	One (1) month of CloudOn Unlimited add-on to RCDM, incl. L3 Support, subscription prepay 1.25% of RCDM list price Minimum 12 months	511210	7.08%
RBK-CLON-UNL-FNDN-ADDON-NODE-PA-L3	One (1) month of CloudOn Unlimited add-on node to Foundation, incl. L3 Support, subscription pay per year 39% of monthly list price of Rubrik Go Foundation L3 Add-on Node Pay Annual Minimum 12 months	511210	7.08%

RBK-CLON-UNL-FNDN-ADDON-NODE-L3	One (1) month of CloudOn Unlimited add-on node to Premium, incl. L3 Support, subscription prepay 39% of monthly list price of Rubrik Go Foundation L3 Add-on Node Minimum 12 months	511210	7.08%
RBK-CLON-UNL-RCDM-ADDON-NODE-L3	One (1) month of CloudOn Unlimited add-on node to RCDM, incl. L3 Support, subscription prepay 1.25% of RCDM Add-On Node list price Minimum 12 months	511210	7.08%
RBK-SVC-NODE-UG-L3	L3 Support, Prepaid for Single Node Upgrade Percent of node upgrade list price	811212	7.08%
RBK-SVC-SW-ENCRYPT-UG-L3	L3 Support, Prepaid for Software Encryption Upgrade Percent of SW Tradeup list price	511210	7.08%
RBK-NFR-RENEWAL	Premium Support, CloudOut and CloudOn renewal for NFR Appliance (for year 2 onwards) 10% of base NFR appliance list price	511210	7.08%
RBK-SVC-PREM-MSPPACK	Premium Support Prepaid, Service Delivery Partner Starter Pack Percent of starter pack appliance list price	811212	7.08%
RBK-SVC-PREM-RCDM-UCS	Premium Support, Prepaid for RCDM, UCS Percent of base 3rd Party HW list price Minimum 12 months	811212	7.08%

RBK-SVC-PREM-RCDM-HPE	Premium Support, Prepaid for RCDM, HPE Percent of base 3rd Party HW list price Minimum 12 months	811212	7.08%
RBK-SVC-PREM-RCDM-DELL	Premium Support, Prepaid for RCDM, Dell Percent of base 3rd Party HW list price Minimum 12 months	811212	7.08%
RBK-SVC-PREM-NODE-UG	Premium Support, Prepaid for Single Node Upgrade Percent of node upgrade list price Minimum 12 months	811212	7.08%
RBK-SVC-PREM-SW-ENCRYPT-UG	Premium Support, Prepaid for Software Encryption Upgrade Percent of SW Tradeup list price	511210	7.08%
RBK-POLARIS-RADAR-UNL	Subscription to Polaris Radar Unlimited, incl Polaris GPS and Premium Support 15% of base appliance list price per year Minimum 12 months	511210	7.08%
RBK-CLOUT-UNLIMITED	Subscription to Rubrik CloudOut, Unlimited, incl Support 15% of base appliance list price Minimum 12 months	511210	7.08%
RBK-CLON-UNLIMITED	Subscription to Rubrik CloudOn, Unlimited, incl Support 12.5% of base appliance list price Minimum 12 months	511210	7.08%
RBK-SVC-PREM-OBJ-STORAGE	Premium Support, Archival to On-premises Object Storage/NFS Percent of OBJ list price Minimum 12 months	811212	7.08%
RBK-SVC-PREM-APPLIANCE	Premium Support, Prepaid for Rubrik Appliance Percent of base appliance list price Minimum 12 months	811212	7.08%
RBK-SVC-PREM-RCDM-ELA	Premium Support, Prepaid for RCDM ELA Percent of base ELA price	511210	7.08%

RBK-SVC-APPLIANCE-L3	L3 Support, Prepaid for Rubrik Appliance Percent of base appliance list price	811212	7.08%
RBK-CLOUT-UNLIMITED-L3	Subscription to Rubrik CloudOut, Unlimited, incl L3 Support 14.125% of base appliance list price	511210	7.08%
RBK-CLON-UNLIMITED-L3	Subscription to Rubrik CloudOn, Unlimited, incl L3 Support 11.771% of base appliance list price	511210	7.08%
RBK-SVC-OBJ-STORAGE-L3	L3 Support, Archival to On-premises Object Storage/NFS Percent of OBJ list price	511210	7.08%
RBK-SVC-BASIC-HW	Basic Support for hardware, prepay, M-F; 8am- 8pm support. 0.75% of hardware per month	811212	7.08%
RBK-SVC-L3B-HW	L3 Basic Support for hardware, prepay, M-F; 8am-8pm support	811212	7.08%
RBK-UG-P-SVC-HW	Upgrade from Basic to Premium Support for hardware, prepay	811212	7.08%
RBK-UG-L3-SVC-HW	Upgrade from L3 Basic to L3 Premium Support for hardware, prepay	811212	7.08%
RBK-POL-RADAR-UNL-FNDN-PA	One (1) month of Polaris Radar unlimited add- on to Foundation, incl. Polaris GPS and Premium Support, subscription pay per year 45% of monthly list price of Go Foundation Pay Annual 45% of monthly list price of Foundation for 3rd party HW Pay Annual Minimum 12 months	511210	7.08%
RBK-POL-RADAR-UNL-FNDN	One (1) month of Polaris Radar unlimited add- on to Foundation, incl. Polaris GPS and Premium Support, subscription prepay 45% of monthly list price of Go Foundation 45% of monthly list price of Foundation for 3rd party HW Minimum 12 months	511210	7.08%
RBK-POL-RADAR-UNL-RCDM	One (1) month of Polaris Radar unlimited add- on to RCDM, incl. Polaris GPS and Premium Support, subscription prepay 1.67% of RCDM list price Minimum 12 months	511210	7.08%

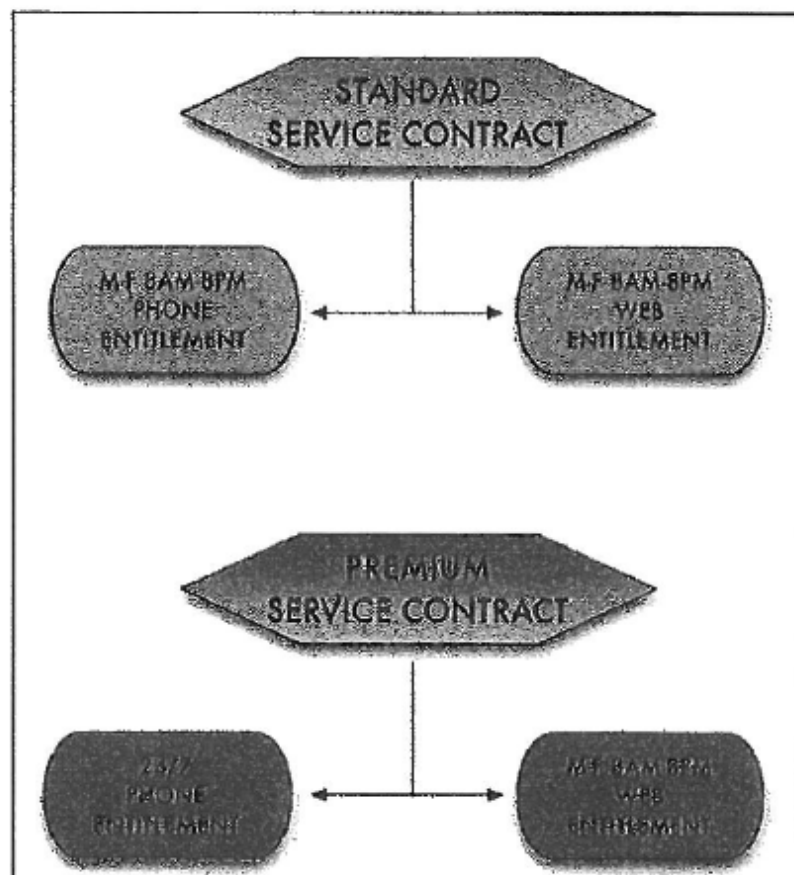


## **SCALE COMPUTING SERVICE**



## Service Contract Definitions

- **Standard Support:** End users receive 8AM-8PM EST phone and web support, with shipping defaulting to ground. After 8PM EST, shipping will be completed the next business day. Support services will have a four-hour milestone to respond to customer requests.
- **Premium Support:** End users receive 24/7 phone support and M-F 8AM-8PM web support, with shipping always being priority overnight. After 8PM, shipping will be completed the next business day unless situation is deemed 'critical.' Support services will have a two-hour milestone to respond to customer requests.
- **Entitlements:** Two entitlements are covered by one service contract, broken out between phone and web support.







**Scale Computing, Inc.**  
**End User Software License Agreement**

This End User Software License Agreement (“**Agreement**” or “**EULA**”) is a legal agreement between Scale Computing, Inc., a Delaware corporation with an office at 525 S. Meridian – Suite 3E, Indianapolis, IN 46225 (“**Scale Computing**”) and the legal entity on whose behalf you are entering into these terms (“**you**” or “**Customer**”). Each of Scale Computing and Customer is a “**Party**” and together, the “**Parties**.”

PLEASE READ THIS AGREEMENT CAREFULLY BEFORE DOWNLOADING, INSTALLING OR USING THE SOFTWARE. YOU AGREE THAT YOU HAVE READ AND UNDERSTOOD, AND, AS A CONDITION TO YOUR USE OF THE SOFTWARE, YOU AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO BE BOUND BY THE TERMS OF THIS EULA, THEN DO NOT INSTALL, COPY OR USE THE SOFTWARE.

## 1. DEFINITIONS

- 1.1. “**Clustered System**” means three or more Nodes that have been joined together in a Scale Computing supported configuration utilizing native hardware and software components to create a single unified system.
- 1.2. “**Documentation**” means user manuals, help files, or other documentation, in whatever form, relating to the Software.
- 1.3. “**Licensed Unit**” means, Nodes, Clustered Systems, chassis, CPUs, or other measurable metric or unit by which the Software is licensed.
- 1.4. “**Node**” means a physical server with its own unique IP address.
- 1.5. “**Order Form**” means the order form, agreement or other ordering document between Customer and Scale Computing or its authorized reseller pursuant to which Customer purchased the right to use the Software.
- 1.6. “**Shipment Date**” means the date of shipment of product or licenses by Scale Computing or its authorized reseller.
- 1.7. “**Software**” means the object code version of Scale Computing’s virtualization software referred to as HyperCore or SC//HyperCore, previously referred to as HC3.

## 2. TERM AND TERMINATION

- 2.1. Term. This Agreement is effective beginning upon the earlier of Customer’s acceptance of this Agreement or when Customer first downloads, installs, breaks the applicable seal or otherwise uses the Software, and, unless terminated earlier in accordance with its terms, shall continue for the subscription period indicated on the Order Form (the “**Term**”).
- 2.2. Termination by Scale Computing. 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). Scale Computing shall comply with any decision of the Contracting Officer, subject to any appeals and as required under applicable law.
- 2.3. Termination by Customer. Customer may terminate this Agreement: (a) at any time by providing notice to Scale Computing of desire to terminate and specifying the effective date of such termination, or (b) in the event Scale Computing breaches any material term or condition of this Agreement and fails to remedy any such breach within thirty (30) days of receiving notice thereof from Customer, by providing notice to Scale Computing.
- 2.4. Effect of Termination of Agreement. Upon termination or expiration of this Agreement, Customer shall immediately cease all use of the Software, the Documentation or related materials, and destroy all copies of the Software, Documentation or related materials. If requested by Scale Computing, Customer will certify to Scale Computing in a writing signed by an officer of Customer that Customer has destroyed all such copies. Customer further agrees that in the event of such termination or expiration, all fees or charges due for the remaining Term shall immediately become due and payable under this Agreement unless it was terminated for Scale Computing’s material breach. Scale Computing’s obligations under this Agreement shall cease upon termination or expiration thereof.
- 2.5. Post-Termination Obligations. If this Agreement is terminated for any reason any and all liabilities accrued prior to the effective date of the termination will survive.
- 2.6. Survival. Notwithstanding anything to the contrary herein, Sections 1, 2.4, 2.5, 2.6, 3.2, 3.5, 3.6, 3.7, 5, 7, 8, and 9 will survive termination or expiration of this Agreement. Rights to access the Software do not survive the Term.

## 3. LICENSE AND INTELLECTUAL PROPERTY

3.1. License Grant - Software. Upon Customer's full payment of the required license fees as specified in the Order Form, Scale Computing hereby grants to Customer, and Customer hereby accepts, a limited, nonexclusive, nontransferable, non-sublicensable license to: (a) install the number of Licensed Units of Software onto equipment authorized by Scale Computing, as indicated in the Order Form, and (b) use the Software solely for the number of Licensed Units purchased as embedded in, for execution on, or (where the applicable Documentation permits installation on equipment not authorized by Scale Computing) for communication with, Scale Computing-authorized equipment by Customer in accordance with the applicable Documentation, in each case subject to the terms and conditions set forth herein.

3.2. License Grant - Documentation. Scale Computing may provide Documentation to Customer. Scale Computing hereby grants to Customer a non-exclusive, non-transferable, non-sublicensable right and license under Scale Computing's rights in the Documentation to use such Documentation solely to enable Customer to exercise its rights to use the Software.

3.3. Single Node Systems. With the exception of HyperCore Edge systems, in the event Customer purchases and operates a Node by itself and not in a Clustered System ("**SNS System**"), Customer must replicate Customer's applications and data to another system sufficient to allow Customer to failover to such system and run Customer's applications and access its data while the SNS System is inoperable for any reason.

3.4. General Restrictions. Except and solely to the extent such restriction is impermissible under applicable law, and other than as expressly set forth in this Agreement, Customer will not, and will not assist or permit any third party to: (a) disassemble, reverse engineer, decompile, or otherwise attempt to derive the source code of the Software or any component thereof, (b) copy, reproduce, modify, alter or otherwise create any derivative works of the Software or any component thereof, (c) sell, lease, sublicense, transfer or otherwise convey the Customer's rights to or license in the Software to any third party, (d) make the software available to a third party on a network, service bureau or as-a-service basis; (e) use the Software to violate, misappropriate, or infringe the rights of any third party, (f) interfere with or circumvent any feature of the Software, including any security or access control mechanisms, (g) use the Software in any way that is not in accordance with this EULA, including the license grant, applicable Documentation, in a way that violates applicable law, or in excess of the limitations of any subscription, including the number of Licensed Units, (h) combine the Software or any part thereof with, or incorporate the Software or any part thereof in, any other programs, (i) remove, delete, alter, or obscure any trademarks or any copyright, trademark, patent, or other intellectual property or proprietary rights notices provided on or with the Software, including any copy thereof, or (j) attempt to do any of the foregoing.

3.5. Customer Data. As between Scale Computing and Customer, Customer retains all right, title, and interest, including all intellectual property rights, in and to any data or information on the computing systems managed operated by the Software ("**Customer Data**").

3.6. Software Data. The Software may report to Scale Computing or Scale Computing may otherwise obtain usage-based and other information related to the Software, including Customer's use thereof ("**Software Data**"). Customer hereby grants Scale Computing a non-exclusive, worldwide, royalty-free, fully paid, sublicensable, fully transferable, irrevocable, perpetual license to use, process, transmit, store, disclose, and otherwise exploit the Software Data. Customer further acknowledges that the Software may contain the capability to self-report back to Scale Computing any issues with the Software, the computing systems running or managed by the Software, and other relevant metrics ("**Reported Data**"). Customer agrees that it shall not interfere with the capability of the Software to collect Reported Data and transmit such Reported Data to Scale Computing. In addition, Customer acknowledges that in the event such capability is disabled or otherwise unavailable, Customer may lose the ability to use certain features or functionality of the Software.

3.7. Feedback. If Customer provides any feedback to Scale Computing concerning the functionality and performance of the Software, or any corresponding Documentation (including identifying potential errors and improvements), Customer hereby grants to Scale Computing a non-exclusive, worldwide, royalty-free, fully paid, sublicensable, fully transferable, irrevocable, perpetual license to use and exploit such feedback without payment or restriction. Scale Computing acknowledges that the ability to use this Agreement and any Feedback provided as a result of this Agreement in advertising is limited by GSAR 552.203-71.

3.8. Reservation of Rights. As between the Parties, Scale Computing owns all right, title, and interest, including all intellectual property rights, in and to the Software, the corresponding Documentation, and any improvements to any of Scale Computing's products or services made as a result of Scale Computing's use, processing, or generation of Customer Data and Software Data. Scale Computing reserves all rights not granted.

3.9. License Limitations. The availability of certain features depends on the type of license Customer purchases. Some features may not be enabled or supported for certain license types. Information regarding the availability of features by license type is available at the following support matrix:

<https://info.scalecomputing.com/schypercore-software-support-guide>. The version of the matrix that is in effect at the time of Customer's purchase will govern the features available to Customer.

#### 4. ADDITIONAL SERVICES AND TERMS.

- 4.1. Maintenance and Support Services. Scale Computing may provide Customer with maintenance and support services related to the Software ("**Support Services**"). Such Support Services shall be provided pursuant to Scale Computing's then-current standard terms for such Support Services attached hereto. Unless otherwise indicated by Scale Computing, all supplemental software code or Documentation provided to Customer as part of the Support Services, if any, will be deemed to be Software hereunder and use of such code or Documentation be subject to the terms and conditions of this Agreement.
- 4.2. Scale Computing Fleet Manager. If Customer's Order Form includes the right to access Scale Computing's online management platform, Scale Computing Fleet Manager (or "**SC//Fleet Manager**"), such access is provided under the Scale Computing Fleet Manager Terms attached hereto, and Customer agrees to such SC//Fleet Manager terms. Customer's rights to use the SC//Fleet Manager platform does not extend beyond Customer's subscription to SC//HyperCore.
- 4.3. Third Party Software. The Software may include, or may be distributed on the same media or in the same download with third-party software, including open source software ("**Third Party Technology**"). Use of such Third Party Technology may be governed by separate copyright notices and license provisions, including those listed at <https://www.scalecomputing.com/open-source-licensing-agreements>.

#### 5. CONFIDENTIALITY

- 5.1. Definition. As used herein, "**Confidential Information**" means all confidential information disclosed by or otherwise obtained from a Party ("**Disclosing Party**") to or by the other Party ("**Receiving Party**"), whether orally, visually, or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. "Confidential Information" of a Disclosing Party includes such Disclosing Party's technology and technical information. Without limiting the foregoing, Scale Computing's "Confidential Information" includes the Software, all corresponding Documentation, and all Scale Computing technical information. "Confidential Information" does not include any information that (a) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (b) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (c) is received from a third party without breach of any obligation owed to the Disclosing Party, or (d) was independently developed by the Receiving Party without use of or reference to the Disclosing Party's Confidential Information. This Section 5 does not apply to Customer Data, Software Data, or Reported Data.
- 5.2. Protection of Confidential Information. Except as otherwise permitted in writing by the Disclosing Party, the Receiving Party will (a) use 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) not to disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of these Terms and (b) limit access to Confidential Information of the Disclosing Party to those of its employees, contractors and agents who need such access for purposes consistent with these Terms and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein. Notwithstanding the foregoing, the Receiving Party is permitted to disclose Confidential Information of the Disclosing Party on a need-to-know basis to employees, contractors, and agents of its affiliates. The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. Scale Computing recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which may require that certain information be released to the extent required thereunder, despite being characterized as "confidential" by the vendor.

#### 6. WARRANTIES AND DISCLAIMER

- 6.1. Mutual Warranties. Each Party represents and warrants to the other that: (a) this Agreement has been duly executed and delivered and constitutes a valid and binding agreement enforceable against such Party in accordance with its terms and (b) no authorization or approval from any third party is required in connection with such Party's execution, delivery, or performance of this Agreement.
- 6.2. Limited Warranty by Scale Computing:

- 6.2.1. Scale Computing warrants to Customer that for a period of thirty (30) days commencing from the Shipment Date (“**Warranty Period**”) the Software substantially conforms to its published specifications. After the Warranty Period, any Software errors will be addressed through Support Services.
- 6.2.2. Customer’s sole and exclusive remedy and Scale Computing’s sole and exclusive liability arising out of or related to a breach of warranty shall be limited, at Scale Computing’s election, to do the following, and provided, that, any claims must be made within the Warranty Period: (a) repair the defective Software, (b) replacement of the defective Software, or (c) refund of the license fees actually paid by Customer and received by Scale Computing for the affected Software,. For the avoidance of doubt, Customer shall remain responsible for its own costs in connection with receipt of such remedies, including, by way of example, the cost of shipping the hardware on which the Software is installed to Scale Computing.
- 6.3. Limitations. Scale Computing shall have no liability or obligation with regard to Scale Computing’s breach of any warranty hereunder in the event the Software or any related product or equipment supplied by Scale Computing: (a) has been altered, except by Scale Computing, (b) has not been installed, operated, repaired, or maintained in accordance with instructions supplied by Scale Computing, (c) has been subjected to abnormal physical or electrical stress, misuse negligence, virus or accident, or (d) is licensed for beta, trial, evaluation or demonstration basis for which Scale Computing does not receive a payment or license fee.
- 6.4. High Risk Activity. Customer agrees that the Software is not designed or intended for use in hazardous environments requiring fail-safe performance, including without limitation, in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, weapons systems, direct lifesupport machines, or any other application in which the failure of the Software could lead directly to death, personal injury, or severe physical or property damage (collectively, “**High Risk Activities**”). Customer acknowledges that the Customer’s right to use the Software does not extend to use in connection with High Risk Activities, and Customer hereby agrees to indemnify Scale Computing from any and all liabilities, losses, harm or other costs (including reasonable attorney’s fees) incurred by Scale Computing resulting from Customer’s use of the Software in connection with High Risk Activities.

**6.5. Disclaimer. EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES STATED IN**

THIS SECTION, SCALE COMPUTING MAKES NO ADDITIONAL REPRESENTATION OR WARRANTY OF ANY KIND WHETHER EXPRESS, IMPLIED (EITHER IN FACT OR BY OPERATION OF LAW), OR STATUTORY, AS TO ANY MATTER WHATSOEVER. SCALE COMPUTING EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY, ACCURACY, TITLE, AND NONINFRINGEMENT. SCALE COMPUTING DOES NOT WARRANT AGAINST INTERFERENCE WITH THE ENJOYMENT OF THE SOFTWARE. SCALE COMPUTING DOES NOT WARRANT THAT THE SOFTWARE, OR THE DOCUMENTATION ARE ERROR-FREE OR THAT OPERATION OF THE SOFTWARE WILL BE SECURE, FULLY AVAILABLE OR UNINTERRUPTED. SCALE COMPUTING DOES NOT WARRANT THAT ANY INFORMATION PROVIDED ON, IN OR THROUGH THE SOFTWARE OR THE DOCUMENTATION IS ACCURATE OR COMPLETE OR THAT ANY SUCH INFORMATION WILL ALWAYS BE AVAILABLE. SCALE COMPUTING EXERCISES NO CONTROL OVER, AND EXPRESSLY DISCLAIMS ANY LIABILITY ARISING OUT OF OR BASED UPON THE RESULTS OF, CUSTOMER’S USE OF THE SOFTWARE, OR THE DOCUMENTATION. SCALE COMPUTING DOES NOT WARRANT AGAINST LOSS OF DATA. THE FOREGOING LIMITATIONS DO NOT APPLY TO THE EXTENT PROHIBITED BY LAW.

**7. INDEMNIFICATION**

- 7.1. Defense by Scale Computing. Scale Computing will, at its expense, either has the right to intervene to defend Customer from or settle any claim, proceeding, or suit (“**Claim**”) brought by a third party against Customer alleging that Customer’s use of the Software infringes or misappropriates the rights of such third party if: (a) Customer gives Scale Computing prompt written notice of the Claim; (b) Customer grants Scale Computing full and complete control over the defense and settlement of the Claim; and (c) Customer provides assistance in connection with the defense and settlement of the Claim as Scale Computing may reasonably request. Customer will not defend or settle any Claim subject to indemnification under this Section without Scale Computing’s prior written consent. Customer will have the right to participate in the defense of the Claim at its own expense and with counsel of its own choosing, but Scale Computing will have sole control over the defense and settlement of the Claim.
- 7.2. Indemnification by Scale Computing. Scale Computing will indemnify Customer from and pay (a) all damages, costs, and attorneys’ fees finally awarded against Customer in any Claim under Section 7.1; (b) all out-of-pocket costs (including reasonable attorneys’ fees) reasonably incurred by Customer in connection with the defense of a Claim under Section 7.1 (other than attorneys’ fees and costs incurred without Scale

Computing's consent after Scale Computing has accepted defense of the Claim); and (c) all amounts that Scale Computing agrees to pay to any third party to settle any Claim under Section 7.1.

- 7.3. Exclusions from Obligations. Notwithstanding the above, Scale Computing will have no obligation under Section 7.1 for any infringement or misappropriation to the extent that it arises out of or is based upon any of the following (the "**Excluded Claims**"): (a) use of the Software in combination with other products or services not provided by Scale Computing if such infringement or misappropriation arose out of such combination; (b) features of the Software that are provided to comply with designs, requirements, or specifications required by or provided by Customer, if the alleged infringement or misappropriation arose out of the compliance with such designs, requirements, or specifications; (c) use of the Software by Customer for purposes not intended or outside the scope of the license granted to Customer; (d) Customer's failure to use the Software in accordance with instructions provided by Scale Computing, if the infringement or misappropriation arose out of such failure; or (e) use of a version of the Software after a subsequent version has been released and provided to Customer, which subsequent version does not contain or perform the alleged infringing materials or activities.
- 7.4. Remedy. If Scale Computing becomes aware of, or anticipates, a Claim subject to indemnification under Sections 7.1 and 7.2, then Scale Computing may, at its option (a) modify the Software so that it becomes non-infringing; (b) obtain a license to the third-party intellectual property rights giving rise to the Claim; or (c) terminate this Agreement. If Scale Computing elects to terminate this Agreement under this Section 7.4, Scale Computing will refund to Customer any unused, prepaid fees on a pro rata basis.
- 7.5. Limited Remedy. Sections 7.1, 7.2, 7.3, and 7.4 state Scale Computing's sole and exclusive liability, and Customer's sole and exclusive remedy, for the actual or alleged infringement or misappropriation of any third-party intellectual property right by Software.

## 8. LIMITATIONS OF LIABILITY

- 8.1. Disclaimer of Indirect Damages. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, SCALE COMPUTING WILL NOT, UNDER ANY CIRCUMSTANCES, BE LIABLE TO CUSTOMER FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS OR LOSS OF BUSINESS, ARISING OUT OF OR RELATED TO THE SUBJECT MATTER OF THESE TERMS, EVEN IF SCALE COMPUTING IS APPRISED OF THE LIKELIHOOD OF SUCH DAMAGES. WITHOUT LIMITING THE FOREGOING, UNDER NO CIRCUMSTANCES WILL SCALE COMPUTING BE LIABLE FOR ANY LOSS OF DATA STORED IN, OR IN CONNECTION WITH, THE SOFTWARE. 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.
- 8.2. Cap on Liability. UNDER NO CIRCUMSTANCES WILL SCALE COMPUTING'S TOTAL LIABILITY OF ALL KINDS ARISING OUT OF OR RELATED TO THESE TERMS (INCLUDING BUT NOT LIMITED TO WARRANTY CLAIMS), REGARDLESS OF THE FORUM AND REGARDLESS OF WHETHER ANY ACTION OR CLAIM IS BASED ON CONTRACT, TORT, OR OTHERWISE, EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER FOR THE SOFTWARE DURING THE 12 MONTHS IMMEDIATELY PRECEDING THE FACTS OR CIRCUMSTANCES GIVING RISE TO THE CLAIM.
- 8.3. Independent Allocations of Risk. EACH PROVISION OF THESE TERMS THAT PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES, OR EXCLUSION OF DAMAGES IS TO ALLOCATE THE RISKS OF THESE TERMS BETWEEN THE PARTIES. THIS ALLOCATION IS REFLECTED IN THE PRICING OFFERED TO CUSTOMER AND 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 THESE TERMS. THE LIMITATIONS IN SECTION 8 WILL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY IN THESE TERMS.

## 9. GENERAL

9.1. Relationship. The Parties to this Agreement are independent contractors and this Agreement will not establish any relationship of partnership, joint venture, employment, franchise, or agency between the Parties. Neither Party will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent.

9.2. Use of Brand Name. Scale Computing and its affiliates may use the name of Customer (and Customer's parent company) (the "**Customer Marks**") solely for the purpose of identifying Customer as a licensee or customer of Scale Computing and its affiliates in a 'customer' section of their websites, brochures, or other promotional materials, or as part of a list of their customers in a press release or other public relations materials to the extent permitted by the General Services Acquisition Regulation (GSAR) 552.203-71. Any such limited use shall include proper attribution to Customer or its parent company of any trademark or logo of Customer or its parent company, and shall in no way suggest that Scale Computing and its affiliates are affiliated with, or speaking on behalf of, Customer or Customer's parent company. Any other press releases or marketing materials referring to the Customer Marks shall require mutual approval



in writing prior to public dissemination thereof. Without limiting the foregoing, Customer may object to use of the Customer Marks by providing written notice to Scale Computing specifying the objectionable uses, and Scale Computing and its affiliates will use reasonable efforts to promptly cease the identified uses following receipt of such notice.

9.3. Customer Records. Customer grants to Scale Computing and its independent accountants the right to examine Customer's books and records during Customer's normal business hours to verify compliance with this Agreement. In the event that such failure includes Customer's use of the Software that exceeds the scope of the rights granted hereunder, Customer shall promptly pay to Scale Computing the appropriate license fees for such excess use at Scale Computing's then-current GSA Schedule rates plus interest at interest rate established by the Secretary of the Treasury as provided in [41 U.S.C. 7109](#), which is applicable to the period in which the amount becomes due, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid. The terms of this Section shall survive any termination or expiration of this Agreement.

9.4. Assignability. Customer shall not assign or otherwise transfer its rights under this Agreement without the prior written consent of Scale Computing. Any attempt to make such an assignment without Scale Computing's consent shall be void.

9.5. U.S. Government Restricted Rights. The Software and any accompanying Documentation is commercial computer software, as that term is defined in 48 C.F.R. §2.101. Accordingly, if the Customer is the U.S. Government or any contractor therefor, Customer will receive only those rights with respect to the Software and accompanying Documentation as are granted to all other end users under license, in accordance with (a) 48 C.F.R. §227.7201 through 48 C.F.R. §227.7204, with respect to the Department of Defense and their contractors, or (b) 48 C.F.R. §12.212, with respect to all other U.S. Government licensees and their contractors.

9.6. Notices. All notices and other communications required or permitted hereunder shall be in writing and be deemed given when delivered personally or sent by certified or registered mail, return receipt requested, to the appropriate Party at the address set forth in Customer's order for Scale Computing software and with the appropriate postage affixed. Either Party may change its address for receipt of notice by notice to the other Party in accordance with this Section 9.6.

9.7. Force Majeure. In accordance with GSA 552.212-4(f), Neither Party will be liable to the other Party for any delay or failure to perform as required by this Agreement as a result of any cause or condition beyond its reasonable control, including, without limitation, Acts of God, accident, death, acts, omissions and defaults of third parties and official, governmental and judicial action not the fault of the Party failing or delaying in performance.

9.8. Governing Law. This Agreement shall be governed by and construed in accordance with the Federal laws of the United States, without regard to the provisions of the 1980 U.N. Convention on Contracts for the International Sale of Goods.

9.9. Waiver. Waiver of any right or remedy under this Agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. Failure by either Party to enforce any provisions of this Agreement shall not be deemed a waiver of future enforcement of that or any other provision.

9.10. Severability. If a court or arbitrator of competent jurisdiction holds any term of this Agreement invalid or unenforceable, such term will be reduced or otherwise modified by such court or arbitrator to the minimum extent necessary to make it valid and enforceable. If such term cannot be so modified, it will be severed and the remaining terms of this Agreement will be interpreted in such ways as to give maximum validity and enforceability to this Agreement. If any material limitation or restriction on the use of the Software and any accompanying Documentation under this Agreement is found to be illegal, unenforceable, or invalid, Customer's right to use the Software will immediately terminate.

9.11. Entire Agreement. This Agreement, including all exhibits, constitutes the entire agreement between these Parties and supersedes, and the terms of this Agreement govern, all prior and contemporaneous oral and written communications regarding this transaction, except that this Agreement do not supersede any prior nondisclosure or comparable agreement between the Parties executed prior to this Agreement being executed, nor do they affect the validity of any agreements between the Parties relating to products or services of Scale Computing other than the Software. No employee, agent, or other representative of Scale Computing has any authority to bind Scale Computing with respect to any statement, representation, warranty, or other expression unless the same is specifically set forth in this Agreement. No usage of trade or other regular practice or method of dealing between the Parties will be used to modify, interpret, supplement, or alter the terms of this Agreement. This Agreement may not be altered, modified, or amended except by written amendment duly executed by authorized representatives of each Party hereto. Scale Computing will not be bound by, and specifically objects to, any term, condition, or other provision that is different from or in addition to this Agreement (whether or not it would materially alter this Agreement) that is proffered by Customer in any receipt, acceptance, confirmation, correspondence, purchase order, or otherwise, unless Scale Computing specifically provides a written acceptance of such

provision signed by an authorized representative of Scale Computing. Scale Computing may non-materially update this Agreement from time to time and any updates will be binding at time of Customer's next renewal of Software and any accompanying Documentation. Customer will periodically check for non-material updates to this Agreement, including prior to any renewal.

9.12. Export Restrictions. Customer acknowledges that the Software, Documentation, or any related materials may be subject to export control laws and regulations, and that each of Scale Computing and Customer is responsible for their own compliance with such laws and regulations. This requirement shall survive expiration or termination of this Agreement.

**SCALE COMPUTING, INC.**  
**TERMS OF SUPPORT AND MAINTENANCE**

These Terms of Support and Maintenance (these “**Terms**”) set forth the terms pursuant to which Scale Computing, Inc. (“**Scale Computing**”) will provide Support Services to the individual or entity who has purchased or licensed a Covered Product (“**Customer**”). Each of Scale Computing and Customer is a “**Party**” and together, the “**Parties**.” By entering into an Order Form for Support Services, purchasing a Covered Product, or otherwise using or accessing a Covered Product, Customer agrees to be bound by these Terms.

**1. DEFINITIONS**

- 1.1. “**Clustered System**” means three or more Covered Products that have been joined together in a Scale Computing-supported configuration utilizing native hardware and software components to create a single unified system.
- 1.2. “**Covered Product**” means a hardware appliance or software sold by Scale Computing or Scale Computing’s authorized reseller to Customer for which Customer has purchased Support Services.
- 1.3. “**Customer Data**” means any electronic data submitted by or on behalf of Customer to Scale Computing in connection with the Support Services.
- 1.4. “**Dark Site**” means a location that does not have internet capabilities or which is not connected to the internet.
- 1.5. “**Error**” means any failure of a Covered Product to substantially conform to its published specifications.
- 1.6. “**High Temperature Alert**” means an alert shown by a Covered Product indicating that the temperature of the Covered Product or a component thereof is approaching or has exceeded the manufacturer’s temperature thresholds for safety and proper operation of such Covered Product or component.
- 1.7. “**Order Form**” means the order form, purchase order, or other ordering document pursuant to which Customer is entitled to obtain Support Services from Scale Computing.
- 1.8. “**Severity Levels**” means the severity level classifications and descriptions and their corresponding service objectives and initial response times, as set forth in Exhibit A.
- 1.9. “**Software**” means the SC//HyperCore product.
- 1.10. “**Software Update**” means improvements, bug fixes, error corrections, and patches that may include minor new features, but not architectural changes or major new features to the Software. A Software Update is indicated by a change in the version number after the first decimal (e.g. version 1.0.0 to 1.1.0).
- 1.11. “**Support Hours**” means the support hours corresponding to the Support Package.
- 1.12. “**Support Package**” means the support package purchased by Customer, as indicated on the Order Form.
- 1.13. “**Support Services**” means the technical support, maintenance, and other services provided by Scale Computing, as set forth in these Terms.

**2. SUPPORT SERVICES.**

- 2.1. **Generally. During the Term, and subject to Customer’s compliance with these Terms, Scale Computing will provide the Support Services to Customer based on Customer’s purchased Support Package. During the term of the Support Services, Scale Computing will provide Customer with assistance to diagnose and resolve technical problems with the Covered Products through Scale Computing’s website, by telephone, or by other means specified by Scale Computing.**
- 2.2. Scale Support Web Site. Scale Computing will provision Customer an account to access Scale Computing’s online customer support portal (the “**Support Portal**”). Customer will use the Support Portal only for supporting its authorized use of the Covered Products and for logging a support ticket. Customer agrees to keep the credentials used to access the Support Portal confidential and secure, and accepts responsibility for all activities that occur under its account. Customer agrees to immediately notify Scale Computing in the event Customer believes that Customer’s account is no longer secure. Scale Computing may terminate or suspend Customer’s access to the Support Portal, if Scale Computing, in its sole discretion, determines

Customer's account is no longer secure. All software that is available for download through the Support Portal will be licensed to Customer under the same terms as those covering Customer's use of the Covered Product unless otherwise indicated. By downloading, installing, or otherwise using such software, Customer hereby accepts such additional or different license terms. Customer agrees that Scale Computing may track or collect information or data related to Customer's use of Scale Computing's website or Support Portal, and hereby consents to Scale Computing's use thereof in connection with its business.

2.3. Error Corrections. Scale Computing will use commercially reasonable efforts to correct or minimize the effects of any reproducible and demonstrable Error reported to Scale Computing by Customer in accordance with the service and response objectives for the Severity Level of such Error.

2.4. Security. Scale Computing will maintain appropriate administrative, physical, and technical safeguards, reasonably designed to protect Customer Data from unauthorized access, destruction, use, modification, or disclosure. In addition, Scale Computing will also maintain procedures reasonably designed to respond to security incidents and will notify Customer after becoming aware of any unlawful access or unauthorized acquisition or disclosure of Customer Data following determination by Scale Computing that such security incident has occurred.

**3. FULL SUPPORT.** If Customer has an active Support Package containing full support (as indicated in the Support Portal), Scale Computing will provide the following support for the applicable Covered Products. For clarity, Section 3.1 applies to Software, and the other Sections in this Section 3 apply to hardware:

3.1. Software Support. Scale Computing will provide Support Services for Software, as described in Section 4.

3.2. Hardware Failure Analysis. Upon receipt of a Customer's report that a Covered Product has failed, Scale Computing may review such allegedly failing Covered Product or component and perform a failure analysis to determine the cause of the alleged non-conformance. In the event that such failure may be the result of defective materials or workmanship, Scale Computing may, at its option, repair or place such Covered Product or component, and issue a return material authorization ("**RMA**") in accordance with the applicable Support Package. Customer shall return such Covered Product or component to Scale Computing in accordance with Section 3.3 below. Scale Computing may further examine the allegedly failing Covered Product or component upon receipt thereof to confirm the reason for the failure.

3.3. Return of Products. Upon receipt of an RMA, Customer shall package and ship the Covered Products and components identified in the RMA to Scale Computing within 15 days from when Customer receives a replacement part or as otherwise requested by Scale Computing. Customer shall ensure that the RMA number is marked and visible on the outside of the package, and the package is sent prepaid, insured, and packaged appropriately for safe shipment of the Covered Products or components. Scale Computing may reject any packages sent that do not comply with the foregoing. Customer may contact Scale Computing to obtain instructions and packaging materials (as available) for safe shipment of Covered Products or components. Title and risk of loss to any returned Covered Products or components shall transfer to Scale Computing upon receipt. If the failure is due to defective materials or workmanship, Scale Computing will bear all freight expenses for returned Covered Products or components, provided Customer complies with the process set forth in this Section 3.3 and utilizes Scale Computing's designated carrier.

3.4. Spare Parts. Customer may purchase spare parts by submitting a purchase order to Scale Computing. Any purchase of spare parts is subject to and governed by these Terms. Such spare parts will be subject to the original warranty. Title to, and risk of loss of, the spare parts will pass to Customer when such spare parts are entrusted to a carrier. Any and all legal terms in a customer's purchase order are null and void. Payments for spare parts will be made as directed by Scale Computing.

3.5. Excluded Coverage. For clarity, Scale Computing will not be responsible for replacing or repairing any Covered Products or components with failures caused by: (a) issues external to the Covered Product, such as issues with Customer's network or systems, (b) improper use or installation, or (c) damage to the Covered Product while in Customer's possession or control (each an "**Out of Warranty Cause**"). If Scale Computing determines that the failure of a Covered Product or component is caused by an Out of Warranty Cause, Scale Computing may invoice Customer for, and Customer agrees to pay, any costs incurred by Scale Computing for diagnosing the cause of such failure, for any related shipping costs, and, to the extent Scale Computing has repaired or replaced the failed Covered Product or component, the cost of such repair or replacement.

Replacing or repairing any Covered Product or component shall not extend any warranty covering the replaced Covered Product or component.

- 3.6. Opened Hardware Covers. Covered Products may contain mechanisms or devices to detect whether the Covered Product has been opened or any protective casing has been removed or tampered with. Scale Computing shall have no obligation to provide support for any Covered Product that Scale Computing determines has been opened or for which any casing has been removed or tampered with unless Customer does so in accordance with Scale Computing's express written instructions.

**4. SOFTWARE SUPPORT.** If Customer has an active Support Package specified as containing full support or Software-only support, Scale Computing will provide the following support for Software:

- 4.1. Software Updates. Scale Computing will make Software Updates available to Customer, if, as and when Scale Computing makes any such Software Update generally available to its other customers. Updates are licensed under the terms of the Software unless otherwise stated.
- 4.2. Documentation. Customer may access Scale Computing's most recently published support documentation on Scale Computing's website, through the Support Portal.

**5. FULL SUPPORT ELIGIBILITY.** For the avoidance of doubt, Customer will be entitled to full support (i.e., coverages for hardware and software) for Covered Products, when Customer has purchased a Support Package that includes full support from Scale Computing. If Customer purchased support from a third party, such third party support may include hardware-related support to be provided by such third party, and Software-only support to be provided by Scale Computing.

**6. ON-SITE INSTALLATION.** Scale Computing may, upon Customer's request, agree to provide on-site installation. If on-site installation is included in Customer's Support Package, such installation will be offered on a one time basis as a separate charge to Customer. Without limiting the foregoing, future on-site support may be provided pursuant to a separate written agreement between Scale Computing and Customer.

**7. DARK SITES SUPPORT.** In the event Customer operates a Covered Product from a Dark Site, or a Covered Product is not connected or has limited access to the internet ("Dark Products"), Customer is responsible for ensuring Scale Computing has remote access to the Dark Products sufficient to allow Scale Computing to provide the Support Services, such as, by way of example, via lights-out management, KVM over IP, or remote terminal access. Scale Computing will use commercially reasonable efforts to provide Customer support for Dark Products during Scale Computing's Support Hours only if: (a) Customer has an active Support Package that includes Dark Site support, and (b) Scale Computing has sufficient access to provide the Support Services. Customer may purchase Remote Access Mechanisms from Scale Computing upon request.

**8. EXCLUSIONS, LIMITATIONS AND CONDITIONS TO SUPPORT SERVICES.**

8.1. Services Not Covered. Notwithstanding anything to the contrary in these Terms, the Support Services shall not include, and Scale Computing will have no obligation to provide Support Services for any Errors, failures, defects or other issues caused by or resulting from:

8.1.1. Customer's failure to implement any Software Update;

8.1.2. Changes made by Customer or a third party to an operating system, network configuration or environment that adversely affects a Covered Product;

8.1.3. Configuration of the Customer's network (except for configuration of the Customer's network done in accordance with Scale Computing's written instructions for installation, or maintenance of a Covered Product);

8.1.4. Any repairs, alterations or modifications made to a Covered Products other than those made by or at the direct of Scale Computing;

- 8.1.5. Use of a Covered Product in a manner other than as specific in the applicable documentation or specifications;
- 8.1.6. Customer's installation, operation, repair, or maintenance of a Covered Product in a manner not in accordance with Scale Computing's instructions
- 8.1.7. The combination, replacement, use, or interconnection of a Covered Product (or any part thereof) with other software or hardware that was not supplied or approved by Scale Computing;
- 8.1.8. Fire or water damage, earthquakes, lightning, or other acts of nature; or other causes external to a Covered Product;
- 8.1.9. Abnormal physical or electrical stress;
- 8.1.10. Customer's or a third party's negligence or accidental damage;
- 8.1.11. Customer's failure to provide and maintain adequate electrical power, cooling or humidity controls, in accordance with a Covered Product's specifications;
- 8.1.12. Excessive wear or deterioration of a Covered Product;
- 8.1.13. Relocation of a Covered Product (except as authorized by Scale Computing in accordance with Section 10);
- 8.1.14. Breach of Customer of these Terms or of the license agreement governing Customer's use of a Covered Product;
- 8.1.15. Customer's refusal to follow Scale Computing's instructions, implement any Error correction, or install a replacement part made available to Customer by Scale Computing or its designee.

## 8.2. Limitations on Support Services

- 8.2.1. *Single Node Systems.* With the exception of HyperCore Edge systems, in the event Customer operates a Covered Product by itself and not in a Clustered System ("**SNS System**"), as a condition to Scale Computing's obligation to provide Support Services for the SNS System, Customer must have an active Support Package for the SNS System, and must replicate Customer's applications and data to another system sufficient to allow Customer to failover to such system and run its applications and access its data while the SNS System is inoperable for any reason. In the event Scale Computing provides Support Services for a Covered Product that has not been so replicated, then, without limiting any other limits of Scale Computing's liability arising out of or in connection with the subject matter hereof, Scale Computing shall have no liability for any data, productivity, monetary or business losses incurred by Customer in connection with providing such Support Services. An SNS System can be operated as a business resilience system only if purchased as a HyperCore BRS limited license type. Customer must use a data backup service when Customer is using the HyperCore BRS limited license type. For the avoidance of doubt, Scale Computing shall have no liability for any downtime or data loss experienced by Customer in connection with the BRS for SNS Systems, whether the underlying data is subject to backup or not.
- 8.2.2. *Clustered Systems.* Each Covered Product in a Clustered System must have an active Support Package in order to receive Support Services. Scale Computing will have no obligation to provide Support Services to any Covered Products in a Clustered System if any individual Covered Product within the Clustered System does not have an active Support Package that includes the type of Support Service requested.

## 8.3. **Customer Obligations. Scale Computing's obligation to provide the Support Services is conditioned on Customer's fulfillment and compliance with the following obligations.**

- 8.3.1. *Maintenance.* Customer will maintain the installation site, the Covered Products, and the operating environment for the Covered Products in good working order and in accordance with the specifications and documentation for the Covered Products, including any manufacturer's specifications for the

Covered Product or a component thereof.

- 8.3.2. *Personnel.* Customer shall only allow use of the Covered Products by competent, trained personnel.
- 8.3.3. *Software Releases.* In order to receive Support Services, Customer must implement all Software Updates in accordance with on Scale Computing's Software Support Matrix (available at <https://community.scalecomputing.com/s/article/Scale-Computing-Software-Support-Matrix> or a successor URL).
- 8.3.4. *Cooperation.* Customer will reasonably cooperate with Scale Computing and assist as reasonably requested by Scale Computing in connection with Scale Computing's provision of the Support Services. Such cooperation shall include: (a) providing Scale Computing with remote access to the Covered Products as may be necessary to provide the Support Services, (b) providing Scale Computing with the information about Errors (as set forth in subsection 8.3.5 below), and (c) reasonable assistance as may be required to diagnose or service a Covered Product, including restarting the system, logging or running operational readiness tasks, as may be requested by Scale Computing.
- 8.3.5. *Notification.* Customer shall promptly notify Scale Computing of any Errors with information sufficient to allow Scale Computing to reproduce the Error ("**Error Notification**"). The Error Notification shall include a description of the Error, including, if applicable, a description of any physical indicators of the Error, alarm codes, system logs, or any other information reasonably requested by Scale Computing. Error Notifications made via email will, by default, be treated as having a Severity Level of 4 (as described in the Severity Levels). Any software or product information provided by Customer to Scale Computing in connection with the Support Services may be freely used by Scale Computing without restriction.
- 8.3.6. *Designated Contact.* Customer will designate a primary contact and an alternate contact (each a "**Designated Contact**") that Scale Computing may contact in connection with the Support Services. All Error Notifications must be made by a Designated Contact. Customer may change its Designated Contacts by providing Scale Computing at least 10 days' notice of such change.
- 8.3.7. *Data.* Customer will be responsible for maintaining backup copies of all data residing in or relying in any way on a Covered Product. Scale Computing will have no responsibility or liability arising out of or related to the loss of any data incurred in connection with the Support Services.
- 8.3.8. *Temperature, Cooling and Age.* Customer shall maintain proper cooling of the Covered Products. In the event a High Temperature Alert is triggered, Customer will check the physical hardware location and take corrective action as may be necessary to address the any underlying causes, including, without limitation, powering off the affected Covered Products. Additionally, Customer shall promptly notify Scale Computing in the event Customer is unable to ascertain the underlying cause for the High Temperature Alert. In the event Scale Computing determines that Customer has failed to comply with its obligations, Scale Computing may elect (in its sole discretion) to either: (a) provide Software-only support for the remainder of the Support Term (as defined in Section 11.1), and upon such election, Customer will no longer be entitled to receive full support for the Covered Product, or (b) require (as a condition to Scale Computing's obligation to provide any Support Services) that Customer purchase and replace the affected components in the Covered Product in accordance with Scale Computing's written directions.
- 8.3.9. *Fees.* Customer shall pay the fees for the Support Services as set forth in the Order Form. Except as indicated on the applicable Order Form, payments are non-refundable.
- 8.4. Abuse of Support Services. Customer acknowledges that the Support Services are intended to provide support for the Covered Products. Accordingly, in no event will the Support Services include administrative, monitoring, troubleshooting or other duties:
- 8.4.1. Outside of the Covered Product's direct software or hardware platforms or immediate networking environment;
- 8.4.2. Outside of the provided web interface features, including but not limited to performing accessible configurations such as snapshot scheduling or virtual machine cloning, replication, or exporting; or

8.4.3. Involving guest environments on host software, including operating system boot issues, performance issues, viruses, software or hardware customizations, general troubleshooting or server, service, or application installation and configuration.

Scale Computing reserves the right to limit or terminate active Support Packages without refund after one written warning if Scale Computing determines that Customer is utilizing or attempting to utilize Scale Computing support resources to assist with any of the foregoing.

9. **LAPSED SERVICE FEE.** In the event Customer elects to purchase a Support Package for a Covered Product for which Support Services have lapsed, Customer agrees to pay Scale Computing: (a) the maintenance fees set forth on the Order Form for the such Support Package, (b) a lapsed service fee equal to Scale Computing's then-current standard maintenance fee for such Support Package pro-rated for the amount of time Support Services for the Covered Product have lapsed, (c) Scale Computing's then-current catch-up fees, if applicable, and (d) any recertification fees, as applicable.
10. **RELOCATION AND TRANSFER OF COVERED PRODUCTS.** All relocations of a Covered Product must be performed in accordance with Scale Computing's instructions in order to continue receiving full support as indicated in Section 3. In no event will Scale Computing be responsible for, or be obligated to provide hardware replacement support for, damage, failures, Errors or other issues arising out of or resulting from relocation or movement of a Covered Product. Scale Computing may provide Customer with shipping and packaging materials for the relocation of a Covered Product upon request. Scale Support will assist in facilitating pre- and post-move health checks of the Covered Products upon request. A full list of recommendations for a successful physical relocation can be found on the transfer documents.

## 11. TERM AND TERMINATION

- 11.1. Support Term. These Terms go into effect on the date Customer agrees to these Terms and continue until terminated, or until Customer no longer maintains an active Support Package for such Covered Product (such period the "**Support Term**"). The Support Term for each Support Package will begin on the date the applicable Covered Product is shipped to Customer unless otherwise specified on the Order Form, and will continue for the purchased duration unless these Terms are terminated.
- 11.2. Full Support Renewal. Except as otherwise specified on an Order Form, Customer may renew the Support Term for Support Packages containing full support for so long as full support is offered by Scale Computing for the applicable Covered Product by providing notice to Scale Computing at least 30 days prior to the end of the Support Term, provided, however, that in no event can the aggregate Support Term for the Support Package extend beyond five (5) years from the original purchase date of the applicable Covered Product.
- 11.3. Software Support Renewal. Except as otherwise specified on an Order Form, Customer may request to renew the Support Term for Support Packages containing full support or Software-only support as Software-only support for so long as Software-only support is offered by Scale Computing for the applicable Covered Product by providing notice to Scale Computing at least 30 days prior to the end of the Support Term, provided, however, that in no event can the aggregate Support Term for the Support Package extend beyond seven years from the original purchase date of the applicable Covered Product. For clarity, any Support Packages renewed pursuant to this Section 11.3 shall contain Software-only support, and Scale Computing shall not be obligated to provide hardware-related support for any Covered Product covered by such renewed Support Package.
- 11.4. Termination. Either Party may terminate these Terms or an affected Support Package in the event the other Party: (a) materially breaches these Terms, and fails to cure such breach within 30 days of being notified thereof; or (b) makes an assignment for the benefit of creditors, become subject to proceedings under bankruptcy or insolvency law, is unable to pay debts as they mature, becomes insolvent, or ceases operating in the normal course of business. Either Party may terminate these Terms upon notice to the other in the event there are no active Support Packages.
- 11.5. Effect of Termination. Upon termination of these Terms, all Support Packages shall terminate as well, and the rights and obligations of the Parties under these Terms will terminate, except that Sections 1, 11.5, 12, 13, 14.2, 15, and 16 will survive termination of these Terms.



**12. PROPRIETARY RIGHTS.** Except as explicitly provided herein, Scale Computing retains all right, title, and interest in and to the intellectual property rights in the Support Services, Covered Products and the Software, including, without limitation, any Software Updates, documentation, and all derivative works created therefrom. Customer will not delete or in any manner alter any copyright, trademark, or other proprietary rights notices of Scale Computing appearing on or in the Covered Products, Software, or documentation, and Customer shall reproduce any such notices on all copies it makes of the Covered Products, Software or documentation. To the extent Customer provides feedback to Scale Computing regarding any Covered Product, Software, Support Services, or documentation (“Feedback”), Customer agrees that Scale Computing may freely exploit such Feedback without further compensation to Customer.

### **13. CONFIDENTIALITY.**

13.1. Definition. As used herein, “**Confidential Information**” means all confidential information disclosed by or otherwise obtained from a Party (“**Disclosing Party**”) to or by the other Party (“**Receiving Party**”), whether orally, visually, or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. “Confidential Information” of a Disclosing Party includes such Disclosing Party’s technology and technical information, product plans and designs, and business processes. Without limiting the foregoing, Scale Computing’s “Confidential Information” includes the Software, documentation, and all Scale Computing product technical information, as well as technical information generated by Covered Products about the operation or performance of Covered Products. “Confidential Information” does not include any information that (a) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (b) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (c) is received from a third party without breach of any obligation owed to the Disclosing Party, or (d) was independently developed by the Receiving Party without use of or reference to the Disclosing Party’s Confidential Information.

13.2. Protection of Confidential Information. Except as otherwise permitted in writing by the Disclosing Party, the Receiving Party will (a) use 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) not to disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of these Terms and (b) limit access to Confidential Information of the Disclosing Party to those of its employees, contractors and agents who need such access for purposes consistent with these Terms and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein. Notwithstanding the foregoing, the Receiving Party is permitted to disclose Confidential Information of the Disclosing Party on a need-to-know basis to employees, contractors, and agents of its Affiliates. The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party’s cost, if the Disclosing Party wishes to contest the disclosure. “**Affiliate**” means any corporation, partnership, joint venture, or other entity: (a) as to which a Party owns or controls, directly or indirectly, stock or other interest representing more than 50% of the aggregate stock or other interest entitled to vote on general decisions reserved to the stockholders, partners, or other owners of such entity; (b) if a partnership, as to which a Party or another Affiliate is a general partner; or (c) that a Party otherwise is in common control with, controlled by, or controls in matters of management and operations.

### **14. WARRANTIES AND DISCLAIMER**

14.1. Limited Warranty. Scale Computing warrants to Customer that it will perform the Support Services in a professional and workmanlike manner. Scale Computing will use reasonable efforts to reperform any Support Services to correct or circumvent any nonconformities in the Support Services identified by Customer within the 30-day period following the date of performance of such Support Services. This Section 14.1 states Scale Computing’s sole and exclusive liability, and Customer’s sole and exclusive remedy for breach of this warranty.

14.2. Disclaimer. EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES STATED IN THIS SECTION, SCALE COMPUTING MAKES NO ADDITIONAL REPRESENTATION OR WARRANTY OF ANY KIND WHETHER EXPRESS, IMPLIED (EITHER IN FACT OR BY OPERATION OF LAW), OR STATUTORY, AS TO ANY MATTER WHATSOEVER. SCALE COMPUTING EXPRESSLY DISCLAIMS ALL IMPLIED

WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY, ACCURACY, TITLE, AND NON-INFRINGEMENT. SCALE COMPUTING DOES NOT WARRANT AGAINST INTERFERENCE WITH THE ENJOYMENT OF THE SOFTWARE. SCALE COMPUTING DOES NOT WARRANT THAT THE SOFTWARE, OR THE DOCUMENTATION ARE ERROR-FREE OR THAT OPERATION OF THE SOFTWARE WILL BE SECURE, FULLY AVAILABLE OR UNINTERRUPTED. SCALE COMPUTING DOES NOT WARRANT THAT ANY INFORMATION PROVIDED ON, IN OR THROUGH THE SOFTWARE OR THE DOCUMENTATION IS ACCURATE OR COMPLETE OR THAT ANY SUCH INFORMATION WILL ALWAYS BE AVAILABLE. SCALE COMPUTING EXERCISES NO CONTROL OVER, AND EXPRESSLY DISCLAIMS ANY LIABILITY ARISING OUT OF OR BASED UPON THE RESULTS OF, CUSTOMER'S USE OF THE SOFTWARE, OR THE DOCUMENTATION. SCALE COMPUTING DOES NOT WARRANT AGAINST LOSS OF DATA.

## 15. LIMITATIONS OF LIABILITY

- 15.1. Disclaimer of Indirect Damages. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THESE TERMS, SCALE COMPUTING WILL NOT, UNDER ANY CIRCUMSTANCES, BE LIABLE TO CUSTOMER FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS OR LOSS OF BUSINESS, ARISING OUT OF OR RELATED TO THE SUBJECT MATTER OF THESE TERMS, EVEN IF SCALE COMPUTING IS APPRISED OF THE LIKELIHOOD OF SUCH DAMAGES. WITHOUT LIMITING THE FOREGOING, UNDER NO CIRCUMSTANCES WILL SCALE COMPUTING BE LIABLE FOR ANY LOSS OF DATA STORED IN, OR IN CONNECTION WITH, THE SOFTWARE.
- 15.2. Cap on Liability. UNDER NO CIRCUMSTANCES WILL SCALE COMPUTING'S (OR ITS SUPPLIERS) TOTAL LIABILITY OF ALL KINDS ARISING OUT OF OR RELATED TO THESE TERMS (INCLUDING BUT NOT LIMITED TO WARRANTY CLAIMS), REGARDLESS OF THE FORUM AND REGARDLESS OF WHETHER ANY ACTION OR CLAIM IS BASED ON CONTRACT, TORT, OR OTHERWISE, EXCEED THE TOTAL AMOUNT OF FEES PAID BY CUSTOMER FOR THE ACTIVE SUPPORT PACKAGE FOR WHICH CLAIMED DAMAGES AROSE.
- 15.3. Independent Allocations of Risk. EACH PROVISION OF THESE TERMS THAT PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES, OR EXCLUSION OF DAMAGES IS TO ALLOCATE THE RISKS OF THESE TERMS BETWEEN THE PARTIES. THIS ALLOCATION IS REFLECTED IN THE PRICING OFFERED BY SCALE COMPUTING TO CUSTOMER AND 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 THESE TERMS. THE LIMITATIONS IN SECTION 15 WILL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY IN THESE TERMS.

## 16. GENERAL

- 16.1. Relationship. The Parties to these Terms are independent contractors and these Terms will not establish any relationship of partnership, joint venture, employment, franchise, or agency between the Parties. Neither Party will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent.
- 16.2. Use of Brand Name. Scale Computing and its Affiliates may use the name, brand, or logo of Customer (and Customer's parent company) (the "**Customer Marks**") solely for the purpose of identifying Customer as a licensee or customer of Scale Computing and its Affiliates in a 'customer' section of their websites, brochures, or other promotional materials, or as part of a list of their customers in a press release or other public relations materials. Any such limited use shall include proper attribution to Customer or its parent company of any trademark or logo of Customer or its parent company, and shall in no way suggest that Scale Computing and its Affiliates are affiliated with, or speaking on behalf of, Customer or Customer's parent company. Any other press releases or marketing materials referring to the Customer Marks shall require mutual approval in writing prior to public dissemination thereof. Without limiting the foregoing, Customer may object to use of the Customer Marks by providing written notice to Scale Computing specifying the objectionable uses, and Scale Computing and its Affiliates will use reasonable efforts to promptly cease the identified uses following receipt of such notice.
- 16.3. Assignability. Customer shall not assign or otherwise transfer its rights under these Terms without the prior written consent of Scale Computing. Any attempt to make such an assignment without Scale Computing's

consent shall be void. Scale Computing may freely assign these Terms.

- 16.4. U.S. Government Restricted Rights. The Software is commercial computer software, as that term is defined in 48 C.F.R. §2.101. Accordingly, if the Customer is the U.S. Government or any contractor therefor, Customer will receive only those rights with respect to the Software and corresponding documentation as are granted to all other end users under license, in accordance with (a) 48 C.F.R. §227.7201 through 48 C.F.R. §227.7204, with respect to the Department of Defense and their contractors, or (b) 48 C.F.R. §12.212, with respect to all other U.S. Government licensees and their contractors.
- 16.5. Notices. All notices and other communications required or permitted hereunder shall be in writing and be deemed given when delivered personally or sent by certified or registered mail, return receipt requested, to the appropriate Party at the address set forth in Customer's order for Scale Computing Platform software and with the appropriate postage affixed. Either Party may change its address for receipt of notice by notice to the other Party in accordance with this Section 16.5. Notices to Scale Computing shall be sent to: Scale Computing, Inc, 525 S. Meridian - Suite 3E, Indianapolis, IN 46225. Email for legal notices: legalnotices@scalecomputing.com.
- 16.6. Force Majeure. Neither Party will be liable to the other Party for any delay or failure to perform as required by these Terms as a result of any cause or condition beyond its reasonable control, including, without limitation, Acts of God, accident, death, acts, omissions and defaults of third parties and official, governmental and judicial action not the fault of the Party failing or delaying in performance.
- 16.7. Governing Law. These Terms shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to the provisions of the 1980 U.N. Convention on Contracts for the International Sale of Goods. The Parties hereby irrevocably consent to the personal jurisdiction and venue of the federal, state, and local courts in New Castle County, Delaware in connection with any action arising out of or in connection with these Terms. Notwithstanding the foregoing, at either Party's option, any dispute or claim arising out of or related to these Terms may be finally settled by confidential binding arbitration in Wilmington, Delaware before one arbitrator, administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Customer will use the Software and corresponding documentation in compliance with all applicable laws and regulations.
- 16.8. Waiver. Waiver of any right or remedy under these Terms or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. Failure by either Party to enforce any provisions of these Terms shall not be deemed a waiver of future enforcement of that or any other provision.
- 16.9. Severability. If a court or arbitrator of competent jurisdiction holds any term of these Terms invalid or unenforceable, such term will be reduced or otherwise modified by such court or arbitrator to the minimum extent necessary to make it valid and enforceable. If such term cannot be so modified, it will be severed and the remaining terms of these Terms will be interpreted in such ways as to give maximum validity and enforceability to these Terms. If any material limitation or restriction on the use of the Software under this Agreement is found to be illegal, unenforceable, or invalid, Customer's right to use the Software will immediately terminate.
- 16.10. Entire Agreement. These Terms, including all exhibits, constitutes the entire agreement between these Parties and supersedes, and the terms of these Terms govern, all prior and contemporaneous oral and written communications regarding this transaction, except that these Terms do not supersede any prior nondisclosure or comparable agreement between the Parties executed prior to these Terms being executed, nor do they affect the validity of any agreements between the Parties relating to products or services of Scale Computing other than the Software. No employee, agent, or other representative of Scale Computing has any authority to bind Scale Computing with respect to any statement, representation, warranty, or other expression unless the same is specifically set forth in these Terms. No usage of trade or other regular practice or method of dealing between the Parties will be used to modify, interpret, supplement, or alter the terms of these Terms. These Terms may not be altered, modified, or amended except by written amendment duly executed by authorized representatives of each Party hereto. Scale Computing will not be bound by, and specifically objects to, any term, condition, or other provision that is different from or in addition to these Terms (whether or not it would materially alter these Terms) that is proffered by Customer in any receipt, acceptance, confirmation, correspondence, purchase order, or otherwise, unless Scale Computing specifically provides a written acceptance of such provision signed by an authorized representative of Scale Computing. Scale Computing may update these Terms from time to time and any updates will be binding at

time of Customer's next renewal of the Software. Customer will periodically check for updates to these Terms, including prior to any renewal.

**EXHIBIT A**

**Severity Levels**

Scale Computing will assign a Severity Level for each technical problem based on Customer's description of the problem(s) and their impact on overall data accessibility. The Initial Response Time Objective is defined as Scale Computing providing some form of verbal or written contact with Customer to respond to and/or identify the issue or concern as Scale Computing understands it at that time. Scale Computing will use commercially reasonable efforts to meet the objectives below.

<b>Severity</b>	<b>Definition</b>	<b>Service Objective</b>	<b>Initial Response Time Objective</b>
1 (Critical)	A critical problem requiring immediate resolution. Problem may cause loss of data and/or restrict production data availability.	Resources applied continuously until a solution or acceptable workaround is found.	2 hours
2 (Major)	A serious problem that affects major functionality. Operation continues in a restricted fashion and there may be restricted access to production data.	Resources applied on a priority basis during normal business hours (8AM–8PM ET Monday through Friday), until a solution or workaround is found.	2 hours
3 (Minor)	A problem that minimally affects, if at all, functionality operations or for which an acceptable workaround exists.	Resources applied during normal business hours (8AM–8PM ET Monday through Friday) until a solution or workaround is found.	2 hours
4 (Minor Enhancements)	A minor condition or request that has no significant effect on the Customer operations.	Resources applied during normal business hours (8AM–8PM ET Monday through Friday) until a solution or workaround is found.	1 business day

## SCALE COMPUTING INC FLEET MANAGER TERMS

These Fleet Manager Terms (these “**Terms**”) are made and entered into between Scale Computing Inc. (“**Scale**”) and the legal entity with a subscription to the Scale Computing Platform software on whose behalf you are agreeing to these Terms (“**Customer**”). These Terms sets forth the terms and conditions pursuant to which Customer will be permitted to use and receive access to Scale Computing Fleet Manager cloud service (the “**SC//Fleet Manager**”). Each of Scale and Customer is a “**Party**” and together, the “**Parties**.” BY ACCEPTING THESE TERMS, BY EXECUTING OR AGREEING TO AN ORDER OR OTHER DOCUMENT THAT REFERENCES THESE TERMS, USING SC//FLEET MANAGER OR OTHERWISE AFFIRMATIVELY INDICATING YOUR ACCEPTANCE OF THESE TERMS, YOU: (A) AGREE TO THESE TERMS ON BEHALF OF CUSTOMER; AND (B) REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND CUSTOMER TO THESE TERMS. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS, YOU MUST NOT ACCEPT THESE TERMS AND MAY NOT USE THE SC//FLEET MANAGER.

### 1. RIGHTS AND RESTRICTIONS

- 1.1. Right to Access and Use. To be able to access and use the SC//Fleet Manager, Customer must have an active subscription to Scale Computing HyperCore virtualization platform software and such subscription must include access to the SC//Fleet Manager or Customer must have purchased a separate subscription to SC//Fleet Manager. The length of Customer’s subscription is the “**SC//Fleet Manager Term**”. Subject to the restrictions set forth in these Terms, Customer’s timely payment of applicable subscription fees, Scale hereby grants to Customer the right to access the SC//Fleet Manager during the SC//Fleet Manager Term for their Scale Computing HyperCore virtualization platform software instances. Customer is solely responsible for provisioning access accounts to the SC//Fleet Manager and all uses of the SC//Fleet Manager occurring under Customer’s accounts.
- 1.2. Trial Period. If Customer was provided access to the SC//Fleet Manager for evaluation or proof of concept purposes, then notwithstanding Section 1.1, Customer may use the SC//Fleet Manager solely during the designated trial period (or if no period is designated, then 30 days) (the “**Trial Period**”) for evaluation purposes only. Customer acknowledges that evaluation or proof of concept versions of the SC//Fleet Manager may automatically be disabled upon expiration of the Trial Period, and that any data stored in the SC//Fleet Manager may become unavailable at that time.
- 1.3. Use Restrictions. Except as otherwise explicitly provided in these Terms, or as may be expressly permitted by applicable law, Customer will not, and will not permit or authorize third parties to: (a) rent, lease, or otherwise permit third parties (or other persons not authorized by these Terms) to access or use the SC//Fleet Manager or the Documentation; (b) use the SC//Fleet Manager to provide services to third parties (e.g., as a service bureau); (c) use the SC//Fleet Manager for any benchmarking activity or in connection with the development of a competitive product; (d) circumvent or disable any security or other technological features or measures of the SC//Fleet Manager or use the SC//Fleet Manager in a manner that Scale reasonably believes poses a threat to the security of any Scale-controlled computer systems; (e) modify, translate, reverse engineer, decompile, disassemble, or otherwise derive the source code or the underlying ideas, algorithms, structure, or organization from the SC//Fleet Manager (except to the extent that applicable law prevents the prohibition of such activities); (f) use or access the SC//Fleet Manager in a manner that materially impacts or burdens Scale or Scale’s servers or other computer systems, or that interferes with Scale’s ability to make the SC//Fleet Manager available to any third party; or (g) use the SC//Fleet Manager in violation of Scale’s then-current published policies, as may be updated from time to time.
- 1.4. Documentation. Scale may provide to Customer user manuals, help files, specification sheets, or other documentation, in whatever form, relating to the SC//Fleet Manager (collectively, the “**Documentation**”). Scale hereby grants to Customer a non-exclusive, non-transferable, non-sublicensable right and license under Scale’s rights in the Documentation to use such

Documentation solely to enable Customer to exercise its rights under these Terms to use the SC//Fleet Manager as set forth in this Section 1.

- 1.5. Protection against Unauthorized Use. Customer will prevent any unauthorized use of or access to the SC//Fleet Manager and the Documentation and will immediately notify Scale in writing of any such unauthorized use or access of which Customer becomes aware. Customer will immediately terminate any unauthorized use by persons having access to the SC//Fleet Manager or the Documentation through Customer.
  - 1.6. Ownership; Data. As between Scale and Customer, Customer retains all right, title, and interest, including all intellectual property rights, in and to (a) any data or information that Customer uploads or inputs into the SC//Fleet Manager or otherwise makes available to Scale, including in connection with Customer's use of the SC//Fleet Manager, and (b) data that is generated and made available to Customer by the SC//Fleet Manager through use of the data described in part (a) above ((a) and (b) collectively, "**Customer Data**"). Customer hereby grants Scale a non-exclusive, worldwide, royalty-free, fully paid, sublicensable, fully transferable, irrevocable license to use, process, transmit, store, and disclose the Customer Data: (a) during the Term, for the purpose of exercising Scale's rights and performing its obligations under these Terms and (b) in perpetuity, in a form that does not identify Customer as the source thereof, for Scale's and its Affiliates' legitimate business purposes, including to develop and improve Scale's and its Affiliates' products and services. As between the Parties, Scale owns all right, title, and interest, including all intellectual property rights, in and to the SC//Fleet Manager, the Documentation, and any improvements to any of Scale's products or services made as a result of Scale's use, processing, or generation of Customer Data. Scale reserves all rights not granted.
  - 1.7. Security. Scale will maintain appropriate administrative, physical, and technical safeguards, reasonably designed to protect Customer Data from unauthorized access, destruction, use, modification, or disclosure. In addition, Scale will also maintain procedures reasonably designed to respond to security incidents and will notify Customer after becoming aware of any unlawful access or unauthorized acquisition or disclosure of Customer Data following determination by Scale that such security incident has occurred.
  - 1.8. Feedback. If Customer provides any feedback to Scale concerning the functionality and performance of the SC//Fleet Manager, or any Documentation (including identifying potential errors and improvements), Customer hereby grants to Scale a worldwide, nonexclusive, sublicensable, transferrable, fully paid-up, and royalty free license to exploit such feedback without payment or restriction.
  - 1.9. Availability and Uptime. During the Term, Scale will use commercially reasonable efforts to make the SC//Fleet Manager available to Customer and perform with 99.9% uptime, excluding maintenance, measured on a calendar month basis. Email or phone support will be available to Customer.
  - 1.10. Modification. Scale may modify, improve, update, or otherwise change the functionality of the SC//Fleet Manager at any time at its discretion. If at any point Scale modifies the SC//Fleet Manager so that Customer loses material functionality, within 30 days of the loss of such material functionality, Customer may notify Scale that Customer elects to terminate these Terms. Upon receiving notice of termination, Scale will refund to Customer any unused, prepaid fees on a pro rata basis.
2. TERM AND TERMINATION
- 2.1. Term. These Terms will remain in effect until terminated in accordance with its terms (the "**Term**").
  - 2.2. Reserved.
  - 2.3. Termination for Material Breach. 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, Scale shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer.

2.4. Reserved.

2.5. Suspension. Notwithstanding anything to the contrary in these Terms, Scale may temporarily suspend Customer's access to any portion or all of the SC//Fleet Manager if Scale reasonably determines that (i) there is a threat or attack on the SC//Fleet Manager; (ii) Customer's use of the SC//Fleet Manager disrupts or poses a security risk to Scale or to any other customer or vendor of Scale; (iii) Customer is using the SC//Fleet Manager for fraudulent or illegal activities. Scale shall use commercially reasonable efforts to provide prior written notice of any suspension to Customer and to provide updates regarding resumption of access to the SC//Fleet Manager following any suspension. Scale shall use commercially reasonable efforts to resume providing access to the SC//Fleet Manager as soon as reasonably possible after the event giving rise to the SC//Fleet Manager suspension is cured. Scale will have no liability for any damage, liabilities, losses (including any loss of or profits), or any other consequences that Customer may incur as a result of such suspension.

2.6. Post-Termination Obligations. If these Terms are terminated for any reason any and all liabilities accrued prior to the effective date of the termination will survive.

2.7. Survival. Notwithstanding anything to the contrary herein, Sections 1.3, 1.6, 1.8, 2.6, 2.7, 3, 4.2, 5, 6, 7 will survive termination or expiration of these Terms. Rights to access the SC//Fleet Manager do not survive the Term.

3. CONFIDENTIALITY

3.1. Definition. As used herein, "**Confidential Information**" means all confidential information disclosed by or otherwise obtained from a Party ("**Disclosing Party**") to or by the other Party ("**Receiving Party**"), whether orally, visually, or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. "Confidential Information" of a Disclosing Party includes such Disclosing Party's business and marketing plans, technology and technical information, product plans and designs, and business processes. Without limiting the foregoing, Scale's "Confidential Information" includes the SC//Fleet Manager, all Documentation, and all Scale technical information. Customer Data will not be considered Confidential Information of Customer and instead will be subject to Section 1.7. "Confidential Information" does not include any information that (a) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (b) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (c) is received from a third party without breach of any obligation owed to the Disclosing Party, or (d) was independently developed by the Receiving Party without use of or reference to the Disclosing Party's Confidential Information.

3.2. Protection of Confidential Information. Except as otherwise permitted in writing by the Disclosing Party, the Receiving Party will (a) use 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) not to disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of these Terms and (b) limit access to Confidential Information of the Disclosing Party to those of its employees, contractors and agents who need such access for purposes consistent with these Terms and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein. Notwithstanding the foregoing, the Receiving Party is permitted to disclose Confidential Information of the Disclosing Party on a need-to-know basis to employees, contractors, and agents of its Affiliates. The Receiving Party may disclose



Confidential Information of the Disclosing Party if it is compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. "**Affiliate**" means any corporation, partnership, joint venture, or other entity: (i) as to which a Party owns or controls, directly or indirectly, stock or other interest representing more than 50% of the aggregate stock or other interest entitled to vote on general decisions reserved to the stockholders, partners, or other owners of such entity; (ii) if a partnership, as to which a Party or another Affiliate is a general partner; or (iii) that a Party otherwise is in common control with, controlled by, or controls in matters of management and operations. Scale recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which may require that certain information be released, despite being characterized as "confidential" by the vendor.

#### 4. WARRANTIES AND DISCLAIMER

4.1. Mutual Warranties. Each Party represents and warrants to the other that: (a) these Terms have been duly executed and delivered and constitutes a valid and binding agreement enforceable against such Party in accordance with its terms and (b) no authorization or approval from any third party is required in connection with such Party's execution, delivery, or performance of these Terms.

4.2. Disclaimer. SCALE WARRANTS THAT THE SC//FLEET MANAGER WILL, FOR A PERIOD OF SIXTY(60) DAYS FROM THE DATE OF YOUR RECEIPT, PERFORM SUBSTANTIALLY IN ACCORDANCE WITH SC//FLEET MANAGER WRITTEN MATERIALS ACCOMPANYING IT. EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES STATED IN THIS SECTION, SCALE MAKES NO ADDITIONAL REPRESENTATION OR WARRANTY OF ANY KIND WHETHER EXPRESS, IMPLIED (EITHER IN FACT OR BY OPERATION OF LAW), OR STATUTORY, AS TO ANY MATTER WHATSOEVER. SCALE EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY, ACCURACY, TITLE, AND NON-INFRINGEMENT. SCALE DOES NOT WARRANT AGAINST INTERFERENCE WITH THE ENJOYMENT OF THE SC//FLEET MANAGER. SCALE DOES NOT WARRANT THAT THE SC//FLEET MANAGER, OR THE DOCUMENTATION ARE ERROR-FREE OR THAT OPERATION OF THE SC//FLEET MANAGER WILL BE SECURE, FULLY AVAILABLE OR UNINTERRUPTED. SCALE DOES NOT WARRANT THAT ANY INFORMATION PROVIDED ON, IN OR THROUGH THE SC//FLEET MANAGER OR THE DOCUMENTATION IS ACCURATE OR COMPLETE OR THAT ANY SUCH INFORMATION WILL ALWAYS BE AVAILABLE. SCALE EXERCISES NO CONTROL OVER, AND EXPRESSLY DISCLAIMS ANY LIABILITY ARISING OUT OF OR BASED UPON THE RESULTS OF, CUSTOMER'S USE OF THE SC//FLEET MANAGER, OR THE DOCUMENTATION. SCALE DOES NOT WARRANT AGAINST LOSS OF DATA.

#### 5. INDEMNIFICATION

5.1. Defense by Scale. Scale will, at its expense, either have the right to intervene to defend Customer from or settle any claim, proceeding, or suit ("**Claim**") brought by a third party against Customer alleging that Customer's use of the SC//Fleet Manager infringes or misappropriates the rights of such third party if: (a) Customer gives Scale prompt written notice of the Claim; (b) Customer grants Scale full and complete control over the defense and settlement of the Claim; and (c) Customer provides assistance in connection with the defense and settlement of the Claim as Scale may reasonably request. Customer will not defend or settle any Claim subject to indemnification under this Section without Scale's prior written consent. Customer will have the right to participate in the defense of the Claim at its own expense and with counsel of its own choosing, but Scale will have control over the defense and settlement of the Claim. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516.

- 5.2. Indemnification by Scale. Scale will indemnify Customer from and pay (a) all damages, costs, and attorneys' fees finally awarded against Customer in any Claim under Section 5.1; (b) all out-of-pocket costs (including reasonable attorneys' fees) reasonably incurred by Customer in connection with the defense of a Claim under Section 5.1 (other than attorneys' fees and costs incurred without Scale's consent after Scale has accepted defense of the Claim); and (c) all amounts that Scale agrees to pay to any third party to settle any Claim under Section 5.1.
- 5.3. Exclusions from Obligations. Notwithstanding the above, Scale will have no obligation under Section 5.1 for any infringement or misappropriation to the extent that it arises out of or is based upon any of the following (the "**Excluded Claims**"): (a) use of the SC//Fleet Manager in combination with other products or services not provided by Scale if such infringement or misappropriation arose out of such combination; (b) features of the SC//Fleet Manager that are provided to comply with designs, requirements, or specifications required by or provided by Customer, if the alleged infringement or misappropriation arose out of the compliance with such designs, requirements, or specifications; (c) use of the SC//Fleet Manager by Customer for purposes not intended or outside the scope of the license granted to Customer; or (d) Customer's failure to use the SC//Fleet Manager in accordance with instructions provided by Scale, if the infringement or misappropriation arose out of such failure.
- 5.4. Remedy. If Scale becomes aware of, or anticipates, a Claim subject to indemnification under Sections 5.1 and 5.2, then Scale may, at its option (a) modify the SC//Fleet Manager so that it becomes non-infringing; (b) obtain a license to the third-party intellectual property rights giving rise to the Claim; or (c) terminate these Terms. If Scale elects to terminate these Terms under this Section 5.4, Scale will refund to Customer any unused, prepaid fees on a pro rata basis.
- 5.5. Limited Remedy. Sections 5.1, 5.2, 5.3, and 5.4 state Scale's sole and exclusive liability, and Customer's sole and exclusive remedy, for the actual or alleged infringement or misappropriation of any third-party intellectual property right by the SC//Fleet Manager.
- 5.6. Reserved.
- 5.7. Reserved.
6. LIMITATIONS OF LIABILITY
  - 6.1. Disclaimer of Indirect Damages. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THESE TERMS, SCALE WILL NOT, UNDER ANY CIRCUMSTANCES, BE LIABLE TO CUSTOMER FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS OR LOSS OF BUSINESS, ARISING OUT OF OR RELATED TO THE SUBJECT MATTER OF THESE TERMS, EVEN IF SCALE IS APPRISED OF THE LIKELIHOOD OF SUCH DAMAGES. WITHOUT LIMITING THE FOREGOING, UNDER NO CIRCUMSTANCES WILL SCALE BE LIABLE FOR ANY LOSS OF DATA STORED IN, OR IN CONNECTION WITH, THE SC//FLEET MANAGER. 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.
  - 6.2. Cap on Liability. UNDER NO CIRCUMSTANCES WILL SCALE'S TOTAL LIABILITY OF ALL KINDS ARISING OUT OF OR RELATED TO THESE TERMS (INCLUDING BUT NOT LIMITED TO WARRANTY CLAIMS), REGARDLESS OF THE FORUM AND REGARDLESS OF WHETHER ANY ACTION OR CLAIM IS BASED ON CONTRACT, TORT, OR OTHERWISE, EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER TO SCALE FOR SC//FLEET MANAGER DURING THE 12 MONTHS IMMEDIATELY PRECEDING THE FACTS OR CIRCUMSTANCES GIVING RISE TO THE CLAIM.
  - 6.3. Independent Allocations of Risk. EACH PROVISION OF THESE TERMS THAT PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES, OR EXCLUSION OF DAMAGES IS TO ALLOCATE THE RISKS OF THESE TERMS BETWEEN THE PARTIES. THIS ALLOCATION IS REFLECTED IN THE PRICING OFFERED BY SCALE TO CUSTOMER AND 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 THESE TERMS. THE LIMITATIONS IN SECTION 6 WILL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY IN THESE TERMS.

6.4. GENERAL

- 6.5. Relationship. The Parties to these Terms are independent contractors and these Terms will not establish any relationship of partnership, joint venture, employment, franchise, or agency between the Parties. Neither Party will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent.
- 6.6. Use of Brand Name. Scale and its Affiliates may use the name, of Customer (or Customer's parent company) (the "**Customer Marks**") solely for the purpose of identifying Customer as a licensee or customer of Scale and its Affiliates in a 'customer' section of their websites, brochures, or other promotional materials, or as part of a list of their customers in a press release or other public relations materials to the extent permitted by the General Services Acquisition Regulation (GSAR) 552.203-71. Any such limited use shall include proper attribution to Customer or its parent company of any trademark or logo of Customer or its parent company, and shall in no way suggest that Scale and its Affiliates are affiliated with, or speaking on behalf of, Customer or Customer's parent company. Any other press releases or marketing materials referring to the Customer Marks shall require mutual approval in writing prior to public dissemination thereof. Without limiting the foregoing, Customer may object to use of the Customer Marks by providing written notice to Scale specifying the objectionable uses, and Scale and its Affiliates will use reasonable efforts to promptly cease the identified uses following receipt of such notice.
- 6.7. Assignability. Customer shall not assign or otherwise transfer its rights under these Terms without the prior written consent of Scale. Any attempt to make such an assignment without Scale's consent shall be void. Scale may freely assign these Terms.
- 6.8. U.S. Government Restricted Rights. The SC//Fleet Manager is commercial computer software, as that term is defined in 48 C.F.R. §2.101. Accordingly, if the Customer is the U.S. Government or any contractor therefor, Customer will receive only those rights with respect to the SC//Fleet Manager and Documentation as are granted to all other end users under license, in accordance with (a) 48 C.F.R. §227.7201 through 48 C.F.R. §227.7204, with respect to the Department of Defense and their contractors, or (b) 48 C.F.R. §12.212, with respect to all other U.S. Government licensees and their contractors.
- 6.9. Notices. All notices and other communications required or permitted hereunder shall be in writing and be deemed given when delivered personally or sent by certified or registered mail, return receipt requested, to the appropriate Party at the address set forth in Customer's order for Scale Computing Platform software and with the appropriate postage affixed. Either Party may change its address for receipt of notice by notice to the other Party in accordance with this Section 7.5.
- 6.10. Force Majeure. In accordance with GSAR 552.212-4(f), Neither Party will be liable to the other Party for any delay or failure to perform as required by these Terms as a result of any cause or condition beyond its reasonable control, including, without limitation, Acts of God, accident, death, acts, omissions and defaults of third parties and official, governmental and judicial action not the fault of the Party failing or delaying in performance.
- 6.11. Governing Law. These Terms shall be governed by and construed in accordance with the Federal laws of the United States, without regard to the provisions of the 1980 U.N. Convention on Contracts for the International Sale of Goods. Customer will use the SC//Fleet Manager and the Documentation in compliance with all applicable laws and regulations.
- 6.12. Waiver. Waiver of any right or remedy under these Terms or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.

Failure by either Party to enforce any provisions of these Terms shall not be deemed a waiver of future enforcement of that or any other provision.

- 6.13. Severability. If a court or arbitrator of competent jurisdiction holds any term of these Terms invalid or unenforceable, such term will be reduced or otherwise modified by such court or arbitrator to the minimum extent necessary to make it valid and enforceable. If such term cannot be so modified, it will be severed and the remaining terms of these Terms will be interpreted in such ways as to give maximum validity and enforceability to these Terms. If any material limitation or restriction on the use of the SC//Fleet Manager under this Agreement is found to be illegal, unenforceable, or invalid, Customer's right to use the SC//Fleet Manager will immediately terminate.
- 6.14. Entire Agreement. These Terms, including all exhibits, constitutes the entire agreement between these Parties and supersedes, and the terms of these Terms govern, all prior and contemporaneous oral and written communications regarding this transaction, except that these Terms do not supersede any prior nondisclosure or comparable agreement between the Parties executed prior to these Terms being executed, nor do they affect the validity of any agreements between the Parties relating to products or services of Scale other than the SC//Fleet Manager. No employee, agent, or other representative of Scale has any authority to bind Scale with respect to any statement, representation, warranty, or other expression unless the same is specifically set forth in these Terms. No usage of trade or other regular practice or method of dealing between the Parties will be used to modify, interpret, supplement, or alter the terms of these Terms. These Terms may not be altered, modified, or amended except by written amendment duly executed by authorized representatives of each Party hereto. Scale will not be bound by, and specifically objects to, any term, condition, or other provision that is different from or in addition to these Terms (whether or not it would materially alter these Terms) that is proffered by Customer in any receipt, acceptance, confirmation, correspondence, or otherwise, unless Scale specifically provides a written acceptance of such provision signed by an authorized representative of Scale. Scale may update these Terms from time to time and any updates will be binding at time of Customer's next renewal of SC//Fleet Manager.

**SMART EULA and WARRANTIES**

## END USER LICENSE AGREEMENT

**NOTICE:** These Terms govern General Services Administration (GSA) sourced SMART software and take precedence over Terms that may ship with or be embedded with SMART software and/or hardware.

Thank you for choosing SMART. This document is a legal agreement between SMART Technologies ULC ("SMART", "we" or "our") and Ordering Activity (where "you" or "your" includes your organization that you are using our product on behalf of).

Ordering Activity represents and warrants that it has the authority to accept this agreement and where applicable bind its organization and ensure it complies with these terms. If you are a minor, your parent or guardian must agree to these terms on your behalf and you should only use our products at a school if your school, or district, or teacher has obtained the requisite consent for you to disclose personal information in compliance with our Privacy Policy.

Our software is licensed, not sold. Unless applicable law gives you more rights you may only use our software as expressly permitted in this agreement. Ordering Activity must comply with, and not attempt to circumvent, any law or technical limitation that allows Ordering Activity to activate or use our products only in certain ways.

SMART GRANTS A LICENSE TO USE THE SOFTWARE SUBJECT TO THE FOLLOWING:

1. **YOUR LICENSE.** You may terminate this agreement at any time by notifying us (see Section 16). Our software, or portions of it, and services may be offered on a subscription basis. For subscriptions, unless the subscription is renewed your license to the subscription is automatically revoked and your software (the subscription portions) or service will stop working at the end of the subscription period without any additional notice to you. SMART may, at any time, modify or discontinue (temporarily or permanently) distributing or updating our products. Unless obligated by law or warranty, SMART is not required to provide any support or maintenance to you and we shall not be liable to you or any third party for any suspension or discontinuance of our products.
2. **LANGUAGE.** Any translation we may do is for convenience and in the event of a conflict between the English and non-English versions the English version shall prevail and govern. If you are unable to access these terms in the official language of your country please contact SMART (Section 15) and a copy will be provided to you.
3. **GOVERNING LAW.** This Agreement will be exclusively governed, construed and interpreted in accordance with the laws of the United States of America.
4. **LINKED TERMS.** You are also bound by the following terms and conditions:  
Terms of Use (<http://www.smarttech.com/Home+Page/Legal/Legal+Notice>)  
Privacy Policy (<https://smarttech.com/Legal/Privacy+Policy>)  
In the event of a conflict or variance between the linked terms and the terms in the body of this agreement, the terms in the body of this agreement shall prevail and govern. If you are unable to access these links please contact SMART at the address listed in Section 15 and a copy will be provided to you.
5. **LIMITED WARRANTY.** SMART warrants to you that the software, when properly installed and used, shall operate in substantial accordance with our published specifications for a period of ninety (90) days from the date of purchase. Subject to entitlements under a maintenance program (if any), you assume the entire cost of all necessary upgrades, servicing, repairs or correction of the software. SMART's sole obligation under this limited warranty shall be, at SMART's option and expense, to either: a) refund the purchase price paid by you for the defective software; or b) to replace the defective software with software that substantially conforms to applicable SMART published specifications. Any replacement software will be warranted for the remainder of the original warranty period or thirty (30) days, whichever is longer. THIS AGREEMENT DOES NOT LIMIT OR DISCLAIM ANY OF THE WARRANTIES SPECIFIED IN THE GSA SCHEDULE 70 CONTRACT UNDER FAR 52.212-4(O). IN THE EVENT OF A BREACH OF WARRANTY, THE U.S. GOVERNMENT RESERVES ALL RIGHTS AND REMEDIES UNDER THE CONTRACT, THE FEDERAL ACQUISITION REGULATIONS, AND THE CONTRACT DISPUTES ACT, 41 U.S.C. 7101-7109.
6. **NO WARRANTY.** OTHER THAN THE LIMITED WARRANTY AS STATED ABOVE IN SECTION 6, THE SOFTWARE IS PROVIDED "AS-IS" AND ITS USE IS AT YOUR OWN RISK. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, SMART AND ITS SUPPLIERS, LICENSORS, DISTRIBUTORS AND RESELLERS DISCLAIM ALL WARRANTIES AND CONDITIONS, EITHER EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, QUIET ENJOYMENT AND NONINFRINGEMENT WITH REGARD TO THE SOFTWARE AND SMART PRODUCTS AND ANY COMPONENT THEREOF, AND THE PROVISION OF OR FAILURE TO PROVIDE SUPPORT SERVICES. SMART DOES NOT WARRANT THAT THE OPERATION OF THE SOFTWARE IS OR WILL BE INTERRUPTION FREE, DEFECT FREE OR WILL MEET YOUR NEEDS.

7. NO LIABILITY. To the maximum extent permitted by applicable law, in no event shall SMART or its suppliers, third party providers, licensors, resellers or distributors be liable for any special, incidental, indirect, exemplary, consequential or punitive damages whatsoever (including, without limitation, damages for any injury to any person or property, damages for loss of profits, business interruption, loss of business information, loss of privacy, damages for procurement of substitute goods or services, damages for loss of use, loss of data, damages for failure to meet any duty including the duties of good faith or of reasonable care, for negligence or any other pecuniary loss) arising out of the use of or inability to use the software or any component thereof or the provision of or failure to provide support services, whether based on contract, tort, negligence, strict liability or otherwise, even if SMART or its suppliers, third party providers, licensors, resellers or distributors have been advised of the possibility of such damages. IN ANY CASE, SMART'S ENTIRE LIABILITY SHALL NOT EXCEED THE PURCHASE PRICE. THIS AGREEMENT SHALL NOT IMPAIR THE U.S. GOVERNMENT'S RIGHT TO RECOVER FOR FRAUD OR CRIMES ARISING OUT OF OR RELATED TO THIS CONTRACT UNDER ANY FEDERAL FRAUD STATUTE, INCLUDING THE FALSE CLAIMS ACT, 31 U.S.C. 3729-3733. FURTHERMORE, THIS CLAUSE SHALL NOT IMPAIR NOR PREJUDICE THE U.S. GOVERNMENT'S RIGHT TO EXPRESS REMEDIES PROVIDED IN THE GSA SCHEDULE CONTRACT (E.G., CLAUSE 552.238-75 – PRICE REDUCTIONS, CLAUSE 52.212-4(H) – PATENT INDEMNIFICATION, AND GSAR 552.215-72 – PRICE ADJUSTMENT – FAILURE TO PROVIDE ACCURATE INFORMATION).
8. FEEDBACK. We do not claim any intellectual property rights over material you create. We do appreciate your direct suggestions but please be aware that any comments, feedback or ideas you share with us while not under a non-disclosure agreement shall be treated as non-confidential and you will, and do hereby, assign us all right, title and interest to them. This means we are free to use them for any purpose, without compensation, acknowledgment or other obligation of any kind to you.
9. BETA CHANNEL. The beta channel is meant for advanced users who are comfortable using pre-release software and providing feedback. Problems you may encounter in beta channel releases are not supported by SMART support. Moving to the beta channel may cause your board to behave unexpectedly. Updates will be installed automatically and all bugs or crashes will be automatically reported. Returning to the stable channel requires a factory reset that erases all settings and returns them to their default values.
10. EXPORT RESTRICTIONS. You agree that you shall comply with all domestic and international export laws and regulations that apply. Our software is a "Commercial Item", as that term is defined at 48 CFR 2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation", as such terms are used in 48 CFR 12.212 or 48 CFR 227.7202, as applicable. Consistent with 48 CFR 12.212 or 48 CFR 227.7202-4, as applicable, the Commercial Computer Software and Commercial Computer Software Documentation are being licensed to US Government end users (a) only as Commercial Items, and (b) with only those rights as are granted to all other end users pursuant to the terms and conditions of this agreement.
11. INVALIDITY OF PROVISIONS. If any provision of this agreement is invalid, illegal or unenforceable in any respect, such provision shall be severed from this agreement or the applicable linked terms, and the validity, legality or enforceability of the remaining provisions shall not in any way be affected or impaired. The failure by a party to exercise any right shall not operate as a waiver of such party's right to exercise such right or any other right in the future.
12. ENTIRE AGREEMENT. This agreement, together with the purchase order and linked terms, constitutes the entire understanding of the parties and supersedes all prior end user license agreements, representations, negotiations, tender documents and proposals between the parties with respect to the subject matter of this agreement.
13. CONTACTING YOU. We (including our software), or an authorized representative of SMART, may contact you about this agreement or operational messages by: a) calling you or sending an email or regular mail to the addresses we have on file for you; b) providing notification, system messages or updates via the software; or c) posting a message where you found these legal terms. You understand and agree that if you use our product after the date on which we provide notice to you that the terms of this agreement or the linked terms have changed, you will be agreeing to and accepting the updated terms. Unless other terms accompany them, these terms also apply to related updates, patches and related Internet or mobile based applications.
14. SURVIVAL. The obligations set forth in the preamble and Sections 2 to 14 inclusive shall survive termination of this agreement.
15. HAVE A QUESTION?  
SMART Technologies ULC  
Attention: Legal Department  
3636 Research Road N.W.  
CALGARY, AB CANADA T2L 1Y1  
+1.403.245.0333

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380860\_1; GSA Specific EULA





## Limited Product Warranty SBID8084i-G4 interactive flat panel and SBID8000i-G5 series interactive flat panels with SMART Meeting Pro

This non-transferable limited warranty is provided to the original end user purchaser ("you") of a SMART hardware product (the "Product") from:

SMART Technologies ULC ("SMART")  
3836 Research Road NW  
Calgary, AB T2L 1Y1  
Phone: +1.403.245.0333  
Fax: 403.228.2500  
smarttech.com

This warranty applies to SMART products purchased from a SMART authorized reseller or distributor.

SMART warrants that the Product and certain Accessories will be free from defects in materials and workmanship for the periods set out below ("Warranty Term"):

**Product:** a period of **three (3) years** from date of purchase

**Accessories:** wireless serial or USB connections, floor stands, speakers: a period of **one (1) year** from the date of purchase

**All other Accessories and parts listed on SMART's Parts Store at parts.smarttech.com: no warranty is provided** (i.e. non-interactive pens, erasers, brackets, cables, batteries, power supply units)

This warranty applies to claims of which you have notified SMART during the Warranty Term.

### WHAT SMART WILL DO TO HONOR THIS WARRANTY

If SMART receives notice during the Warranty Term that the Product does not conform to the above warranty, your exclusive remedy and SMART's sole obligation shall be for SMART to **repair or replace the Product** (or component of Product) that has proven to be defective at no cost to you except for the one-way shipping cost (plus any duties and taxes) of the Product or component to a SMART-authorized service center. Product must be returned in original packaging.

Upon receipt of returned Product or component, SMART will establish the cause of the problem. At the sole discretion of SMART, the defective Product or component will be either repaired or replaced. SMART offers Advance Replacement at an additional cost for select Products. If you have purchased optional Advanced Replacement, separate warranty terms may apply in addition to those set out in this Standard Limited Warranty.

### WHAT YOU MUST DO TO CLAIM THE WARRANTY

To make a claim under this warranty you will need to:

1. Contact SMART to register your claim and provide sufficient details to enable a SMART representative to assess the claim. It is a requirement to provide the serial number of the Product when requesting a warranty claim.

Contact SMART at:

**Website:** smarttech.com/contactsupport

**Phone:** 1.866.518.6791 (toll-free in the U.S./Canada) or +1.403.228.5940 (all other countries)

2. The SMART representative will first attempt to understand and correct the problem via telephone or e-mail. If SMART's representative is unable to correct the situation, the SMART representative will confirm the serial number of the Product. If appropriate, the SMART representative will then provide you with a Return of Merchandise Authorization (RMA) number.
3. Ship the Product (or component) to a SMART-authorized service center and in accordance with the shipping instructions of the SMART representative. Shipping to the SMART-authorized service center is at your cost. The RMA number must be clearly marked on the packaging of the item being returned.

### DEFECTIVE HARDWARE OUT OF THE CARTON

If Product fails to function **within 30 days of the original purchase**, you must follow the same procedures as described above for warranty claims. Purchase dates must be supported by proof of purchase upon SMART's request. In such circumstances, replacement hardware Product or components, subject to availability, will be shipped to your location via ground transportation at SMART's cost. Defective Product or components must then be returned by you by ground transportation, as directed by SMART, at SMART's cost within 30 days of failure, or you will be liable to pay SMART for the purchase price of the replacement item.

### DAMAGED IN SHIPPING

If Product arrives in visibly damaged condition you must note the damage on carrier delivery documents and advise **SMART or Distributor or Reseller** as soon as possible and before the expiry of ten (10) days after delivery at smarttech.com/contactsupport.

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**COST CLAIM**

SMART may seek shipping costs or reimbursement from you of any reasonable costs incurred if the Product or component is found, at SMART's discretion, to be in good working order, the problem is not a consequence of a defect or manufacturing fault or where any of the warranty exclusions or limitations apply. Reasonable costs may include the costs of packaging, insurance, shipping, service or parts and labor.

**DISCLAIMERS, EXCLUSIONS AND LIMITATIONS**

This section applies to the fullest extent permitted by law.

**Warranty Exclusions:** This warranty will not apply to and SMART will not be liable for (i) any Product which is not purchased from a SMART authorized reseller or distributor; (ii) Product that has been damaged by accident, abuse, neglect, misuse, or causes other than ordinary use (see online Product manuals for further details at [www.smarttech.com](http://www.smarttech.com)), including the direct application of any cleaning liquids, substances or abrasives to the hardware or onto any display surface other than in accordance with the cleaning and care instructions included in the User's Guide for the Product; (iii) Product which has been altered, changed, serviced or repaired by anyone other than SMART authorized repair personnel, or (iv) any Product on which the serial number has been defaced, modified or removed. Warranty service hereunder shall not operate to extend the original Warranty Term. The warranty excludes damage incurred in shipment by you or SMART authorized reseller or distributor.

Any charges associated with a rush-requested order or return, such as air express, are your responsibility.

THIS WARRANTY DOES NOT REPLACE, MODIFY OR SUPPLEMENT THE WARRANTIES FOUND IN THE APPLICABLE END USER LICENSE AGREEMENT OR OTHER LICENSE AGREEMENT FOR ANY SOFTWARE PROVIDED IN CONNECTION WITH THE PRODUCT.

THE ABOVE WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, REPRESENTATIONS AND CONDITIONS WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES, REPRESENTATION AND CONDITIONS OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. ALL WARRANTIES, WITH THE SOLE EXCEPTION OF THE WARRANTY ABOVE, ARE EXPRESSLY DISCLAIMED AND EXCLUDED AND EXCEPT FOR THE WARRANTY ABOVE THE PRODUCT IS SOLD ON AN "AS IS, WHERE IS" BASIS. ANY REPRESENTATION OR WARRANTY, OR AFFIRMATION OF FACT, WHETHER MADE BY ANY SALES REPRESENTATIVE OR OTHER AGENT OF SMART OR ANY THIRD PARTY, INCLUDING BUT NOT LIMITED TO STATEMENTS REGARDING CAPACITY, SUITABILITY FOR USE OR PERFORMANCE, EXPRESS OR IMPLIED, WHICH IS NOT SPECIFICALLY SET FORTH HEREIN ARE EXPRESSLY DISCLAIMED AND EXCLUDED AND WILL NOT BE BINDING UPON OR ENFORCEABLE AGAINST SMART.

Some states, provinces, and countries do not allow the exclusion or limitation of incidental or consequential damages or exclusions or limitation on the duration of implied warranties or conditions, so the above limitations or exclusions may not apply to you. This warranty gives you specific legal rights, and you may also have other rights that vary by state, province or country, but only if and to the extent such rights cannot be disclaimed, excluded or limited in the applicable jurisdiction.

**Limitation of Liability:** THIS WARRANTY IS YOUR SOLE REMEDY AND SMART'S SOLE OBLIGATION FOR DEFECTS IN MATERIALS AND WORKMANSHIP IN THE PRODUCT AND ACCESSORIES. TO THE EXTENT ALLOWED BY LOCAL LAW, THE LIABILITY OF SMART TO YOU ARISING OUT OF THE PURCHASE AND SUPPLY OF THE PRODUCT AND RELATED ITEMS OR ITS OR THEIR USE, WHETHER BASED UPON WARRANTY, CONTRACT, TORT (INCLUDING WITHOUT LIMITATION, NEGLIGENCE), STATUTE OR OTHERWISE, SHALL NOT IN ANY CASE EXCEED THE ORIGINAL COST TO THE PURCHASER OF THE PRODUCT.

SMART SHALL NOT BE LIABLE, WHETHER IN WARRANTY, CONTRACT, TORT (INCLUDING WITHOUT LIMITATION, NEGLIGENCE), STATUTE OR ON ANY OTHER BASIS, FOR ANY DAMAGES SUSTAINED BY THE PURCHASER OR ANY OTHER PERSON ARISING FROM OR RELATED TO LOSS OF USE, FAILURE OR INTERRUPTION IN THE OPERATION OF THE PRODUCT OR RELATED ITEMS, DELAY IN REPAIR OR REPLACEMENT, LOSS OF DATA OR FOR INCIDENTAL, CONSEQUENTIAL, INDIRECT OR SPECIAL DAMAGES OR LIABILITIES, LOSS OF REVENUE, LOSS OF BUSINESS OR OTHER FINANCIAL LOSS ARISING OUT OF OR IN CONNECTION WITH THE SALE, LEASE, MAINTENANCE, USE, PERFORMANCE FAILURE OR INTERRUPTION OF THE PRODUCT OR RELATED ITEMS. ALL SUCH DAMAGES AND LOSSES ARE EXPRESSLY DISCLAIMED AND EXCLUDED.

ALL LIMITATIONS OF LIABILITY AND EXCLUSIVE REMEDIES HEREIN SHALL EXTEND TO SMART'S RELATED OR AFFILIATED ENTITIES AND ITS AND THEIR DIRECTORS, OFFICERS AND EMPLOYEES.

**Data:** If Product or component presented for repair or replacement is capable of retaining user-generated data, you are advised that repair or replacement may result in loss of the data.

**IF YOU ARE AN AUSTRALIAN CONSUMER:**

**YOUR RIGHTS AS A CONSUMER**

This section applies if you acquire the warranted products as a consumer within the meaning of the Australian Consumer Law.

The benefits provided to you under this warranty are in addition to other rights and remedies that you may have as a consumer under a law in relation to the goods or services to which this warranty relates.

Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure. For details about the Australian Consumer Law please see the following links:  
[www.accc.gov.au](http://www.accc.gov.au) or [www.consumerlaw.gov.au](http://www.consumerlaw.gov.au).

**OTHER CONSUMER PURCHASERS:** Consult local authority regarding your rights and obligations.

**SMART Technologies**  
3836 Research Road NW  
Calgary, AB T2L 1Y1  
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[smarttech.com/support](http://smarttech.com/support)    [smarttech.com/contactsupport](http://smarttech.com/contactsupport)

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Warranty effective February 2016.

The SMART logo is displayed in a stylized, bold, sans-serif font. The letters are black with a white outline, giving it a three-dimensional appearance. The word "SMART" is followed by a registered trademark symbol (®).



## Limited Product Warranty SMART kapp iQ-Pro interactive flat panels (kapp iQ-Pro) – Enterprise Product

This non-transferable limited warranty is provided to the original end user purchaser ("you") of a SMART hardware product (the "Product") from:

SMART Technologies ULC ("SMART")  
3636 Research Road NW  
Calgary, AB T2L 1Y1  
Phone: +1.403.245.0333  
Fax: 403.228.2500  
smarttech.com

This warranty applies to SMART products purchased from a SMART authorized reseller or distributor.

SMART warrants that the Product and certain Accessories will be free from defects in materials and workmanship for the periods set out below ("Warranty Term"):

**Product:** a period of **three (3) years** from date of purchase

**Accessories:** floor stands, speakers: a period of **one (1) year** from the date of purchase

**All other Accessories and parts listed on SMART's Parts Store at [parts.smarttech.com](http://parts.smarttech.com): no warranty is provided** (i.e. non-interactive pens, erasers, brackets, cables, batteries, power supply units)

This warranty applies to claims of which you have notified SMART during the Warranty Term.

### WHAT SMART WILL DO TO HONOR THIS WARRANTY

If SMART receives notice during the Warranty Term that the Product does not conform to the above warranty, your exclusive remedy and SMART's sole obligation shall be for SMART to **repair or replace the Product** (or component of Product) that has proven to be defective at no cost to you except for the one-way shipping cost (plus any duties and taxes) of the Product or component to a SMART-authorized service center. Product must be returned in original packaging.

Upon receipt of returned Product or component, SMART will establish the cause of the problem. At the sole discretion of SMART, the defective Product or component will be either repaired or replaced. SMART offers Advance Replacement at an additional cost for select Products. If you have purchased optional Advanced Replacement, separate warranty terms may apply in addition to those set out in this Limited Product Warranty.

### WHAT YOU MUST DO TO CLAIM THE WARRANTY

To make a claim under this warranty you will need to:

1. Contact SMART to register your claim and provide sufficient details to enable a SMART representative to assess the claim. It is a requirement to provide the serial number of the Product when requesting a warranty claim.  
Contact SMART at:  
**Website:** [smarttech.com/contactsupport](http://smarttech.com/contactsupport)  
**Phone:** 1.866.518.6791 (toll-free in the U.S./Canada) or +1.403.228.5940 (all other countries)
2. The SMART representative will first attempt to understand and correct the problem via telephone or e-mail. If SMART's representative is unable to correct the situation, the SMART representative will confirm the serial number of the Product. If appropriate, the SMART representative will then provide you with a Return of Merchandise Authorization (RMA) number.
3. Ship the Product (or component) to a SMART-authorized service center and in accordance with the shipping instructions of the SMART representative. Shipping to the SMART-authorized service center is at your cost. The RMA number must be clearly marked on the packaging of the item being returned.

### DEFECTIVE HARDWARE OUT OF THE CARTON

If Product fails to function **within 30 days of the original purchase**, you must follow the same procedures as described above for warranty claims. Purchase dates must be supported by proof of purchase upon SMART's request. In such circumstances, replacement hardware Product or components, subject to availability, will be shipped to your location via ground transportation at SMART's cost. Defective Product or components must then be returned by you by ground transportation, as directed by SMART, at SMART's cost within 30 days of failure, or you will be liable to pay SMART for the purchase price of the replacement item.

### DAMAGED IN SHIPPING

If Product arrives in visibly damaged condition you must note the damage on carrier delivery documents and advise **SMART or Distributor or Reseller** as soon as possible and before the expiry of ten (10) days after delivery at [smarttech.com/contactsupport](http://smarttech.com/contactsupport).

**COST CLAIM**

SMART may seek shipping costs or reimbursement from you of any reasonable costs incurred if the Product or component is found, at SMART's discretion, to be in good working order, the problem is not a consequence of a defect or manufacturing fault or where any of the warranty exclusions or limitations apply. Reasonable costs may include the costs of packaging, insurance, shipping, service or parts and labor.

**DISCLAIMERS, EXCLUSIONS AND LIMITATIONS**

This section applies to the fullest extent permitted by law.

**Warranty Exclusions:** This warranty will not apply to and SMART will not be liable for (i) any Product which is not purchased from a SMART authorized reseller or distributor; (ii) Product that has been damaged by accident, abuse, neglect, misuse, or causes other than ordinary use (see online Product manuals for further details at [www.smarttech.com](http://www.smarttech.com)), including the direct application of any cleaning liquids, substances or abrasives to the hardware or onto any display surface other than in accordance with the cleaning and care instructions included in the User's Guide for the Product; (iii) Product which has been altered, changed, serviced or repaired by anyone other than SMART authorized repair personnel, or (iv) any Product on which the serial number has been defaced, modified or removed. Warranty service hereunder shall not operate to extend the original Warranty Term. The warranty excludes damage incurred in shipment by you or SMART authorized reseller or distributor.

Any charges associated with a rush-requested order or return, such as air express, are your responsibility.

THIS WARRANTY DOES NOT REPLACE, MODIFY OR SUPPLEMENT THE WARRANTIES FOUND IN THE APPLICABLE END USER LICENSE AGREEMENT OR OTHER LICENSE AGREEMENT FOR ANY SOFTWARE PROVIDED IN CONNECTION WITH THE PRODUCT.

THE ABOVE WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, REPRESENTATIONS AND CONDITIONS WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES, REPRESENTATION AND CONDITIONS OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. ALL WARRANTIES, WITH THE SOLE EXCEPTION OF THE WARRANTY ABOVE, ARE EXPRESSLY DISCLAIMED AND EXCLUDED AND EXCEPT FOR THE WARRANTY ABOVE THE PRODUCT IS SOLD ON AN "AS IS, WHERE IS" BASIS. ANY REPRESENTATION OR WARRANTY, OR AFFIRMATION OF FACT, WHETHER MADE BY ANY SALES REPRESENTATIVE OR OTHER AGENT OF SMART OR ANY THIRD PARTY, INCLUDING BUT NOT LIMITED TO STATEMENTS REGARDING CAPACITY, SUITABILITY FOR USE OR PERFORMANCE, EXPRESS OR IMPLIED, WHICH IS NOT SPECIFICALLY SET FORTH HEREIN ARE EXPRESSLY DISCLAIMED AND EXCLUDED AND WILL NOT BE BINDING UPON OR ENFORCEABLE AGAINST SMART.

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SMART SHALL NOT BE LIABLE, WHETHER IN WARRANTY, CONTRACT, TORT (INCLUDING WITHOUT LIMITATION, NEGLIGENCE), STATUTE OR ON ANY OTHER BASIS, FOR ANY DAMAGES SUSTAINED BY THE PURCHASER OR ANY OTHER PERSON ARISING FROM OR RELATED TO LOSS OF USE, FAILURE OR INTERRUPTION IN THE OPERATION OF THE PRODUCT OR RELATED ITEMS, DELAY IN REPAIR OR REPLACEMENT, LOSS OF DATA OR FOR INCIDENTAL, CONSEQUENTIAL, INDIRECT OR SPECIAL DAMAGES OR LIABILITIES, LOSS OF REVENUE, LOSS OF BUSINESS OR OTHER FINANCIAL LOSS ARISING OUT OF OR IN CONNECTION WITH THE SALE, LEASE, MAINTENANCE, USE, PERFORMANCE FAILURE OR INTERRUPTION OF THE PRODUCT OR RELATED ITEMS. ALL SUCH DAMAGES AND LOSSES ARE EXPRESSLY DISCLAIMED AND EXCLUDED.

ALL LIMITATIONS OF LIABILITY AND EXCLUSIVE REMEDIES HEREIN SHALL EXTEND TO SMART'S RELATED OR AFFILIATED ENTITIES AND ITS AND THEIR DIRECTORS, OFFICERS AND EMPLOYEES.

**Data:** If Product or component presented for repair or replacement is capable of retaining user-generated data, you are advised that repair or replacement may result in loss of the data.

**IF YOU ARE AN AUSTRALIAN CONSUMER:**

**YOUR RIGHTS AS A CONSUMER**

This section applies if you acquire the warranted products as a consumer within the meaning of the Australian Consumer Law.

The benefits provided to you under this warranty are in addition to other rights and remedies that you may have as a consumer under a law in relation to the goods or services to which this warranty relates.

Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure. For details about the Australian Consumer Law please see the following links: [www.accc.gov.au](http://www.accc.gov.au) or [www.consumerlaw.gov.au](http://www.consumerlaw.gov.au).

**OTHER CONSUMER PURCHASERS:** Consult local authority regarding your rights and obligations.

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Warranty effective February 2016.

The SMART logo is rendered in a stylized, hand-drawn font. The letters are bold and slightly irregular, with a casual, sketchy appearance. The 'S' and 'M' are particularly prominent, with the 'M' having a distinctive shape. The 'A' is also stylized, and the 'R' and 'T' complete the word in a similar hand-drawn style.



## Limited Product Warranty SMART kapp iQ interactive flat panels (kapp iQ) – Enterprise Product

This non-transferable limited warranty is provided to the original end user purchaser ("you") of a SMART hardware product (the "Product") from:

SMART Technologies ULC ("SMART")  
3636 Research Road NW  
Calgary, AB T2L 1Y1  
Phone: +1.403.245.0333  
Fax: 403.228.2500  
smarttech.com

This warranty applies to SMART products purchased from a SMART authorized reseller or distributor.

SMART warrants that the Product and certain Accessories will be free from defects in materials and workmanship for the periods set out below ("Warranty Term"):

**Product:** a period of **two (2) years** from date of purchase

**Accessories:** floor stands, speakers: a period of **one (1) year** from the date of purchase

**All other Accessories and parts listed on SMART's Parts Store at parts.smarttech.com: no warranty is provided** (i.e. non-interactive pens, erasers, brackets, cables, batteries, power supply units)

This warranty applies to claims of which you have notified SMART during the Warranty Term.

### WHAT SMART WILL DO TO HONOR THIS WARRANTY

If SMART receives notice during the Warranty Term that the Product does not conform to the above warranty, your exclusive remedy and SMART's sole obligation shall be for SMART to **repair or replace the Product** (or component of Product) that has proven to be defective at no cost to you except for the one-way shipping cost (plus any duties and taxes) of the Product or component to a SMART-authorized service center. Product must be returned in original packaging.

Upon receipt of returned Product or component, SMART will establish the cause of the problem. At the sole discretion of SMART, the defective Product or component will be either repaired or replaced. SMART offers Advance Replacement at an additional cost for select Products. If you have purchased optional Advanced Replacement, separate warranty terms may apply in addition to those set out in this Limited Product Warranty.

### WHAT YOU MUST DO TO CLAIM THE WARRANTY

To make a claim under this warranty you will need to:

1. Contact SMART to register your claim and provide sufficient details to enable a SMART representative to assess the claim. It is a requirement to provide the serial number of the Product when requesting a warranty claim.  
Contact SMART at:  
**Website:** smarttech.com/contactsupport  
**Phone:** 1.866.518.6791 (toll-free in the U.S./Canada) or +1.403.228.5940 (all other countries)
2. The SMART representative will first attempt to understand and correct the problem via telephone or e-mail. If SMART's representative is unable to correct the situation, the SMART representative will confirm the serial number of the Product. If appropriate, the SMART representative will then provide you with a Return of Merchandise Authorization (RMA) number.
3. Ship the Product (or component) to a SMART-authorized service center and in accordance with the shipping instructions of the SMART representative. Shipping to the SMART-authorized service center is at your cost. The RMA number must be clearly marked on the packaging of the item being returned.

### DEFECTIVE HARDWARE OUT OF THE CARTON

If Product fails to function **within 30 days of the original purchase**, you must follow the same procedures as described above for warranty claims. Purchase dates must be supported by proof of purchase upon SMART's request. In such circumstances, replacement hardware Product or components, subject to availability, will be shipped to your location via ground transportation at SMART's cost. Defective Product or components must then be returned by you by ground transportation, as directed by SMART, at SMART's cost within 30 days of failure, or you will be liable to pay SMART for the purchase price of the replacement item.

### DAMAGED IN SHIPPING

If Product arrives in visibly damaged condition you must note the damage on carrier delivery documents and advise **SMART or Distributor or Reseller** as soon as possible and before the expiry of ten (10) days after delivery at smarttech.com/contactsupport.

**COST CLAIM**

SMART may seek shipping costs or reimbursement from you of any reasonable costs incurred if the Product or component is found, at SMART's discretion, to be in good working order, the problem is not a consequence of a defect or manufacturing fault or where any of the warranty exclusions or limitations apply. Reasonable costs may include the costs of packaging, insurance, shipping, service or parts and labor.

**DISCLAIMERS, EXCLUSIONS AND LIMITATIONS**

This section applies to the fullest extent permitted by law.

**Warranty Exclusions:** This warranty will not apply to and SMART will not be liable for (i) any Product which is not purchased from a SMART authorized reseller or distributor; (ii) Product that has been damaged by accident, abuse, neglect, misuse, or causes other than ordinary use (see online Product manuals for further details at [www.smarttech.com](http://www.smarttech.com)), including the direct application of any cleaning liquids, substances or abrasives to the hardware or onto any display surface other than in accordance with the cleaning and care instructions included in the User's Guide for the Product; (iii) Product which has been altered, changed, serviced or repaired by anyone other than SMART authorized repair personnel, or (iv) any Product on which the serial number has been defaced, modified or removed. Warranty service hereunder shall not operate to extend the original Warranty Term. The warranty excludes damage incurred in shipment by you or SMART authorized reseller or distributor.

Any charges associated with a rush-requested order or return, such as air express, are your responsibility.

THIS WARRANTY DOES NOT REPLACE, MODIFY OR SUPPLEMENT THE WARRANTIES FOUND IN THE APPLICABLE END USER LICENSE AGREEMENT OR OTHER LICENSE AGREEMENT FOR ANY SOFTWARE PROVIDED IN CONNECTION WITH THE PRODUCT.

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**Limitation of Liability:** THIS WARRANTY IS YOUR SOLE REMEDY AND SMART'S SOLE OBLIGATION FOR DEFECTS IN MATERIALS AND WORKMANSHIP IN THE PRODUCT AND ACCESSORIES. TO THE EXTENT ALLOWED BY LOCAL LAW, THE LIABILITY OF SMART TO YOU ARISING OUT OF THE PURCHASE AND SUPPLY OF THE PRODUCT AND RELATED ITEMS OR ITS OR THEIR USE, WHETHER BASED UPON WARRANTY, CONTRACT, TORT (INCLUDING WITHOUT LIMITATION, NEGLIGENCE), STATUTE OR OTHERWISE, SHALL NOT IN ANY CASE EXCEED THE ORIGINAL COST TO THE PURCHASER OF THE PRODUCT.

SMART SHALL NOT BE LIABLE, WHETHER IN WARRANTY, CONTRACT, TORT (INCLUDING WITHOUT LIMITATION, NEGLIGENCE), STATUTE OR ON ANY OTHER BASIS, FOR ANY DAMAGES SUSTAINED BY THE PURCHASER OR ANY OTHER PERSON ARISING FROM OR RELATED TO LOSS OF USE, FAILURE OR INTERRUPTION IN THE OPERATION OF THE PRODUCT OR RELATED ITEMS, DELAY IN REPAIR OR REPLACEMENT, LOSS OF DATA OR FOR INCIDENTAL, CONSEQUENTIAL, INDIRECT OR SPECIAL DAMAGES OR LIABILITIES, LOSS OF REVENUE, LOSS OF BUSINESS OR OTHER FINANCIAL LOSS ARISING OUT OF OR IN CONNECTION WITH THE SALE, LEASE, MAINTENANCE, USE, PERFORMANCE FAILURE OR INTERRUPTION OF THE PRODUCT OR RELATED ITEMS. ALL SUCH DAMAGES AND LOSSES ARE EXPRESSLY DISCLAIMED AND EXCLUDED.

ALL LIMITATIONS OF LIABILITY AND EXCLUSIVE REMEDIES HEREIN SHALL EXTEND TO SMART'S RELATED OR AFFILIATED ENTITIES AND ITS AND THEIR DIRECTORS, OFFICERS AND EMPLOYEES.

**Data:** If Product or component presented for repair or replacement is capable of retaining user-generated data, you are advised that repair or replacement may result in loss of the data.



**IF YOU ARE AN AUSTRALIAN CONSUMER:**

**YOUR RIGHTS AS A CONSUMER**

This section applies if you acquire the warranted products as a consumer within the meaning of the Australian Consumer Law.

The benefits provided to you under this warranty are in addition to other rights and remedies that you may have as a consumer under a law in relation to the goods or services to which this warranty relates.

Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure. For details about the Australian Consumer Law please see the following links: [www.accc.gov.au](http://www.accc.gov.au) or [www.consumerlaw.gov.au](http://www.consumerlaw.gov.au).

**OTHER CONSUMER PURCHASERS:** Consult local authority regarding your rights and obligations.

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Warranty effective February 2016.

The SMART logo is rendered in a stylized, hand-drawn font. The letters are bold and slightly irregular, with a casual, sketchy appearance. The 'S' and 'M' are particularly prominent, with the 'S' having a thick, rounded shape and the 'M' being composed of two vertical strokes connected at the top. The 'A', 'R', and 'T' are also thick and rounded, with the 'A' having a small triangle at the top. The 'R' has a curved bottom, and the 'T' is a simple vertical bar with a horizontal top bar. The overall style is modern and approachable.

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## Limited Product Warranty SMART kapp boards (kapp42/ kapp84) – North America, UK and ROW

This non-transferable limited warranty is provided to the original end user purchaser ("you") of a SMART hardware product (the "Product") from:

SMART Technologies ULC ("SMART")S  
3636 Research Road NW  
Calgary, AB T2L 1Y1  
Phone: +1.403.245.0333  
Fax: +1.403.228.2500  
smarttech.com

This warranty applies to SMART products purchased from a SMART authorized reseller or distributor.

SMART warrants that the Product and certain Accessories will be free from defects in materials and workmanship for the periods set out below ("Warranty Term"):

**Product:** a period of one (1) year from date of purchase

**All other Accessories and parts listed on SMART's Parts Store at [parts.smarttech.com](http://parts.smarttech.com): no warranty is provided** (i.e. non-interactive pens, erasers, brackets, cables, batteries, power supply units)

This warranty applies to claims of which you have notified SMART during the Warranty Term.

### WHAT SMART WILL DO TO HONOR THIS WARRANTY

SMART offers Advanced Replacement at no cost to you following receipt of notice by SMART from you during the Warranty Term that the Product does not conform to the above warranty. SMART also offers optional Return for Repair at your request. Product must be returned in original packaging. In the event that Product supply is limited, SMART will process the request via the return for repair model. SMART will pay for shipping costs.

### WHAT YOU MUST DO TO CLAIM THE WARRANTY

To make a claim under this warranty you will need to:

1. Contact SMART to register your claim and provide sufficient details to enable a SMART representative to assess the claim. It is a requirement to provide the serial number of the Product when requesting a warranty claim.  
Contact SMART at:  
**Website:** [smarttech.com/contactsupport](http://smarttech.com/contactsupport)  
**Phone:** 1.866.518.6791 (toll-free in the U.S./Canada) or +1.403.228.5940 (all other countries)
2. The SMART representative will first attempt to understand and correct the problem via telephone or e-mail. If SMART's representative is unable to correct the situation, the SMART representative will confirm the serial number of the Product. If appropriate, the SMART representative will then provide you with a Return of Merchandise Authorization (RMA) number.
3. Ship the Product (or component) to a SMART-authorized service center and in accordance with the shipping instructions of the SMART representative. The RMA number must be clearly marked on the packaging of the item being returned.

### DEFECTIVE HARDWARE OUT OF THE CARTON

If Product fails to function **within 30 days of the original purchase**, you must follow the same procedures as described above for warranty claims. Purchase dates must be supported by proof of purchase upon SMART's request. In such circumstances, replacement hardware Product or components, subject to availability, will be shipped to your location via ground transportation at SMART's cost. Defective Product or components must then be returned by you by ground transportation, as directed by SMART, at SMART's cost within 30 days of failure, or you will be liable to pay SMART for the purchase price of the replacement item.

### DAMAGED IN SHIPPING

If Product arrives in visibly damaged condition you must note the damage on carrier delivery documents and advise **SMART or Distributor or Reseller** as soon as possible and before the expiry of ten (10) days after delivery at [smarttech.com/contactsupport](http://smarttech.com/contactsupport).

### COST CLAIM

SMART may seek shipping costs or reimbursement from you of any reasonable costs incurred if the Product or component is found, at SMART's discretion, to be in good working order, the problem is not a consequence of a defect or manufacturing fault or where any of the warranty exclusions or limitations apply. Reasonable costs may include the costs of packaging, insurance, shipping, service or parts and labor.

### DISCLAIMERS, EXCLUSIONS AND LIMITATIONS

This section applies to the fullest extent permitted by law.

**Warranty Exclusions:** This warranty will not apply to and SMART will not be liable for (i) any Product which is not purchased from a SMART authorized reseller or distributor; (ii) Product that has been damaged by accident, abuse, neglect, misuse, or causes other than ordinary use (see online Product manuals for further details at [www.smarttech.com](http://www.smarttech.com)), including the direct application of any cleaning liquids, substances or abrasives to the hardware or onto any display surface other than in accordance with the cleaning and care instructions included in the User's Guide for the Product; (iii) Product which has been altered, changed, serviced or repaired by anyone other than SMART authorized repair personnel, or (iv) any Product on which the serial number has been defaced, modified or removed.

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Warranty service hereunder shall not operate to extend the original Warranty Term. The warranty excludes damage incurred in shipment by you or SMART authorized reseller or distributor.

Any charges associated with a rush-requested order or return, such as air express, are your responsibility.

THIS WARRANTY DOES NOT REPLACE, MODIFY OR SUPPLEMENT THE WARRANTIES FOUND IN THE APPLICABLE END USER LICENSE AGREEMENT OR OTHER LICENSE AGREEMENT FOR ANY SOFTWARE PROVIDED IN CONNECTION WITH THE PRODUCT.

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**Limitation of Liability:** THIS WARRANTY IS YOUR SOLE REMEDY AND SMART'S SOLE OBLIGATION FOR DEFECTS IN MATERIALS AND WORKMANSHIP IN THE PRODUCT AND ACCESSORIES. TO THE EXTENT ALLOWED BY LOCAL LAW, THE LIABILITY OF SMART TO YOU ARISING OUT OF THE PURCHASE AND SUPPLY OF THE PRODUCT AND RELATED ITEMS OR ITS OR THEIR USE, WHETHER BASED UPON WARRANTY, CONTRACT, TORT (INCLUDING WITHOUT LIMITATION, NEGLIGENCE), STATUTE OR OTHERWISE, SHALL NOT IN ANY CASE EXCEED THE ORIGINAL COST TO THE PURCHASER OF THE PRODUCT.

SMART SHALL NOT BE LIABLE, WHETHER IN WARRANTY, CONTRACT, TORT (INCLUDING WITHOUT LIMITATION, NEGLIGENCE), STATUTE OR ON ANY OTHER BASIS, FOR ANY DAMAGES SUSTAINED BY THE PURCHASER OR ANY OTHER PERSON ARISING FROM OR RELATED TO LOSS OF USE, FAILURE OR INTERRUPTION IN THE OPERATION OF THE PRODUCT OR RELATED ITEMS, DELAY IN REPAIR OR REPLACEMENT, LOSS OF DATA OR FOR INCIDENTAL, CONSEQUENTIAL, INDIRECT OR SPECIAL DAMAGES OR LIABILITIES, LOSS OF REVENUE, LOSS OF BUSINESS OR OTHER FINANCIAL LOSS ARISING OUT OF OR IN CONNECTION WITH THE SALE, LEASE, MAINTENANCE, USE, PERFORMANCE FAILURE OR INTERRUPTION OF THE PRODUCT OR RELATED ITEMS. ALL SUCH DAMAGES AND LOSSES ARE EXPRESSLY DISCLAIMED AND EXCLUDED.

ALL LIMITATIONS OF LIABILITY AND EXCLUSIVE REMEDIES HEREIN SHALL EXTEND TO SMART'S RELATED OR AFFILIATED ENTITIES AND ITS AND THEIR DIRECTORS, OFFICERS AND EMPLOYEES.

**Data:** If Product or component presented for repair or replacement is capable of retaining user-generated data, you are advised that repair or replacement may result in loss of the data.

**IF YOU ARE AN AUSTRALIAN CONSUMER:**

**YOUR RIGHTS AS A CONSUMER**

This section applies if you acquire the warranted products as a consumer within the meaning of the Australian Consumer Law.

The benefits provided to you under this warranty are in addition to other rights and remedies that you may have as a consumer under a law in relation to the goods or services to which this warranty relates.

Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage.

You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure. For details about the Australian Consumer Law please see the following links: [www.accc.gov.au](http://www.accc.gov.au) or [www.consumerlaw.gov.au](http://www.consumerlaw.gov.au).

**OTHER CONSUMER PURCHASERS:** Consult local authority regarding your rights and obligations.

**SMART Technologies**  
3636 Research Road NW  
Calgary, AB T2L 1Y1  
CANADA

[smarttech.com/support](http://smarttech.com/support)    [smarttech.com/contactsupport](mailto:smarttech.com/contactsupport)

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Warranty effective February 2016.

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# SONICWALL EULA

## SONICWALL GENERAL PRODUCT AGREEMENT

BY EXECUTING AN ORDER FOR THIS PRODUCT, YOU ACCEPT AND AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, DO NOT DOWNLOAD, INSTALL, ACCESS OR USE THE PRODUCT.

This SonicWall Product Agreement (the “*Agreement*”) is made between you (“*Customer*” or “*You*”) and SonicWall, as defined below.

**1. Definitions.** Capitalized terms not defined in context shall 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) “*Appliance*” means a SonicWall branded computer hardware product.
- (c) “*Documentation*” means the user manuals and documentation that SonicWall makes available for the Products and Maintenance Services, and all copies of the foregoing.
- (d) “*Maintenance Services*” means SonicWall’s maintenance and support offering(s) for the Products as further described in Section 10 *Maintenance Services*.
- (e) “*Order*” means the Customer’s order for Product that is accepted by SonicWall from Customer including without limitation requests provided online, via email, or other method.
- (f) “*Partner*” means a reseller or distributor.
- (g) “*SonicWall*” means (i) for Customers located and transacting in the United States, Canada and Brazil, SonicWall Inc., with its principal place of business located at 1033 McCarthy Blvd., Milpitas, CA 95035, USA and (ii) for Customers located and transacting outside the United States (excluding Canada and Brazil), SonicWall International Ltd. located at 2300B, Building 2000, City Gate Park Mahon, Cork, Ireland.
- (h) “*Product(s)*” means the Software, Appliance(s), Maintenance Services and Documentation.
- (i) “*Software*” means the object code version of the software and as well as any bug fixes, updates, new versions and releases to such software that are made available to Customer pursuant to this Agreement and derivatives thereof, and all copies of the foregoing.

## 2. Software License.

(a) **General.** The provisions of this Section 2(a) are applicable to all Software licenses. Subject to the provisions of this Agreement, SonicWall grants to Customer, and Customer accepts from SonicWall, a non-exclusive, non-transferable, non-assignable and non-sublicensable license (except as provided herein) to access and use the Software in the quantities purchased from SonicWall or a Partner within the parameters of the applicable license type described below (“**License Type**”). Except for MSSP Licenses (as defined below), Customer shall only use the Software to support the internal business operations of itself and its worldwide Affiliates. The licenses granted under this Agreement may be perpetual or a subscription license. If the license is a “**Perpetual License**”, the license continues indefinitely unless terminated in accordance with this Agreement. If the license is a “**Subscription License**”, the license continues only for a limited term or period. Except as expressly provided by this Agreement, the initial term of any Subscription License or service offering is stated in the Order, or if no term is stated, is one (1) month. On expiration of the initial term of a Subscription License or Order, the Subscription License or Order terminates (as well as associated rights and licenses) unless Customer has placed an Order or otherwise set up an account or registration for renewal. Except for termination of this Agreement for Customer’s breach, a Perpetual License will survive expiration or termination of this Agreement. The licenses described in this Agreement are only granted to the extent Customer has purchased such license. Customer agrees it will promptly install any updates to Software as may be provided by SonicWall.

(b) **License Types.** The License Type for the Software delivered on an Appliance is “**per Appliance**”. Software licensed per Appliance may be used only on the Appliance on which it is delivered. Software that is purchased on a subscription, or periodic basis is licensed by User or by Managed Node. A “**User**” is each person with a unique login identity to the Software. A “**Managed Node**” is any object managed by the Software including, but not limited to firewalls, devices, and other items sold by SonicWall.

(c) **Software as a Service License.** Customer may purchase a Subscription License to access and use Software installed on equipment operated by SonicWall or its suppliers (the “**SaaS Software License**”). If any item of Software to be installed on Customer’s equipment is provided in connection with SaaS Software License, the duration for such item of Software shall be for the remaining corresponding Subscription License term.

(d) **MSSP License.** “*Management Services*” includes, without limitation, the application, operating system, and database implementation, performance tuning, and maintenance services provided by Customer to its customers (each such customer being a “*Client*”) where Customer installs copies of the Software on its Clients’ equipment or provides its Clients access to the Products (“*MSSP*”). Subject to the provisions of this Agreement, MSSP may purchase a license to use the Software and the associated Documentation to provide Management Services (the “*MSSP License*”). As allowed by applicable law, SonicWall may restrict the MSSP’s distribution of Product within a particular territory. MSSP must include a statement in its agreement with the Client that Client has no recourse or claim whatsoever against SonicWall with respect to the Product as well as associated Orders and Client shall look solely to the MSSP. MSSP may install the Software on equipment owned and operated by the Client provided that MSSP retains administrative control of the Software. MSSP shall interact with the Client regarding all Support and shall not refer the Client to SonicWall for Support. If SonicWall receives calls from Clients for Support, SonicWall reserves the right and Customer agrees to pay SonicWall any additional fees invoiced by SonicWall related to its receipts of such calls. MSSP shall ensure that (i) it makes no representations or warranties related to the Products in excess of SonicWall’s representations or warranties contained in this Agreement, (ii) each Client only uses the Products as part of the Management Services provided to it by MSSP, (iii) such use is subject to the restrictions and limitations contained in this Agreement, including, but not limited to those in the *Export* Section of this Agreement, and (iv) each Client cooperates with SonicWall during any compliance review that may be conducted by SonicWall or its designated agent. At the conclusion of any Management Services engagement with a Client, MSSP shall promptly remove any Product installed on its Client’s computer equipment or require the Client to do the same.

(e) **Evaluation License.** If Product that is commercially available or in beta form is obtained from SonicWall for evaluation purposes, Customer’s license to use the Product is only for Customer’s own non-production, internal evaluation purposes (an “*Evaluation License*”). Each Evaluation License shall be granted for an evaluation period of up to thirty (30) days beginning (i) five (5) days after the Product is shipped or (ii) from the date that access is granted to the Product, plus any extensions granted by SonicWall in writing (the “**Evaluation Period**”). Customer is responsible for any applicable shipping charges or taxes which may be incurred, and any fees which may be associated with an Evaluation License and usage beyond the scope of an Evaluation License. Product in beta or pre-release form may include features and capabilities which may not be available in SonicWall’s generally available commercial versions of the Product. SonicWall retains the right during the term of the Evaluation License to modify, revise, or remove Product from Customer’s premises and SonicWall has no obligation to make beta or pre-release Product generally available. Customer acknowledges that SonicWall owns all modifications, derivative works, changes, expansions or improvements to Product, as well as all reports, testing data or results, feedback, benchmarking or other analysis completed in whole or in part in conjunction with usage of the Product. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT OTHERWISE, CUSTOMER UNDERSTANDS AND AGREES THAT PRODUCT PROVIDED UNDER AN EVALUATION LICENSE IS PROVIDED “AS IS”, WITH ALL FAULTS AND THAT SONICWALL DOES NOT PROVIDE ANY WARRANTY, SUPPORT, OR MAINTENANCE SERVICES FOR PRODUCT PROVIDED UNDER AN EVALUATION LICENSE. SONICWALL BEARS NO LIABILITY FOR ANY DIRECT, INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES RESULTING FROM USE (OR ATTEMPTED USE) OF THE PRODUCT THROUGH AND AFTER THE EVALUATION PERIOD. PRODUCT PROVIDED UNDER AN EVALUATION LICENSE MAY CONTAIN DEFECTS. CUSTOMER IS ADVISED TO SAFEGUARD IMPORTANT DATA, TO USE CAUTION AND NOT TO RELY IN ANY WAY ON THE CORRECT FUNCTIONING OR PERFORMANCE OF THE PRODUCT AND/OR ACCOMPANYING MATERIALS.

(f) **Use by Third Parties.** Customer may allow its service vendors and contractors (each, a “**Third Party User**”) to access and use the Products provided to Customer solely for purposes of providing services to Customer, provided that Customer ensures that (i) the Third Party User’s access to or use of the Products is subject to the provisions in this Agreement, including, but not limited to those in the *Export* Section, (ii) the Third Party User cooperates with SonicWall during any compliance review that may be conducted by SonicWall or its designated agent, and (iii) the Third Party Users promptly removes any Software installed on its computer equipment upon the completion of the Third Party’s need to access or use the Products as permitted by this Section. Customer agrees that it shall be liable to SonicWall for those acts and omissions of its Third Party Users which, if done or not done by Customer, would be a breach of this Agreement.

**3. Restrictions, Reporting & Registration.** 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 (a) such restrictions are prohibited by applicable law and (b) Customer has requested interoperability information in writing from SonicWall and SonicWall has not provided such information in a timely manner. In addition, Customer may not (i) modify, translate, localize, adapt, rent, lease, loan, create or prepare derivative works of, or create a patent based on the Products, or any part thereof, (ii) resell, sublicense

or distribute the Products, (iii) provide, make available to, or permit use of the Products, in whole or in part, by any third party (except as expressly set forth herein), (iv) use the Products to create or enhance a competitive offering or for any other purpose which is competitive to SonicWall, (v) remove Software that was delivered on an Appliance from the Appliance on which it was delivered and load such Software onto a different appliance without SonicWall's prior written consent, or (vi) perform or fail to perform any other act which would result in a misappropriation or infringement of SonicWall's intellectual property rights in the Products. Each permitted copy of the Software and Documentation made by Customer hereunder must contain all titles, trademarks, copyrights and restricted rights notices as in the original. Customer understands and agrees that the Products may come bundled or otherwise distributed with or work in conjunction with open source or other third party products ("**3rd Party Products**"). Customer agrees that it may be subject to additional terms and conditions other than those of this Agreement and it is responsible for ensuring that it is properly licensed or authorized to use such 3rd Party Products. Notwithstanding anything otherwise set forth in this Agreement, nothing in this Agreement prevents or restricts Customer from exercising additional or different rights to any open source software that may be contained in or provided with the Products in accordance with the applicable open source software licenses which shall be either included with the Products or made available to Customer upon request. 3rd PARTY PRODUCTS ARE PROVIDED BY SONICWALL "AS IS" WITHOUT ANY WARRANTY, EXPRESS, IMPLIED, OR OTHERWISE, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, AS IT RELATES TO ANY AND ALL CLAIMS ARISING OUT OF OR IN CONNECTION WITH 3RD PARTY PRODUCTS, SONICWALL SHALL HAVE NO LIABILITY FOR ANY DIRECT, INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, WHETHER IN CONTRACT, STRICT LIABILITY, OR TORT (INCLUDING NEGLIGENCE OR OTHERWISE) ARISING IN ANY WAY OUT OF THE USE OF 3RD PARTY PRODUCT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. Customer may not use any license keys or other license access devices not provided by SonicWall, including but not limited to "pirate keys", to install or access the Software. SonicWall may require the provision of information from or about Customer and/or Partner, including but not limited to the information regarding the use, access, control, and location of the Product, identity of users and any other information requested by SonicWall. All such information shall be provided and transmitted in a form and within a time period determined by SonicWall. SonicWall may also require the registration of Product, establishment of an account (online or otherwise) and/or use of an online portal on or before (without limitation) activating licenses and/or functionality of Product, allowing access to firmware or software, to obtain Maintenance Services or any type of warranty service or support, or to receive any promotion, discount, rebate or other incentive.

**4. Proprietary Rights.** Customer understands and agrees that (i) the Products are protected by copyright and other intellectual property laws and treaties, (ii) SonicWall, its Affiliates and/or its licensors own the copyright, and other intellectual property rights in the Products, (iii) the Software is licensed, and not sold, (iv) this Agreement does not grant Customer any rights to SonicWall's trademarks or service marks, and (v) SonicWall reserves any and all rights, implied or otherwise, which are not expressly granted to Customer in this Agreement.

**5. Title.** SonicWall, its Affiliates and/or its licensors own all rights, title and interest in and to the Software.

**6. Payment.** If credit or credit terms are extended to Customer, Customer may be required to issue a purchase order within a specific period specified after a report or other event occurs. Customer will provide 1 purchase order per MSSP per month and per report required by SonicWall unless specified otherwise by SonicWall. Any reports and any associated billings or invoices must be disputed within 30 days after SonicWall provides the report or invoice, whichever occurs first. Customer agrees to pay to SonicWall (or, if applicable, the Partner) the fees specified in each Order in accordance with the GSA Schedule Pricelist. All payments must be made in US currency unless specified otherwise by SonicWall. SonicWall reserves the right to require Customer to issue a purchase order to SonicWall prior to accepting an Order. SonicWall is not obligated to offer credit or credit terms. If credit and/or credit terms are not extended to Customer, SonicWall may require payment of all amounts due and payable upon delivery of Product by SonicWall. If credit or credit terms are extended to Customer, Customer may be invoiced prior to, upon or following delivery of the Products or before or after the commencement of any Renewal Maintenance Period. Customer shall make all payments due to SonicWall in full within thirty (30) days from the receipt date of each invoice from SonicWall or such other period (if any) stated in an Order. Availability of Products may be limited or change without notice, including without limitation pricing. SonicWall is not responsible for typographical or other errors. Amounts due and payable may be associated with use of a license key, password, or other mechanisms provided by SonicWall to access or

use the Product. Customer will be responsible for its use or distribution of Product as well as for the security, use, and administration of all such license keys, passwords, or other mechanisms (including without limitation all activations and deactivations). SonicWall is not obligated to issue refunds or credits for Customer's failure to maintain the security, use and administration of such information. SonicWall's calculation of fees or other amounts due and payable based on license keys, passwords, or other mechanisms provided by SonicWall shall be at SonicWall's sole discretion and Customer agrees to pay all fees based on such calculations. SonicWall recommends that Customer immediately contact SonicWall if any such information changes, or is lost, stolen, misplaced, or otherwise compromised. If Customer continues using the Product after termination or expiration of the term of the License or this Agreement, it will be a material breach of this Agreement. SonicWall reserves the right to charge Customer a late penalty as indicated by the Prompt Payment Act (31 USC 3901 et seq) and Treasury regulations at 5 CFR 1315 for any amounts payable to SonicWall by Customer that are not subject to a good faith dispute and that remain unpaid after the due date until such amount is paid. Amounts due or payable to SonicWall may not be offset against any other amount due and payable to SonicWall.

**7. Taxes.** SonicWall shall state separately on invoices taxes excluded from the fees, and the Customer agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 552.212-4(k). This Section does not apply to taxes based on SonicWall's or a Partner's income.

#### **8. 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 brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, SonicWall 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.

(b) Upon termination of this Agreement or expiration or termination of a license for any reason, all rights granted to Customer for the applicable Product shall immediately cease and Customer shall immediately: (i) cease using the applicable Product, (ii) remove all copies, installations, and instances of the applicable Software from all Appliances, Customer computers and any other devices on which the Software was installed, and ensure that all applicable Third Party Users and Clients do the same, (iii) return the Software to SonicWall together with all Documentation and other materials associated with the Software and all copies of any of the foregoing, or destroy such items, (iv) cease using the Maintenance Services associated with the Product, (v) pay SonicWall or the applicable Partner all amounts due and payable up to the date of termination, and (vi) give SonicWall a written certification, within ten (10) days, that Customer, Third Party Users, and Clients, as applicable, have complied with all of the foregoing obligations.

(c) Any provision of this Agreement that requires or contemplates execution after (i) termination of this Agreement, (ii) a termination or expiration of a license, or (iii) the expiration of a Subscription Term, is enforceable against the other party and their respective successors and assignees notwithstanding such termination or expiration, including, without limitation, the *Restrictions, Payment, Taxes, Termination, Survival, Warranty Disclaimer, Infringement Indemnity, Limitation of Liability, Confidential Information, Compliance Verification, 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 or a Partner may have under law, subject to the limitations and exclusions set forth in this Agreement.

**9. Export.** Customer acknowledges that the Products are subject to the export control laws, rules, regulations, restrictions and national security controls of the United States and other applicable foreign agencies (the "**Export Controls**") and agrees to abide by the Export Controls. Customer hereby agrees to use the Products in accordance with the Export Controls, and shall not export, re-export, sell, lease or otherwise transfer the Products or any copy, portion or direct product of the foregoing in violation of the Export Controls. Customer is solely responsible for obtaining all necessary licenses or authorizations relating to the export, re-export, sale, lease or transfer of the Products and for ensuring compliance with the requirements of such licenses or authorizations. Customer hereby (i) represents that Customer, and if Customer is providing services under the MSSP License herein each of its Clients, is not an entity or person to which shipment of Products is prohibited by the Export Controls; and (ii) agrees that it shall not export, re-export or otherwise transfer the Products to (a) any country subject to a United States trade embargo, (b) a national or resident of any country subject to a United States trade embargo, (c) any person or entity to which shipment of Products is prohibited by the Export Controls, or (d) anyone who is engaged in activities related to the design, development, production, or use of nuclear materials, nuclear facilities, nuclear weapons, missiles or chemical or biological weapons. Customer shall, at its expense, defend SonicWall and its Affiliates from any third party claim or action arising out of any



inaccurate representation made by Customer regarding the existence of an export license, Customer's failure to provide information to SonicWall to obtain an export license, or any allegation made against SonicWall due to Customer's violation or alleged violation of the Export Controls (an "**Export Claim**") and shall pay any judgments or settlements reached in connection with the Export Claim as well as SonicWall's costs of responding to the Export Claim.

## **10. Maintenance Services.**

(a) **Description.** If Maintenance Services are purchased and notwithstanding anything in the Agreement to the contrary, SonicWall will provide Support in accordance with applicable support policies at [www.sonicwall.com/support/support-services/](http://www.sonicwall.com/support/support-services/). These Maintenance Services may include, during any Maintenance Period:

(i) Making available to Customer new versions and releases of the Software (if any are made generally available), without additional charge as part of Maintenance Services.

(ii) Responding to communications from Customer that report Software failures not previously reported to SonicWall by Customer.

(iii) Responding to requests from Customer's technical coordinators for assistance with the operational/technical aspects of the Software unrelated to a Software failure. SonicWall shall have the right to limit such responses if SonicWall reasonably determines that the volume of such non-error related requests for assistance is excessive or overly repetitive in nature.

(iv) Providing access to SonicWall's software support web site at [www.sonicwall.com/support](http://www.sonicwall.com/support) (the "**Support Site**").

(v) For Customers that have purchased Maintenance Services continuously since the purchase of such license, providing the repair and return program described on the Support Site for the Appliance on which the Software is delivered.

(b) **Availability.** Maintenance Services are generally available during regional business support hours ("**Business Hours**") as indicated on the Support Site, unless Customer has purchased 24x7 Support. The list of Software for which 24x7 Support is available and/or required is listed in the Global Support Guide on the Support Site. Maintenance Services for Software that SonicWall has obtained through an acquisition or merger may, for a period of time following the effective date of the acquisition or merger, be governed by terms other than those in this Section. The applicable different terms, if any, shall be stated on the Support Site. Availability of Maintenance Services and other offers may vary by Product and/or location.

(c) **Maintenance Period.** The first period for which Customer is entitled to receive Maintenance Services begins on the date of the registration of the Product at SonicWall's registration portal (the "**Registration**") and ends within the period of time specified in the Order thereafter (the "**Initial Maintenance Period**"). Following the Initial Maintenance Period, Maintenance Services for the Product(s) (if available) may then be renewed for additional periods (each, a "**Renewal Maintenance Period**"). For purposes of this Agreement, the Initial Maintenance Period and each Renewal Maintenance Period shall be considered a "**Maintenance Period.**" For the avoidance of doubt, the provisions of this Agreement shall apply to each Renewal Maintenance Period. Maintenance fees shall be due in advance of each Renewal Maintenance Period. The procedure for reinstating Maintenance Services for the Appliance and/or Software after it has lapsed is posted at [www.sonicwall.com/support/support-services/#toggle-id-7](http://www.sonicwall.com/support/support-services/#toggle-id-7).

(d) Customer must provide SonicWall with all information that SonicWall reasonably requests in connection with Customer's Maintenance Service request, including information needed to reproduce the error or other issue Customer experiences. If Customer purchases a Maintenance Service offering that limits the number of individuals who may request Maintenance Services on Customer's behalf, Customer must identify Customer's designated individuals in writing to SonicWall on request. Customer's personnel who request Support must be reasonably proficient in the use of information technologies, and knowledgeable about Customer's systems. SonicWall is not obligated to provide Maintenance Services where the request is the result of any of the following (the "**Support Exclusions**"), but may do so, at its option: (i) use of the Maintenance Services other than in accordance with the applicable provisions of the Agreement, the Documentation or reasonable instructions provided by SonicWall, or (ii) excessive or repetitive requests for Maintenance Services. SonicWall may charge additional fees and Customer agrees to pay for any work related to a Support Exclusion. Any Maintenance Services provided in connection with a Support Exclusion is provided AS IS. Maintenance Services do not include planning, design, deployment or other professional or consulting services. SonicWall partners may offer professional services as further described on the SonicWall website ([www.sonicwall.com/partners/partner-enabled-services/](http://www.sonicwall.com/partners/partner-enabled-services/)) under separate legal terms and conditions.

Notwithstanding anything in this Agreement to the contrary, MSSP will be responsible for providing first and

second level of support to Clients and Clients will not be referred to SonicWall for any support or service. If SonicWall receives calls from Clients for support, such support will be deemed a Support Exclusion.

## 11. Warranties and Remedies.

(a) **Software Warranties.** Except as otherwise provided herein, SonicWall warrants that during the applicable Warranty Period (as defined in subsection (c) below),

(i) the operation of the Software, as provided by SonicWall, will substantially conform to its Documentation (the “*Operational Warranty*”);

(ii) SonicWall has used reasonable efforts to ensure the Software, as provided by SonicWall, will not contain any viruses, worms, Trojan Horses, or other malicious or destructive code designed by SonicWall to allow unauthorized intrusion upon, disabling of, or erasure of the Software, except that the Software may contain a key limiting its use to the scope of the license granted, and license keys issued by SonicWall for temporary use are time-sensitive (the “*Virus Warranty*”);

(b) **Appliance Warranties.** Unless the Documentation provides otherwise, SonicWall warrants that, during the applicable Warranty Period, the Appliance will operate in a manner which allows it to be used in substantial conformance with the Documentation (the “*Appliance Warranty*”).

(c) **Warranty Periods.** The “*Warranty Period*” for each of the above warranties (except for monthly subscription licenses and other Products designated by SonicWall which do not include a Software warranty), shall be as follows: (i) for the Operational Warranty as it applies to Software and the Virus Warranty, up to ninety (90) days following the initial registration of the Software; (ii) the SaaS Availability Warranty, the duration of the SaaS Software License term; and (iv) for the Appliance Warranty, one (1) year following the date the Appliance is registered with SonicWall.

(d) **Remedies.** Any breach of the foregoing warranties must be reported by Customer to SonicWall during the applicable Warranty Period. Customer’s sole and exclusive remedy and SonicWall’s sole obligation for any such breach shall be as follows:

(i) For a breach of the *Operational Warranty* that materially impacts the use of Software, SonicWall will use reasonable efforts to correct or provide a workaround for reproducible errors in the Software within a reasonable time considering the severity of the error and its effect on Customer or, at SonicWall’s option, refund the license fees paid for the nonconforming Software upon return of such Software to SonicWall and termination of the related license(s).

(ii) For a breach of the *Operational Warranty* that materially impacts the use of a SaaS Software License, SonicWall will use reasonable efforts to correct or provide a workaround for reproducible errors in the Software within a reasonable time considering the severity of the error and its effect on Customer or terminate the license and provide a credit or refund of the fees allocable to the period of the Subscription License remaining when the license was terminated.

(iii) For a breach of the *Virus Warranty*, SonicWall will use reasonable efforts to replace the Software with a copy that is in conformance with the Virus Warranty.

(e) **Warranty Exclusions.** The warranties set forth in this Section shall not apply to any non-conformance (i) that SonicWall cannot recreate after exercising commercially reasonable efforts to attempt to do so; (ii) caused by misuse of the applicable Product or by using the Product in a manner that is inconsistent with this Agreement; or (iii) arising from the modification of the Product by anyone other than SonicWall.

(f) **Third Party Products.** Certain Software may contain features designed to interoperate with third-party products. If the third-party product is no longer made available by the applicable SonicWall, SonicWall may discontinue the related product feature. SonicWall shall notify Customer of any such discontinuation, however Customer will not be entitled to any refund, credit or other compensation as a result of the discontinuation.

(g) **Warranty Disclaimer.** THE EXPRESS WARRANTIES AND REMEDIES SET FORTH IN THIS SECTION ARE THE ONLY WARRANTIES AND REMEDIES PROVIDED BY SONICWALL HEREUNDER. 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 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. SONICWALL DOES NOT WARRANT UNINTERRUPTED OR ERROR-FREE OPERATION OF THE PRODUCTS.

(h) **High-Risk Disclaimer.** Customer understands and agrees that the Products 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 navigation, air traffic control, life support machines, weapons systems, or any other application where the failure or malfunction of any Product 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 Products in a High Risk Environment, (ii) any use of the Products

by customer in a high risk environment is at Customer's own risk, (iii) SonicWall, its affiliates and suppliers shall not be liable to Customer in any way for use of the Products in a High risk Environment, and (iv) SonicWall makes no warranties or assurances, express or implied, regarding use of the Products in a High Risk Environment. Further, Customer acknowledges that Product provided under this Agreement is not designed with security and access management for the processing and/or storage of the following categories of data and software: (A) classified data and software; (B) data and software controlled under the International Traffic in Arms Regulations ("ITAR"); and (C) personally identifiable information that is subject to heightened security requirements as a result of your internal policies or practices or by law (collectively referred to as "Excluded Data"). Customer hereby agrees that it is solely responsible for reviewing data that the Product will provide to SonicWall (or to which SonicWall will have access) to ensure that it does not contain Excluded Data.

## **12. Indemnity.**

(a) SonicWall shall indemnify 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 Software directly infringes any patent, copyright, trademark, or other proprietary right enforceable in the United States or misappropriates a trade secret (a "**Claim**"). Indemnification for a Claim shall consist of the following: SonicWall shall (a) have the right to intervene to defend or settle the Claim at its own expense, (b) pay any judgments finally awarded against Customer under a Claim or any amounts assessed against Customer in any settlements of a Claim, and (c) reimburse Customer for the reasonable administrative costs or expenses, including without limitation reasonable attorneys' fees, it necessarily incurs in responding to the Claim. SonicWall's obligations under this *Infringement Indemnity* Section are conditioned upon Customer (i) giving prompt written notice of the Claim to SonicWall, (ii) permitting SonicWall to retain sole control of the investigation, defense or settlement of the Claim, and (iii) providing SonicWall with cooperation and assistance as SonicWall may reasonably request in connection with the Claim. SonicWall shall have no obligation hereunder to defend Customer against any Claim (a) resulting from use of the Software other than as authorized by this Agreement, (b) resulting from a modification of the Software other than by SonicWall, (c) based on Customer's use of any release of the Software other than the current release of the Software, or (d) to the extent the Claim arises from or is based on the use of the Software with other products, services, or data not supplied by SonicWall if the infringement would not have occurred but for such use. If, as a result of a Claim or an injunction, Customer must stop using any Software ("**Infringing Software**"), SonicWall shall at its expense and option either (1) obtain for Customer the right to continue using the Infringing Software, (2) replace the Infringing Software with a functionally equivalent non-infringing product, (3) modify the Infringing Software so that it is non-infringing, or (4) terminate the license for the Infringing Software and (A) excluding SaaS Software License, accept the return of the Infringing Software and refund the license fee paid for the Infringing Software, pro-rated over a sixty (60) month period from the date of initial delivery of such Software, or (B) for a SaaS Software License, discontinue Customer's right to access and use the Infringing Software and refund the unused pro-rated portion of any license fees pre-paid by Customer for such SaaS Software License. This Section states SonicWall's entire liability and its sole and exclusive indemnification obligations with respect to a Claim and Infringing Software. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516.

(b)Reserved.

## **13. Limitation of Liability.**

(a) IN NO EVENT SHALL CUSTOMER OR ITS AFFILIATES, OR SONICWALL, ITS AFFILIATES OR SUPPLIERS 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.

(b) THE MAXIMUM AGGREGATE AND CUMULATIVE LIABILITY OF CUSTOMER AND ITS AFFILIATES, AND SONICWALL, ITS AFFILIATES AND SUPPLIERS, FOR DAMAGES UNDER THIS AGREEMENT, WHETHER ARISING IN OR FOR BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF STATUTORY DUTY, OR OTHERWISE, SHALL BE AN AMOUNT EQUAL TO (Y) THE GREATER OF THE FEES PAID AND/OR OWED (AS APPLICABLE) BY CUSTOMER OR ITS AFFILIATES FOR THE PRODUCTS THAT ARE THE SUBJECT OF THE BREACH OR FIVE HUNDRED DOLLARS (\$500.00), EXCEPT FOR (Z) A PRODUCT SUBJECT TO RECURRING FEES, FOR WHICH THE MAXIMUM AGGREGATE AND CUMULATIVE LIABILITY SHALL BE THE GREATER OF THE AMOUNT PAID AND/OR OWED (AS APPLICABLE) FOR SUCH PRODUCT. THE PARTIES

AGREE THAT THESE LIMITATIONS OF LIABILITY ARE AGREED ALLOCATIONS OF RISK CONSTITUTING IN PART THE CONSIDERATION FOR SONICWALL PROVIDING PRODUCTS 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.

(c) THE LIMITATIONS SET FORTH IN THIS SECTION SHALL NOT APPLY TO (A) ANY BREACH OF THE LICENSE(S), RESTRICTIONS, OR CONFIDENTIAL INFORMATION PROVISIONS OF THIS AGREEMENT, OR ANY OTHER VIOLATION OF SONICWALL'S INTELLECTUAL PROPERTY RIGHTS; (B) EACH PARTY'S EXPRESS OBLIGATIONS UNDER THE INFRINGEMENT INDEMNITY SECTION OF THIS AGREEMENT AND (C) CUSTOMER'S EXPRESS OBLIGATIONS UNDER THIS AGREEMENT REGARDING THE CONDUCT, EXPORT, AND USE BY THIRD PARTIES, (C) SONICWALL'S COSTS OF COLLECTING DELINQUENT AMOUNTS WHICH ARE NOT THE SUBJECT OF A GOOD FAITH DISPUTE; (D) A PREVAILING PARTY'S LEGAL FEES PURSUANT TO THE LEGAL FEES SECTION OF THIS AGREEMENT; OR (E) ANY LIABILITY TO THE EXTENT LIABILITY MAY NOT BE EXCLUDED OR LIMITED AS A MATTER OF APPLICABLE LAW. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO (1) PERSONAL INJURY OR DEATH RESULTING FROM LICENSOR'S NEGLIGENCE; (2) FOR FRAUD; OR (3) FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW.

#### **14. 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 (excluding GSA Schedule pricing), trade secrets, know-how, proprietary tools, knowledge and methodologies, 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. Reporting and registration information provided by Customer to SonicWall under this Agreement shall be deemed SonicWall Confidential Information. Confidential Information shall 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 date that Customer accepts the Agreement (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 protected by SonicWall in accordance with its obligations under the *Protected Data* Section below, or (v) are or were independently developed by the Receiving Party without access to or use of the Disclosing Party's Confidential Information.

(b) **Obligations.** The Receiving Party shall (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 shall 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 shall 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*"), but only to those Representatives that (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 shall 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 be a breach of this Agreement. Additionally, it shall not be a breach of this Section for the Receiving Party to disclose the Disclosing Party's Confidential Information as may be required by operation of law or 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. Vendor recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C.

552, which requires that certain information be released in accordance with applicable law, despite being characterized as “confidential” by the vendor.

**15. Protected Data.** For purposes of this Section, “*Protected Data*” means any information or data that is provided by Customer to SonicWall during this Agreement that alone or together with any other information relates to an identified or identifiable natural person or data considered to be personal data as defined under Privacy Laws, and “*Privacy Laws*” means any applicable law, statute, directive or regulation regarding privacy, data protection, information security obligations and/or the processing of Protected Data. Except as permitted herein or to the extent required by Privacy Laws or legal process, SonicWall shall implement reasonable technical and organizational measures to prevent unauthorized disclosure of or access to Protected Data by third parties and shall only store and process Protected Data as may be required to fulfill its obligations under this Agreement. If SonicWall complies with Customer’s written instructions with respect to the Protected Data, SonicWall shall have no liability to Customer for any breach of this Section resulting from such compliance. SonicWall shall promptly notify Customer of any disclosure of or access to the Protected Data by a third party in material breach of this Section and shall cooperate with Customer to reasonably remediate the effects of such disclosure or access. SonicWall further affirms to Customer that it has adequate agreements in place incorporating the EU standard contractual clauses for the transfer of Protected Data from the European Union (“*EU*”) to a country outside the EU. Customer hereby (i) represents that it has the right to send the Protected Data to SonicWall, (ii) consents for SonicWall to store and use the Protected Data worldwide for the sole purpose of performing its obligations under this Agreement, (iii) agrees that the Protected Data may be accessed and used by SonicWall and its Representatives worldwide as may be needed to support SonicWall’s standard business operations, and (iv) agrees that Protected Data consisting of Customer contact information (e.g., email addresses, names) provided as part of Maintenance Services may be sent to SonicWall’s third party service providers as part of SonicWall’s services improvement processes.

**16. Compliance Verification.** Customer agrees to maintain and use systems and procedures to accurately track, document, and report its installations, acquisitions and usage of Software. Such systems and procedures shall be sufficient to determine if Customer’s deployment of the Software or, if applicable, use of the Software under a SaaS Software License is within the quantities, terms, and maintenance releases to which it is entitled. SonicWall or its designated auditing agent shall have the right to audit Customer’s deployment of the Software. Any such audits shall be scheduled at least ten (10) days in advance and shall be conducted during normal business hours remotely or at Customer’s facilities subject to Government security requirements. Customer shall provide its full cooperation and assistance with such audit and provide access to the applicable records and computers. Without limiting the generality of the foregoing, as part of the audit, SonicWall may request, and Customer agrees to provide, a written report, signed by an authorized representative, listing Customer’s then current deployment of the Software and/or the number of individuals that have accessed and used Software as well as any other information as may be requested by SonicWall. If Customer’s deployment or use of the Software is found to be greater than its purchased entitlement to such Software, Customer will be invoiced for the over-deployed quantities at SonicWall’s then current GSA Schedule list price without any deduction of discounts, rebates, incentives or other amounts plus the applicable Maintenance Services and applicable over-deployment fees. All such amounts shall be payable in accordance with this Agreement. SonicWall reserves the right to submit a claim for any unpaid fees that exceed five percent (5%) of the fees paid for the applicable software.

**17. SaaS Provisions.**

(a) **Data.** Customer may store data on the systems to which it is provided access in connection with its use of a SaaS Software License (the “*SaaS Environment*”). SonicWall may periodically make back-up copies of Customer data, however, such back-ups are not intended to replace Customer’s obligation to maintain regular data backups or redundant data archives. Customer is solely responsible for collecting, inputting and updating all Customer data stored in the SaaS Environment, and for ensuring that it does not (i) knowingly create and store data that actually or potentially infringes or misappropriates the copyright, trade secret, trademark or other intellectual property right of any third party, or (ii) use the SaaS Environment for purposes that would reasonably be seen as obscene, defamatory, harassing, offensive or malicious. SonicWall shall have the right to delete all Customer data stored in connection with the use of the SaaS License following any termination or expiration of this Agreement or any license granted hereunder. Customer represents and warrants that it has obtained all rights, permissions and consents necessary to use and transfer all Customer and/or third party data within and outside of the country in which Customer or the applicable Customer Affiliate is located (including providing adequate disclosures and obtaining legally sufficient consents from Customer’s employees, customers, agents, and contractors). If Customer transmits data to a third-party website or other provider that is linked to or made accessible by the SaaS Software License, Customer will be deemed to have given its consent

to SonicWall enabling such transmission and SonicWall shall have no liability to Customer in connection with any claims by a third party in connection with such transmission.

(b) **Conduct.** In connection with the use of Software, Customer may not (i) attempt to use or gain unauthorized access to SonicWall's or to any third-party's networks or equipment; (ii) permit other individuals or entities to copy the Software; (iii) provide unauthorized access to or use of any Software or the associated access credentials; (iv) attempt to probe, scan or test the vulnerability of the Software, the SaaS Environment, or a system, account or network of SonicWall or any of SonicWall's customers or suppliers; (v) interfere or attempt to interfere with service to any user, host or network; (vi) engage in fraudulent, offensive or illegal activity of any nature or intentionally engage in any activity that infringes the intellectual property rights or privacy rights of any individual or third party; (vii) transmit unsolicited bulk or commercial messages; (viii) intentionally distribute worms, Trojan horses, viruses, corrupted files or any similar items; (ix) restrict, inhibit, or otherwise interfere with the ability of any other person, regardless of intent, purpose or knowledge, to use or enjoy the SaaS Software (except for tools with safety and security functions); or (x) restrict, inhibit, interfere with or otherwise disrupt or cause a performance degradation to any SonicWall (or SonicWall supplier) facilities used to provide the SaaS Environment. Customer shall cooperate with SonicWall's reasonable investigation of SaaS Environment outages, security issues, and any suspected breach of this Section, Customer agrees that any such costs related to third-party claims alleging harm to such third parties caused by Customer's breach of any of the provisions of this section are allocable to the contract and recoverable under the Contract Disputes Act.

(c) **Suspension.** SonicWall may temporarily suspend Customer's use or access to Software (a) if so required by law enforcement or legal process, or (b) in the event of an imminent security risk to SonicWall or its customers. SonicWall shall make commercially reasonable efforts under the circumstances to provide prior notice to Customer of any such suspension.

## 18. General.

(a) **Governing Law and Venue.** This Agreement shall be governed by and construed in accordance with the Federal laws of the United States, 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) shall 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 shall not, in whole or part, assign or transfer any part of this Agreement, the licenses granted under this Agreement or any other rights, interest or obligations hereunder, 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 SonicWall. Any attempted transfer or assignment by Customer that is not permitted by this Agreement shall be null and void.

(c) **Severability.** If any provision of this Agreement shall be held by a court of competent jurisdiction to be contrary to law, such provision will be enforced to the maximum extent permissible by law to affect the intent of the parties and the remaining provisions of this Agreement will remain in full force and effect. Notwithstanding the foregoing, the terms of this Agreement that limit, disclaim, or exclude warranties, remedies or damages are intended by the parties to be independent and remain in effect despite the failure or unenforceability of an agreed remedy. The parties have relied on the limitations and exclusions set forth in this Agreement in determining whether to enter into it.

(d) **Use by U.S. Government.** The Software is a "commercial item" under FAR 12.201. Consistent with FAR section 12.212, 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 and the *Injunctive Relief* Section of this Agreement shall not be applicable.

(e) **Notices.** All notices provided hereunder shall be in writing and may be delivered by email, in the case of SonicWall to and in the case of Customer to the email address SonicWall has on file for Customer. All notices, requests, demands or communications shall be deemed effective upon delivery in accordance with this paragraph.

(f) **Disclosure of Customer Status.** SonicWall may include Customer in its listing of customers and, upon written consent by Customer, announce Customer's selection of SonicWall in its marketing communications to the extent permitted by the General Services Acquisition Regulation (GSAR) 552.203-71.

(g) **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 shall 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.

(h) Reserved.

(i) **Force Majeure.** Excusable delays shall be governed by FAR 552.212-4(f).

(j) **Equal Opportunity.** SonicWall is an Affirmative Action employer (M/F/D/V) as required by the Equal Opportunity clause C.F.R. § 60-741.5(a).

(k) **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.”

(l) Reserved.

(m) **Entire Agreement.** Each party acknowledges that in entering into the Agreement it has not relied on and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in the Agreement. Unless Customer has entered into another written agreement with respect to the Product which has been signed by Customer and an authorized representative of SonicWall and which conflicts with the provisions of this Agreement, Customer agrees that this Agreement supersedes all prior written or oral agreements, warranties or representations with respect to use of the Product. If any provision (or part thereof) of this Agreement is found to be invalid or unenforceable, the remaining provisions (including other valid parts within the effected term) will remain effective. Customer understands and agrees that SonicWall may modify or amend the non-material terms and conditions of this Agreement at any time without notice. Customer is responsible for ensuring it is aware of the most current terms and conditions that apply to the Products and use thereof. Customer acknowledges that it has read, understands and agrees to be bound by this Agreement and that this Agreement is the complete and exclusive statement of the agreement between Customer and SonicWall regarding the Product(s).

**Appendix**

Additional Product Specific Agreements



## SONICWALL CAPTURE SECURITY CENTER (HOSTED OFFERING)

These SonicWall Service Terms for Capture Security Center (these "**Service Terms**") are between SonicWall and the Ordering Activity under GSA Schedule contracts submitting an Order for the Capture Security Center Services ("**Customer**"). These terms apply only to SonicWall's Capture Security Center hosted service offering and not for an offering that includes installation on an environment that you host and control.

SonicWall may modify the non-materials terms and conditions of these Services Terms at any time, but modifications are not effective for Orders that are in place prior to the modification until the Order renews or Customer adds new services to Customer's account. See the [Section 17.8 \(Changes to Online Service Terms\)](#).

**Please note that the Capture Security Center Services capture data about network connected devices, physical and virtual, and all traffic processed by those devices.** See [Section 3.4 \(Security\)](#) below for additional information.

**1. Definitions.** The following terms, when capitalized, have the meanings stated below:

**1.1 Affiliate** means a legal entity that controls, is controlled by, or is under common control with the person referred to, for so long as such control exists.

**1.2 Agent** means a software agent provided by SonicWall for Customer's installation on Customer's network for the purpose of enabling Customer to use the Services;

**1.3 Agreement** means these Service Terms and the Order(s), collectively.

**1.4 Customer Data** means data, information and content that is: (i) transmitted to or from, or stored via the authorized use of the Services, (ii) created by Customer or its authorized users by means of the Services, or (iii) results from SonicWall's processing of any of the foregoing, but excluding in each case de-identified or anonymous system usage data as described in [Section 17.9.1 \("Customer Data"\)](#).

**1.5 Documentation** means the general release versions of user and administrative manuals and other documentation and technical policies for the Services, as updated from time to time by SonicWall.

**1.6 Malware** means viruses, spyware, adware, or other unauthorized code or information that is designed to interrupt the normal use of the Services or the Customer's systems, or destroy or corrupt any data, or covertly transmit information.

**1.7 MSP Agreement** has the meaning given in [Section 6 \(Managed Services\)](#).

**1.8 MSP Client** has the meaning given in [Section 6 \(Managed Services\)](#).

**1.9 Order** means the Customer's order for the Services that is submitted on forms prepared by SonicWall, and that is accepted by SonicWall or its Partner.

**1.10 Outsourcer** means a third party under contract with Customer to provide services to Customer in support of Customer's internal business operations.

**1.11 Partner** means a reseller or distributor that is authorized by SonicWall to offer and sell the Services.

**1.12 Personal Data** has the meaning given in [Section 16 \(Personal Data\)](#).

**1.13 Services** means SonicWall making the Software available online through SonicWall's hosted environment for Customer's remote use as further described in an Order.

**1.14 Software** means (i) the SonicWall Capture Security Center software, (ii) the Agent, (iii) the Documentation, and (iv) updates and enhancements to either of the them made by SonicWall during the Term.

**1.15 SonicWall** means (i) for Customers located in the United States, SonicWall Inc., with its principal place of business located at 1033 McCarthy Blvd., Milpitas, CA 95035, USA and (ii) for Customers located outside the United States, SonicWall International Ltd. located at 2300B, Building 2000, City Gate Park, Mahon, Cork,

Ireland.

**1.16 Support** means (i) assistance with the use or operation of the Services or Software provided on Customer's request, and (ii) access to online Documentation as further described on SonicWall's website and applicable Order that includes a defined set of Support commitments for a defined period.

**1.17 SonicWall Technology** means the Software, the Services environment, user and programming interfaces, reporting tools, and other software, information and materials that comprise the Services or that are used by SonicWall to provide the Services.

**1.18 Term** means the initial term and any renewal term, collectively.

**1.19 Third Party Technology** means software or other technology that Customer licenses directly from a third party for use with the Services.

## **2. Services and Support.**

**2.1 Services.** The Services are provided during the Term pursuant to the terms and conditions, and subject to restrictions, stated in the Order and these Service Terms. The Services include those features described in Customer's Order or that are part of the product set described in the Documentation and referenced in the Order. The Services include updates and enhancements that SonicWall releases during the Term as part of the Services product that Customer has purchased.

**2.2 Support.** SonicWall will provide Support in accordance with applicable support policies at [www.sonicwall.com/support/support-services](http://www.sonicwall.com/support/support-services). Customer must provide SonicWall with all information that SonicWall reasonably requests in connection with Customer's support request, including information needed to reproduce the error or other issue Customer experiences. If Customer purchases a Support offering that limits the number of individuals who may request Support on Customer's behalf, Customer must identify Customer's designated individuals in writing to SonicWall on request. Customer's personnel who request Support must be reasonably proficient in the use of information technologies, and knowledgeable about Customer's systems. SonicWall is not obligated to provide Support where the request is the result of any of the following (the "Support Exclusions"), but may do so, at its option: (i) use of the Services other than in accordance with the applicable terms of the Agreement, the Documentation or reasonable instructions provided by SonicWall, or (ii) excessive or repetitive requests for Support. SonicWall may charge additional fees for any work related to a Support Exclusion. Any SonicWall Support provided in connection with a Support Exclusion is provided **AS IS**. Support does not include planning, design, deployment or other professional or consulting services. SonicWall partners offer professional services as described on the SonicWall website ([www.sonicwall.com/partners/partner-enabled-services](http://www.sonicwall.com/partners/partner-enabled-services)) under separate legal terms.

## **3. Warranties and Remedies.**

**3.1 Services.** SonicWall warrants that it will use commercially reasonable efforts to make the Services available to Customer 24 hours per day, 7 days per week, year-round, excluding unavailability due to reasonable maintenance. The Services will substantially conform to the applicable Documentation. Customer's **SOLE AND EXCLUSIVE REMEDY** for SonicWall's failure to meet the warranties stated in this Section is to require SonicWall to correct the failure, or if SonicWall does not correct the failure within a reasonable time, or correction is not commercially feasible, to terminate the Order and receive a refund of any pre-paid fees for unused Services. As a condition to the warranty remedy under this Section, Customer must give notice of the warranty failure within ten (10) days following the calendar month in which the breach occurs and must cooperate with SonicWall's reasonable requests for information and assistance, including information necessary to reproduce the defect. The warranty does not apply to the extent a failure is due to a Support Exclusion as defined above.

**3.2 Support.** SonicWall warrants that it will provide Support in a professional manner using personnel who have appropriate education, experience, and skill. Customer's **SOLE AND EXCLUSIVE REMEDY** for SonicWall's failure to meet its Support warranty stated in this Section is to require SonicWall to correct or re-perform the deficient Support, or, if SonicWall fails to correct or re-perform the deficient Support, to terminate the Order and receive a refund of any pre-paid fees for unused services. As a condition to the warranty remedy under this Section, Customer must give notice of the warranty breach within ten (10) days following the calendar month in which the breach occurs and must cooperate with SonicWall's reasonable requests for

information and assistance. The warranty does not apply to Support Exclusions.

**3.3 Malware.** SonicWall warrants that it will use reasonable commercial efforts to deliver the Services free of Malware.

**3.4 Security.** SonicWall shall have and maintain, at its cost and expense, physical, organizational and technical measures and processes, security standards, guidelines, controls and procedures designed to meet the requirements of United States and European Union data protection laws. Customer is responsible for determining if the Services offered by SonicWall meet any and all regulatory requirements applicable to Customer and otherwise meet Customer's business and security requirements. Customer acknowledges that the Services are designed to capture all of the information about the data flows transmitted to or through devices, as well as all of the configuration data about the devices, to the same extent as such information is available to the operator of the device.

**3.5 Warranty Disclaimer.** THE EXPRESS WARRANTIES AND REMEDIES SET FORTH IN THIS SECTION ARE THE ONLY WARRANTIES AND REMEDIES PROVIDED BY SONICWALL HEREUNDER. 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 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. SONICWALL DOES NOT WARRANT UNINTERRUPTED OR ERROR-FREE OPERATION OF THE SERVICES. SONICWALL DOES NOT WARRANT THAT THE SERVICES WILL ENABLE THE CUSTOMER TO DETECT ALL THREATS OR KEEP THE CUSTOMER'S NETWORK OR SYSTEMS FREE FROM ALL MALWARE AND SECURITY EVENTS.

**3.6 Threat Update Services.** The terms in this Section apply to the SonicWall's provision of threat intelligence updates via the Services (the "**Threat Update Services**"). The Threat Update Services will not function unless Customer maintains a current subscription to the Services and complies with SonicWall's enablement requests. On expiration of the initial term or any renewal term, the Threat Update Services will end unless Customer has renewed the Order and complied with any updated enablement instructions provided by SonicWall. SonicWall will use commercially reasonable efforts to make the Threat Update Services continuously available but does not warrant or represent that the Threat Update Services will be continuously available. SONICWALL DOES NOT WARRANT OR REPRESENT THAT THE THREAT UPDATE SERVICES WILL ENABLE CUSTOMER TO DETECT ALL THREATS OR KEEP THE CUSTOMER'S NETWORK OR SYSTEMS FREE FROM ALL MALWARE AND SECURITY BREACHES. The threat intelligence information provided as part of the Threat Update Services is SonicWall's Confidential Information. As between SonicWall and Customer, the threat intelligence information is SonicWall's proprietary information, and is licensed to Customer on the terms and conditions applicable to the Software.

## 4. License

**4.1 General License Terms.** The executable version of the Software is licensed to Customer on a non-exclusive basis solely for use as part of the Services, and subject to the terms, conditions and restrictions stated in this [Section 4](#):

**4.1.1 Use.** The Software is licensed either for Customer's internal use or for Customer's use as a managed service provider. Licenses to use the Software as a managed service provider are subject to the additional terms and conditions of [Section 6](#) (*Managed Services*) below;

**4.1.2 License Term.** The Software is licensed on a limited term basis for the Services period stated in the Order, or if no term is stated for one month. The license may be terminated or revoked as provided in [Section 9](#) (*Term and Termination*);

**4.1.3 Assignment.** The license may not be transferred or assigned except as part of an assignment of the Agreement that is permitted by [Section 17.3](#) (*Assignment*);

**4.1.4 Sublicense.** Customer may permit use of the Software by users authorized in accordance with [Section 5.2](#) (*Authorized Users*), but may not otherwise sublicense the Software;

**4.1.5 Copies.** Customer may copy the Agent and Documentation as reasonably necessary for the use of the Services as permitted by the Agreement, but may not otherwise copy the Documentation or the Software. Customer must retain all SonicWall proprietary and restricted rights notices on each copy of the Documentation.

#### **4.2 Restrictions**

Customer may not do any of the following:

- i. except for the Agent, and except as reasonably necessary to use the Documentation as necessary for the permitted use of the Services, use the Software except on the SonicWall services environment;
- ii. use the SonicWall Technology in excess of the licensed quantities of users, hosts or other specifications for the Service purchased;
- iii. reverse engineer, decompile, disassemble, or attempt to discover or modify in any way the underlying source code or technology embodied by the executable version of the SonicWall Technology;
- iv. modify, translate, localize, adapt, create or prepare derivative works of the SonicWall Technology or any part of it;
- v. publish any performance analysis or other “benchmarking” data without SonicWall’s prior written consent;
- vi. resell, distribute, rent, lease, or loan the Services except to the limited extent expressly permitted by [Section 6 \(Managed Services\)](#);
- vii. use the SonicWall Technology to create or enhance a competitive offering or for any other purpose that is competitive to SonicWall;
- viii. use the SonicWall Technology as part of any high-risk activity as described in [Section 5.4 \(High Risk Disclaimer\)](#);
- ix. use the SonicWall Technology to violate applicable laws;
- x. use or configure the SonicWall Technology other than in accordance with the Documentation; or
- xi. enable the SonicWall Technology using any means other than the license keys or other enabling information provided by SonicWall or the Partner.

### **5. Customer Obligations**

**5.1 Acceptable Use, Responsibility for Use.** Customer must use the Services in accordance with applicable law, including export laws, and in accordance with industry norms for acceptable use as reflected in the published acceptable use policies of then-current industry leading infrastructure services providers. Customer must use reasonable security precautions in connection with its use of the Services, such as Malware screening and requiring unique log ins for each individual user. Customer is responsible for the use of the Services by any user (human or automated) using a Customer login or other access credential, and for any use that results from Customer’s failure to use reasonable security precautions, even if such use is not authorized by Customer. Customer shall cooperate with SonicWall’s reasonable investigation of security issues.

**5.2 Authorized Users.** Customer authorizes SonicWall to act on the instructions of a user who authenticates using the account credentials Customer or its Outsourcer has established. Customer is solely responsible for maintaining the user permissions and authentication credentials for Customer’s account. Customer may not authorize anyone to use the administrative features of Customer’s Services account other than Customer’s and its Outsourcer’s personnel. Each user must have a separate log in.

**5.3 Customer Data.** SonicWall has no obligation to create backups or archives of Customer Data or to provide access to any backups or archives of Customer Data that SonicWall may create. Customer represents, warrants, and covenants to SonicWall that SonicWall’s use of the Customer Data as permitted by the Agreement does not infringe or misappropriate any third party intellectual property rights. SonicWall is not required to retain Customer Data following expiration or termination of the Services.

**5.4 High-Risk Disclaimer.** Customer understands and agrees that the 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 navigation, air traffic control, life support machines, weapons systems, or any other application where the failure or malfunction of the Services 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 Services in connection with a High-Risk Environment, (ii) any use of the Services by Customer in a High-Risk environment is at Customer’s own risk, (iii) SonicWall, its affiliates and suppliers shall not be liable to Customer in any way for use of the Services in a High-Risk Environment,

and (iv) SonicWall makes no warranties or assurances, express or implied, regarding use of the Software in a High-Risk Environment.

**5.5 Audit.** Customer shall maintain legible, accurate and complete books and records during the term of this Agreement and a period of five (5) years thereafter concerning this Agreement and the marketing, sale, distribution, licensing, delivery, and end-use of Services. At the end of this retention period, Customer shall appropriately dispose of all such records. Upon SonicWall's request, Customer shall cooperate with and assist SonicWall with any audit, review, or investigation ("Audit") that relates to (a) this Agreement or Customer's compliance with law; (b) Customer's marketing, sale, distribution, licensing, or delivery of Services, whether sourced from SonicWall or a third-party; (c) any incentives, concessions, or other amounts paid or payable by SonicWall; or (d) any amounts due to SonicWall. In connection with an Audit, Customer will deliver all records, information, and documents reasonably requested by SonicWall. SonicWall has the right to conduct onsite Audits, and Customer will grant SonicWall and its employees and representatives subject to Government security requirements reasonable access to information, records, personnel, and Customer's clients (including client agreements to verify its compliance with this Agreement) and provide entry and access to Customer's premises or other locations (during normal business hours) where such information and records are located. Failure by Customer to cooperate with an Audit or provide the information or records requested by SonicWall is a material breach of this Agreement. SonicWall will pay the costs of an Audit.

**6. Managed Service.** If Customer has purchased an offering that is authorized for MSP use, Customer may use the Services to provide managed security services to its clients pursuant to a written subscription agreement signed by Customer and the Customer's client (the "**MSP Client**") that includes terms that: (i) restrict the MSP Client's use of the Services to those Services purchased by the Customer, (ii) restricts the use of the Services to MSP Client's internal business purposes; (iii) prohibits any assignment, transfer and sublicensing of the Services; (iii) protects SonicWall's intellectual property and confidential information and protects SonicWall from liability and risk with terms at least as stringent as those terms applicable to Customer in these Service Terms, including the limitations of remedies and disclaimers in Section 3 (*Warranties and Remedies*), Section 4.1.6 (*Restrictions*), Section 5 (*Customer Obligations*), Section 10 (*Suspension*), Section 11 (*Export*), Section 12 (*Third Party Technology*), Section 14 (*Limitations of Liability*), Section 15 (*Confidential Information*), Section 16 (*Personal Data*), Section 17.8 (*Changes to Online Terms*), Section 17.9 (*Ownership*), and Section 17.4 (*Restriction of Rights*) (the "**MSP Agreement**"). In addition, the MSP Agreement must include a statement that the MSP Client has no recourse or claim whatsoever against SonicWall with respect to the Services, but shall look solely to the Customer. Customer shall interact with the MSP Client in regard to all Support issues and shall not refer the MSP Client to SonicWall for Support unless otherwise expressly agreed in advance in writing. On SonicWall's request, Customer shall report the names and geographic locations of each MSP client and any other information that SonicWall may reasonably request in connection with the use authorized under this Section.

**7. Evaluation, Proof of Concept.** If SonicWall authorizes Customer to use the Services on an evaluation, "proof of concept," or similar basis (with or without charge) ("**Evaluation Services**"), the following additional terms, conditions and restrictions apply unless otherwise expressly agreed in writing: (i) the Evaluation Services term is ninety (90) days and may be terminated by SonicWall prior to expiration at any time on written notice, with or without cause; (ii) the Evaluation Services may not be used in production, and may not be used to process or store production data or Personal Data; (iii) the Evaluation Services are provided **AS IS**, and **AS AVAILABLE**; (v) unless otherwise agreed, SonicWall has no obligation to provide Support for the Evaluation Services and any support that is provided is provided **AS IS** and **AS AVAILABLE**. Customer's continued use of the Services beyond the authorized Evaluation term constitutes a purchase of a production subscription for the Services, and SonicWall will invoice Customer for the Services at its then-current list price.

## **8. Fees, Payments, Taxes**

**8.1 Fees.** Fees are stated in the Order. Unless otherwise stated in the Order, SonicWall may invoice fees. Customer may not use the Services in excess of the licenses and systems specifications limits stated or referenced in the Documentation or an Order. If Customer exceeds any limits or licenses, SonicWall may charge Customer at its then-current GSA Schedule list price for usage at the higher level. Customer may not undermine SonicWall's technical means of enforcing compliance with the specifications. Unless otherwise stated in the Agreement, fees are invoiced and must be paid in United States Dollars. Fees for Services rendered are non-refundable.

**8.2 Payment.** If Customer purchases SonicWall Services from a Partner, the fees and payment terms are stated

in Customer's agreement with the Partner. If Customer purchases SonicWall Services directly from SonicWall, the payment terms in this Section apply. SonicWall may invoice the Customer fees on or after the date the Customer submits an Order, or for renewals upon the renewal date. Unless otherwise agreed, fees are due thirty (30) days from invoice receipt date. SonicWall may charge Customer interest on overdue amounts at the rate indicated by the Prompt Payment Act (31 USC 3901 et seq) and Treasury regulations at 5 CFR 1315. If Customer reasonably disputes an invoiced amount SonicWall will not charge interest on the disputed amount, suspend the Services, or pursue collection efforts for up to thirty (30) days following the due date provided that Customer: (i) gives SonicWall a written notice describing the dispute in reasonable detail before the due date, (ii) pays when due any undisputed amounts, and (iii) cooperates in good faith to resolve the dispute.

**8.3 Taxes.** SonicWall shall state separately on invoices taxes excluded from the fees, and the Customer agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 552.212-4(k).

## **9. Term and Termination.**

**9.1 Term.** The initial term of each Order is stated in the Order. The term begins when SonicWall has provided the Customer with access information for the use of the Services. The Order expires at the expiration of the initial term unless Customer places an Order for a renewal.

**9.2 Termination for Breach.** 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, SonicWall 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 Early Termination Other than for Breach.** Customer may terminate an Order for convenience at any time on thirty (30) days advance written notice, provided that, unless otherwise stated in the Order, Customer remains responsible for the fees for the remaining part of the then current term and any other committed fees stated in the Order.

**9.4 Survival.** The provisions terms of the Agreement that by their nature are intended to survive expiration or termination of the Agreement shall survive, including [Section 13 \(Indemnification\)](#), [Section 14 \(Limitation of Liability\)](#) and [Section 15 \(Confidentiality\)](#). Termination of this Agreement or a license shall be without prejudice to any other remedies that the terminating party or a Partner may have under law, subject to the limitations and exclusions set forth in this Agreement.

**9.5 Return of Customer's Content.** Customer is responsible for exporting Customer's Content from the Services prior to expiration or termination of the Agreement.

**9.6 Obligations on Termination.** On expiration or earlier termination of the Agreement Customer shall stop using the Services and shall uninstall and destroy any Agents in its possession or control, and each party shall return or destroy the other party's Confidential Information.

**10. Suspension.** SonicWall may temporarily suspend Customer's use of the Services (i) if required by law enforcement or legal process, (ii) in the event of an imminent security risk to SonicWall or its other customers, or (iii) if continued use would subject SonicWall to a risk of significant liability. SonicWall shall make commercially reasonable efforts under the circumstances to provide prior notice to Customer of any suspension.

**11. Export.** Customer acknowledges that the SonicWall Technology is subject to the export control laws, rules, regulations, restrictions and national security controls of the United States and other applicable foreign agencies (the "**Export Controls**"). Customer shall not export, re-export or otherwise transfer the SonicWall Technology or any part of it in violation of the Export Controls. Customer is solely responsible for obtaining all necessary licenses or authorizations relating to the export, re-export, or transfer of the SonicWall Technology in accordance with Export Controls and for ensuring compliance with the requirements of such licenses or authorizations. Customer (i) represents that Customer and, if applicable, each of Managed Services Clients and the authorized users is not an entity or person to which the provision of the SonicWall Technology is prohibited by the Export Controls; and (ii) agrees that it shall not export, re-export or otherwise transfer the SonicWall Technology to (a) any country subject to a United States trade embargo, (b) a national or resident of any country subject to a United States trade embargo, (c) any person or entity to which the provision of the SonicWall

Technology or the Services is prohibited by the Export Controls, or (d) anyone who is engaged in activities related to the design, development, production, or use of nuclear materials, nuclear facilities, nuclear weapons, missiles or chemical or biological weapons.

**12. Third Party Technology.** The Services may include integration features designed to enable the exchange of information between the Services and Third Party Technologies. The integration features may be unavailable or may not work properly if a third party's API is unavailable or if a third party modifies its API or services in a way that impacts the integration feature. SonicWall will use commercially reasonable efforts to modify its integration features to maintain compatibility with service provider's APIs and services, but may discontinue an integration feature without liability to Customer if there is a change in the service that creates an unreasonable cost or operational burden to SonicWall. Customer's obligations under the Agreement, for fees and otherwise, are not conditioned on the continued availability of any integration features. SonicWall does not endorse or recommend any Third Party Technology. Integration features are provided solely for Customer's convenience. Customer is responsible for deciding if any Third Party Technology meet its needs and acknowledges that SonicWall has no liability whatsoever in connection with Customer's use of the Third Party Technology.

### **13. Indemnification.**

**13.1 SonicWall IP Infringement Indemnification.** SonicWall shall have the right to intervene to defend Customer from any claim, suit, action, or proceeding brought against Customer by a third party asserting that Customer's use of the Services as permitted by the Agreement directly infringes or misappropriates any patent, copyright, trademark, or trade secret enforceable in the United States or the European Union, (a "**Claim**"), and shall pay any judgments finally awarded against Customer as a result of the Claim. In the alternative, SonicWall may settle a Claim at its expense, provided the settlement fully resolves the liability of Customer and does not require Customer to make any admission of liability or culpability. SonicWall's obligations under this Section are conditioned on Customer (i) giving prompt written notice of the Claim to SonicWall, (ii) permitting SonicWall to retain control of the investigation, defense or settlement of the Claim, and (iii) providing SonicWall with cooperation and assistance as SonicWall may reasonably request in connection with the Claim. SonicWall shall have no obligation under this Section with respect to any Claim (a) resulting from a modification of the SonicWall Technology other than by SonicWall, (b) to the extent based on Customer's use of the SonicWall Technology or Services after SonicWall has provided an updated version of the SonicWall Technology or Services that is free from the Claim, or (c) to the extent the Claim arises from or is based on the combination of the SonicWall Technology or Services with other products, services, or data not supplied by SonicWall if the infringement would not have occurred but for such combination. In the event of a Claim, SonicWall may, at its option, either (1) obtain for Customer the right to continue using the Services free from the infringement claim, or (2) replace or modify the Services so that they are free from the Claim provided the replacement or modification is functionally equivalent or better than the Services that are the subject of the Claim. In the event SonicWall is not able to do either on commercially reasonable terms, SonicWall may terminate the Services and refund any pre-paid license fees for unused periods. This Section states SonicWall's entire liability and Customer's **SOLE AND EXCLUSIVE REMEDY** with respect to a claim of intellectual property infringement or misappropriation. 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.

### **13.2 Reserved.**

### **14. Limitation of Liability.**

**14.1 EXCEPT FOR ANY BREACH OF CONFIDENTIALITY OR INDEMNIFICATION OBLIGATIONS, CUSTOMER'S BREACH OF LICENSE TERMS, AND A PARTY'S GROSS NEGLIGENCE, RECKLESSNESS OR INTENTIONAL MISCONDUCT, IN NO EVENT SHALL EITHER PARTY OR ITS AFFILIATES, LICENSORS OR SUPPLIERS BE LIABLE FOR any indirect, incidental, special or consequential loss or damage of any kind or for 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. The foregoing limitation of liability shall not apply to (1) personal injury or death resulting from Licensor's negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.**

**14.2 EXCEPT FOR ANY BREACH OF CONFIDENTIALITY OR INDEMNIFICATION OBLIGATIONS, CUSTOMER'S BREACH OF LICENSE TERMS, A PARTY'S GROSS NEGLIGENCE, RECKLESSNESS OR INTENTIONAL MISCONDUCT, CUSTOMER'S FEE PAYMENT OBLIGATIONS AND RELATED LATE INTEREST AND COLLECTION COSTS, THE MAXIMUM AGGREGATE AND CUMULATIVE LIABILITY OF EITHER PARTY AND ITS AFFILIATES, LICENSORS AND SUPPLIERS FOR DAMAGES UNDER OR RELATED TO THE AGREEMENT, THE SERVICES, OR ANY TECHNOLOGY PROVIDED UNDER OR IN CONNECTION WITH THIS AGREEMENT, WHETHER ARISING IN OR FOR BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF STATUTORY DUTY WHETHER ARISING IN OR FOR BREACH OF CONTRACT, TORT, (INCLUDING NEGLIGENCE), BREACH OF STATUTORY DUTY, OR OTHERWISE, SHALL BE AN AMOUNT EQUAL TO THE GREATER OF THE FEES PAID OR PAYABLE BY CUSTOMER FOR THE SERVICES THAT ARE THE SUBJECT OF THE CLAIM. THE PARTIES ACKNOWLEDGE THAT THESE LIMITATIONS OF LIABILITY ARE AGREED ALLOCATIONS OF RISK CONSTITUTING PART OF THE CONSIDERATION FOR SONICWALL PROVIDING 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.**

## **15. Confidential Information.**

**15.1 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 (excluding GSA Schedule Pricing), trade secrets, know-how, proprietary tools, knowledge and methodologies, the Services, information or benchmark test results regarding the functionality and performance of the Software or Services, Documentation, any logins or other Services enabling information provided to Customer. Confidential Information shall 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; (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 as evidenced by the Receiving Party's written business records.

**15.2 Obligations.** The Receiving Party shall not disclose the Disclosing Party's Confidential Information to any third party except as permitted below or use the Disclosing Party's Confidential Information except to perform its obligations or exercise its rights under the Agreement. SonicWall shall use those measures described in [Section 3.4 \(Security\)](#) to protect the Customer Data from unauthorized use or disclosure, and shall protect Customer's other Confidential Information using reasonable care. Customer shall use reasonable care to protect SonicWall's Confidential Information from unauthorized use or disclosure. Customer acknowledges that the Receiving Party shall 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 shall apply to all disclosures of the parties' Confidential Information as of the Effective Date, whether specifically arising from a party's performance under this Agreement.

**15.3 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"), but only to those Representatives that (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. The Receiving Party shall 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 be a breach of this Agreement. In addition, it shall not be a breach of this Section for the Receiving Party to disclose the Disclosing Party's Confidential Information as may be required by operation of law or legal process, provided that the Receiving Party provides prior notice of such disclosure to the Disclosing Party (unless such notice is prohibited by law). Vendor 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.

**16. Personal Data.** “**Personal Data**” means any information about a natural person that is identified or identifiable to the natural person, either alone or in combination with other information that SonicWall processes for Customer via the Services or has access to as part of providing the Services and purchased under this Agreement. Personal Data is Customer’s “Confidential Information” covered by SonicWall’s commitments stated in Section 15 (*Confidential Information*). In addition to those commitments, SonicWall makes the following commitments: (i) SonicWall will not use, disclose or process the Personal Data except as permitted by the Agreement or Customer’s other written instructions, or as strictly necessary for its internal administrative purposes related to the provision of the Services, (ii) SonicWall will require sub-contractors who have access to the Personal Data to contractually agree to terms at least as protective of the Personal Data as those stated in this Agreement, and (iii) SonicWall will comply with applicable United States and European Union data privacy laws and regulations. In respect of any data breach involving Personal Data, SonicWall shall, without undue delay: (a) notify Customer of the data breach; and (b) provide Customer with details of the data breach. SonicWall shall have no liability, howsoever arising, whether in contract, tort (including negligence) or otherwise for any losses, costs, expenses or liabilities arising from or in connection with any processing in accordance with Customer’s processing instructions following notification to Customer. SonicWall shall be liable only for losses related to a data breach, howsoever arising, whether in contract, tort (including negligence) or otherwise, under or in connection with this Agreement (a) only to the extent caused by the processing of Personal Data under this Agreement and directly resulting from the SonicWall’s breach of this Section, and (b) in no circumstances to the extent that any data breach losses (or the circumstances giving rise to them) are contributed to or caused by any breach of this Agreement by Customer. If a party receives a compensation claim from a person relating to processing of Personal Data, it shall promptly provide the other party with notice and full details of such claim. The party with conduct of the action shall (a) make no admission of liability nor agree to any settlement or compromise of the relevant claim without the prior written consent of the other party (which shall not be unreasonably withheld or delayed), and (b) consult fully with the other party in relation to any such action, but the terms of any settlement or compromise of the claim will be exclusively the decision of the party that is responsible under this Section for paying the compensation. Customer represents and warrants to SonicWall that: (i) the Personal Data has been collected in accordance with applicable privacy law, including data subject notice and consent requirements as necessary for Customer to authorize SonicWall to process the Customer Data; (ii) the transfer of the Personal Data to SonicWall for the purpose of providing the Services is authorized under applicable law; (iii) Customer will comply with applicable law as to requests from data subjects in connection with the Personal Data; (iv) Customer shall disclose to SonicWall only that Personal Data that is necessary for SonicWall’s provision of the Services; and (v) Customer shall not ask SonicWall to take any action with respect to the Personal Data that Customer is not permitted to take directly.

## **17. General.**

**17.1 Pre-Release Technology.** SonicWall may invite Customer to use test, beta, pilot, limited release, developer preview, non-production, evaluation, or other pre-release software or services (“**Pre-Release Technology**”). Pre-Release Technology is provided **AS IS** and **AS AVAILABLE** without any representation or warranty whatsoever. SonicWall is not required to provide support for Pre-Release Technology. Customer may not use Pre-Release Technology for production purposes unless it has written permission from SonicWall. SonicWall may discontinue Pre-Release Technology at any time in its sole discretion and delete all Customer Data associated with the Pre-Release Technology. SonicWall may never offer a general release version of the Pre-Release Technology, or if it does, there may not be an automatic update path from the Pre-Release version to the general release version. SonicWall has no liability for any harm or damage arising from Customer’s use of a Pre-Release Technology.

**17.2 Governing Law and Venue.** This Agreement shall be governed by and construed in accordance with the Federal laws of the United States. Each party hereby agrees to submit to the jurisdiction of such courts. 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) shall apply to this Agreement, regardless of the states in which the parties do business or are incorporated. **TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY WAIVES THE RIGHT TO A TRIAL BY JURY WITH RESPECT TO ANY LITIGATION ARISING OUT OF THE SUBJECT MATTER OF THIS AGREEMENT.**

**17.3 Assignment.** Customer shall not, in whole or part, assign or transfer any part of this Agreement, or any rights, interest or obligations hereunder, 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 SonicWall. Any attempted transfer or assignment by Customer that is not permitted by this Agreement shall be null and void.

**17.4 Order of Precedence.** The provisions of these Service Terms control over any conflicting provision in an Order.

**17.5 Changes to the Services.** Customer agrees that Customer's purchases are not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by SonicWall regarding future functionality or features. Customer acknowledges that SonicWall may modify or suspend any of its Software, Services offerings, or any other products, services or support at any time. If a modification or suspension materially and adversely affects Customer's use of the Services, Customer may terminate the Agreement by giving written notice of the change no later than 30 days following the date of the change and receive a refund of any prepaid fees for unused Services as Customer's **SOLE AND EXCLUSIVE REMEDY**.

**17.6 General Representations.** Each party represents that it has validly entered into this Agreement and has the legal power to do so.

**17.7 Representation by Individual Submitting the Order.** If an individual submits an Order on his or her own behalf (including as a sole proprietor), the individual represents and warrants to SonicWall that he or she is old enough to enter into contracts and otherwise has the legal capacity to enter into contracts under applicable law. If the individual submits the Order does on behalf of a company or other legal entity, the individual represents and warrants to SonicWall that he or she has the legal power and authority to bind that entity to the Order and these Service Terms.

**17.8 Changes to Online Service Terms.** SonicWall may non-materially amend these Services Terms at any time in its sole discretion. Any non-material amendment will become effective as to Customer's Order at the earlier of (i) any amended or new Order that modifies the Order terms applicable to the Services, or (ii) the first renewal of the Order that follows the publication of the amendment by at least thirty (30) days.

#### **17.9 Ownership, Reservation of Rights.**

**17.9.1 Customer Content.** As between Customer and SonicWall, Customer owns and retains ownership and all rights in Customer Data. SonicWall may use Customer Data only for the purpose of providing the Services and exercising its legal rights and remedies in connection with the Agreement. For clarity, "Customer's Data" does not include: (i) system generated data about Customer's network or use of the Services ("**System Data**") provided that the System Data is not identifiable to Customer or any user, or (ii) any numerical or financial data about Customer's users that is collected and maintained in aggregate anonymous form ("**Anonymous Statistical Data**"). Customer acknowledges that SonicWall owns and retains ownership rights in the System Data and Anonymous Statistical Data and may use, transfer, and commercially exploit the System Data and Anonymous Statistical Data for any purpose whatsoever.

**17.9.2 SonicWall Technology.** Customer understands and agrees that (i) the SonicWall Technology is protected by copyright and other intellectual property laws and treaties, (ii) SonicWall or its licensors own the copyright, and other intellectual property rights in the SonicWall Technology, and (iii) the SonicWall Technology is licensed, and not sold, and SonicWall or its licenses retains all right, title and interest in and to the SonicWall Technology

**17.9.3 Reservation of Rights.** Except for rights expressly granted in this Agreement, SonicWall retains all right, title and interest in and to the SonicWall Technology and all related intellectual property rights. No rights in intellectual property may arise by implication or estoppel.

**17.9.4 Other.** Customer hereby licenses to SonicWall any feedback or suggestions that Customer provides regarding the SonicWall Technology, Services or SonicWall's other existing or proposed products or services on a perpetual, irrevocable, royalty free, worldwide, unconditional, fully sublicensable and transferable basis, including the right to make, have made, use, sell, offer to sell, import, copy, display, perform, modify, distribute in modified or unmodified form, and commercialize any intellectual property, without accounting to Customer. Customer agrees that Customer will not assert, or authorize, assist, or encourage any third party to assert, against SonicWall or any of its affiliates, vendors, business partners, or licensors, any patent infringement or other intellectual property infringement claim regarding the Service or any of SonicWall's other products or services that Customer uses.

**17.10 Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, such provision will be enforced to the maximum extent permissible by law to effect the intent of the parties and the remaining provisions of this Agreement will remain in full force and effect. The parties have relied on the limitations and exclusions set forth in this Agreement in determining whether to enter into it.

**17.11 Use by U.S. Government.** The Software is a “commercial item” under FAR 12.201. Consistent with FAR section 12.212, 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.

**17.12 Notices.** All notices provided hereunder shall be in writing and may be delivered by email, in the case of SonicWall to legal@sonicwall.com and in the case of Customer to the email address SonicWall has on file for Customer. All notices, requests, demands or communications shall be deemed effective upon delivery in accordance with this paragraph.

**17.13 Publicity.** SonicWall may include Customer in its listing of customers on its public web pages and other material to the extent permitted by the General Services Acquisition Regulation (GSAR) 552.203-71 unless Customer gives SonicWall written notice that it is not permitted to do. SonicWall may not otherwise use Customer’s name or logo in any publicity unless Customer has given its advance written consent.

**17.14 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 shall 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.

**7.15 Reserved.**

**17.16 Force Majeure.** Excusable delays shall be governed by FAR 52.212-4(f).

**7.17 Interpretations.** 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.” The term “person” refers to any legal person, and may mean a natural person (individual), a legally created person (such as an entity, trustee, or executor), or an entity (such as a corporation, partnership, or limited liability company). The use of the words “partner” or “partnership” in this Agreement or otherwise refers only to a business relationship, and does not create or reflect any legal partnership, joint venture, or other fiduciary or other special relationship between the persons described as partners. The words “will” and “shall” are words of obligation, not expressions of intent or expectation. The word “personnel” means the employees or individual contractors under the direct supervision of the person referred to.

**17.18 Reserved.**

**17.19 Complete and Exclusive Agreement.** The Agreement is the complete and exclusive agreement between the parties regarding its subject matter and supersedes and replaces in its entirety any prior or contemporaneous agreement or understanding written or oral.

## SONICWALL NSV AGREEMENT

SonicWall licenses its software on the conditions below, and on the condition that Customer agrees to this EULA. If Customer does not wish to agree to this EULA, (i) Customer does not have a license to the software and (ii) Customer may not download, install, activate or otherwise use any of the software, and (iii) Customer must promptly return the software. Customer's execution of an Order for the Software and use of the Software is conclusive evidence that it agrees to this EULA.

The individual who indicates the Customer's agreement to this EULA personally represents to SonicWall that he or she is authorized to agree to this EULA on behalf of the Customer.

This SonicWall End User License Agreement (the "EULA") is between the SonicWall entity identified in the Definitions section and the Ordering Activity under GSA Schedule Contracts identified in an Order as the purchaser of SonicWall Products or on whose behalf the Software is used ("Customer").

**1. Definitions.** The following terms, when capitalized, have the following meanings:

**1.1 Affiliate** means a legal entity that controls, is controlled by, or is under common control with the person referred to, for so long as such control exists.

**1.2 Agreement** means this EULA; applicable terms and conditions posted at [www.sonicwall.com](http://www.sonicwall.com) and [mysonicwall.com](http://mysonicwall.com), and the Order(s), collectively.

**1.3 Documentation** means the general release versions of user and administrative manuals and other documentation and technical policies for the Software or Services, as updated from time to time by SonicWall.

**1.4 Maintenance** means SonicWall provision of updates and upgrades to the Software.

**1.5 Malware** means viruses, spyware, adware, or other unauthorized code or information that is designed to interrupt the normal use of the Software or the systems on which any part of the Software is installed, destroy or corrupt any data, or covertly transmit information.

**1.6 MSP Agreement** has the meaning given in [Section 4 \(Managed Services\)](#).

**1.7 MSP Client** has the meaning given in [Section 4 \(Managed Services\)](#).

**1.8 Order** refers to the Customer's order for the Product that includes the Software license and related subscription and Support as reflected in the order acknowledgement, invoice or separately-signed agreement with SonicWall.

**1.9 Outsourcer** means a third party under contract with Customer to provide services to Customer in support of Customer's internal business operations.

**1.10 Partner** means a reseller or distributor that is authorized by SonicWall to offer and sell the Products.

**1.11 Personal Data** has the meaning given in [Section 16 \(Personal Data\)](#).

**1.12 Products** means the licenses, subscriptions, and service offerings for Software, Services, and Support described in an Order.

**1.13 Services** means the service offerings that may be offered by SonicWall from time to time including without limitation Threat Update Services.

**1.14 Software** means (i) the general commercial release of SonicWall software that is either identified in an Order that references this EULA or that is distributed or enabled on media or systems that include or display this EULA, (ii) the Documentation, and (iii) updates and enhancements to either of the them provided to Customer by SonicWall or its Partner as part of Support or otherwise.

**1.15 SonicWall** means (i) for Customers located in the United States, SonicWall Inc., with its principal place of business located at 1033 McCarthy Blvd., Milpitas, CA 95035, USA and (ii) for Customers located outside the

United States, SonicWall International Ltd. located at 2300B, Building 2000, City Gate Park Mahon, Cork, Ireland.

**1.16 Support** means a defined set of Support commitments for a defined period that includes Maintenance, Technical Assistance, and access to online support materials as further described on SonicWall's website and the applicable Order.

**1.17 Support Exclusions** has the meaning given in Section 10 (*Support*).

**1.18 Technical Assistance** means assistance with the use or operation of the Software or Services provided on Customer's request.

**1.19 Threat Update Services** has the meaning given in Section 3 (*Services*).

**1.20 Third Party Technology** means software or other technology that Customer licenses directly from a third party for use with the Software or Services.

## **2. Software License.**

**2.1 General License Provisions.** The executable version of the Software is licensed to Customer on a non-exclusive basis, subject to the following terms, conditions and restrictions set forth in this Agreement including without limitation this Section 2:

**2.1.1 Use.** The Software is licensed for Customer's internal use or, for Customer's use as a managed service provider if Customer has purchased a managed services license, subject to the additional provisions of Section 4 (*Managed Services*);

**2.1.2 License Term.** The license is either a perpetual or subscription license as indicated in the Order or as otherwise provided in this EULA. The license may be terminated or revoked as provided in Section 8 (*Term and Termination*);

**2.1.3 Assignment.** The license may not be transferred or assigned except as part of an assignment of the Agreement that is permitted by Section 18.3 (*Assignment*);

**2.1.4 Sublicense.** If Customer has purchased the appropriate license, Customer may sublicense the Software to: (i) its Managed Services Clients, as permitted by Section 4 (*Managed Services*), or (ii) Outsourcers. Customer may not otherwise sublicense the Software. Each sublicense is subject to all the terms, conditions, and restrictions applicable to the Customer license;

**2.1.5 License Fees.** The license is conditional on Customer's payment of the applicable fees;

**2.1.6 Territory.** The license is worldwide, subject to applicable export law;

**2.1.7 Copies.** Customer may copy the Software as reasonably necessary for its licensed use. Customer may make one backup copy for use in the event the production version of the Software becomes unavailable. Customer must retain all SonicWall proprietary and restricted rights notices on each copy of the Software. Customer may not otherwise copy the Software.

**2. Restrictions.** Customer may not do any of the following:

**2.1.1** use the Software in excess of the licensed quantities of users, hosts and other specifications for the Product purchased;

**2.1.2** 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 (a) such restrictions are prohibited by applicable law and (b) Customer has requested interoperability information in writing from SonicWall and SonicWall has not provided such information in a timely manner;

**2.1.3** modify, translate, localize, adapt, create or prepare derivative works of the Software or any part of it;

- 2.1.4** publish any performance analysis or other “benchmarking” data without SonicWall’s prior written consent;
- 2.1.5** authorize as a user any individual other than its personnel or the personnel of its permitted sub-licensees;
- 2.1.6** resell, distribute, rent, lease, or loan the Software except to the limited extent expressly permitted by [Section 4 \(Managed Services\)](#);
- 2.1.7** use the Software to create or enhance a competitive offering or for any other purpose that is competitive to SonicWall;
- 2.1.8** use the Software as part of any high-risk activity as described in [Section 11.3 \(High-Risk Disclaimer\)](#);
- 2.1.9** use the Software to violate applicable laws;
- 2.1.10** use or configure the Software other than in accordance with the Documentation; or
- 2.1.11** enable the Software using any means other than the license keys or other enabling information provided by SonicWall or the Partner.

**2.3 Open Source Software.** Notwithstanding anything to the contrary stated in the Agreement, nothing in this Agreement prohibits or restricts Customer from exercising additional or different rights to any open source software that may be contained in or provided with the Software in accordance with the applicable open source software licenses. Information on open source software and licenses is either included with the Software or published on SonicWall’s website.

**3. Services.** This Section applies to the SonicWall’s provision of threat intelligence updates (“**Threat Update Services**”) to the Software. For clarity, updates to the Software code are “Maintenance” covered by the provisions for Support in [Section 10](#) and not this Section. The Threat Update Services are provided on a limited subscription term basis for the period stated in the applicable Order, or if no term is stated for an initial term of one month. The Threat Update Services will not function unless Customer maintains a current subscription and complies with SonicWall’s enablement instructions. On expiration of the initial term, the Threat Update Services will end unless Customer has renewed the subscription and complied with any updated enablement instructions provided by SonicWall. SonicWall has no obligation to deliver updated threat intelligence information following expiration or earlier termination of the subscription. SonicWall will use commercially reasonable efforts to make the Threat Update Services continuously available but does not warrant or represent that the Services will be continuously available. **SonicWall does not warrant or represent that the Threat Update Services will enable the Software to detect all threats or keep the Customer’s network or systems free from all Malware and security breaches.** The threat intelligence information included with the Software as initially delivered and as updated by means of the Threat Update Services is SonicWall’s Confidential Information. As between SonicWall and Customer, the threat intelligence information is SonicWall’s proprietary information, and is licensed to Customer subject to the provisions and conditions applicable to the Software. In addition, the threat intelligence information is licensed to Customer for use solely in connection with the Customer’s licensed use of the Software.

**4. Managed Services.** If SonicWall offers a license product that authorize use for managed security services, and Customer purchases that license product, Customer may use the Software and Services to provide managed security services to its clients pursuant to a written subscription agreement signed by Customer and the Customer’s client (the “**MSP Client**”) that includes provisions that: (i) restrict the MSP Client’s use of the Software and Services to the use of the Customer offering; (ii) restricts the use of the Software and Services to MSP Client’s internal business purposes; (iii) prohibits any assignment, transfer and sublicensing of the Software or Services; (iii) protects SonicWall’s intellectual property and confidential information and protects SonicWall from liability and risk with provisions at least as stringent as those provisions applicable to Customer in this EULA, including [Section 2 \(Software License\)](#), [Section 3 \(Services\)](#), [Section 8 \(Term and Termination\)](#), [Section 9 \(Export\)](#), [Section 11 \(Warranty Disclaimer\)](#), [Section 12 \(Third Party Technology\)](#), [Section 13.2 \(Customer Indemnification\)](#), [Section 14 \(Limitation of Liability\)](#), [Section 15 \(Confidential Information\)](#), [Section 16 \(Personal Data\)](#), [Section 18.5 \(Reservation of Rights\)](#), and [Section 18.7 \(Use by U.S. Government\)](#) (the “**MSP Agreement**”). In addition, the MSP Agreement must enable Customer to comply with [Section 14 \(Compliance Verification\)](#) as to the MSP Client’s use and must include a statement that the MSP Client has no recourse or claim whatsoever against SonicWall with respect to the Software or Services but shall look solely to the Customer. Customer may install the Software on equipment

owned and operated by the MSP Client provided that Customer retains administrative control of the Software. Customer may install and use the Software on a Customer controlled cloud environment and provide the managed services as a cloud offering. Customer shall interact with the MSP Client in regard to all Support issues and shall not refer the MSP Client to SonicWall for Technical Assistance or other Support unless otherwise expressly agreed in advance in writing. On SonicWall's request, Customer shall report the names and geographic locations of each MSP Client and any other information that SonicWall may reasonably request in connection with the use authorized under this Section.

**5. Evaluation, Proof of Concept.** If SonicWall authorizes Customer to use the Software or Services on an evaluation, "proof of concept," or similar basis (with or without charge) (an "**Evaluation License**"), the following additional terms, conditions and restrictions apply unless otherwise expressly agreed in writing: (i) the license or services term is ninety (90) days and may be terminated by SonicWall prior to expiration at any time on written notice, with or without cause; (ii) the Software or Services may not be used in production, and may not be used to process or store production data or Personal Data; (iii) the Software or Services are provided **AS IS**, and **AS AVAILABLE** during the term of the Evaluation License; (v) unless otherwise agreed SonicWall has no obligation to provide Support during the term of the Evaluation License and any support that is provided is provided **AS IS** and **AS AVAILABLE**. Customer's continued use of the Software or Services beyond the authorized evaluation period constitutes a purchase of a production license for the Software, and SonicWall will invoice Customer for the license or services at its then-current list price.

**6. Delivery.** Unless otherwise expressly stated in the Order, SonicWall shall deliver Software electronically by making the Software and enabling information available on SonicWall's Internet accessible download site. Delivery is deemed fulfilled and complete and the license and Support terms will begin as of the day that SonicWall has made the enabling or access information available to Customer.

## 7. Quotes, Fees, Payments, Taxes.

**7.1 Quotes & Fees.** Customer must notify SonicWall within thirty days of the invoice date if Customer believes any part of its Order is missing or incorrect. Acceptance of one Order by SonicWall is independent from any other Order. Quoted prices are effective until the expiration date of the SonicWall quote but may be subject to change. SonicWall may revise or discontinue products, services, and Third Party Products at any time, including after Customer places an Order, but prior to SonicWall's shipment or performance. As a result, products and services Customer receives may differ from those ordered. However, SonicWall branded Products will materially meet or exceed published specifications for the Products. SonicWall is not responsible for pricing, typographical, or other errors in any offer and may cancel Orders affected by such errors. If Customer's purchase is made through a Partner, then the provisions related to credit, invoicing, payment, returns, ordering, taxes, and cancellation terms for the purchase do not apply and will be as agreed between Customer and the Partner. Customer may not use Software or Services in a greater amount than the systems specifications limits stated or referenced in the Documentation for the Product they purchase. Customer may not undermine SonicWall's technical means of enforcing compliance with the specifications. Unless otherwise stated in the Agreement, fees are invoiced and must be paid in United States Dollars.

**7.2 Payment.** If Customer purchases SonicWall Products directly from SonicWall, the payment provisions in this Section apply. Orders are subject to credit and credit approval and are subject to SonicWall's acceptance, at its sole discretion. SonicWall may invoice the Customer fees on or after the date the Customer submits an Order. Customer must pay SonicWall's invoices in full and in the same currency as indicated in SonicWall's quote. Unless otherwise agreed, fees are due thirty (30) days from invoice receipt date. SonicWall may charge Customer interest on overdue amounts at the rate indicated by the Prompt Payment Act (31 USC 3901 et seq) and Treasury regulations at 5 CFR 1315. SonicWall may invoice parts of an Order separately or together in one invoice. All invoices will be deemed accurate unless Customer advises SonicWall in writing of a material error within ten days following receipt. If Customer advises SonicWall of a material error, (i) any amounts corrected by SonicWall in writing must be paid within fourteen days of correction, and (ii) all other amounts shall be paid by Customer by the due date. If Customer withholds payment because Customer believes an invoiced amount is incorrect, and SonicWall concludes that the amount is accurate, Customer must pay interest as described in this Section from the due date for the amount until SonicWall's receipt of payment. Customer may not offset, defer or deduct any invoiced amounts that SonicWall determines are correct following the notification process stated in this Section. If Customer reasonably disputes an invoiced amount SonicWall will not charge interest on the disputed amount, suspend the license or services, or pursue collection efforts for up to thirty (30) days following the due date provided that Customer: (i) gives SonicWall a written notice describing the dispute in reasonable

detail before the due date, (ii) pays when due any undisputed amounts, and (iii) cooperates in good faith to resolve the dispute.

**7.3 Taxes.** SonicWall shall state separately on invoices taxes excluded from the fees, and the Customer agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 552.212-4(k).

## 8. Term and Termination.

**8.1 Term.** A “perpetual” license continues indefinitely unless terminated in accordance with this Agreement. A “subscription” license continues for a limited term or period. Except as expressly provided by this Agreement, the initial term of any subscription license or services offering is stated in the Order, or if no term is stated is one (1) month. On expiration of the initial term of a subscription license or service Order, the license or Order terminates (as well as associated rights and licenses) unless Customer has placed an Order for renewal. Except for termination of this Agreement for Customer’s breach, a perpetual license will survive expiration or termination of this Agreement.

**8.2 Termination for Breach.** 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, SonicWall 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.

### 8.3 Reserved.

**8.4 Effect of Expiration or Termination.** Customer’s license and Support terminates without further notice on expiration of a subscription or Support term, or any earlier termination of this Agreement as provided in this Section. On expiration or earlier termination, Customer and, its sublicensees must: (i) immediately stop using the Software and Services, as applicable, (ii) within five (5) business days of expiration or termination uninstall all copies of the Software from all Customer and sublicensee systems, and (iii) return or destroy the Software. Within ten (10) days of SonicWall’s request, Customer will deliver to SonicWall a written certification signed by an officer of Customer stating that Customer has met the requirements stated in this Section. The provisions of the Agreement that by their nature are intended to survive expiration or termination of the Agreement shall survive, including without limitation [Section 13 \(Indemnification\)](#), [Section 14 \(Limitation of Liability\)](#) and [Section 15 \(Confidential Information\)](#). Termination of this Agreement or a license shall be without prejudice to any other remedies that the terminating party or a Partner may have under law, subject to the limitations and exclusions set forth in this Agreement.

**9. Export.** Customer acknowledges that the Software, Services, and Support are subject to the export control laws, rules, regulations, restrictions and national security controls of the United States and other applicable foreign agencies (the “**Export Controls**”). Customer must not export, re-export or otherwise transfer the Software, Services, or Support or any part thereof in violation of the Export Controls. Customer is solely responsible for obtaining all necessary licenses or authorizations relating to the export, re-export, or transfer of the Software, Services and Support in accordance with Export Controls and for ensuring compliance with the requirements of such licenses or authorizations. Without limiting the foregoing, Customer represents and warrants that Customer and each of its MSP Clients, if applicable, is: (i) not an entity or person to which shipment of the Software or provision of Services or Support or other SonicWall products or services, is prohibited by the Export Controls; (ii) will not cause the export, re-export or transfer of the Software, Services, and Support to, or use the Software, Services, and Support in, a region subject to a U.S. trade embargo or comprehensive sanctions, such as Cuba, Iran, North Korea, Sudan, Syria and the Crimea Region of Ukraine; (iii) will not cause the export, re-export or transfer of the Software, Services, and Support if it will be used to support unauthorized proliferation-related end-uses, such as the design, development, production, or use of nuclear materials, nuclear facilities, nuclear weapons, missiles or chemical or biological weapons), and (iv) will not cause the export, re-export or transfer of the Software, Services, and Support to a government end-user without obtaining any required U.S. export licenses.

**10. Support.** SonicWall will provide Support in accordance with the terms of the Support offering Customer has purchased and subject to SonicWall’s applicable support policies at [www.sonicwall.com/support/support-services](http://www.sonicwall.com/support/support-services). Unless otherwise stated in the applicable Order, the term of a Support offering purchased for use with a perpetual license has an initial term of twelve (12) months beginning on the date of the registration of the



Product at SonicWall's registration portal. Renewals of Support offerings and Subscriptions are covered by [Section 8 \(Term and Termination\)](#) above. If Customer elects to purchase Support, it must purchase Support for all active Software licenses at the same level of Support. Customer must provide SonicWall with all information that SonicWall reasonably requests in connection with Customer's support request, including information needed to reproduce the error or other issue Customer experienced. If Customer purchases a Support offering that limits the number of individuals who may request Support on Customer's behalf, Customer must identify Customer's designated individuals in writing to SonicWall on request. Customer's personnel who request Support must be reasonably proficient in the use of information technologies, and knowledgeable about Customer's systems monitored by the Software. SonicWall has no obligation to provide Support for custom software or configurations unless otherwise agreed in an Order for professional services. SonicWall is not obligated to provide Support where the request is the result of any of the following (the "**Support Exclusions**"), but may do so, at its option: (i) failure to implement all maintenance releases provided by SonicWall; (ii) failure to use the Software in accordance with the applicable terms of the Agreement, the Documentation or reasonable instructions provided by SonicWall, or (iii) excessive or repetitive requests for Technical Assistance. Any SonicWall Support provided in connection with a Support Exclusion is provided **AS IS**. SonicWall may charge additional fees for any work related to a Support Exclusion. Support does not include planning, design, deployment or other professional and consulting services. SonicWall partners offer professional services as described on the SonicWall website ([www.sonicwall.com/partners/partner-enabled-services](http://www.sonicwall.com/partners/partner-enabled-services)) under separate legal terms.

## **11. Warranties and Remedies.**

**11.1 Software Warranty.** For ninety (90) days from delivery of the Software, subject to the conditions and exclusions described in this Section, SonicWall warrants that: (i) the general release version of Software will substantially conform to the applicable Documentation; and (ii) the media on which the Software is provided will be free from material defects. CUSTOMER ASSUMES RESPONSIBILITY FOR SELECTING THE PRODUCTS, SOFTWARE, SERVICES, AND SUPPORT AND THE RESULTS ACHIEVED. CUSTOMER'S SOLE AND EXCLUSIVE REMEDY, AND SONICWALL'S ENTIRE LIABILITY, FOR BREACH OF THE WARRANTIES AS STATED, IS FOR SONICWALL, AT ITS SOLE DISCRETION, TO EITHER USE COMMERCIALY REASONABLE EFFORTS TO REMEDY ANY NON-CONFORMANCE OR TO PROVIDE A PRO-RATED REFUND OF THE LICENSE FEES RECEIVED BY SONICWALL FOR THE SOFTWARE. THIS DISCLAIMER OF WARRANTY MAY NOT BE VALID IN SOME JURISDICTIONS AND CUSTOMER MAY HAVE WARRANTY RIGHTS UNDER LAW WHICH MAY NOT BE WAIVED OR DISCLAIMED. ANY SUCH WARRANTY EXTENDS ONLY FOR THIRTY (30) DAYS FROM THE DATE OF DELIVERY OF THE SOFTWARE (UNLESS LOCAL LAW PROVIDES OTHERWISE). As a condition to the warranty remedy under this Section, Customer must give notice of the warranty breach during the warranty period or within thirty (30) days after the end of the warranty period and must cooperate with SonicWall's reasonable requests for information and assistance, including information necessary to reproduce the defect. The warranty does not apply to the extent a failure is due to: (i) Customer's failure to comply with the installation, operation, environmental, and other requirements or specifications stated in the Order or the Documentation; (ii) fire, flood, or other casualty; (iii) any non-standard configuration or implementation of the Software; or (iv) the interoperation between the Software and any Third Party Technology. Some or all the Software may be remotely hosted or accessible to Customer through the Internet ("Hosted Software"). In such case, SonicWall may suspend, terminate, withdraw, or discontinue all or part of the Hosted Software or Customer's access to the Hosted Software upon receipt of a subpoena or law-enforcement request, or when SonicWall believes, in its sole discretion, that Customer has breached any provision of this EULA or has involved in any fraudulent, misleading, or illegal activities. SonicWall may modify the Hosted Software at any time with or without prior notice to Customer. SonicWall may perform scheduled or unscheduled repairs or maintenance, or remotely patch or upgrade the Hosted Software installed on its and Customer system(s), which may temporarily degrade the quality of the Hosted Software or result in a partial or complete outage of the Hosted Software. Updates, patches or alerts may be delivered from SonicWall servers, which may be located outside of the country where Customer is located. SonicWall provides no assurance that Customer will receive advance notification of such activities or that Customer's use of the Hosted Software will be uninterrupted or error-free.

**11.2 Other Warranties.** SonicWall warrants that it will use reasonable commercial efforts to deliver the Software free of Malware and SonicWall shall use reasonable commercial efforts to avoid introducing Malware to the Software or the systems on which the Software is installed.

**11.3 Warranty Disclaimer.** THE EXPRESS WARRANTIES AND REMEDIES SET FORTH IN THIS

SECTION ARE THE ONLY WARRANTIES AND REMEDIES PROVIDED BY SONICWALL HEREUNDER. 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 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. SONICWALL DOES NOT WARRANT UNINTERRUPTED OR ERROR-FREE OPERATION OF THE PRODUCTS. SONICWALL DOES NOT WARRANT THAT THE SERVICES WILL ENABLE THE SOFTWARE TO DETECT ALL THREATS OR KEEP THE CUSTOMER'S NETWORK OR SYSTEMS FREE FROM ALL MALWARE AND SECURITY BREACHES.

**11.4 High-Risk Disclaimer.** Customer understands and agrees that the Software is not fault-tolerant and is not designed or intended for use in any high-risk or hazardous environment, including without limitation, the operation of nuclear facilities, aircraft navigation, air traffic control, life support machines, weapons systems, or any other application where the failure or malfunction of the Software 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 Software in a High-Risk Environment, (ii) any use of the Software by Customer in a High-Risk environment is at Customer's own risk, (iii) SonicWall, its affiliates and suppliers shall not be liable to Customer in any way for use of the Software in a High-Risk Environment, and (iv) SonicWall makes no warranties or assurances, express or implied, regarding use of the Software in a High-Risk Environment.

**12. Third Party Technology.** The Software may include integration features designed to enable the exchange of information between the Software and Third Party Technologies. The integration features may be unavailable or may not work properly if a third party's API is unavailable or if the third party modifies its API or services in a way that impacts the integration feature. SonicWall will use commercially reasonable efforts to modify its integration features to maintain compatibility with service provider's APIs and services but may discontinue an integration feature without liability to Customer if there is a change in the service that creates an unreasonable cost or operational burden to SonicWall. Customer's obligations under the Agreement, for fees and otherwise, are not conditioned on the continued availability of any integration features. SonicWall does not endorse or recommend any Third Party Technology. Integration features are provided solely for Customer's convenience. Customer is responsible for deciding if any Third Party Technology meet its needs and acknowledges that SonicWall has no liability whatsoever in connection with Customer's use of the Third Party Technology.

### **13. Indemnification.**

**13.1 SonicWall IP Infringement Indemnification.** SonicWall shall have the right to intervene to defend Customer from a claim, suit, action, or proceeding brought against Customer by a third party asserting that Customer's use of the Software as permitted by the Agreement directly infringes or misappropriates any US patent, copyright, trademark, or trade secret enforceable in the country in which SonicWall has authorized Customer to use the Software, (a “**Claim**”), and shall pay any judgments finally awarded against Customer as a result of the Claim. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516. In the alternative, SonicWall may settle a Claim at its expense, provided the settlement fully resolves the liability of Customer and does not require Customer to make any admission of liability or culpability. SonicWall's obligations under this Section are conditioned on Customer (i) giving prompt written notice of the Claim to SonicWall, (ii) permitting SonicWall to retain control of the investigation, defense or settlement of the Claim, and (iii) providing SonicWall with cooperation and assistance as SonicWall may reasonably request in connection with the Claim. SonicWall shall have no obligation under this Section with respect to any Claim (a) resulting from a modification of the Software other than by SonicWall, (b) to the extent based on Customer's use of the Software after SonicWall has provided an updated version of the Software that is free from the Claim, or (c) to the extent the Claim arises from or is based on the combination of the Software with other products, services, or data not supplied by SonicWall if the infringement would not have occurred but for such combination. In the event of a Claim, SonicWall may, at its option, either (1) obtain for Customer the right to continue using the Software free from the infringement claim, or (2) replace or modify the Software so that it is free from the Claim provided the replacement or modification is functionally equivalent or better than the Software that is the subject of the Claim. In the event SonicWall is not able to do either on commercially reasonable terms, SonicWall may terminate the license for the Software and related subscriptions and Support offerings and refund any pre-paid license fees for unused license and services/subscription services (which for

the Software license shall be pro-rated over a maximum of a sixty (60) month period from the date of initial delivery of such Software). This Section states SonicWall's entire liability and Customer's **SOLE AND EXCLUSIVE REMEDY** with respect to a claim of intellectual property infringement or misappropriation.

### **13.2 Reserved.**

### **14. Limitation of Liability.**

**14.1** IN NO EVENT SHALL EITHER PARTY OR ITS AFFILIATES, LICENSORS OR SUPPLIERS BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL LOSS OR DAMAGE OF ANY KIND. SONICWALL SHALL NOT BE LIABLE FOR ANY 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. The foregoing limitation of liability shall not apply to (1) personal injury or death resulting from Licensor's negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.

**14.2** THE MAXIMUM AGGREGATE AND CUMULATIVE LIABILITY OF EITHER PARTY AND ITS AFFILIATES, LICENSORS AND SUPPLIERS FOR DAMAGES UNDER OR RELATED TO THE AGREEMENT, THE PRODUCTS, THE SOFTWARE, SERVICES OR SUPPORT, WHETHER ARISING IN OR FOR BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF STATUTORY DUTY, OR OTHERWISE, SHALL BE AN AMOUNT EQUAL TO THE GREATER OF THE FEES PAID OR PAYABLE BY CUSTOMER FOR THE PRODUCTS THAT ARE THE SUBJECT OF THE CLAIM. THE PARTIES ACKNOWLEDGE THAT THESE LIMITATIONS OF LIABILITY ARE AGREED ALLOCATIONS OF RISK CONSTITUTING PART OF THE CONSIDERATION FOR SONICWALL 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.

**14.3** NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, THE LIMITATIONS SET FORTH IN THIS SECTION SHALL NOT APPLY TO DAMAGES ARISING FROM BREACH OF CONFIDENTIALITY OR INDEMNIFICATION OBLIGATIONS, CUSTOMER'S BREACH OF THE LICENSE GRANTED, A PARTY'S GROSS NEGLIGENCE, RECKLESSNESS OR INTENTIONAL MISCONDUCT, CUSTOMER'S PAYMENT OBLIGATIONS AND RELATED LATE INTEREST AND COLLECTION COSTS.

### **15. Confidential Information.**

**15.1 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 (excluding GSA Schedule pricing), trade secrets, know-how, proprietary tools, knowledge and methodologies, 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. Confidential Information shall 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; (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; or (iv) are or were independently developed by the Receiving Party without access to or use of the Disclosing Party's Confidential Information as evidenced by the Receiving Party's written business records.

**15.2 Obligations.** The Receiving Party shall (i) not disclose the Disclosing Party's Confidential Information to any third party, except as permitted in this Section, (ii) not use the Disclosing Party's Confidential Information except to perform its obligations or exercise its rights under the Agreement, and (iii) 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 shall 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 shall apply to all disclosures of the parties' Confidential Information as of the Effective Date, whether specifically arising from a party's performance under this Agreement.

**15.3 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"), but only to those Representatives that (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. The Receiving Party shall 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 be a breach of this Agreement.

In addition, it shall not be a breach of this Section for the Receiving Party to disclose the Disclosing Party's Confidential Information as may be required by operation of law or legal process, provided that the Receiving Party provides prior notice of such disclosure to the Disclosing Party (unless such notice is prohibited by law).

**16. Personal Data.** "Personal Data" means any information about a natural person that is identified or identifiable to the natural person, either alone or in combination with other information that one party processes for the other or that SonicWall will have access to as part of providing the Products. Personal Data is Customer's "Confidential Information" covered by SonicWall's commitments stated in [Section 15](#) (*Confidential Information*). Each party will: (i) not use, disclose or process the Personal Data except as permitted or as provided by written instructions, or as strictly necessary for its internal administrative purposes related to the provision of the Products, (ii) require sub-contractors who have access to the Personal Data to contractually agree to terms at least as protective of the Personal Data as those stated in this Agreement, (iii) will comply with applicable United States privacy laws and regulations, and the laws of any other jurisdiction that may be expressly identified in a written memorandum that identifies the jurisdiction and is signed by the parties. In the event a party discovers they have encountered a Personal Data breach, such party will without undue delay using those means established for routine account-related communications notify the other party. The notice shall include the following information to the extent it is reasonably available at the time of the notice, and shall update its notice as additional information becomes reasonably available: (i) the dates and times of the Personal Data breach; (ii) the facts that underlie the discovery of the Personal Data breach, or the decision to begin an investigation into a suspected Personal Data breach, as applicable; (iii) a description of the Personal Data involved, either specifically, or by reference to the data set(s), and (iv) the measures planned or underway to remedy or mitigate the vulnerability giving rise to the Personal Data breach. Customer represents and warrants to SonicWall that: (i) the Personal Data has been collected in accordance with applicable law; (ii) the transfer of the Personal Data to SonicWall for the purpose of providing the Products is authorized under applicable law; (iii) Customer will comply with applicable law as to requests from data subjects in connection with the Personal Data; (iv) Customer shall disclose to SonicWall only that Personal Data that is necessary for SonicWall's provision of the Products; and (v) Customer shall not ask SonicWall to take any action with respect to the Personal Data that Customer is not permitted to take directly or is otherwise prohibited by applicable law.

**17. Compliance Verification.** Customer agrees to maintain and use systems and procedures to accurately track its compliance with the licensing provisions of this Agreement. Customer shall notify SonicWall if it installs Software on its systems at any location other than the location stated on the Order. SonicWall or its auditing agent may audit Customer's compliance with the licensing terms of the Agreement on advance written notice of at least ten (10) days. SonicWall may require access to Customer's records, systems and premises as part of the audit, or require Customer to produce documentary evidence of compliance certified as true and correct by Customer's financial officer, or both. Any onsite audit must be conducted during normal business hours at Customer's facilities and without undue disruption to Customer's operations. Customer shall provide its full cooperation and assistance with any audit. Customer shall promptly remedy any non-compliance by paying applicable license fees for all periods of non-compliance and Support fees for all use during the prior periods in accordance with [Section 10](#) (*Support*). Customer shall also correct its tracking systems to avoid future non-compliance. If the unpaid license, support and other fees for any annual period exceeds .5% of the total fees due for that annual period Customer shall pay SonicWall's GSA Schedule price stated in the Order. SonicWall may not conduct an audit under this Section more than once during any twelve (12) month period unless an audit reveals material non-compliance, in which case SonicWall may conduct an audit as often as every three months

until no material non-compliance is discovered for twelve consecutive months. The requirements of this Section shall survive for two (2) years following the termination of the last license governed by this Agreement.

## **18. General.**

**18.1 Pre-Release Technology.** SonicWall may invite Customer to use test, beta, pilot, limited release, developer preview, non-production, evaluation, or other pre-release software or services (“**Pre-Release Technology**”). Pre-Release Technology is provided **AS IS** and **AS AVAILABLE** without any representation or warranty whatsoever. SonicWall is not required to provide support for Pre-Release Technology. Customer may not use Pre-Release Technology for production purposes unless it has written permission from SonicWall. SonicWall may discontinue Pre-Release Technology at any time in its sole discretion and delete all Customer information associated with the Pre-Release Technology. SonicWall may never offer a general release version of the Pre-Release Technology, or if it does, there may not be an automatic update path from the Pre-Release version to the general release version. SonicWall has no liability for any harm or damage arising from Customer’s use of a Pre-Release Technology.

**18.2 Governing Law and Venue.** This Agreement shall be governed by and construed in accordance with the Federal laws of the United States. Any action seeking enforcement of this Agreement or any provision hereof shall be brought exclusively in the state or federal courts located in the United States. 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) shall apply to this Agreement, regardless of the states in which the parties do business or are incorporated. **TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY WAIVES THE RIGHT TO A TRIAL BY JURY WITH RESPECT TO ANY LITIGATION ARISING OUT OF THE SUBJECT MATTER OF THIS AGREEMENT.**

**18.3 Assignment.** Customer shall not, in whole or part, assign or transfer any part of this Agreement, the licenses granted under this Agreement or any other rights, interests, or obligations hereunder, 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 SonicWall. Any attempted transfer or assignment by Customer that is not permitted by this Agreement shall be null and void.

**18.4 Order of Precedence.** The terms of this EULA control over any conflicting term in an Order.

## **18.5 Intellectual Property.**

**18.5.1 Reservation of Rights.** Customer understands and agrees that (i) the Software is protected by copyright and other intellectual property laws and treaties, (ii) SonicWall or its licensors own the patent, copyright, and other intellectual property rights and any confidential information in the Software, (iii) the Software is licensed, and not sold, and SonicWall or its licenses retains all right, title and interest in and to the Software and (v) SonicWall reserves any and all rights, implied or otherwise, which are not expressly granted to Customer in this Agreement. Nothing in this Agreement grants Customer any license or other right to use SonicWall’s trademarks or service marks.

**18.5.2 Feedback.** SonicWall will retain and Customer assigns all rights, title and interest in and to any feedback or suggestions that Customer provides regarding the Products or SonicWall’s other existing or proposed products or services. To the extent such rights may not be assigned, Customer grants SonicWall a perpetual, irrevocable, royalty free, worldwide, unconditional, fully sublicensable and transferable basis, including the right to make, have made, use, sell, offer to sell, import, copy, display, perform, modify, distribute in modified or unmodified form, and commercialize any intellectual property, without accounting to Customer.

**18.5.3 No-Assertion.** Customer agrees that Customer will not assert, or authorize, assist, or encourage any third party to assert, against SonicWall or any of its affiliates, vendors, business partners, or licensors, any patent infringement or other intellectual property infringement claim regarding the Service or any of SonicWall’s other products or services that Customer uses.

**18.6 Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, such provision will be enforced to the maximum extent permissible by law to enforce the intent of the parties and the remaining provisions of this Agreement will remain in full force and effect. The parties have relied on the limitations and exclusions set forth in this Agreement in determining whether to execute this

Agreement.

**18.7 Use by U.S. Government.** The Software is a “commercial item” under FAR 12.201. Consistent with FAR section 12.212, 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.

**18.8 Notices.** All notices provided hereunder shall be in writing and may be delivered by email, in the case of SonicWall to legal@sonicwall.com and in the case of Customer to the email address SonicWall has on file for Customer. All notices, requests, demands or communications shall be deemed effective upon delivery in accordance with this paragraph.

**18.9 Publicity.** SonicWall may include Customer in its listing of customers on its public web pages and other material to the extent permitted by the General Services Acquisition Regulation (GSAR) 552.203-71 unless Customer gives SonicWall written notice that it is not permitted to do. SonicWall may not otherwise use Customer’s name or logo in any publicity unless Customer has given its advance written consent.

**18.10 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 shall 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.

**18.11 Reserved.**

**18.12 Force Majeure.** Excusable delays shall be governed by FAR 552.212-4(f).

**18.13 Interpretations.** 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.” The term “person” refers to any legal person, and may mean a natural person (individual), a legally created person (such as an entity, trustee, or executor), or an entity (such as a corporation, partnership, or limited liability company). The use of the words “partner” or “partnership” in this Agreement or otherwise refers only to a business relationship, and does not create or reflect any legal partnership, joint venture, or other fiduciary or other special relationship between the persons described as partners. The words “will” and “shall” are words of obligation, not expressions of intent or expectation. The word “personnel” refers to the employees and individual contractors under the direct supervision of the person referred to.

**18.14 Reserved.**

**18.15 Representation by Individual Submitting the Order.** If an individual submits an Order on his or her own behalf (including as a sole proprietor), the individual represents and warrants to SonicWall that he or she is old enough to enter into contracts and otherwise has the legal capacity to enter into contracts under applicable law. If the individual submits the Order does on behalf of a company or other legal entity, the individual represents and warrants to SonicWall that he or she has the legal power and authority to bind that entity to the Order and this Agreement.

**18.16 Complete and Exclusive Agreement.** The Agreement is the complete and exclusive agreement between the parties regarding its subject matter and supersedes and replaces in its entirety any prior or contemporaneous agreement or understanding written or oral.

Effective August 22, 2018

## SONICWALL CLOUD EDGE SECURE ACCESS PRODUCT AGREEMENT

PLEASE READ THESE TERMS AND CONDITIONS CAREFULLY BEFORE ACCESSING THE SITE AND/OR USING SONICWALL'S CLOUD EDGE SECURE ACCESS.

These terms and conditions are applicable to SonicWall's Cloud Edge Secure Access services ("**Terms**") and govern access and use of the Product whether through personal computers, mobile devices and any other devices which are supported by the Service. These Terms are between SonicWall and the Ordering Activity under GSA Schedule contracts submitting an Order for the Cloud Edge Secure Access services ("**Customer**"). If you are an individual entering into these Terms on behalf of a company or other legal entity, you represent that you have the authority to bind such company or other legal entity to these Terms. If you do not have such authority, or if you do not agree with these Terms, you may not access or use the Product.

### 1. Definitions.

- 1.1 "**App**" means SonicWall's proprietary application known as "Cloud Edge", for the provision of the Service. It is a web app used for management and audit control, as available for downloading from our Site (for use on a personal computer and/or any other devices which are supported by our Service) or at Google Play and App Store (for use on mobile devices).
- 1.2 "**Content**" means all of data, information, text, pictures, and other content, that is (i) uploaded, routed or transmitted through the authorized use of the Service (ii) created by Customer or its authorized users by means of the Services, or (iii) results from SonicWall's processing of any of the foregoing, but excluding in each case de-identified or anonymous system usage data.
- 1.3 "**Features**" means any features of the Service.
- 1.4 "**Order**" means the Customer's order for the Services that is submitted on forms prepared by SonicWall, and that is accepted by SonicWall or its Partner.
- 1.5 "**Servers Locations**" mean SonicWall's servers and/or its third party contractors' servers.
- 1.6 "**Service**" means SonicWall's Cloud Edge Secure Access service which is a zero trust network access method used to add security and privacy to private and public networks, like Wi-Fi hotspots and the world wide web ("Internet"), and may include certain Features.
- 1.7 "**Site**" means SonicWall's internet site for the provision of the Service, found at <https://www.mysonicwall.com>
- 1.8 "**Software**" means the software (in object code only) and related documentation, used for the provision of the Service.
- 1.9 "**Subscription**" means the license and/or Service continues only for a limited term or period.
- 1.10 "**Partner**" means a reseller or distributor.
- 1.11 "**Product**" refers to the App, Service, Feature(s), and the Site including any derivatives thereof.
- 1.12 "**Usage Rules**" refers to the applicable terms and conditions associated with Google Play and Apple's App Store.
- 1.13 "**User**" means any person accessing the Site, or using the Service.

### 2. License.

2.1 **Customer License.** Subject to Customer compliance with these Terms, the license, granted to Customer by SonicWall, is limited to a non-exclusive, non-assignable, revocable, non-transferable, non-sublicensable and worldwide license to (i) access the Site and (ii) use the Service solely for Customer's personal, internal, receipt and use of the Service as provided by SonicWall, in the manner permitted by these Terms, (i) on Customer's enterprise computers, (ii) on any mobile phone or other mobile device operated by Android™, subject to the Usage Rules, (iii) on any iPhone or any other Apple supported device subject to the Usage Rules and/or (iv) any other devices which are supported by our Service, as set out on the Site, subject to any additional terms and conditions. Customer may not use the App and/or the Service if the mobile phone or other mobile device restricts installing applications including without limitation restrictions on bypassing (known as 'Jailbreaking' or 'Rooting'). These Terms will govern any upgrades and updates provided by SonicWall, unless such upgrade or update is accompanied by a separate terms and conditions in which case the terms and conditions of that license will govern. From time to time, an upgrade to the latest version of the Product may be required in order to make use of the Product in whole or in part. SonicWall reserves its right to amend, make changes to or discontinue or terminate the Product in whole or in part. Additional and/or future Features or upgrade or update to the Product offered by SonicWall may be subject to payment of additional fees. Except as expressly provided by these Terms, the Subscription shall be for the period stated in the Order, or if no such period is stated is one (1) month. On expiration of the initial term of a Subscription or Order, the Subscription or Order terminates (as well as associated rights and licenses) unless Customer has placed an Order or otherwise set up an account or registration for renewal. These Terms and the licenses granted under these Terms may be subject to additional terms and conditions posted on or that may be accessed through the Site, [www.sonicwall.com](http://www.sonicwall.com) and other sites

owned or controlled by SonicWall. Customer shall be responsible for ensuring that any Users accessing and/or using the Product, shall use the Product strictly in accordance with these Terms. Any use of Product by a User contrary to the provisions of these Terms, shall be deemed as a material breach by Customer of these Terms. In addition, Customer shall maintain and shall procure that the Users accessing the Product comply with appropriate security measures and access procedures, in order to ensure that the Product is accessed only by the Users authorized by Customer and that SonicWall's intellectual property rights and other rights under these Terms are not compromised in any way.

**2.2 MSSP License.** "Management Services" includes, without limitation, the application, operating system, and database implementation, performance tuning, and maintenance services provided by Customer to its customers and/or Users (each such customer being a "Client") where Customer installs or grants access to the Product in whole or in part on its Clients' equipment or provides its Clients access to the Products ("MSSP"). Subject to the provisions of these Terms, MSSP may purchase a license to use the Service, App, Features and the associated documentation to provide Management Services (the "MSSP License"). As allowed by applicable law, SonicWall may restrict the MSSP's distribution of Product within a particular territory. MSSP must include a statement in its agreement with the Client that Client has no recourse or claim whatsoever against SonicWall with respect to the Product as well as associated Orders and Client shall look solely to the MSSP. MSSP may install or use the Product on equipment owned and operated by the Client provided that MSSP retains administrative control. MSSP shall interact with the Client regarding all support and shall not refer the Client to SonicWall for support. If SonicWall receives calls from Clients for support, SonicWall reserves the right and MSSP agrees to pay SonicWall any additional fees invoiced by SonicWall related to its receipts of such calls. MSSP shall ensure that (i) it makes no representations or warranties related to the Products in excess of SonicWall's representations or warranties contained in these Terms, (ii) each Client only uses the Products as part of the Management Services provided to it by MSSP, (iii) such use is subject to the restrictions and limitations contained in these Terms, including, but not limited to those in the Export Section of these Terms, and (iv) each Client cooperates with SonicWall during any compliance review that may be conducted by SonicWall or its designated agent. At the conclusion of any Management Services engagement with a Client, MSSP shall promptly remove any Product installed on its Client's computer equipment or require the Client to do the same.

**2.3 Evaluation/Trial/Demonstration License.** If Product that is commercially available or in beta form is obtained from SonicWall for evaluation, trial or demonstration purposes, Customer's license to use the Product is only for Customer's own non-production, internal evaluation purposes (an "Evaluation License"). Each Evaluation License shall be granted for an evaluation period of up to thirty (30) days beginning (i) five (5) days after the Product is shipped or (ii) from the date that access is granted to the Product, plus any extensions granted by SonicWall in writing (the "Evaluation Period"). If Notwithstanding the foregoing, if Partner has purchased a "not for resale" license ("NFR License"), the license term will be for 12 months unless stated otherwise in the Order or other documentation provided by SonicWall and the license may only be use for the purposed of demonstrating the Service. Customer is responsible for any applicable shipping charges or taxes which may be incurred, and any fees which may be associated with an Evaluation License and usage beyond the scope of an Evaluation License. Product in beta or pre-release form may include features and capabilities which may not be available in SonicWall's generally available commercial versions of the Product. SonicWall retains the right during the term of the Evaluation License to modify, revise, or remove Product from Customer's premises and SonicWall has no obligation to make beta or pre-release Product generally available. Customer acknowledges that SonicWall owns all modifications, derivative works, changes, expansions or improvements to Product, as well as all reports, testing data or results, feedback, benchmarking or other analysis completed in whole or in part in conjunction with usage of the Product. NOTWITHSTANDING ANYTHING IN THESE TERMS OTHERWISE, CUSTOMER UNDERSTANDS AND AGREES THAT PRODUCT PROVIDED UNDER AN EVALUATION LICENSE IS PROVIDED "AS IS", WITH ALL FAULTS AND THAT SONICWALL DOES NOT PROVIDE ANY WARRANTY, SUPPORT, OR MAINTENANCE SERVICES FOR PRODUCT PROVIDED UNDER AN EVALUATION LICENSE. SONICWALL BEARS NO LIABILITY FOR ANY DIRECT, INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES RESULTING FROM USE (OR ATTEMPTED USE) OF THE PRODUCT THROUGH AND AFTER THE EVALUATION PERIOD. PRODUCT PROVIDED UNDER AN EVALUATION LICENSE MAY CONTAIN DEFECTS. CUSTOMER IS ADVISED TO SAFEGUARD IMPORTANT DATA, TO USE CAUTION AND NOT TO RELY IN ANY WAY ON THE CORRECT FUNCTIONING OR PERFORMANCE OF THE PRODUCT AND/OR ACCOMPANYING MATERIALS.

**2.4 Use by Third Parties.** Customer may allow its third-party vendors and contractors (each, a "Third Party User") to access and use the Products provided to Customer solely for purposes of providing Product to Customer, provided that Customer ensures that (i) the Third Party User's access to or use of the Products is subject to the provisions in these Terms, including, but not limited to those in the Export Section, (ii) the Third Party User cooperates with SonicWall during any compliance review that may be conducted by SonicWall or its



designated agent, and (iii) the Third Party Users promptly removes any Software installed on its computer equipment upon the completion of the Third Party's need to access or use the Products as permitted by this Section. Customer agrees that it shall be liable to SonicWall for those acts and omissions of its Third Party Users which, if done or not done by Customer, would be a breach of these Terms.

**2.5 Restrictions, Reporting & Registration.** Customer may not reverse engineer, decompile, disassemble, or attempt to discover or modify in any way the underlying source code of any software used in the Product, or any part thereof unless and to the extent (a) such restrictions are prohibited by applicable law and (b) Customer has requested interoperability information in writing from SonicWall and SonicWall has not provided such information in a timely manner. In addition, Customer may not (i) modify, translate, localize, adapt, rent, lease, loan, create or prepare derivative works of, or create a patent based on the Products, or any part thereof, (ii) resell, sublicense or distribute the Products, (iii) provide, make available to, or permit use of the Products, in whole or in part, by any third party (except as expressly set forth herein), (iv) use the Products to create or enhance a competitive offering or for any other purpose which is competitive to SonicWall, (v) remove software that was delivered on an appliance from the appliance on which it was delivered and load such software onto a different appliance without SonicWall's prior written consent, or (vi) perform or fail to perform any other act which would result in a misappropriation or infringement of SonicWall's intellectual property rights in the Products. Each permitted copy of the software and documentation made by Customer hereunder must contain all titles, trademarks, copyrights and restricted rights notices as in the original. Customer understands and agrees that the Products may come bundled or otherwise distributed with or work in conjunction with open source or other third party products ("3rd Party Products"). Customer agrees that it may be subject to additional terms and conditions other than those of these terms and it is responsible for ensuring that it is properly licensed or authorized to use such 3rd Party Products. Notwithstanding anything otherwise set forth in these Terms, nothing in these Terms prevents or restricts Customer from exercising additional or different rights to any open source software that may be contained in or provided with the Products in accordance with the applicable open source software licenses which shall be either included with the Products or made available to Customer upon request. Customer hereby represents and warrants that: (a) Customer's and its User's use of the Service shall at all times comply with these Terms; (b) Customer's and its User's use of the Service shall comply with all applicable laws, rules and regulations; and (d) Customer and its User's will not use the Service to conduct any illegal activity, solicit the performance of any illegal activity, or engage in any other activity which infringes upon the rights of SonicWall or any third party. THIRD PARTY PRODUCTS ARE PROVIDED BY SONICWALL "AS IS" WITHOUT ANY WARRANTY, EXPRESS, IMPLIED, OR OTHERWISE, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THESE TERMS, AS IT RELATES TO ANY AND ALL CLAIMS ARISING OUT OF OR IN CONNECTION WITH THIRD PARTY PRODUCTS, SONICWALL SHALL HAVE NO LIABILITY FOR ANY DIRECT, INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, WHETHER IN CONTRACT, STRICT LIABILITY, OR TORT (INCLUDING NEGLIGENCE OR OTHERWISE) ARISING IN ANY WAY OUT OF THE USE OF 3RD PARTY PRODUCT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. Customer may not use any license keys or other license access devices not provided by SonicWall, including but not limited to "pirate keys", to install or access Product. SonicWall may require the provision of information from or about Customer and/or Partner, including but not limited the information regarding the use, access, control, and location of the Product, identify of users and any other information requested by SonicWall. All such information shall be provided and transmitted in a form and within a time period determined by SonicWall. SonicWall may also require the registration of Product, establishment of an account (online or otherwise) and/or use of an online portal on a before (without limitation) activating licenses and/or functionality of Product, allowing access to firmware or software, to obtain Services or support or any type of warranty service or support, or to receive any promotion, discount, rebate or other incentive. THE USE OF THE PRODUCT OR ANY PART THEREOF EXCEPT AS EXPRESSLY PROVIDED BY THESE TERMS, IS STRICTLY PROHIBITED, AND MAY SUBJECT CUSTOMER TO CIVIL AND CRIMINAL PENALTIES, INCLUDING POSSIBLE MONETARY DAMAGES FOR COPYRIGHT INFRINGEMENT.

**2.6 Proprietary Rights.** Customer understands and agrees that (i) the Products are protected by copyright and other intellectual property laws and treaties or are a trade secret, (ii) SonicWall, its affiliates and/or its licensors own the copyright, and other intellectual property rights in the Products, (iii) software is licensed, and not sold, (iv) these Terms do not grant Customer any rights to SonicWall's trademarks or service marks, and (v) SonicWall reserves any and all rights implied or otherwise, which are not expressly granted to Customer in these Terms. Any third party trade or service marks present on content are trade or service marks of their respective owners. Such content may not be downloaded, copied, reproduced, distributed, transmitted, broadcast, displayed, sold, licensed, or otherwise exploited for any other purpose whatsoever except as permitted in these Terms. SonicWall, reserves all proprietary rights in and to (i) all designs, engineering details

and other data pertaining to the Product, (ii) all original works, computer programs, discoveries, inventions, patents, know-how, and techniques arising out of, and/or products developed as a result of, the Product. The Product contains trade secrets of SonicWall, including, without limitation, the source code version and the specific design of the Product. Customer shall not adopt, use or register any trade names or symbols that are identical, or confusingly similar, to any trademarks or trade names used by SonicWall. Customer shall promptly notify SonicWall in writing of any actual or potential infringement or other violation of SonicWall's intellectual property rights to which Customer becomes aware. SonicWall shall have the sole and exclusive right to protect and defend SonicWall's intellectual property rights, at its sole cost and expense. Customer shall reasonably cooperate with SonicWall, at SonicWall's expense, in the defense and protection of such intellectual property rights. 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.

2.7 **Title.** SonicWall, its affiliates and/or its licensors own all rights, title and interest in and to the Product. Customer is not granted any title or ownership rights in or to the Product.

### 3. General Terms.

3.1 **Site Account.** The use of the Product including use as a part of a trial, evaluation, beta or other license is subject to Customer having a valid Site account ("**Site Account**"). Customer is responsible for ensuring its Site Account includes current, complete and accurate information. Customer is solely responsible for maintaining the confidentiality and security of passwords as well as all activities occurring through any account(s) or registrations with SonicWall or its third-party providers. Customer agrees to notify SonicWall immediately of any unauthorized use of its Site Accounts and other accounts or any other breach of security. SonicWall will not be liable for any loss or liability incurred as a result of use of Customer's password(s), registrations or account(s). In addition, Customer will be liable for losses incurred by SonicWall or and its third-party supplier(s) arising from or related to Customer's account(s), registration(s) and/or password(s). Customer may not use another party's Site Account without the permission of the Site Account holder.

3.2 **Fees.** Additional and/or future Products including upgrades or updates may not be included in the fees paid by Customer and subject to additional payment.

3.3 **Payment.** If credit or credit terms are extended to Customer, Customer may be required to issue a purchase order within a specific period specified after a report or other event occurs. Unless otherwise specified by SonicWall or as posted on the Site or at [www.sonicwall.com](http://www.sonicwall.com), a) Customer will provide 1 purchase order per MSSP per month and per report required by SonicWall; b) any reports and any associated billings or invoices must be disputed within 30 days after SonicWall provides the report or invoice, whichever occurs first; and c) Customer shall make all payments due to SonicWall in full within thirty (30) days from the receipt date of each invoice from SonicWall or such other period (if any) stated in an Order. Customer agrees to pay to SonicWall (or, if applicable, the Partner) the fees specified in each Order in accordance with the GSA Schedule pricelist. All payments must be made in US currency unless specified otherwise by SonicWall. SonicWall reserves the right to require Customer to issue a purchase order to SonicWall prior to accepting an Order. If credit or credit terms are extended to Customer, Customer may be invoiced upon or following delivery of or access to the Products or before or after the commencement of any renewal period. Should Customer, by any means or way, revoke or cancel any payment to SonicWall or any Partner, SonicWall and/or its Partners shall be allowed to supply the third party clearing or payment service any information about such transaction; including, but not only, email address(es), IP address(es) and any activity pursuant to such denied transaction. Orders may be terminated, cancelled, or suspended by SonicWall's in accordance with the Contract Disputes Act. Availability of Products may be limited or change without notice. SonicWall is not responsible for typographical or other errors. Amounts due and payable may be associated with use of a license key, password, or other mechanisms provided by SonicWall to access or use the Product. Customer will be responsible for its use or distribution of Product as well as for the security, use, and administration of all such license keys, passwords, or other mechanisms (including without limitation all activations and deactivations). SonicWall is not obligated to issue refunds or credits for Customer's failure to maintain the security, use and administration of such information. SonicWall's calculation of fees or other amounts due and payable based on license keys, passwords, or other mechanisms provided by SonicWall shall be at SonicWall's sole discretion and Customer agrees to pay all fees based on such calculations. SonicWall recommends that Customer immediately contact SonicWall if any such information changes, or is lost, stolen, misplaced, or otherwise compromised. If Customer continues using the Product after termination or expiration of the term of the License or these Terms, it will be a material breach of these Terms except if SonicWall extends a grace period in its sole discretion. SonicWall reserves the right to charge Customer a late penalty in accordance with the Prompt Payment Act (31 USC 3901 et seq) and Treasury regulations at 5 CFR 1315. Amounts due or payable to SonicWall may not be offset against any other amount due and payable to SonicWall.

3.4 **Content.** SonicWall is not responsible for validating any of the Content for correctness, usability or any use whatsoever. SonicWall reserves the right to reject the Content if it is not "server-ready". SonicWall may notify

Customer of its refusal of the Content and afford Customer the opportunity to modify the Content to satisfy SonicWall's requirements for the Product. As between SonicWall and Customer, Customer has the sole and exclusive ownership and/or control of the Content, including all intellectual property rights related thereto. Customer hereby grants to SonicWall, a non-exclusive, worldwide, fully paid up and royalty free license to use, copy, store and display the Content solely to the extent necessary to provide the Product. SonicWall may use Content for the purpose of providing the Product and exercising its legal rights and remedies in connection with these Terms. For clarity, "Content" does not include: (i) system generated data about Customer's network or use of the Services ("System Data") provided that the System Data is not identifiable to Customer or any user, or (ii) any numerical or financial data about Customer's users that is collected and maintained in aggregate anonymous form ("Anonymous Statistical Data"). Customer acknowledges that SonicWall owns and retains ownership rights in the System Data and Anonymous Statistical Data and may use, transfer, and commercially exploit the System Data and Anonymous Statistical Data for any purpose whatsoever.

**3.5 Taxes.** The fees stated in an Order may not include taxes. SonicWall shall state separately on invoices taxes excluded from the fees, and the Customer agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 552.212-4(k). This Section does not apply to taxes based on SonicWall's or a Partner's income.

**4. The Site.** Any of the content on the Site or other websites owned or controlled by SonicWall may be out of date at any given time, and SonicWall is not under any obligation to update such content. SonicWall will not be liable if, for any reason, the Site is unavailable at any time. SonicWall may restrict access to some parts of the Site, or the entire Site at any point on a temporary or permanent basis. Customer is responsible for making all arrangements necessary to access to the Site. Customer is responsible for ensuring that all Users or other persons who access the Site through Customer are aware of and comply with these Terms. Customer will indemnify and hold SonicWall harmless for any breach of these Terms by Customer and Users.

**5. Compliance Verification.** Customer agrees to maintain and use systems and procedures to accurately track, document, and report its installations, acquisitions and usage of Product. Such systems and procedures shall be sufficient to determine if Customer and its User's use and deployment of the Product is within the quantities, terms, and maintenance releases to which it is entitled. SonicWall or its designated auditing agent shall have the right to audit Customer and its User's use and deployment of the Product and compliance with these Terms. Any such audits shall be scheduled at least ten (10) days in advance and shall be conducted during normal business hours remotely or at Customer's facilities, at SonicWall's discretion. Customer shall provide its full cooperation and assistance with such audit and provide access to the applicable records and computers. Without limiting the generality of the foregoing, as part of the audit, SonicWall may request, and Customer agrees to provide, a written report, signed by an authorized representative, listing Customer and its User's then current use and deployment of the Product and/or the number of individuals that have accessed and used Software as well as any other information as may be requested by SonicWall. If Customer's deployment or use of the Product is found to be greater than its purchased entitlement, Customer will be invoiced for the over-deployed/used quantities at SonicWall's then current GSA Schedule list price without any deduction of discounts, rebates, incentives or other amounts. All such amounts shall be payable in accordance with these Terms. Additionally, the parties agree that SonicWall is entitled to a submit a claim under the Contract Disputes Act for unpaid fees that exceed five (5%) of the fees paid for the applicable Product, including the costs of the audit, which are allocable under this Agreement. The requirements of this Section shall survive expiration or termination of these Terms.

## **6. External Sites.**

**6.1 Access and Use of External Sites.** The Site may enable access to certain third-party web sites and Customer and/or its Users may access to third-party web sites while using the Service ("External Sites"). The use of and access to External Sites may require Internet access and may be subject to additional terms and conditions. Customer and its Users should review the applicable terms and policies, including privacy and data gathering practices, of any site its accesses and/or uses. Customer and its User(s) agree to comply with the terms and conditions of the External Site. External Sites that may be accessed from the Site and/or while using the Service are not necessarily available in all languages or in all countries. SonicWall makes no representation that such External Sites are appropriate or available for use in any location. To the extent Customer and/or its Users chooses to access External Sites, Customer and its Users does so at its own initiative and is responsible for compliance with any applicable laws. SonicWall may but has no obligation to, block information, transmissions or access to certain information, services, products or domains to protect the Service, our network, the public or Users. Customer understands that by using and/or accessing any of the External Sites, Customer and its Users may encounter or be exposed to content that may inaccurate, and/or be deemed offensive, indecent, or objectionable, and which may or may not be identified as having explicit language, and that the results of any search or entering of a particular URL may automatically and unintentionally generate links or references to

such offensive, indecent or objectionable material. If Customer or its User(s) decide to access such third-party External Sites, Customer and its User(s) do so at its own risk. Customer acknowledges and agrees that SonicWall is not responsible for examining or evaluating the content, accuracy, completeness, timeliness, validity, copyright compliance, legality, decency, quality or any other aspect of the External Sites. SonicWall does not warrant or endorse any advertising, products or other materials on or available from such External Sites. SonicWall will not be liable for any loss or damage which may be incurred by Customer and its User(s) as a result of any reliance placed on the completeness, accuracy or existence of any advertising, products or other materials on, or available from, such External Sites, nor for any services, or products that Customer or its User(s) accesses, downloads, receives or buys while using the Service. Customer hereby waives any legal or equitable rights and remedies Customer and its Users may have or may have against SonicWall with respect to any such content.

**6.2 Special Caution Relating to Location Data.** Location data may not be accurate. Location data provided, whether by any External Sites or as integral part of the Site, is for basic navigational purposes only and is not intended to be relied upon in situations where precise location information is needed or where erroneous, inaccurate or incomplete location data may lead to death, personal injury, property or environmental damage. Use of real time route guidance is at Customer's sole risk. Neither SonicWall, nor any of its third-party suppliers, guarantee the availability, accuracy, completeness, reliability, or timeliness of location data displayed by any External Site or as integral part of the Site.

## **7. Additional Restriction and Responsibilities.**

**7.1 Restrictions on Use of the Product.** Customer must and will ensure its User(s):

- a) Use the Product in compliance with these Terms and not facilitate or encourage any violations of these Terms or any other applicable terms and conditions or policies;
- b) Comply with all local, state, federal, national, laws, statutes, ordinances, rules, regulations, and policies ("Laws"). Customer acknowledges and agrees it is Customer's responsibility to know and comprehend all laws related to any jurisdiction or venue that concerns Customer and its User;
- c) Will not use the Product for generating and/or sending any unauthorized, unwanted or unsolicited content or communications such as surveys, contests, pyramid schemes, chain letters, junk email, spamming or any duplicative or unsolicited messages (commercial or otherwise);
- d) Will not use the Product to encourage conduct or to generate and/or distribute any content which is or could be harmful, threatening, tortuous, abusive, defamatory, obscene, libelous, hateful, objectionable or is otherwise unlawful, malicious, harassment or discriminatory or which harms, could harm or violate the rights of minors or other individuals in any way;
- e) Will not use the Product that may result in or give rise to a criminal offense, generate, distribute and/or receive any illegal content, including, but not limited to, child pornography, whether via email, peer-to-peer file sharing, or any other electronic communication channel;
- f) Will not use the Product to upload, download, post, reproduce, generate and/or distribute any content which falsifies, infringes or violates any patent, trademark, trade secret, copyright or other proprietary rights of any third party nor delete any copyright management information, such as author attributions, legal or other proper notices or proprietary designations or labels of the origin or source of intellectual property or proprietary information;
- g) Will not use the Product for any unlawful purposes or for promotion of illegal activities including, without limitation, provide material support or resources (or to conceal or disguise the nature, location, source, or ownership of material support or resources) to any organization(s) designated by applicable law as a terrorist organization;
- h) Will not use the Product for sending other people's private and confidential information, such as credit card numbers, street address or Social Security/National Identity numbers, without their express authorization and permission and in compliance with all Laws;
- i) Will not use the Product for interfering with, or disrupting (or attempting to do so), the access of any person, host or network, including, without limitation, by uploading and/or sending software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware;
- j) Will not attempt to access, probe, or connect to computing devices without proper authorization (i.e., any form of "hacking").
- k) Will not do anything that could disable, overburden, or impair the use or enjoyment of the Product by any other User or third party.
- l) Will not use any torrent while using the Product and/or use the Product to generate, distribute and/or receive any torrent files.
- m) Will not use the Product for any purpose other than lawful purposes.

**7.2** Customer is solely responsible and liable for, and SonicWall has no responsibility to Customer or to any

third party, for Customer's and its User's acts or omissions including without limitation any breach of Customer's obligations under these Terms and for the consequences (including any loss or damage which SonicWall may suffer) of any such breach. Customer will indemnify and hold SonicWall harmless for its acts and omissions.

7.3 SonicWall reserves the right to investigate complaints or reported violations of these Terms and to take any action SonicWall deems appropriate, including but not limited to reporting any suspected unlawful activity to law enforcement officials, regulators, or other third parties and disclosing any information necessary or appropriate to such persons or entities relating profiles, email addresses, usage history, posted materials, IP addresses and traffic information.

**8. Limited Warranty.** SONICWALL WARRANTS THAT THE PRODUCT WILL, FOR A PERIOD OF (60) DAYS FROM THE DATE OF YOUR RECEIPT, PERFORM SUBSTANTIALLY IN ACCORDANCE WITH PRODUCT WRITTEN MATERIALS ACCOMPANYING IT. EXCEPT AS EXPRESSLY SET FORTH IN THE FOREGOING, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE PRODUCT IS PROVIDED "AS IS" AND "AS AVAILABLE", WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND. SONICWALL AND ITS THIRD-PARTY SUPPLIERS HEREBY DISCLAIMS ALL REPRESENTATIONS, WARRANTIES AND CONDITIONS WITH RESPECT TO THE PRODUCT, EXPRESS, IMPLIED, ORAL, WRITTEN OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF COMPLETENESS, ACCURACY, AVAILABILITY, TIMELINESS, USEFULNESS, SECURITY, RELIABILITY AND NON-INFRINGEMENT, AND ANY IMPLIED WARRANTIES OF MERCHANTABILITY, OF SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE ANY WARRANTIES ARISING FROM USAGE OF TRADE OR COURSE OF DEALING OR PERFORMANCE. SonicWall does not warrant against interference with Customer's or its User's enjoyment of the Product, that the Product will meet its requirements, that the operation of the Product will be uninterrupted or error-free, that defects in the Product will be corrected, that the Product will be free from corruption, attack, viruses, interference, hacking, or other security intrusion or that it will interoperate. The Product may be subject to unavailability for a variety of factors, including, but not limited to, emergencies, third-party service failures, transmission, equipment or network problems or limitations, interference or signal strength, and may be interrupted, refused, limited or curtailed. The accuracy and timeliness of data received while using the Product is not guaranteed and delays or omissions may occur. SonicWall is not responsible for data, messages or pages lost, not delivered, delayed or misdirected due to interruptions or performance issues with the Product or communications services or networks. SonicWall may impose usage or service limits, suspend services, or block certain kinds of usage in our sole discretion. SonicWall reserves our right to investigate matters SonicWall considers to be violations of these Terms. SonicWall may, but is not obligated to, in its sole discretion, and without notice, remove, block, filter or restrict by any means any materials or information that SonicWall considers to be actual or potential violations of the restrictions set forth in these Terms, and any other activities that may subject SonicWall or other third parties to liability. SonicWall and its third-party suppliers disclaim all liability in this respect. SonicWall and its third-party suppliers make no guaranty of confidentiality or privacy of any communication or information transmitted through or the use of the Product. No advice or information, whether oral or written, obtained by Customer or User(s) from SonicWall shall create any warranty, representation or guarantee not expressly stated in these Terms. Some jurisdictions do not allow the exclusion of implied warranties or limitations on applicable statutory rights of a consumer, so the above exclusion and limitations may not apply.

**9. Limitation of Liability.** IN NO EVENT SHALL SONICWALL, ITS AFFILIATES OR SUPPLIERS 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. THE MAXIMUM AGGREGATE AND CUMULATIVE LIABILITY OF SONICWALL, ITS AFFILIATES AND SUPPLIERS, FOR DAMAGES UNDER THESE TERMS, WHETHER ARISING IN OR FOR BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF STATUTORY DUTY, OR OTHERWISE, SHALL BE AN AMOUNT EQUAL TO (Y) THE GREATER OF THE FEES PAID AND/OR OWED (AS APPLICABLE) BY CUSTOMER OR ITS AFFILIATES FOR THE PRODUCTS THAT ARE THE SUBJECT OF THE BREACH OR FIVE HUNDRED DOLLARS (\$500.00). THE PARTIES AGREE THAT THESE LIMITATIONS OF LIABILITY ARE AGREED ALLOCATIONS OF RISK CONSTITUTING IN PART THE CONSIDERATION FOR SONICWALL PROVIDING PRODUCTS 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. SONICWALL WILL NOT BE RESPONSIBLE FOR ANY LIABILITY, OR DAMAGE OF ANY KIND RESULTING IN ANY WAY FROM (I) CUSTOMER'S ACCESS TO OR USE, INABILITY TO USE, OR RELIANCE ON THE PRODUCT, AND/OR ANY EXTERNAL SITE, (II) ANY ERRORS, OMISSIONS OR OTHER INACCURACIES IN ANY CONTENT INCLUDED IN THE SITE WHICH IS FALSE OR WHICH CONSTITUTES PASSING-OFF, (III) CUSTOMER'S INTERACTION ON THE SITE AND/OR THROUGH THE SERVICE AND ANY STATEMENTS OR CONDUCT OF ANY THIRD PARTY, (IV) OR ANY OTHER MATTER RELATING TO THE SITE, THE SERVICE, THE APP AND/OR THE FEATURES, REGARDLESS OF THE THEORY OF LIABILITY (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE), EVEN IF SONICWALL HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF A REMEDY SET FORTH HEREIN FAILS OF ITS ESSENTIAL PURPOSE, AND/OR (C) FOR ANY THIRD PARTY CLAIMS AGAINST CUSTOMER AND/OR ITS USERS. IN ADDITION, ALL RESPONSIBILITY OR LIABILITY OF SONICWALL AND ITS AFFILIATES, ITS DIRECTORS, OFFICERS, EMPLOYEES, LICENSORS AND/OR AGENTS FOR ANY DAMAGES CAUSED BY VIRUSES OR OTHER HARMFUL COMPONENTS IS HEREBY DISCLAIMED. Any cause of action by Customer with respect to the Product, must be instituted within one (1) year after the cause of action arose. Customer is solely responsible for paying all fees and charges of any third-party whose sites, products or services Customer or its User access, buy or use via the Product. If Customer or its Users choose to use the Product to access websites, services or content, and/or purchase products from third parties, personal information provided may be available to the third-party. How third parties handle and use personal information related to their sites, products and services is governed by their security, privacy and other policies (if any) and not SonicWall's. SonicWall has no responsibility for third-party provider policies, and/or for their compliance with such policies nor for their products, services or offers. Customer expressly acknowledges and agrees that use of the Service, and any consequences thereof, are at Customer's sole risk, responsibility and liability. The foregoing limitation of liability shall not apply to (1) personal injury or death resulting from Licensor's negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.

#### **10. Reserved.**

#### **11. Acknowledgments.**

11.1 Any logos, artwork and trademarks associated with each third-party payment processor is/are the property of such applicable third party. Google Play™, Android™ and any logos, artwork and trademarks associated therewith is/are the property of Google Inc. ("Google"). Apple™, App Store™, iPhone™ and any logos, artwork and trademarks associated therewith is/are the property of Apple Inc.

11.2 Reserved.

11.3 Customer expressly acknowledge and agree that: (i) these Terms are made between Customer and SonicWall, and not with Apple; (ii) SonicWall, and not Apple, is solely responsible for the App and the Services; (iii) SonicWall alone shall be responsible for providing any maintenance and support services (if any) with respect to the App, if any and as specified in these Terms, or as required under applicable law, and Apple will not have any obligation whatsoever to furnish any maintenance and support services with respect to the App or the Services; (iv) SonicWall shall be solely responsible for any warranties with respect to the App and the Services, whether express or implied by law, to the extent not effectively disclaimed; (v) in the event of any failure of the App to conform to any applicable warranty, Customer may notify Apple, and Apple will refund the purchase price (if any) for the App to Customer; (vi) to the maximum extent allowed by applicable law, except as described in clause (v) above, Apple will not have any other warranty obligation whatsoever with respect to the App or the Services, and any other claims, losses, liabilities, damages, costs or expenses attributable to any failure to conform to any warranty will be SonicWall's sole responsibility; (vii) SonicWall, not Apple, is responsible for addressing any claim by Customer or any third-party relating to the App or Customer's possession and/or use of the App, including, but not limited to (a) product liability claims, (b) any claim that the App fails to conform to any applicable legal or regulatory requirement, and (c) claims arising under consumer protection or similar legislation; (viii) in the event of any third-party claim that the App or Customer's possession and use of the App infringes such third-party's intellectual property rights, SonicWall, not Apple, will be solely responsible for the investigation, defense, settlement and discharge of any such intellectual property infringement claim, (xi) Customer have had the opportunity to review Apple's Usage Rules; (xii) Reserved.

#### **12. Termination.**

12.1 Unless terminated earlier as provided by these Terms or the Service has been renewed, Customer's right to use the Service, the App and Features shall terminate upon expiration or termination of the period associated

with the subscription to the Service. (E.g., in the event a yearly subscription Customer's right to use the Service shall terminate within 12 months thereafter). SonicWall may terminate or create limits (permanently or temporarily) the Service (and/or any Features within the Service or App) to Customer or to Users, at SonicWall's sole discretion at any time, and without liability to SonicWall or notice. Upon termination of these Terms, Customer and its Users shall cease all access and use of the Product. SonicWall, at its sole discretion, without notice to Customer, may immediately terminate these Terms and Customer's use of the Product in whole or in part if Customer fails to comply with or breaches any of the provisions of these Terms.

12.2 The following provisions shall survive expiration or termination of these Terms: 1, 2.5, 2.6, 2.7, 3.3, 3.5, 4, 5, 7.2, 7.3, 8, 9, 10, 11, 13, 14, 15, 16, and 17. If SonicWall permanently terminates providing the Service to Customer, then these Terms shall be terminated (except for provisions which by their nature are intended to survive termination).

**13. Unsolicited Idea Submission Policy.** Customer agrees that any remarks, ideas, feedback, comments, suggestions, or any other information that that Customer or a User provides to SonicWall (collectively, a "**Submission**"), whether through a review or otherwise, is entirely voluntary, and that SonicWall will be free to use any such feedback, comments or suggestions as SonicWall will see fit, without any obligation or compensation to Customer, User or any other person providing the Submission. SonicWall will have exclusive ownership of all present and future existing rights, title and interest in and to the Submission of every kind and nature everywhere, and Customer hereby irrevocably assign to SonicWall all rights, title and interest therein. SonicWall will not be required to treat any Submission as confidential. Customer acknowledges that Customer is responsible for whatever material submitted, and will have full responsibility for the Submission, including its legality, reliability, appropriateness, originality, and copyright.

**14. Export Regulations.** Customer acknowledges that the Service,, Features, Site and App ("Products") are subject to the export control laws, rules, regulations, restrictions and national security controls of the United States and other applicable foreign agencies (the "Export Controls") and agrees to abide by the Export Controls. Customer hereby agrees to use the Products in accordance with the Export Controls, and shall not export, re-export, sell, lease or otherwise transfer the Products or any copy, portion or direct product of the foregoing in violation of the Export Controls. Customer is solely responsible for obtaining all necessary licenses or authorizations relating to the export, re-export, sale, lease or transfer of the Products and for ensuring compliance with the requirements of such licenses or authorizations. Customer hereby (i) represents that Customer, and if Customer is providing services under the MSSP License herein each of its Clients, is not an entity or person to which shipment of Products is prohibited by the Export Controls; and (ii) agrees that it shall not export, re-export or otherwise transfer the Products to (a) any country subject to a United States trade embargo, (b) a national or resident of any country subject to a United States trade embargo, (c) any person or entity to which shipment of Products is prohibited by the Export Controls, or (d) anyone who is engaged in activities related to the design, development, production, or use of nuclear materials, nuclear facilities, nuclear weapons, missiles or chemical or biological weapons. Customer shall, at its expense, defend SonicWall and its affiliates from any third party claim or action arising out of any inaccurate representation made by Customer regarding the existence of an export license, Customer's failure to provide information to SonicWall to obtain an export license, or any allegation made against SonicWall due to Customer's violation or alleged violation of the Export Controls (an "Export Claim") and shall pay any judgments or settlements reached in connection with the Export Claim as well as SonicWall's costs of responding to the Export Claim.

**15. High-Risk Disclaimer.** Customer understands and agrees that the Products 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 navigation, air traffic control, life support machines, weapons systems, or any other application where the failure or malfunction of any Product 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 Products in a High Risk Environment, (ii) any use of the Products by customer in a high risk environment is at Customer's own risk, (iii) SonicWall, its affiliates and suppliers shall not be liable to Customer in any way for use of the Products in a High risk Environment, and (iv) SonicWall makes no warranties or assurances, express or implied, regarding use of the Products in a High Risk Environment. Further, Customer acknowledges that Product provided under these Terms is not designed with security and access management for the processing and/or storage of the following categories of data and software: (A) classified data and software; (B) data and software controlled under the International Traffic in Arms Regulations ("ITAR"); and (C) personally identifiable information that is subject to heightened security requirements as a result of Customer's internal policies or practices or by law (collectively referred to as "Excluded Data"). Customer hereby agrees that it is solely responsible for reviewing data that the Product will provide to SonicWall (or to which SonicWall will have access) to ensure that it does not contain Excluded Data.

## **16 Confidentiality.**

**16.1 Definition.** “Confidential Information” means information or materials disclosed by SonicWall (the “Disclosing Party”) to Customer (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 (excluding GSA Schedule pricing), trade secrets, know-how, proprietary tools, knowledge and methodologies, the Software (in source code and/or object code form), information or benchmark test results regarding the functionality and performance of the Product, any software license keys provided to Customer. Reporting and registration information provided by Customer to SonicWall under these Terms shall be deemed SonicWall Confidential Information. Confidential Information shall 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 date that Customer accepts these Terms (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 protected by SonicWall in accordance with its obligations under the Protected Data Section below, or (v) are or were independently developed by the Receiving Party without access to or use of the Disclosing Party’s Confidential Information.

**16.2 Obligations.** The Receiving Party shall (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 shall 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 shall 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 these Terms.

**16.3 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”), but only to those Representatives that (i) have a “need to know” in order to carry out the purposes of these Terms or to provide professional advice in connection with these Terms, (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 shall 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 be a breach of these Terms. Additionally, it shall not be a breach of this Section for the Receiving Party to disclose the Disclosing Party’s Confidential Information as may be required by operation of law or 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. Vendor 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.

## **17. Miscellaneous.**

**17.1 Translation.** Any translation of these Terms is provided solely for convenience and is not intended to modify these Terms. In the event of a conflict between the English version of these Terms and a version in a language other than English, the English version shall apply.

**17.2 Inconsistency in Terms.** In the event (i) of any inconsistency or contradiction between this Terms and the terms and conditions associated with the application store from which the App was downloaded, or in the event that (ii) these Terms are found to be less restrictive than the terms of use and/or usage rules (as the case may be) of such application store, or that (iii) these Terms will not be enforceable in their entirety for any reason (but without derogating from “Severability” in Section below), then the terms and/or usage rules (as the case may be) of the applicable application store, shall prevail.

**17.3 No Partnership.** Nothing contained in these Terms shall be construed as creating a partnership, joint venture, agency or other similar relationship between SonicWall and Customer, nor as granting Customer the right, power, or authority (express or implied) to bind or otherwise create any duty or obligation for SonicWall.

**17.4 No Third-Party Beneficiaries.** Except as expressly provided by these Terms, these Terms does not create any obligation of a party to any third parties, nor shall it be deemed to create any rights or causes of action on



behalf of any third parties.

**17.5 Governing Law and Venue.** These Terms shall be governed by and construed in accordance with the Federal laws of the United States, 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) shall apply to these Terms, regardless of the states in which the parties do business or are incorporated.

**17.6 Assignment.** Except as otherwise set forth herein, Customer shall not, in whole or part, assign or transfer any part of these Terms, the licenses granted under these Terms or any other rights, interest or obligations hereunder, 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 SonicWall. Any attempted transfer or assignment by Customer that is not permitted by these Terms shall be null and void.

**17.7 Severability.** If any provision of these Terms shall be held by a court of competent jurisdiction to be contrary to law, such provision will be enforced to the maximum extent permissible by law to affect the intent of the parties and the remaining provisions of these Terms will remain in full force and effect. Notwithstanding the foregoing, the terms of these Terms that limit, disclaim, or exclude warranties, remedies or damages are intended by the parties to be independent and remain in effect despite the failure or unenforceability of an agreed remedy. The parties have relied on the limitations and exclusions set forth in these Terms in determining whether to enter into it.

**17.8 Use by U.S. Government.** The Product is a “commercial item” under FAR 12.201. Consistent with FAR section 12.212, any use, modification, reproduction, release, performance, display, disclosure or distribution of the Product or documentation by the U.S. government is prohibited except as expressly permitted by these Terms. In addition, when Customer is a U.S. government entity, the Infringement Indemnity provisions of these Terms and the Injunctive Relief provisions shall not be applicable.

**17.9 Notices.** All notices provided hereunder shall be in writing and may be delivered by email, in the case of SonicWall to and in the case of Customer to the email address SonicWall has on file for Customer. All notices, requests, demands or communications shall be deemed effective upon delivery in accordance with this paragraph.

**17.10 Disclosure of Customer Status.** SonicWall may include Customer in its listing of customers and, upon written consent by Customer, announce Customer’s selection of SonicWall in its marketing communications.

**17.11 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 shall be effective only with respect to the specific obligation described therein. Any waiver or failure to enforce any provision of these Terms on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

17.12 Reserved.

**17.13 Force Majeure.** Excusable delays shall be governed by FAR 52.212-4(f).

**17.14 Equal Opportunity.** SonicWall is an Affirmative Action employer (M/F/D/V) as required by the Equal Opportunity clause C.F.R. § 60-741.5(a).

**17.15 Headings.** Headings in these Terms are for convenience only and do not affect the meaning or interpretation of these Terms. These Terms 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 these Terms it will be construed in each case to mean “including, but not limited to.”

17.16 Reserved.

**17.17 Entire Agreement.** Each party acknowledges that in entering into these Terms it has not relied on and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in these Terms. Unless Customer has entered into another written agreement with respect to the Product which has been signed by Customer and an authorized representative of SonicWall and which conflicts with the provisions of these Terms, Customer agrees that these Terms supersede all prior written or oral agreements, warranties or representations with respect to use of the Product. If any provision (or part thereof) of these Terms is found to be invalid or unenforceable, the remaining provisions (including other valid parts within the effected term) will remain effective. Customer understands and agrees that SonicWall may modify or amend the non-material terms and conditions of these Terms at any time without notice. Customer is responsible for ensuring it is aware of the most current terms and conditions that apply to the Products and use thereof. Customer acknowledges that it has read, understands and agrees to be bound by these Terms and that these Terms is the complete and exclusive statement of the agreement between Customer and SonicWall regarding the Product(s).

## **SUSE EULA**

## **SUSE® Linux Enterprise GSA End User License Agreement for SUSE products**

**PLEASE READ THIS AGREEMENT CAREFULLY. BY BOTH PARTIES EXECUTING THIS AGREEMENT IN WRITING, YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU DO NOT AGREE WITH THESE TERMS, YOU ARE NOT PERMITTED TO DOWNLOAD, INSTALL OR USE THE SOFTWARE AND YOU SHOULD NOTIFY THE PARTY FROM WHICH YOU PURCHASED THE SOFTWARE TO OBTAIN A REFUND. AN INDIVIDUAL ACTING ON BEHALF OF AN ENTITY REPRESENTS THAT HE OR SHE HAS THE AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF THAT ENTITY.**

This End User License Agreement ("Agreement") is a legal agreement between the Ordering Activity under GSA Schedule contracts identified in the Purchase Order, Statement of Work, or similar document ("You") and SUSE LLC ("Licensor"). The software products identified in the title of this Agreement for which You have acquired licenses, any media or reproductions (physical or virtual) and accompanying documentation (collectively the "Software") is protected by the copyright laws and treaties of the United States ("U.S.") and other countries and is subject to the terms of this Agreement. If the laws of Your principal place of business require contracts to be in the local language to be enforceable, such local language version may be obtained from Licensor upon written request and shall be deemed to govern Your purchase of licenses to the Software. Any add-on, extension, update, mobile application, module, adapter or support release to the Software that You may download or receive that is not accompanied by a license agreement is Software and is governed by this Agreement. If the Software is an update or support release, then You must have validly licensed the version and quantity of the Software being updated or supported in order to install or use the update or support release.

If purchases are made through a reseller, this Agreement is the complete and exclusive statement of the mutual understanding of Licensor and Customer as it relates to the licensing of the software and supersedes and cancels all previous written and oral agreements and communications between Licensor and Customer relating to the subject matter of this Agreement. Nothing in this Agreement modifies any terms and conditions between the Customer and any prime contractor under which the Licensor's Products were ordered.

### **LICENSED USE**

#### **GENERAL LICENSE GRANT APPLICABLE UNLESS SPECIFIC PRODUCT LICENSE GRANT APPLICABLE**

The Software and each of its components are owned by Licensor or other licensors and are protected under copyright laws and other applicable laws. Subject to compliance with the terms and conditions of this Agreement, Licensor grants to You a perpetual, non-exclusive, non-transferable, worldwide license to reproduce and use copies of the Software within Your Organization (as defined below). "Organization" means a legal entity, excluding subsidiaries and affiliates with a separate existence for tax purposes or for legal personality purposes. An example of an Organization in the private sector would be a corporation, partnership, or trust, excluding any subsidiaries or affiliates of the organization with a separate tax identification number or company registration number. A public sector example of an Organization would be a specific government body or local government authority.

#### **LICENSE SPECIFIC TO SUSE Enterprise Storage Base Configuration**

Subject to compliance with the terms and conditions of this Agreement, Licensor grants to You a perpetual, non-exclusive, non-transferable, worldwide license to reproduce and use within Your Organization (as defined below) up to four (4) copies of SUSE Enterprise Storage deployed on one (1) to two (2) CPU socket server nodes and up to four (4) copies of SUSE Linux Enterprise Server deployed on the same one (1) to two (2) CPU socket server nodes for the sole purpose of running up to four (4) copies of the SES Object Storage Daemon (as defined in SUSE's Terms and Conditions available at [https://www.suse.com/products/terms\\_and\\_conditions.pdf](https://www.suse.com/products/terms_and_conditions.pdf), attached hereto and made a part hereof as Exhibit A ("Terms and Conditions")) component on same server nodes within a specific storage cluster. With respect to the same storage cluster, Licensor grants to You a perpetual, non-exclusive, non-transferable, worldwide license to reproduce and use within Your Organization (as defined in the general license grant section above) up to six (6) copies of SUSE Enterprise Storage and up to six (6) copies of SUSE Linux Enterprise Server for the sole purpose of running up to six (6) SES Infrastructure Nodes (as defined in the Terms and Conditions) on the same storage cluster.

#### **LICENSE SPECIFIC TO SUSE Enterprise Storage Expansion Node**

Subject to compliance with the terms and conditions of this Agreement, Licensor grants to You a perpetual, non-exclusive, non-transferable, worldwide license to reproduce and use within Your Organization (as defined below) one (1) copy of SUSE Enterprise Storage deployed on a one (1) to two (2) CPU socket server node and one (1) copy of SUSE Linux Enterprise Server deployed on the same one (1) to two (2) CPU socket server node for the sole purpose of running one (1) copy of the SES Object Storage Daemon (as defined in the Terms and Conditions) component on one (1) particular

storage cluster provided that such storage cluster already has one (1) SUSE Enterprise Storage Base Configuration actively deployed. With respect to the same storage cluster, Licensor grants to You a perpetual, non-exclusive, non-transferable, worldwide license to reproduce and use within Your Organization (as defined in the general license grant section above) up to one (1) copy of SUSE® Enterprise Storage and up to one (1) copy of SUSE Linux Enterprise Server for the sole purpose of running up to one (1) SES Infrastructure Node (as defined in the Terms and Conditions) on the same storage cluster.

#### **LICENSE SPECIFIC TO SUSE LINUX Enterprise Point of Service**

Subject to compliance with the terms and conditions of this Agreement, Licensor grants to You a perpetual, non-exclusive, non-transferable, worldwide license to reproduce and use copies of the Software within Your Organization (as defined below) solely in connection with, and for the duration of, your lawfully acquired licenses for SUSE Linux Enterprise Server, SUSE Linux Enterprise Desktop and associated products. Associated products currently include, but are not limited to, the following: WebYaST, SUSE Linux Enterprise High Availability Extension, GEO Clustering for SUSE Linux Enterprise High Availability Extension, SUSE Linux Enterprise Real Time Extension, SUSE Linux Enterprise Server for SAP Applications. You agree to use SUSE Linux Enterprise Point of Service solely for the purpose of running a point of service infrastructure within Your Organization (as defined in the general license grant section above) and not as a general purpose operating system.

**THIRD PARTY/OPEN SOURCE.** Nothing in this Agreement shall restrict, limit or otherwise affect any rights or obligations You may have, or conditions to which You may be subject, under any applicable open source licenses to any open source code contained in the Software. The Software may include or be bundled with other software programs licensed under different terms and/or licensed by a third party other than Licensor. Use of any software programs accompanied by a separate license agreement is governed by that separate license agreement.

**SUBSCRIPTION SERVICES.** Licensor has no obligation to provide maintenance or support unless You purchase a subscription offering that expressly includes such services. Licensor sells subscription offerings for the Software that entitles You to fee based technical support and/or internal use of Software updates provided on a specified annual period (“Subscription Offering”) and are subject to the terms of the Subscription Offering Terms and Conditions available at [https://www.suse.com/products/terms\\_and\\_conditions.pdf](https://www.suse.com/products/terms_and_conditions.pdf), attached hereto and made a part hereof as Exhibit A. attached.

**MARKS.** No right or license, express or implied, is granted under this Agreement with respect to any trademark, trade name or service mark of Licensor or its affiliates or licensors (“Mark”). This Agreement does not permit you to distribute the Software or its components using Licensor's trademarks, regardless of whether the copy has been modified. You may make a commercial redistribution of the Programs only if (a) permitted under a separate written agreement with Licensor authorizing such commercial redistribution, or (b) you remove and replace all occurrences of any Mark.

#### **RESTRICTIONS**

License Restrictions. The Software and each of its components are owned by Licensor and/or its licensors and are protected under copyright law and under other laws as applicable. Title to the Software and any component, or to any copy, modification, or merged portion shall remain with Licensor and other licensors, subject to the applicable license. Licensor reserves all rights not expressly granted to You. The Software is licensed for Your internal use only. Except as this Agreement expressly allows and without limiting any rights or obligations set forth in the “Third Party/Open Source” section above, You may not (1) remove any patent, trademark, copyright, trade secret or other proprietary notices or labels on the Software or its documentation; (2) modify, alter, create derivative works, reverse engineer, decompile, or disassemble the Software except and only to the extent expressly permitted by applicable law; (3) transfer, assign, pledge, rent, timeshare, host or lease the Software, or sublicense any of Your license grants or rights under this Agreement; in whole or in part, without prior written permission of Licensor, (4) disclose the results of any performance, functional or other evaluation or benchmarking of the Software to any third party without the prior written permission of Licensor.

Outsourcing Requirements. Your license to use the Software may be used under the terms of this Agreement by a third party acting on Your behalf, such as a third party cloud provider or outsourcing vendor who manages or hosts (either remotely or virtually) the Software for You, subject to and conditioned upon Your adherence to the following: (1) You remain responsible for all of Your obligations under this Agreement and enter into an enforceable agreement with the third party that contains terms and conditions to protect Licensor's rights in the Software that are no less restrictive than those contained in this Agreement, including without limitation the Verification section below; (2) You prohibit use of the Software by the third party for any purpose other than Your sole benefit; (3) You are solely responsible to Licensor for any and all breaches of this Agreement by the third party; and (4) You are

and will remain current on subscription purchases that cover all installations and deployments of the Software by the third party on Your behalf.

Appliance License. If, either directly from Licensor or from a third party, you have received a hardware, software or other appliance that uses the Software, You acknowledge and agree to use the Software solely for the purpose of running the appliance and not as a general purpose operating system.

## **OWNERSHIP**

No title to or ownership of the Software is transferred to You. Licensor and/or its third party licensors retain all right, title and interest in and to all intellectual property rights in the Software and Services, including any adaptations or copies thereof. The Software is not sold to You, You acquire only a conditional license to use the Software. Title, ownership rights and intellectual property rights in and to the content accessed through the Software are the property of the applicable content owner and may be protected by applicable copyright or other law. This Agreement gives You no rights to such content.

## **LIMITED WARRANTY**

Licensor warrants that the media that the Software is delivered on will be free from defects in materials and manufacture under normal use for a period of sixty (60) days from the date of delivery to you. THE FOREGOING WARRANTY IS YOUR SOLE AND EXCLUSIVE REMEDY AND IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED. SAVE FOR THE FOREGOING WARRANTY, THE SOFTWARE IS PROVIDED "AS IS" WITHOUT ANY WARRANTIES OF ANY KIND.

Services. Licensor warrants that any Services purchased will be supplied in a professional manner in accordance with generally accepted industry standards. This warranty will be effective for thirty (30) days following delivery of the Services. Upon any breach of this warranty, Licensor's only obligation is to either correct the Services so that they comply with this warranty or at its option refund the amount You paid to Licensor for the portion of the Services that fail to comply with this warranty. You agree to take appropriate measures to isolate and back up Your systems.

THE SOFTWARE IS NOT DESIGNED, MANUFACTURED OR INTENDED FOR USE OR DISTRIBUTION WITH ON-LINE CONTROL EQUIPMENT IN HAZARDOUS ENVIRONMENTS REQUIRING FAIL-SAFE PERFORMANCE, SUCH AS IN THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION, COMMUNICATION, OR CONTROL SYSTEMS, DIRECT LIFE SUPPORT MACHINES, WEAPONS SYSTEMS, OR OTHER USES IN WHICH FAILURE OF THE SOFTWARE COULD LEAD DIRECTLY TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE.

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EXCEPT AS OTHERWISE RESTRICTED BY LAW, LICENSOR DISCLAIMS AND EXCLUDES ANY AND ALL IMPLIED WARRANTIES INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT NOR ARE THERE ANY WARRANTIES CREATED BY COURSE OF DEALING, COURSE OF PERFORMANCE OR TRADE USAGE. LICENSOR MAKES NO WARRANTY, REPRESENTATION OR PROMISE NOT EXPRESSLY SET FORTH IN THIS LIMITED WARRANTY. LICENSOR DOES NOT WARRANT THAT THE SOFTWARE OR SERVICES WILL SATISFY YOUR REQUIREMENTS, BE COMPATIBLE WITH ALL OPERATING SYSTEMS, OR THAT THE OPERATION OF THE SOFTWARE OR SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE. THE FOREGOING EXCLUSIONS AND DISCLAIMERS ARE AN ESSENTIAL PART OF THIS AGREEMENT AND FORMED THE BASIS FOR DETERMINING THE PRICE CHARGED FOR THE PRODUCTS. Some jurisdictions do not allow certain disclaimers and limitations of warranties, so portions of the above limitations may not apply to You. This limited warranty gives You specific rights and You may also have other rights which vary by state or jurisdiction.

## **LIMITATION OF LIABILITY**

Consequential Losses. NEITHER LICENSOR NOR ANY OF ITS THIRD PARTY LICENSORS, SUBSIDIARIES, OR EMPLOYEES WILL IN ANY CASE BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, INDIRECT, TORT, ECONOMIC OR PUNITIVE DAMAGES, WHETHER BASED ON CONTRACT, , STRICT LIABILITY OR OTHER TORT, BREACH OF ANY STATUTORY DUTY, INDEMNITY OR CONTRIBUTION, INCLUDING WITHOUT LIMITATION LOSS OF PROFITS, BUSINESS OR DATA, EVEN IF ADVISED OF THE POSSIBILITY OF THOSE DAMAGES. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO (1) PERSONAL INJURY

OR DEATH RESULTING FROM LICENSOR'S NEGLIGENCE; (2) FOR FRAUD; OR (3) FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW.

**Direct Damages.** IN NO EVENT WILL LICENSOR'S AGGREGATE LIABILITY FOR DIRECT DAMAGES TO PROPERTY OR PERSON (WHETHER IN ONE INSTANCE OR A SERIES OF INSTANCES) EXCEED THE AMOUNT PAID BY YOU FOR THE SOFTWARE OR SERVICES OUT OF WHICH SUCH CLAIM AROSE (OR \$50 (U.S.) IF YOU RECEIVED THE SOFTWARE FREE OF CHARGE). The above exclusions and limitations will not apply to claims relating to death or personal injury caused by the negligence of Licensor or its employees, agents or contractors, or for fraud. In those jurisdictions that do not allow the exclusion or limitation of damages, including, without limitation, damages for breach of any implied terms as to title or quiet enjoyment of any Software obtained pursuant to this Agreement or for fraudulent misrepresentation, Licensor's liability shall be limited or excluded to the maximum extent allowed within those jurisdictions.

## **GENERAL TERMS**

**Term.** This Agreement becomes effective on the date You legally acquire the Software 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, Licensor 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.

**Audits.** Licensor or an Auditor (as defined below) has the right to verify Your compliance with this Agreement. You agree to:

A. Recordkeeping. Keep, and upon Licensor's request, provide records, sufficient to certify Your compliance with this Agreement based on the applicable license metric and the Subscription Terms and Conditions available at [https://www.suse.com/products/terms\\_and\\_conditions.pdf](https://www.suse.com/products/terms_and_conditions.pdf), attached hereto and made a part hereof as Exhibit A for the Software, which may include but are not limited to, serial numbers, license keys, logs, the location, model (including quantity and type of processor) and serial number of all machines on which the Software is installed or accessed or from which the Software can be accessed, the names (including corporate entity) and number of users accessing or authorized to access the Software, metrics, reports, copies of the Software (by product and version), and network architecture diagrams as they may relate to Your licensing and deployment of the Software and associated support and maintenance;

B. Questionnaire. Within seven (7) days of Licensor's request, You shall furnish Licensor or its designated independent auditor ("Auditor") a completed questionnaire provided by Licensor or Auditor, accompanied with a written statement signed by a director of Your Organization certifying the accuracy of the information provided; and

C. Access. Provide representatives of Licensor or Auditor any necessary assistance and access to records and computers to allow an inspection and audit of Your computers and records, during Your normal business hours, for compliance with the applicable Agreement and fully cooperate with such audit.

D. Non-Compliance. In the event that You have, or at any time have had, unlicensed installation, use of, or access to the Software or have otherwise breached this Agreement (a "Non-Compliance"), without prejudice to any other rights or remedies Licensor may have You shall, within thirty (30) days' notice of such Non-Compliance to You, pay Licensor's current (as of the date of such additional purchase) list term license and support and maintenance fees and interest in accordance with the GSA Schedule Pricelist (compounded at the rate permitted by the Prompt Payment Act (31 USC 3901 et seq) and Treasury regulations at 5 CFR 1315) for such additional licenses for the time period from the commencement of the Non-Compliance until payment of the aforementioned fees, with interest payable even if an invoice was not issued at the time the Non-Compliance occurred. If the Ordering Activity exceeds the use amount, both parties will work together to either prevent such overages in the future or will execute a new agreement in writing that encompasses the higher use amount.

**Transfer.** This Agreement and the associated licenses purchased for use of the Software may not be transferred or assigned without the prior written approval of Licensor. Any such attempted transfer or assignment shall be void and of no effect. Please contact [CRC@suse.com](mailto:CRC@suse.com) to request the transfer of licenses and assignment of this Agreement.

**Law.** All matters arising out of or relating to this Agreement will be governed by the Federal laws of the United States. The application of the United Nations Convention of Contracts for the International Sale of Goods is expressly excluded.

**Entire Agreement.** This Agreement, together with any other purchase documents or other agreement between You and Licensor, sets forth the entire understanding and agreement between You and

Licensor and may be amended or modified only by a written agreement agreed to by You and an authorized representative of Licensor. NO THIRD PARTY LICENSOR, DISTRIBUTOR, DEALER, RETAILER, RESELLER, SALES PERSON, OR EMPLOYEE IS AUTHORIZED TO MODIFY THIS AGREEMENT OR TO MAKE ANY REPRESENTATION OR PROMISE THAT IS DIFFERENT FROM, OR IN ADDITION TO, THE TERMS OF THIS AGREEMENT.

Waiver. No waiver of any right under this Agreement will be effective unless in writing, signed by a duly authorized representative of the party to be bound. No waiver of any past or present right arising from any breach or failure to perform will be deemed to be a waiver of any future right arising under this Agreement.

Severability. If any provision in this Agreement is invalid or unenforceable, that provision will be construed, limited, modified or, if necessary, severed, to the extent necessary, to eliminate its invalidity or unenforceability, and the other provisions of this Agreement will remain unaffected.

Export Compliance. You acknowledge that Licensor's products and/or technology are subject to the U.S. Export Administration Regulations (the "EAR") and You agree to comply with the EAR. You will not export or re-export Licensor's products, directly or indirectly, to: (1) any countries that are subject to US export restrictions; (2) any end user who You know or have reason to know will utilize Licensor's products 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, except as authorized by the relevant government agency by regulation or specific license; or (3) any end user who has been prohibited from participating in the US export transactions by any federal agency of the US government. By downloading or using the Software, You are agreeing to the foregoing and You are representing and warranting that You are not located in, under the control of, or a national or resident of any such country or on any such list. In addition, You are responsible for complying with any local laws in Your jurisdiction which may impact Your right to import, export or use Licensor's products. Please consult the Bureau of Industry and Security web page [www.bis.doc.gov](http://www.bis.doc.gov) before exporting items subject to the EAR. For more information on exporting Software, including the applicable Export Control Classification Number (ECCN) and associated license exception (as applicable), see [www.suse.com/company/legal/](http://www.suse.com/company/legal/). Upon request, Licensor's International Trade Services Department can provide information regarding applicable export restrictions for Licensor products. Licensor assumes no responsibility for Your failure to obtain any necessary export approvals.

:version:2020-04-17:001:

### **Universal Amendment to Software License Agreements for SUSE LLC Software Products**

This Universal Amendment ("Amendment") is between SUSE LLC ("Licensor") and the Authorized End User Licensee ("Authorized Licensee"), as defined below, and modifies SUSE LLC's GSA End User License Agreements (including Volume License Agreements and associated program guide, as applicable, attached hereto and made a part hereof as Exhibit B, and SUSE Support Flyer attached hereto and made a part hereof as Exhibit C) for SUSE software and related services ("License Agreement") purchased by an Authorized Licensee. The Amendment is effective as of the date the End User License Agreement is effective for the Authorized Licensee ("Effective Date").

1. Applicability. This Amendment applies to any order placed for Licensor's software or related services by an Authorized End User Licensee which is defined as: (a) Ordering Activity under GSA Schedule contracts i; or (b) a purchasing agent authorized by a U.S. Government federal agency or organization to purchase on behalf of and solely for the benefit of the U.S. Government federal agency or organization as evidenced by a written authorization letter from the U.S. Government federal agency or organization. This Amendment does not apply to any individual person or to any organization that is a commercial entity or not authorized to purchase in accordance with Subsections 1(a) or 1(b) above.

2. Precedence. Any conflict between the License Agreement and this Amendment shall be controlled by the terms of this Amendment to the maximum extent allowed by applicable Federal law.

3. Contracting Authority. Except as authorized under FAR 1.601(a) and 43.102, all provisions in the License Agreement which would allow any individual to bind the U.S. Government to the terms of the License Agreement or any modifications thereto are hereby deleted. Such provisions include the ability of the Licensor to unilaterally modify the terms of the License Agreement and any requirement to accept terms by means of use, download, or click-through agreements. Authorized Licensee agrees that when an authorized contracting officer of the Authorized Licensee places a task order for the Licensor software, the License Agreement in effect at the time, as amended by this Amendment, shall be legally binding on Authorized Licensee. If an Authorized Licensee receives Licensor software through a task order that is not authorized by the Authorized Licensee's authorized contracting officer or Authorized Licensee fails to acknowledge that the License Agreement is binding on Authorized Licensee, Authorized Licensee shall not be deemed to have any license to the Licensor software and Licensor reserves all rights, remedies, and enforcement actions and venues available under applicable state and federal law.

4. Costs and Fees. Pursuant to the Anti-Deficiency Act, 31 U.S.C. § 1341(a)(1)(B), the U.S. Government does not agree to pay any future costs or fees under the License Agreement or this Amendment. Any provisions of the License Agreement obligating the U.S. Government to pay future costs, fees, or damages, or to otherwise expend unappropriated funds, are hereby deleted unless imposed pursuant to a claim under the Contracts Dispute Act of 1978, as amended, or other applicable Federal law. Any provisions of the License Agreement providing for automatic renewal absent some action by the U.S. Government are hereby deleted. If Authorized Licensee orders Licensor's software or related services from a reseller, then pricing and payment of the software license fee and any related service fees for that transaction shall be between Authorized Licensee and the reseller.

5. Taxes. If Authorized Licensee is exempt by applicable law from paying sales, use or other taxes, then such exemption shall apply in accordance with applicable law.

6. Installation and Use of the Software. Installation and use of the software shall be in accordance with the License Agreement as modified by this Amendment, unless an Authorized Licensee determines that it requires different terms of use and Licensor agrees in writing to such terms.

7. Licensor Indemnification. A License Agreement may contain terms that obligate Licensor to indemnify and defend an Authorized Licensee against a claim brought by a third party. In such case, Licensor agrees it cannot assume responsibility for or control of the litigation or any settlement negotiations, provided that Authorized Licensee (i) agrees that any litigation or settlement negotiation shall not bind Licensor to the final outcome of any such litigation or settlement; (ii) shall not impair Licensor's own rights, defenses, or claims against the claimant or the rights of Licensor's other licensees, (iii) shall not have the right to settle any claim, make any admissions, or waive any defenses on behalf of Licensor; and (v) shall in good faith reasonably cooperate and consult with Licensor during the course of settlement negotiations and prosecution of the claim and shall afford Licensor free access to all communications and documentations with all parties, witnesses, and judicial or administrative body(ies) associated with such claim upon Licensor's request. Any contrary provisions in the License Agreement are hereby deleted. Licensor shall have the right to intervene in a proceeding described by this paragraph at its own expense through counsel of its choice.

8. No Indemnification by Authorized Licensee. In compliance with the Anti-Deficiency Act, 31 U.S.C. §1341(a)(1)(B), an officer or employee of the U.S. Government may not involve the U.S. Government



in a contract or obligation for the payment of money before an appropriation is made unless authorized by law. Any provision requiring the Licensee indemnify the Licensor in the License Agreement is deleted. This provision is not a waiver of Licensor's rights to seek other remedies authorized by applicable U.S. Federal law.

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

10. Dispute Resolution and Venue. Any provisions in the License Agreement requiring the U.S. Government to follow a specific procedure to raise claims or to resolve disputes are hereby deleted. Any provisions in the License Agreement selecting a particular judicial forum or form of alternative dispute resolution for resolving claims relating to the License Agreement are hereby deleted. Any disputes between Licensor and Authorized Licensee relating to the License Agreement and to this Amendment shall be resolved in accordance with the Contract Disputes Act of 1978, as amended (41 U.S.C. §§ 7101-7109). Authorized Licensee expressly acknowledges that Licensor shall have standing to bring a claim to enforce Licensor's rights under the License Agreement and this Amendment provided such claim is brought in a forum and venue allowed by applicable U.S. Federal law.

11. Termination. Licensee's termination rights shall be governed by FAR 52.212-4(l) and (m).

12. Equitable Remedies. Any provision of the License Agreement providing for equitable remedies against the U.S. Government, including an injunction, is deleted to the extent the provision violates the U.S. Government's sovereign immunity or is in violation of an applicable federal law. Nothing in this paragraph shall prevent Licensor from filing a claim or limit damages under the Contract Disputes Act of 1978, as amended (41 USC §§7101-7109).

13. Monitoring Use of License and Audits. Any provision in the License Agreement permitting Licensor to audit, inspect, or monitor use of the software for compliance with the License Agreement is contingent upon reasonable notice to the Authorized Licensee and adherence to reasonable security measures, including any requirements for personnel to be cleared prior to accessing sensitive facilities if clearances are normally required for such access.

14. Advertisements and Endorsements. Any provisions allowing Licensor to use the name or logo of any Authorized Licensee to advertise or to imply an endorsement of Licensor's products or services are hereby deleted. Unless specifically authorized by an Authorized Licensee, such use of the name or logo of any U.S. Government entity is prohibited.

15. Confidentiality, Public Access to Information. Licensor agrees that the License Agreement and this Amendment contain no confidential or proprietary information and acknowledges that the License Agreement and this Amendment may be made available to the public. Except for Licensor's software and documentation included with the software, of which Licensor deems as proprietary and confidential, the Authorized Licensee shall not be prohibited from disclosing the terms of the Licensing Agreement and this Amendment, as required by law, including the Freedom of Information Act.

**EXHIBIT A to**  
**SUSE® Linux Enterprise GSA End User License Agreement for SUSE products**  
SUSE Subscription Services Terms and Conditions

# Terms and Conditions

for SUSE Subscription Offerings

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# General Terms and Conditions

1. **Acceptance.** By both parties executing this Agreement in writing or a purchase order incorporating this Agreement in writing, you (“You”) accept this agreement (“Agreement”) with SUSE LLC (“SUSE”). IF YOU ARE ACCEPTING THIS AGREEMENT ON BEHALF OF A COMPANY, YOU REPRESENT AND WARRANT THAT YOU HAVE THE LEGAL AUTHORITY TO BIND THE COMPANY TO THIS AGREEMENT, AND THAT YOU HAVE READ AND UNDERSTOOD THIS AGREEMENT. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU OR THE COMPANY DOES NOT AGREE WITH THE TERMS OF THIS AGREEMENT, YOU SHOULD NOT ACCEPT IT. If you are accepting this Agreement on behalf of your company, then the terms “you” and “your” refer to the Ordering Activity under GSA Schedule contracts identified in the Purchase Order, Statement of Work, or similar document. If you have previously accepted a different version of this agreement, this Agreement supersedes that agreement. “Subscription Offering” means a SUSE offering you acquire for a “SUSE Product” (e.g., subscription services available with SUSE Linux Enterprise Server (“SLES”) products, whether designated as Basic, Standard, or Priority Subscription) and may include Subscriptions for non-SUSE products. A “SUSE Product” is a software product that you acquire directly or indirectly from SUSE for which Subscription Offerings are made available.
2. **Authority.** You represent that you are the licensee and have rightfully acquired licenses for all software covered by each Subscription Offering. If you are not using the SUSE Product or Subscription Offering as an end user and you have a separately executed agreement with SUSE (e.g., you are an OEM, VAR, etc.), the terms and conditions herein shall not apply to you.
3. **End User License Agreements.** Software you receive as part of a Subscription Offering for a SUSE Product (e.g., an update), if not accompanied by its own license terms, is subject to the end user license agreement accompanying the SUSE Product.
4. **Subscription Offering Types.** A description of the different types of Subscription Offerings is available at <https://www.suse.com/support/programs/subscriptions/>.
5. **Subscription Offering.**
  - 5.1. **Unit of Measure.** In general, unless specified otherwise in the end user license agreement for the applicable SUSE Product or other written agreement between the parties, the unit of measure for a Subscription Offering is the metric specified in Exhibit A (“Unit”).
  - 5.2. **Coverage Requirement.** When you acquire a Subscription Offering for a SUSE Product, you must acquire sufficient Subscription Offerings in the applicable Unit to cover all acquired, installed, or deployed SUSE Products (including variants or components thereof). By way of example, if the Unit is per device on which the SUSE Product is installed, then you must acquire a Subscription Offering for each such device.
  - 5.3. **No Mixing of Subscription Offerings.** Subscription Offerings may only be applied to the exact SUSE Product for which the Subscription Offering was acquired (by way of example and not limitation, you cannot apply Subscription Offering benefits for the x86 platform version of SUSE® Linux Enterprise Server (SLES) to the z System platform version of SLES, nor may you apply Subscription Offerings benefits for SLES to SLES for SAP Applications). You may not mix 1-2 Virtual Machine Subscription Offerings with Unlimited Virtual Machine Subscription Offerings on the same Physical Server. All Subscription Offerings must be of the same type on a Physical Server.

With respect to Subscription Offerings for such an exact SUSE Product, you may concurrently benefit from Standard Subscription Offerings and from Priority Subscription

Offerings. However, with the exception of self-support Subscription Offerings such as Academic Offerings or Developer Offerings, under no circumstances are You permitted to concurrently benefit from a Basic Subscription Offering and a Standard and/or Priority Subscription Offering.

SUSE's Basic Subscription Offerings are no longer offered since May 1st 2015 for SUSE Linux Enterprise Server for x86 and/or x86-64 and from April 1st 2016 for SUSE Linux Enterprise Server for POWER. Notwithstanding the foregoing restriction on concurrently benefiting from a Basic Subscription Offering and a Standard and/or Priority Subscription Offering, if You have Basic Subscription Offerings for SUSE Linux Enterprise Server for x86 and/or x86-64 which expire after May 1st 2015 or Basic Subscription Offerings for SUSE Linux Enterprise Server for POWER which expire after April 1st 2016, You may continue to benefit from those Basic Subscription Offerings until they expire even if this means concurrently benefiting with Standard and/or Priority Subscription Offerings. These Basic Subscription Offerings cannot be renewed.

- 5.4. **Evaluation Offerings.** SUSE may offer limited Subscription Offerings for evaluation purposes. These Subscription Offerings are time limited for sixty (60) days unless otherwise agreed to between You and SUSE. You agree not to use such Subscription Offerings in any production environment or for commercial use.
- 5.5. **Academic Offerings.** SUSE may offer discounted pricing for Academic Use of its Subscription Offerings. You agree to use such Subscription Offerings solely for Academic Use as defined in this Agreement. For the avoidance of doubt, SUSE unconditionally reserves the right to determine whether a specific use constitutes Academic Use.
- 5.6. **Developer Offerings.** SUSE may offer limited Subscription Offerings for personal development purposes. These Subscription Offerings are time limited for one (1) year unless otherwise agreed between You and SUSE. You agree to use such Subscription Offerings only for personal use and not in any production environment or for commercial use.
6. **Benefits.** Each Subscription Offering acquired by You is solely for Your internal use and direct benefit. For each Subscription Offering You are entitled to receive the materials and services, including technical support services as applicable, identified in this Agreement and on the SUSE web page that defines the Subscription Offering – <https://www.suse.com/support/handbook/>.
7. **Reporting.** You acknowledge that the completeness and accuracy of the information You provide to SUSE may affect SUSE's ability to provide Subscription Offering benefits. Any unauthorized use of Subscription Offering will be treated as a material breach of this Agreement. SUSE has the right to verify Your compliance with this Agreement. You agree to: (1) Implement internal safeguards to prevent any unauthorized copying, distribution, installation, use of, or access to, the SUSE Products including materials provided under this Agreement; (2) Keep records sufficient to certify Your compliance with this Agreement, and, upon request of SUSE, provide and certify metrics and/or reports based upon such records and account for both numbers of copies (by product and version) and network architectures as they may reasonably relate to Your use, licensing and deployment of the SUSE Product, Subscription Offerings and Units; and (3) subject to Government security requirements, Allow a SUSE representative or an independent auditor ("Auditor") to inspect and audit Your, or Your contractor's, computers and records during Your normal business hours for compliance with the terms of this Agreement. Upon SUSE's and the Auditor's presentation of their signed, written confidentiality statement form to safeguard Your confidential information, You shall fully cooperate with such audit and provide any necessary assistance

and access to records and computers. If an audit reveals that Your Subscription Offering purchases have at any time been insufficient to cover each installation, use of, deployment of, or access to the Software, You will, within 30 days, purchase sufficient Subscription Offerings to cover any shortfall without benefit of any otherwise applicable discount and subject to fees reflecting the duration of the shortfall.

8. **Product Support Lifecycle and Application of Current Software.** SUSE's product support lifecycle provides support availability guidelines for SUSE Products and is described at: <https://www.suse.com/support/policy.html>. Subscription Offering benefits may be conditioned on You having applied the most current maintenance software available; for example, once a new Service Pack becomes available, support may be conditioned on You having applied that Service Pack. Similarly, support for Modules may be conditioned on You having updated to the most recent Module version made available by SUSE.
9. **Changes to this Agreement.** From time to time SUSE may make changes to this Agreement including changes to Subscription Offering Units in Exhibit A.. Any material updates to this agreement shall be presented to Ordering Activity for review and will not be effective unless and until both parties sign a written agreement updating these terms.
10. **Warranty Disclaimer, Limitation of Liability and Reserved Rights.** SUSE WARRANTS THAT THE SOFTWARE OR SERVICES WILL, FOR A PERIOD OF SIXTY (60) DAYS FROM THE DATE OF YOUR RECEIPT, PERFORM SUBSTANTIALLY IN ACCORDANCE WITH SOFTWARE OR SERVICES WRITTEN MATERIALS ACCOMPANYING IT. EXCEPT AS EXPRESSLY SET FORTH IN THE FOREGOING, AND EXCEPT AS OTHERWISE RESTRICTED BY LAW, SUSE, ON BEHALF OF ITSELF AND ITS AFFILIATES, SUPPLIERS, DISTRIBUTORS, DEALERS, RETAILERS AND RESELLERS (COLLECTIVELY "THIRD PARTIES") DISCLAIMS AND EXCLUDES ANY AND ALL IMPLIED WARRANTIES INCLUDING ANY WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE. SUSE AND THIRD PARTIES MAKE NO WARRANTY, REPRESENTATION OR PROMISE NOT EXPRESSLY SET FORTH IN THE END USER LICENSE AGREEMENT ACCOMPANYING THE SOFTWARE. NEITHER SUSE NOR THIRD PARTIES WARRANT THAT THE SOFTWARE OR SERVICES WILL SATISFY YOUR REQUIREMENTS OR THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED. SUSE AND THIRD PARTIES RESERVE ALL RIGHTS NOT EXPRESSLY GRANTED HEREIN AND GRANT NO ADDITIONAL RIGHTS, LICENSES OR COVENANTS BY IMPLICATION, ESTOPPEL, OR OTHERWISE. NEITHER SUSE NOR ITS AFFILIATES, THIRD PARTIES, SUBSIDIARIES, OR EMPLOYEES WILL IN ANY CASE BE LIABLE FOR ANY OF THE FOLLOWING: (A) ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, INDIRECT, TORT, ECONOMIC, OR PUNITIVE DAMAGES ARISING OUT OF THE USE OF OR INABILITY TO USE THE SOFTWARE OR SERVICES, INCLUDING WITHOUT LIMITATION LOSS OF PROFITS, BUSINESS OR DATA, EVEN IF ADVISED OF THE POSSIBILITY OF THOSE DAMAGES; OR (B) AGGREGATE LIABILITY FOR DIRECT DAMAGES TO PROPERTY OR PERSON (WHETHER IN ONE INSTANCE OR A SERIES OF INSTANCES) EXCEEDING 1.25 TIMES THE AMOUNT PAID BY YOU FOR THE SOFTWARE OR SERVICES OUT OF WHICH SUCH CLAIM AROSE (OR \$50 (U.S.)) IF YOU RECEIVED THE SOFTWARE OR SERVICES FREE OF CHARGE). THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO (1) PERSONAL INJURY OR DEATH RESULTING FROM LICENSOR'S NEGLIGENCE; (2) FOR FRAUD; OR (3) FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW.
11. **Law and Integration.** All matters arising out of or relating to the Agreement will be governed by the substantive laws of the United States without regard to its choice of law provisions. The application of the United Nations Convention of Contracts for the International Sale of Goods is expressly excluded. This Agreement constitutes the entire agreement between You and SUSE and its Third Parties with respect to the Subscription Offerings. It may be modified only by a written agreement executed by both parties.



12. **Transfer.** This Agreement may not be transferred or assigned without the prior written approval of SUSE; any other transfer or assignment or attempted transfer or assignment shall be null and void.
13. **Translations.** For Your convenience, SUSE may from time to time make available translated versions of this Agreement. You acknowledge and agree that such translations are merely a convenience. In the event of any conflict between any such translated version and this Agreement, this Agreement shall govern.

## Exhibit A – Matrix of SUSE Products

SUSE Product	Unit of Measure	Stackable	Details
<b>SUSE Linux Enterprise Server (“SLES”)</b>			
SLES for x86, AMD64 & Intel64, x86 & x86-64) per 1-2, 4 or 8 Sockets per physical, x86 & x86-64, pre-May 2015	Physical Server. Physical Deployment only	No	<a href="#">Appendix A</a>
SLES for x86, AMD64 & Intel64, x86 & x86-64, pre-May 2015	(x86 & x86-64) per 1-2, 4 or 8 Sockets per Physical Server. Unlimited Virtual Instances per Physical Server	No	<a href="#">Appendix A</a>
SUSE Linux Enterprise Server, x86 & x86-64, 1-2 Sockets or 1-2 Virtual Machines	(x86 & x86-64) per 1-2 Sockets per Server or 1-2 Virtual Machines	Yes	<a href="#">Appendix A</a>
SUSE Linux Enterprise Server, x86 & x86-64, 1-2 Sockets with Unlimited Virtual Machines	(x86 & x86-64) per 1-2 Sockets with Unlimited Virtual Machines per Physical Server	Yes	<a href="#">Appendix A</a>
SUSE Linux Enterprise Server for Education Usage, x86 & x86-64, 1-2 Sockets with Unlimited Virtual Machines	(x86 & x86-64) per 1-2 Sockets with Unlimited Virtual Machines per Physical Server	Yes	<a href="#">Appendix A</a>
SUSE Linux Enterprise Server for Education Usage, x86 & x86-64, 1-2 Sockets or 1-2 Virtual Machines	(x86 & x86-64) per 1-2 Sockets per Server or 1-2 Virtual Machines	Yes	<a href="#">Appendix A</a>
SUSE Linux Enterprise Server for Education Usage with Lifecycle Management, x86 & x86-64, 1-2 Sockets with Unlimited Virtual Machines	(x86 & x86-64) per 1-2 Sockets per Server or 1-2 Virtual Machines	Yes	<a href="#">Appendix A</a>
SUSE Linux Enterprise Server for IBM z Systems and LinuxONE, s390x	per IFL or CP per IBM z Systems and LinuxONE Physical Server	Yes	<a href="#">Appendix A</a>
SUSE Linux Enterprise Server for POWER, ppc64, pre-Apr 2016	per Socket per Physical Server	Yes	<a href="#">Appendix A</a>
SUSE Linux Enterprise Server for POWER, ppc64le, pre-Apr 2016	per Socket per Physical Server	Yes	<a href="#">Appendix A</a>
SUSE Linux Enterprise Server for POWER, ppc64, 1-2 Sockets or 1-2 Virtual Machines	per 1-2 Sockets per Physical Server or 1-2 Virtual Machines	Yes	<a href="#">Appendix A</a>
SUSE Linux Enterprise Server for POWER, ppc64le, 1-2 Sockets or 1-2 Virtual Machines	per 1-2 Sockets per Physical Server or 1-2 Virtual Machines	Yes	<a href="#">Appendix A</a>

<b>SUSE Product</b>	<b>Unit of Measure</b>	<b>Stackable</b>	<b>Details</b>
SUSE Linux Enterprise Server for(ppc64) per 1-2 Sockets with Unlimited POWER, ppc64, 1-2 Sockets with Virtual Machines per Physical Server Unlimited Virtual Machines		Yes	<a href="#">Appendix A</a>
SUSE Linux Enterprise Server for(ppc64le) 1-2 Sockets with Unlimited POWER, ppc64le, 1-2 Sockets Virtual Machines per Physical Server with Unlimited Virtual Machines		Yes	<a href="#">Appendix A</a>
SUSE Linux Enterprise Server for(ia64) per Socket per Physical Server Itanium Processor Family, ia64		Yes	<a href="#">Appendix A</a>
SUSE Linux Enterprise Server for(Arm AArch64) per 1-2 Sockets per Physical Server or 1-2 Virtual Machine	Arm 1-2 Virtual Machines	Yes	<a href="#">Appendix A</a>
SUSE Linux Enterprise Server for(Arm AArch64) per 1-2 Sockets with Arm Unlimited Virtual Machines	Unlimited Virtual Machines per Physical Server	Yes	<a href="#">Appendix A</a>
SUSE Linux Enterprise Server for(Arm AArch64) per group of 4 Cores	Arm 1-2 Virtual Machines	Yes	<a href="#">Appendix A</a>
SUSE Linux Enterprise Server for(Arm AArch64) per group of 4 Cores	Arm Unlimited Virtual Machines	Yes	<a href="#">Appendix A</a>
SUSE Linux Enterprise Server for(Raspberry Pi 3 Model B) per Physical Raspberry Pi	System	Yes	<a href="#">Appendix A</a>
SUSE Linux Enterprise Server with Expanded Support	(x86 & x86-64) per 1-2 Sockets or 1-2 Virtual Machines	Yes	<a href="#">Appendix A</a>
SUSE Linux Enterprise Server with Expanded Support with Unlimited Virtual Machines	(x86 & x86-64) per 1-2 Sockets with Unlimited Virtual Machines	Yes	<a href="#">Appendix A</a>
<b>SUSE Linux Enterprise Server for SAP Applications (“SLES for SAP Application”)</b>			
SUSE Linux Enterprise Server for(x86-64) per 1-2 or 4 or 8 Sockets per SAP Applications for AMD64 & Intel64, physical, (x86-64), pre-May 2015	Physical Server	No	<a href="#">Appendix A</a>
SUSE Linux Enterprise Server for(x86-64) per 1-2 or 4 or 8 Sockets per SAP Applications for AMD64 & Intel64, Unlimited Virtual Instances, x86-64, pre-May 2015	Physical Server. Unlimited Virtual Instances per Physical Server	No	<a href="#">Appendix A</a>
SUSE Linux Enterprise Server for(x86-64) per 1-2 Sockets per Physical SAP Applications, x86-64, 1-2 Sockets or 1-2 Virtual Machines	Server or 1-2 Virtual Machines	Yes	<a href="#">Appendix A</a>
SUSE Linux Enterprise Server for(x86-64) per 1-2 Sockets with Unlimited SAP Applications, x86-64, 1-2 Sockets with Unlimited Virtual	Virtual Machines per Physical Server	Yes	<a href="#">Appendix A</a>

SUSE Product	Unit of Measure	Stackable	Details
Machines			
SUSE Linux Enterprise Server for (ppc64) 1-2 Sockets with Unlimited Virtual SAP Applications, POWER, 1-2 Sockets with Unlimited Virtual	Machines per Physical Server	Yes	<a href="#">Appendix A</a>
Machines			
<b>SUSE Linux Enterprise (“SLE”) Extensions</b>			
SUSE Linux Enterprise High Availability Extension for x86, AMD64 & Intel64 (SLE HA), x86 & x86-64, pre-May 2015	(x86 & x86-64) per 1-2 or 4 or 8 Sockets per Physical Server. Inherited Virtualization	No	<a href="#">Appendix B</a>
SUSE Linux Enterprise High Availability Extension (SLE HA), x86 & x86-64	(x86 & x86-64) per 1-2 Sockets per Physical Server or 1-2 Virtual Machines with Inherited Virtualization	Yes	<a href="#">Appendix B</a>
SUSE Linux Enterprise High Availability Extension (SLE HA), ppc64	(ppc64) per Socket per Physical Server	Yes	<a href="#">Appendix B</a>
SUSE Linux Enterprise High Availability Extension (SLE HA), ia64	(ia64) per Socket per Physical Server	No	<a href="#">Appendix B</a>
SUSE Linux Enterprise High Availability Extension (SLE HA), s390x	(s390x) per IFL or CP per IBM z Systems Physical Server	Yes	<a href="#">Appendix B</a>
Geo Clustering for SUSE Linux Enterprise High Availability Extension for x86, AMD64 & Intel64 (Geo SLE HA), x86 & x86-64, pre-May 2015	(x86 & x86-64) per 1-2 or 4 or 8 Sockets per Physical Server. Inherited Virtualization	No	<a href="#">Appendix B</a>
Geo Clustering for SUSE Linux Enterprise High Availability Extension (Geo SLE HA), x86 & x86-64	(x86 & x86-64) per 1-2 Sockets per Physical Server; requires SUSE Linux Enterprise High Availability Extension Subscription Offering for (x86 & x86-64)	Yes	<a href="#">Appendix B</a>
Geo Clustering for SUSE Linux Enterprise High Availability Extension (Geo SLE HA), s390x	(s390x) per IFL or CP on z Systems; requires SUSE Linux Enterprise High Availability Extension Subscription Offering for (s390x)	Yes	<a href="#">Appendix B</a>
SUSE Linux Enterprise Live Patching, x86-64	(x86-64) per 1-2 Sockets per Physical Server or 1-2 Virtual Machines	Yes	<a href="#">Appendix B</a>
SUSE Linux Enterprise Live Patching, ppc64le	(ppc64le) per 1-2 Sockets per Physical Server or 1-2 Virtual Machines	Yes	<a href="#">Appendix B</a>

<b>SUSE Product</b>	<b>Unit of Measure</b>	<b>Stackable</b>	<b>Details</b>
SUSE Linux Enterprise Server Long Term Service Pack Support, x86, for:	(x86) per 1-100 or 1-500 or Unlimited Instances for the specified Service Pack	No	<a href="#">Appendix J</a>
<ul style="list-style-type: none"> <li>• 1-100 Instances</li> <li>• 1-500 Instances</li> <li>• Unlimited Instances</li> </ul>			
SUSE Linux Enterprise Server Long Term Service Pack Support, x86-64, for:	(x86-64) per 1-100 or 1-500 or Unlimited Instances for the specified Service Pack	No	<a href="#">Appendix J</a>
<ul style="list-style-type: none"> <li>• 1-100 Instances</li> <li>• 1-500 Instances</li> <li>• Unlimited Instances</li> </ul>			
SUSE Linux Enterprise Server Long Term Service Pack Support, z Systems, s390x, for:	(s390x) per 1-5 IFLs or 1-10 IFLs or Unlimited IFLs for the specified Service Pack	No	<a href="#">Appendix J</a>
<ul style="list-style-type: none"> <li>• 1-5 IFLs</li> <li>• 1-10 IFLs</li> <li>• Unlimited IFLs</li> </ul>			
SUSE Linux Enterprise Server Long Term Service Pack Support, x86 & x86-64	x86 & x86-64) per 1-2 Sockets with Unlimited Virtual Machines per Physical Server	Yes	<a href="#">Appendix J</a>
SUSE Linux Enterprise Server Long Term Service Pack Support, ppc64	(ppc64) per 1-2 Sockets with Unlimited Virtual Machines per Physical Server	Yes	<a href="#">Appendix J</a>
SUSE Linux Enterprise for High Performance Computing Long Term Service Pack Support, x86-64, Arm	(x86-64, AArch64) per 1-2 Sockets per Physical Server	Yes	<a href="#">Appendix J</a>
SUSE Linux Enterprise Real Time Extension (SLE RT), x86-64	(x86-64) per Physical Server	No	<a href="#">Appendix B</a>
SUSE Linux Enterprise Workstation Extension, x86-64	(x86-64) per Instance; requires SUSE Linux Enterprise Server Subscription Offering for x86-64	No	<a href="#">Appendix B</a>
Virtual Machine Driver Pack Extension up to 4 Virtual Images (VMDP), x86 & x86-64	(x86 & x86-64) per 1-4 Virtual Instances per Physical Server	No	<a href="#">Appendix B</a>
Virtual Machine Driver Pack Extension, unlimited Virtual	(x86 & x86-64) per Unlimited Virtual	No	<a href="#">Appendix B</a>

<b>SUSE Product</b>	<b>Unit of Measure</b>	<b>Stackable</b>	<b>Details</b>
Images (VMDP), x86 & x86-64	Instances per Physical Server		
SUSE Linux Enterprise High Availability Extension with Expanded Support	(x86 & x86-64) per 1-2 Sockets with Inherited Virtualization, Inherited Subscription	Yes	<a href="#">Appendix B</a>
<b>SUSE Manager</b>			
SUSE Manager Server for Intel64 (x86-64 or s390x) & AMD64, x86-64 or s390x	per Instance	No	<a href="#">Appendix E</a>
SUSE Manager Server for Intel64 (x86-64) & AMD64, up to 50 Managed Instances, x86-64	per Instance for up to 50 Managed Instances	No	<a href="#">Appendix E</a>
SUSE Manager Proxy for Intel64 & AMD64, x86-64	(x86-64) per Instance	No	<a href="#">Appendix E</a>
SUSE Manager for Retail Branch Server, Intel64 & AMD64, x86-64	Per 1-2 Sockets with Unlimited Virtual Machines per Physical Server	No	<a href="#">Appendix E</a>
SUSE Manager for Retail Branch Server All-in-one, Intel64 & AMD64, x86-64	Per 1-2 Sockets with Unlimited Virtual Machines per Physical Server	No	<a href="#">Appendix E</a>
SUSE Manager Monitoring, physical deployment, x86 or x86-64 or ppc64 or ppc64le or ia64	(x86 or x86-64 or ppc64 or ppc64le or ia64) per 1-2 Sockets per Physical Server	Yes	<a href="#">Appendix E</a>
SUSE Manager Monitoring (s390x)	(s390x) per IFL or CP per IBM z Systems Business Class or Enterprise Class Physical Server	Yes	<a href="#">Appendix E</a>
SUSE Manager Monitoring, virtualized deployment, x86 or x86-64 or ppc64 or ppc64le or ia64	(x86 or x86-64 or ppc64 or ppc64le or ia64) per 1-2 Instances	Yes	<a href="#">Appendix E</a>
SUSE Manager Monitoring, virtualized deployment	(x86 or x86-64 or ppc64 or ppc64le or ia64) per 1-2 Sockets per Physical Server.	Yes	<a href="#">Appendix E</a>
Unlimited Virtualization, x86 or x86-64 or ppc64 or ppc64le or ia64	Unlimited Virtual Instances per Physical Server		
SUSE Manager Lifecycle Management, physical deployment, x86 or x86-64 or ppc64 or ppc64le or ia64	(x86 or x86-64 or ppc64 or ppc64le or ia64) per 1-2 Sockets per Physical Server	Yes	<a href="#">Appendix E</a>
SUSE Manager Lifecycle	(x86 or x86-64 or ppc64 or ppc64le or ia64) per 1-2 Sockets per Physical Server	Yes	<a href="#">Appendix E</a>

<b>SUSE Product</b>	<b>Unit of Measure</b>	<b>Stackable</b>	<b>Details</b>
Management, virtualized deployment, x86 or x86-64 or ppc64 or ppc64le or ia64	ia64) per 1-2 Instances or per 1-2 Virtual Instances		
SUSE Manager Lifecycle Management, physical deployment, Arm AArch64	(Arm AArch64) per group of 4 Cores	Yes	<a href="#">Appendix E</a>
SUSE Manager Lifecycle Management, physical deployment, Arm AArch64	(Arm AArch64) per 1-2 Sockets per Physical Server	Yes	<a href="#">Appendix E</a>
SUSE Manager Lifecycle Management, virtualized deployment, x86 or x86-64 or ppc64 or ppc64le or ia64	(x86 or x86-64 or ppc64 or ppc64le or ia64 or Arm AArch64), per 1-2 Sockets per Physical Server. Unlimited Virtual Instances per Physical Server	Yes	<a href="#">Appendix E</a>
SUSE Manager Lifecycle Management, virtualized deployment, s390x	(s390x) per IFL or CP per IBM z Systems Business Class or Enterprise Class Physical Server. Unlimited Virtual Instances per Physical Server	Yes	<a href="#">Appendix E</a>
SUSE Manager Virtualization Management, x86-64	(x86-64) Per 1-2 Sockets per Physical Server	Yes	<a href="#">Appendix E</a>
SUSE Manager Management Pack for Microsoft System Center	Per Microsoft System Center Operations Manager (SCOM) Instance	No	<a href="#">Appendix E</a>
<b>SUSE Linux Enterprise Desktop</b>			
SUSE Linux Enterprise Desktop, x86 & x86-64	(x86 & x86-64) per Instance	No	<a href="#">Appendix G</a>
SUSE Linux Enterprise Workstation Extension, x86-64	(x86-84) per Instance	No	<a href="#">Appendix B</a>
SUSE Linux Enterprise Desktop for Education Usage with Lifecycle Management, x86 & x86-64, 1 Instance	(x86 & x86-84) per Instance	No	<a href="#">Appendix G</a>
<b>SUSE OpenStack Cloud</b>			
SUSE OpenStack Cloud Control Node plus SUSE OpenStack Cloud Administration/Deployer Server MSRP, (x86-64)	(x86-64) per 1-2 Physical Servers	No	<a href="#">Appendix D</a>
SUSE OpenStack Cloud Control Node MSRP	(x86-64) per Physical Server	No	<a href="#">Appendix D</a>
SUSE OpenStack Cloud	(x86-64) per 1-2 Sockets per Physical	Yes	<a href="#">Appendix D</a>

<b>SUSE Product</b>	<b>Unit of Measure</b>	<b>Stackable</b>	<b>Details</b>
Compute Node MSRP	Server		
SUSE OpenStack Cloud Swift Storage Node MSRP	(x86-64) per 1-2 Sockets per Physical Server	Yes	<a href="#">Appendix D</a>
SUSE OpenStack Cloud Control Node for VMware	x86-64) per Physical Server	No	<a href="#">Appendix D</a>
SUSE OpenStack Cloud Control Node for zVM	x86-64) per Physical Server	No	<a href="#">Appendix D</a>
SUSE OpenStack Cloud Monitoring	(86-64) per 1-2 Sockets per Physical Server	Yes	<a href="#">Appendix D</a>
<b>SUSE Enterprise Storage</b>			
SUSE Enterprise Storage Base Configuration, x86-64	(x86-64) per 4 OSD Nodes with 1-2 Sockets per Physical Server	No	<a href="#">Appendix F</a>
SUSE Enterprise Storage Expansion Node, x86-64	(x86-64) per 1 OSD Node with 1-2 Sockets per Physical Server and up to 1 Instance of SES Infrastructure Node per 1-2 Socket per Physical Server or per 1 Virtual Machine	Yes	<a href="#">Appendix F</a>
SUSE Enterprise Storage Base Configuration, AArch64	(AArch64) per 4 OSD Nodes with 1-2 Sockets per Physical Server	No	<a href="#">Appendix F</a>
SUSE Enterprise Storage Expansion Node, AArch64	(AArch64) per 1 OSD Node with 1-2 Sockets per Physical Server and up to 1 Instance of SES Infrastructure Node per 1-2 Socket per Physical Server or per 1 Virtual Machine	No	<a href="#">Appendix F</a>
SUSE Enterprise Storage deployed with Rook, x86-64	(x86-64) up to 12 OSDs	Yes	<a href="#">Appendix F</a>
SUSE Enterprise Storage deployed with Rook	(AArch64) up to 12 OSDs	Yes	<a href="#">Appendix F</a>
<b>SUSE CaaS Platform</b>			
SUSE CaaS Platform, x86-64, 1-2 Sockets or 1 Virtual Machine	(x86-64) per 1-2 Sockets per Physical Server or 1 Virtual Machine	Yes	<a href="#">Appendix H</a>
SUSE CaaS Platform Migration Offering with Special Conditions, x86-64, 1-2 Sockets or 1 Virtual Machine	(x86-64) per 1-2 Sockets per Physical Server or 1 Virtual Machine	Yes	<a href="#">Appendix H</a>
SUSE CaaS Platform, x86-64, 1-2 Sockets with Unlimited Virtual Machines	(x86-64) per 1-2 Sockets with Unlimited Virtual Machines per Physical Server	Yes	<a href="#">Appendix H</a>
SUSE CaaS Platform Migration Offering with Special Conditions, x86-64, 1-2 Sockets with	(x86-64) per 1-2 Sockets with Unlimited Virtual Machines per Physical Server	Yes	<a href="#">Appendix H</a>



<b>SUSE Product</b>	<b>Unit of Measure</b>	<b>Stackable</b>	<b>Details</b>
Unlimited Virtual Machines			
<b>SUSE Cloud Application Platform (“CAP”)</b>			
SUSE Cloud Application Platform, x86-64, 1 Core or 2 vCPUs	(x86-64) per 1 Core or 2 vCPUs	Yes	<a href="#">Appendix I</a>
SUSE Cloud Application Platform (with infrastructure), x86-64, 1 Core or 2 vCPUs	(x86-64) per 1 Core or 2 vCPUs	Yes	<a href="#">Appendix I</a>
<b>SUSE Linux Enterprise Point of Service</b>			
SUSE Linux Enterprise Point of Service Client (“SLE POS Client”), x86	(x86) per Device	No	<a href="#">Appendix C</a>
SUSE Linux Enterprise Point of Service Branch Server (“SLE POS Branch Server”), x86 & x86-64	(x86 & x86-64) per Instance	No	<a href="#">Appendix C</a>
SUSE Linux Enterprise Point of Service Administration Server (“SLE POS Admin Server”), x86 & x86-64	(x86 & x86-64) per Instance	No	<a href="#">Appendix C</a>
<b>SUSE Linux Enterprise for High Performance Computing</b>			
SUSE Linux Enterprise for High Performance Computing (“SLE HPC”), x86-64 & Arm	(x86-64, AArch64) per 1-2 Sockets or 1-2 Virtual Machine per Physical Server	Yes	<a href="#">Appendix K</a>
SUSE Linux Enterprise for High Performance Computing ESPOS (“SLE HPC ESPOS”), x86-64 & Arm	(x86-64, AArch64) per 1-2 Sockets or 1-2 Virtual Machine per Physical Server	Yes	<a href="#">Appendix K</a>
SUSE Linux Enterprise for High Performance Computing LTSS (“SLE HPC LTSS”), x86-64 & Arm	(x86-64, AArch64) per 1-2 Sockets per Physical Server	Yes	<a href="#">Appendix K</a>

# Appendix A – SUSE Linux Enterprise Server

## SUSE Linux Enterprise Server Subscription Offerings and Units of Measure

Effective May 1st 2015 for SUSE Linux Enterprise Server for x86 and x86-64, and effective April 1st 2016 for SUSE Linux Enterprise Server for POWER.

### Operating Environments and Unit of Measure.

Each Physical Server, Virtualization Host or Virtualization Environment on which SUSE Linux Enterprise Server is deployed, installed, used or executed must have a Subscription Offering. Except for our Arm AArch64 processor Subscription offerings, Units of Measure do not differentiate between single core, multi-core or simultaneous multi-threading capable Processors.

For Virtualization Environments, if the Unit of Measure chosen is per number of Sockets with Unlimited Virtual Machines per Physical Server, only Physical Servers for which the appropriate Subscription Offering has been acquired may be used to deploy such Virtualization Environment, irrespective of whether such Physical Server is actually used or for how long such Physical Server is used.

A SUSE Linux Enterprise Server Subscription Offering must not be used as Subscription Offering for SUSE Linux Enterprise Server for SAP Applications. However, a Subscription Offering for SUSE Linux Enterprise Server for SAP Applications can alternatively (but not concurrently) be used as a SUSE Linux Enterprise Server Subscription Offering.

To change the deployment type of a Product during the Subscription Offering period, You must choose the highest valued Subscription Offering matching Your different deployment types for this Product. For example, if You deploy the higher valued SUSE Linux Enterprise Server Subscription Offering for '1-2 Sockets with Unlimited Virtual Machines' during the Subscription Offering period for a deployment scenario matching a lower valued (when compared to the 1-2 Sockets with Unlimited Virtual Machines Subscription Offering) '1-2 Sockets or 1-2 Virtual Machines', You may continue to use the higher valued Subscription Offering for the remaining subscription period. However, You may not deploy the lower valued SUSE Linux Enterprise Server Subscription Offering for '1-2 Sockets or 1-2 Virtual Machines' during the Subscription Offering period for a deployment type matching the higher valued '1-2 Sockets with Unlimited Virtual Machines' Subscription Offering.

### Subscription Offerings for 1-2 Sockets or 1-2 Virtual Machines

These Subscription Offerings are intended for flexible deployments on Physical Servers and low-density or cloud virtualization.

#### Deployment on Physical Servers

The number of Subscription Offerings needed for a Physical Server is determined by the number of Sockets in the Physical Server.

Physical Servers with 1 - 2 Sockets need 1 Subscription Offering for "1-2 Sockets or 1-2 Virtual Machines."

For Physical Servers with more than 2 Sockets, Subscription Offerings are Stackable to match or exceed the number of Sockets. For example, a Physical Server with 4 Sockets needs 2 Subscription Offerings for "1-2 Sockets or 1-2 Virtual Machines."

Subscription Offerings can be transferred to new and/or different Physical Servers. For example, when 10 Physical Servers with 2 Sockets each are replaced by 4 Physical Servers with 4 Sockets each, the 10 “1-2 Sockets or 1-2 Virtual Machines” Subscription Offerings can be transferred to the new Physical Servers. In this example, a total of 8 Subscription Offerings (2 per Physical Server with 4 Sockets) are transferred to the new Physical Servers. You can use the remaining 2 Subscription Offerings for later deployments.

## **Low-Density or Cloud Deployments**

Up to 2 Virtual Machines running on the same Virtualization Host or Virtualization Environment or within the same Private Cloud account or Public Cloud zone can be deployed with one “1-2 Sockets or 1-2 Virtual Machines” Subscription Offering.

Subscription Offerings for “1-2 Sockets or 1-2 Virtual Machines” can also be repurposed as Virtual Machines on any Virtualization Host, Virtualization Environment or with any certified Cloud Services provider (CSP).

At any point in time, a Subscription Offering for “1-2 Sockets or 1-2 Virtual Machines” can only be deployed either on a Physical Server or as Virtual Machines. For clarity, a Subscription Offering for “1-2 Sockets or 1-2 Virtual Machines” cannot be used for 1 Socket on a Physical Server and 1 Virtual Machine.

Subscription Offerings for “1-2 Sockets or 1-2 Virtual Machines” may not be used as a Virtualization Host. Virtualization Host capability is provided pursuant to the Subscriptions for 1-2 Sockets with Unlimited Virtual Machine defined below.

## **Subscription Offerings for 1-2 Sockets with Unlimited Virtual Machines**

For high-density Virtualized Deployment a Subscription Offering for “1-2 Sockets with Unlimited Virtual Machines.” is available. This Subscription Offering entitles You to deploy an unlimited number of Virtual Machines per 1-2 Sockets on a Virtualization Host. For Virtualization Hosts with more than 2 Sockets, Subscription Offerings are Stackable to match or exceed the number of Sockets. This Subscription Offering can be used on any third-party Virtualization Host and also includes the entitlement to run SUSE Linux Enterprise for x86-64 Xen or KVM as the Virtualization Host.

Subscription Offerings for “1-2 Sockets with Unlimited Virtual Machines” may be deployed alternatively (but not concurrently) as 1 or 2 Virtual Machines on any Virtualization Host or with any Cloud Services provider which is authorized by SUSE (Bring Your Own Subscription or “BYOS”). Unlike Subscription Offerings for “1-2 Sockets or 1-2 Virtual Machines” (“Low-Density”), Subscription offerings for 1-2 Sockets with Unlimited Virtual Machines must be acquired for each Virtualization Host capable of deploying SUSE Products within a Virtualization Environment.

## **z Systems (“s390x”)**

For a Physical Server with IBM z Systems Processors (s390x), the number of required Subscription Offerings for Your environment must match or exceed the number of IFLs on which SUSE Linux Enterprise Server is deployed, installed, used or executed. You can use an unlimited number of SUSE Linux Enterprise Server Instances per IFL. All these SUSE Linux Enterprise Server Instances must have a Subscription Offering, either Basic or a mix of Standard or Priority. Subscription Offerings are available for EC (Enterprise Class), BC (Business Class) type IBM z Systems models, and IBM LinuxONE type systems. The Unit of Measure for these Subscription Offerings is per IFL. If a single IFL on a specific Physical Server is used as an IFLe, then only IFLe use is permitted on that specific Physical Server. SUSE Linux Enterprise High Availability Extension (SLE HA) Subscription Offerings are included in SUSE Linux Enterprise Server for z Systems Subscription Offering.

## Sub-Capacity for ppc64le Power servers

Physical Servers with PowerVM virtualization provide a hardware platform designed for workload consolidation with high scalability (192 cores + 64 TB memory) of servers combined with efficient virtualized resource management. SUSE Subscription Offerings for Power servers may be purchased for a subset of the Sockets on the Physical Server. This is known as Sub-Capacity pricing.

Sub-Capacity pricing is available for SUSE Subscription Offerings running on Power servers with four or more physical Sockets and PowerVM virtualization. Sub-capacity pricing can be used for all SUSE Subscription Offerings that are based on a 1-2 Socket charge metric including but not limited to SUSE Linux Enterprise Server for Power, SUSE Linux Enterprise Server for SAP Applications for Power, SUSE Linux Enterprise High Availability Extension for Power, SUSE Linux Enterprise Live Patching, SUSE Manager, and SUSE Manager Lifecycle Management.

For example, if a Power 980 server with 16 Sockets of total capacity is configured to only provide 8 Sockets of Processor capacity to SUSE Linux Enterprise Server for Power, then You only have to purchase four 1-2 Socket Subscription Offerings for SUSE Linux Enterprise Server for Power. This is useful for customers that consolidate multiple SUSE and non-SUSE workloads on a single Physical Server.

Prerequisites for Sub-Capacity pricing on Power servers include:

- Must be server based on POWER8 or later generation Processors
- The Physical Server must have four or more physical Sockets
- PowerVM virtualization must be used to limit that amount of Processor capacity available to run the SUSE Subscription Offerings using PowerVM methodologies such as Dedicated processor partitions (Dedicated LPAR), Dynamic LPAR, Single or Multiple Shared Processor Pools

Note: Integrated Facility for Linux (IFL) on Power does not automatically limit SUSE Subscription Offerings to only run on IFL Processors.

Calculating Socket Pair Equivalent for ppc64le Power servers: IBM PowerVM virtualization assigns Processor capacity to an LPAR/VM in 1/20th increments of a Processor Core. Since SUSE Subscription Offerings for IBM Power are sold by Socket Pairs, it is necessary to calculate the “Socket Pair Equivalent” of Processor capacity assigned to a SUSE Subscription Offering when using Sub-Capacity. IBM Power servers vary the number of physical Processor Cores per physical Socket from 8 to 12 Cores. Due this variability, it is necessary to calculate the Socket Pair Equivalent for each individual Physical Server because the Cores/Socket can vary between Physical Servers.

To calculate the Socket Pair Equivalent, the number of whole Processor Cores available to run the SUSE Subscription Offering are divided by the number of Cores for each physical Socket Pair in the Physical Server for which Subscription Offerings are being acquired.

For example, an eight Socket Power Physical Server with ten Cores per physical Socket and 40 Processor Cores assigned to SUSE Linux for SAP Applications for Power, the calculation is 40 Cores divided by 20 Cores (the Cores per Socket Pair on this Physical Server) = 2 Socket Pair Equivalent. You would need to purchase two SUSE Linux Enterprise Server for SAP Applications on Power Subscription Offerings. You must calculate the Socket Pair Equivalent calculation for each SUSE Subscription Offering running on that Physical Server.

When calculating the Socket Pair Equivalent, any fractional Cores or fractional Socket Pairs must be rounded up to the next highest integer. For example, if the number of Cores of capacity available to the SUSE Subscription Offering

was “40.4”, you would round the number of Cores to “41”. Similarly, if the number of Sockets in the Socket Pair Equivalent is “2.1”, the Socket Pair Equivalent is rounded up to “3”.

Should You increase the Processor capacity you must correspondingly increase the number of SUSE Subscription Offerings. Note that changes to Processor pools or LPAR/VM configuration may require the acquisition of additional SUSE Subscription Offerings.

### **Itanium Processor Family (“ia64”)**

For a Physical Server with Itanium Processors (“ia64”), the number of required Subscription Offerings must match or exceed the number of Sockets on which SUSE Linux Enterprise Server is deployed, installed, used or executed. Customers may use an unlimited number of SUSE Linux Enterprise Server Instances per Socket. All these SUSE Linux Enterprise Server Instances must have a Subscription Offering, either Basic or a mix of Standard or Priority.

### **Intel or AMD Processors (“x86” or “x86-64”), Physical Deployment (Pre May 1st, 2015)**

For a Physical Server with 32-bit or 64-bit Processors, the number of required Subscription Offerings must match or exceed the number of Sockets per Physical Server. If necessary, the CPU count per Physical Server must be rounded up to the next available Subscription Offering. Subscription Offerings are available for 1-2 CPU Sockets, 4 CPU Sockets or 8 CPU Sockets. One Subscription Offering cannot be used to entitle more than one Physical Server. Each Physical Server on which SUSE Linux Enterprise Server is deployed, installed, used or executed must have a Subscription Offering: either Basic or a mix of Standard or Priority. Virtualized Deployment of SUSE Linux Enterprise Server is not permitted with these Subscription Offerings (see “Virtualized Deployment” below).

### **Intel or AMD Processors (“x86” or “x86-64”), Virtualized Deployment (Pre May 1st, 2015)**

For a Physical Server with 32-bit or 64-bit Processors, “Unlimited Virtual” Subscription Offerings are available for Virtualized Deployments of SUSE Linux Enterprise Server for use as Virtual Guest and/or Virtualization Host. You can use an unlimited number of SUSE Linux Enterprise Server Instances per Physical Server. The number of required “Unlimited Virtual” Subscription Offerings for Your Physical Server must match or exceed the number of Sockets per Physical Server on which SUSE Linux Enterprise Server is deployed, installed, used or executed. If necessary, the Socket count per Physical Server must be rounded up to the next available Subscription Offering.

“Unlimited Virtual” Subscription Offerings are available for 1-2 CPU Sockets, 4 CPU Sockets, or 8 CPU Sockets. One Subscription Offering cannot be used to entitle more than one Physical Server. Each Physical Server on which SUSE Linux Enterprise Server is deployed, installed, used or executed must have a Subscription Offering: either Basic or a mix of Standard or Priority.

### **POWER (“ppc64 or ppc64le”), (Pre April 1st, 2016)**

For a Physical Server with POWER Processors (ppc64 or ppc64le), the number of required Subscription Offerings for Your environment must match or exceed the number of Sockets on which SUSE Linux Enterprise Server is deployed, installed, used or executed. You can use an unlimited number of SUSE Linux Enterprise Server Instances per Socket. All these SUSE Linux Enterprise Server Instances must have a Subscription Offering, either Basic or a mix of Standard or Priority.

## **Arm AArch64 Processors (“AArch64”), Subscription Offerings for 1-2 Sockets or 1-2 Virtual Machines**

These Subscription Offerings are intended for flexible deployments on Physical Servers and low-density or cloud virtualization.

The number of Subscription Offerings needed for a Physical Server is determined by the number of Cores or Sockets in the Physical Server.

For Physical Servers with 16 or more Cores, the Subscription Offering is based on 1-2 Sockets. For example, a Physical Arm server with 16 Cores would require a single 1-2 Socket Subscription Offering.

For Physical Servers with more than 2 Sockets, Subscription Offerings are Stackable to match or exceed the number of Sockets. For example, a Physical Server with 4 Sockets needs 2 Subscription Offerings for “1-2 Sockets or 1-2 Virtual Machines.” The maximum number of Cores per Socket Pair is limited to 144. One Subscription Offering cannot be used to entitle more than one Physical Server.

Each Physical Server on which SUSE Linux Enterprise Server is deployed, installed, used or executed must have a Subscription. Subscription Offerings can be transferred to new and/or different Physical Servers. For example, when 10 Physical Servers with 2 Sockets each are replaced by 4 Physical Servers with 4 Sockets each, the 10 “1-2 Sockets or 1-2 Virtual Machines” Subscription Offerings can be transferred to the new Physical Servers. In this example, a total of 8 Subscription Offerings (2 per Physical Server with 4 Sockets) are transferred to the new Physical Servers. You can use the remaining 2 Subscription Offerings for later deployments.

Up to 2 Virtual Machines running on the same Virtualization Host or Virtualization Environment or within the same Private Cloud account or Public Cloud zone can be deployed with one “1-2 Sockets or 1-2 Virtual Machines” Subscription Offering.

Subscription Offerings for “1-2 Sockets or 1-2 Virtual Machines” can also be repurposed as Virtual Machines on any Virtualization Host or with any certified Cloud Services provider (CSP).

At any point in time, a Subscription Offering for “1-2 Sockets or 1-2 Virtual Machines” can only be deployed either on a Physical Server or as Virtual Machines. For clarity, a Subscription Offering for “1-2 Sockets or 1-2 Virtual Machines” cannot be used for 1 Socket on a Physical Server and 1 Virtual Machine.

Subscription Offerings for “1-2 Sockets or 1-2 Virtual Machines” may not be used as a Virtualization Host. Virtualization Host capability is provided pursuant to the Subscriptions for 1-2 Sockets with Unlimited Virtual Machine defined below.

## **Arm AArch64 Processors (“AArch64”), Subscription Offerings for 1-2 Sockets with Unlimited Virtual Machines**

For a Physical Server with 64-bit Arm AArch64 Processors, “Unlimited Virtual” Subscription Offerings are available for Virtualized Deployments of SUSE Linux Enterprise Server for use as Virtual Guest and/or Virtualization Host.

For Physical Servers with 16 or more Cores, the Unlimited Virtual Machine Subscription Offering is based on 1-2 Sockets. For example, an Arm Physical Server with 16 Cores would require a single 1-2 Socket Unlimited Virtual Machine Subscription Offering.

This Subscription Offering entitles You to deploy an unlimited number of Virtual Machines per Subscription Offering on a Virtualization Host. For Virtualization Hosts with more than 2 Sockets, Subscription Offerings are Stackable to match or exceed the number of Sockets. This Subscription Offering can be used on any third-party Virtualization

Host and also includes the entitlement to run SUSE Linux Enterprise Xen or KVM as the Virtualization Host One Subscription Offering cannot be used to entitle more than one Physical Server.

Each Physical Server on which SUSE Linux Enterprise Server is deployed, installed, used or executed must have a Subscription.

### **Arm AArch64 Processors (“AArch64”), 1-2 Virtual Machines per 4 Cores**

For Physical Servers with less than 16 physical Arm Cores, the Subscription Offerings are based on groups of 4 Cores. These Subscription Offerings are stackable up to a total of 15 Cores per Physical Server. For example, an Arm Physical Server such as a Raspberry Pi with a total of 4 Cores would need a single, 4-Core group Subscription Offering. An Arm Physical Server with 12 Cores would require three 4-Core group Subscription Offerings. An Arm Physical Server with 15 Cores would require four 4-Core group Subscription Offerings.

For a Physical Server with 64-bit Arm AArch64 Processors, the number of required Subscription Offerings must match or exceed the number of Cores in the Physical Server divided by four (4) and if necessary rounded to the next integer. Subscription Offerings are available for each group of 4 Cores. One Subscription Offering cannot be used to entitle more than one Physical Server.

Each Physical Server on which SUSE Linux Enterprise Server is deployed, installed, used or executed must have a Subscription. Virtualized Deployment of SUSE Linux Enterprise Server is not permitted with these Subscription Offerings (see “Virtualized Deployment” below).

### **Arm AArch64 Processors (“AArch64”), Unlimited Virtual Machines per 4 Cores**

For a Physical Server with 64-bit Arm AArch64 Processors, “Unlimited Virtual Machines” Subscription Offerings are available for Virtualized Deployments of SUSE Linux Enterprise Server for use as Virtual Guest and/or Virtualization Host.

For Arm Physical Servers with less than 16 Cores, the Subscription Offerings are based on groups of 4 Cores. These Subscription Offerings are stackable up to a total of 15 Cores per Physical Server. For example, an Arm Physical Server with a total of 4 Cores would need a single, 4-Core group Unlimited Virtual Machine Subscription Offering. An Arm Physical Server with 12 Cores would require three 4-Core group Unlimited Virtual Machine Subscription Offerings.

This Subscription Offering entitles You to deploy an unlimited number of Virtual Machines per 4 Cores on a Virtualization Host. For Virtualization Hosts with more than 4 Cores, Subscription Offerings are Stackable to match or exceed the number of Cores. This Subscription Offering can be used on any third-party Virtualization Host and also includes the entitlement to run SUSE Linux Enterprise Xen or KVM as the Virtualization Host

The number of required “Unlimited Virtual Machines” Subscription Offerings for Your Physical Server must match or exceed the number of Cores in the Physical Server divided by four (4) and if necessary rounded to the next integer for each Core on which SUSE Linux Enterprise Server is deployed, installed, used or executed.

Each Physical Server on which SUSE Linux Enterprise Server is deployed, installed, used or executed must have a Subscription Offering.

## **SUSE Linux Enterprise Server with Expanded Support Subscription Offerings and Units of Measure**

When You acquire SUSE Linux Enterprise Server with Expanded Support, You are actually acquiring a standard Subscription Offering for SUSE Linux Enterprise Server, but with the added entitlement for Expanded Support. As such, the Units of Measure for SUSE Linux Enterprise Server with Expanded Support are the same as for the corresponding SUSE Linux Enterprise Server Subscription Offering (e.g. with Unlimited Virtual Machines).



# Appendix B – SUSE Linux Enterprise Extensions

## SUSE Linux Enterprise High Availability Extension

SUSE Linux Enterprise High Availability Extension is a SUSE Product based on open source technology to implement highly available Linux clusters. It is supported on all Physical and Virtual Deployments where SUSE Linux Enterprise Server (x86, x86-64, ppc64, ia64, s390x) is supported.

Unit of Measure is the same as the Unit of Measure for SUSE Linux Enterprise Server Subscription Offerings for x86, AMD64 & Intel64, and POWER (see Appendix A).

Organizations with a Current SUSE Linux Enterprise Server Subscription Offering for Itanium (ia64), or z Systems (s390x) are entitled to receive Subscription Offering benefits for SUSE Linux Enterprise High Availability Extension for the respective Hardware Architecture. Organizations with a SUSE Linux Enterprise Server Subscription Offering for POWER (ppc64) purchased before April 1st 2016, are entitled to receive Subscription Offering benefits for SUSE Linux Enterprise High Availability Extension.

SUSE Linux Enterprise High Availability Extension Subscription Offering benefits are determined by and inherited from the underlying SUSE Linux Enterprise Server Subscription Offering benefits.

## Geo Clustering for SUSE Linux Enterprise High Availability Extension

To receive Subscription Offering benefits for Geographically Clustered Linux Servers, separate Geo Clustering for SUSE Linux Enterprise High Availability Extension Subscription Offerings are required, in addition to Current SUSE Linux Enterprise Server and SUSE Linux Enterprise High Availability Extension Subscription Offerings.

Unit of Measure for Geo SLE HA is the same as the Unit of Measure for SUSE Linux Enterprise Server for x86, AMD64 & Intel64 (x86 / x86-64), and z Systems (s390x) Subscription Offerings in Appendix A. Subscription Offering benefits for Geo Clustering for SUSE Linux Enterprise High Availability Extension are determined by and inherited from the Subscription Offering benefit of the underlying SUSE Linux Enterprise Server Subscription Offerings.

## SUSE Linux Enterprise Server Real Time Extension

To receive Subscription Offering benefits for SUSE Linux Enterprise Server Real Time Extension (“SLE RT”), a separate SLE RT Extension Subscription Offering is required in addition to a Current SUSE Linux Enterprise Server Subscription Offering (see Appendix A) either for Physical Deployment or Unlimited Virtual Machines.

Unit of Measure for SLE RT is per Physical Server. Subscription Offering benefits for SLE RT are determined by and inherited from the underlying SUSE Linux Enterprise Server Subscription Offering.

## SUSE Linux Enterprise Virtual Machine Driver Pack Extension

To receive Subscription Offering benefits for SUSE Linux Enterprise Virtual Machine Driver Pack Extension (“SLE VM DP”), a Current SUSE Linux Enterprise Server Subscription Offering is required (see Appendix A). Purchasing SLE VM DP Subscription Offerings without a Current SUSE Linux Enterprise Server Subscription Offering does not entitle You to receive Subscription Offering benefits for SLE VM DP.

Unit of Measure for SLE VM DP is either per 1 to 4 Virtual Instances per Physical Server or unlimited number of Virtual Instances per Physical Server. Subscription Offering benefits for SLE VM DP are determined by the Subscription Offering benefit of the underlying SUSE Linux Enterprise Server Subscription Offering.

## **SUSE Linux Enterprise Workstation Extension Units of Measure**

Units of Measure do not differentiate between single core or multi-core, or simultaneous multi-threading capable Processors. SUSE Linux Enterprise Workstation Extension (“SLE WE”) requires one Current SLES Subscription Offering per Physical Server in addition to the respective SLE WE Instances.

### **SUSE Linux Enterprise Workstation Extension for Intel or AMD Processors (“x86-64”), Physical Deployment**

For Physical Servers with 64-bit Processors, the number of Subscription Offerings must match or exceed the number of Physical Servers or Devices, where SLE WE is deployed, installed, used or executed. Subscription Offering benefits for SLE WE are determined by and inherited from the Subscription Offering benefits of the underlying SUSE Linux Enterprise Server Subscription Offering. Virtualized Deployment of SUSE Linux Enterprise Workstation Extension is not permitted with this Subscription Offering. (See Virtualized Deployment below.) One Subscription Offering cannot be used to entitle more than one Physical Server.

### **SUSE Linux Enterprise Workstation Extension for Intel or AMD Processors (“x86-64”), Virtualized Deployment**

For Physical Servers with 64-bit Processors, the number of Subscription Offerings must match or exceed the number of Instances of SUSE Linux Enterprise Workstation Extension for use as Virtual Instance. You can use an unlimited number of SUSE Linux Enterprise Workstation Instances per Physical Server. One Subscription Offering cannot be used to entitle more than one Virtual Instance. Each Virtual Instance on a Virtualization Host on which SUSE Linux Enterprise Workstation Extension is deployed, installed, used or executed must have a Subscription Offering. Subscription Offering benefits for SLE WE are determined by and inherited from the Subscription Offering benefits of the underlying SUSE Linux Enterprise Server Subscription Offering.

## **SUSE Linux Enterprise High Availability Extension with Expanded Support**

When You acquire SUSE Linux Enterprise High Availability Extension with Expanded Support, You are actually acquiring a standard Subscription Offering for SUSE Linux Enterprise High Availability Extension, but with the added entitlement for Expanded Support. As such, the Units of Measure for SUSE Linux Enterprise High Availability Extension with Expanded Support are the same as for the corresponding SUSE Linux Enterprise High Availability Subscription Offering (e.g. with Unlimited Virtual Machines).

## **SUSE Linux Enterprise Live Patching**

SUSE Linux Enterprise Live Patching is a SUSE Product based on open source technology to implement code updates during operation of the system. It is supported on all Physical and Virtual Deployments starting with SUSE Linux Enterprise Server 12 on x86-64 and POWER (ppc64le).

Unit of Measure for SUSE Linux Enterprise Live Patching is the same as SUSE Linux Enterprise Server Subscription Offerings for x86-64 and POWER (ppc64le), respectively (see Appendix A).

SUSE Linux Enterprise Live Patching Subscription Offering requires an underlying Current SUSE Linux Enterprise Server Priority Subscription Offering. Subscription Offering benefits are available for the kernel versions listed on <https://www.suse.com/products/live-patching/>. The list is subject to change at SUSE's discretion and your

entitlement to receive Subscription Offering benefits may be conditioned on Your deployment of a current version from this list.

# Appendix C – SUSE Linux Enterprise Point of Service

## SUSE Linux Enterprise Point of Service (“SLE POS”) Subscription Offerings and Units of Measure

Subscription Offerings for SUSE Linux Enterprise Point of Service (SLE POS) include access to SUSE Linux Enterprise Server and maintenance updates. Subscription Offering benefits are limited to the use of those components in a SLE POS solution as outlined below. In order for any individual Device to be eligible for Subscription Offering benefits, all Physical Servers, Instances, and Client Devices used as part of a SLE POS solution must have a Current Subscription Offering.

### SLE POS Administration Server

At least one administration server is needed in a typical SLE POS environment. The administration server manages all point of service Devices and serves as the central repository for configuration information. It also keeps the master operating systems for the point of service Devices.

Point of service operating systems are built from templates, using SUSE Linux Enterprise and its maintenance updates as the base. Point of service operating systems can be built on the same Instance used as the administration server or on a separate Physical or Virtual Server Instance. All administration Physical Servers or operating system build Instances must have a “SUSE Linux Enterprise Point of Service Admin Server” Subscription Offering.

Additional workloads may only be run on an administration server if they are directly related to running the SLE POS solution. All other workloads must have SUSE Linux Enterprise Server Subscription Offerings.

### SLE POS Branch Server

SUSE recommends using at least one branch server per branch. It is possible to run the SLE POS branch server function directly off the administration server for small-scale implementations of SLE POS. In this case, only an administration server Subscription Offering is needed.

The branch server provides the infrastructure for booting the point of service Client Devices from the local network, registering new Client Devices at the site and distributing operating system updates to the Client Devices. SLE POS Branch Server Subscription Offerings can be used for the actual point of service branch server as well as other SUSE Linux Enterprise Server Instances running at a branch, provided that they are used solely to serve data or applications to the point of service Client Devices. Instances in branches that are used in other roles must have a Current SUSE Linux Enterprise Server Subscription Offering.

### SLE POS Client

All point of service Client Devices that are running a SUSE Linux Enterprise operating system, either deployed by the SLE POS solution or otherwise installed or deployed, must have a “SUSE Linux Enterprise Point of Service Client” Subscription Offering.

Client Devices are entitled to be used for running typical point of service applications or for supporting client applications (for example, a web browser). If the point of service application needs certain SUSE Linux Enterprise Server services to run, for example a local database, this is also covered by the SLE POS Client Subscription Offering.

Point of service Devices that are used as a combined point of service terminal and as a branch server, or point of service hardware used in any other server role, must have at least a SLE POS Branch Server Subscription Offering.

SLE POS Client Subscription Offerings must not be employed for any general purpose desktop or server use.

### **SLE POS High Availability Setup**

SLE POS high availability servers can be set up as 2 Node high availability cluster. In that case separate Subscription Offerings of the SUSE Linux Enterprise High Availability Extension are needed for all Physical Servers used as cluster Nodes.

### **SLE POS Hardware Architectures**

SLE POS administration and branch servers may be deployed on x86 or x86-64 SUSE certified hardware. SLE POS Client operating systems may only be built for the x86 Hardware Architecture.

### **SLE POS Virtualization**

Provided that the restrictions mentioned above are complied with and all Instances belong to the same Point of Service solution, more than one virtual SUSE Linux Enterprise Point of Service Instance may be run on a single Physical Server that has a Current SLE POS Administration Server or SLE POS Branch Server Subscription Offering. For example, an operating system build server may be run as a Virtual Instance on the SLE POS Administration Server, or a SLE POS Branch Server can be run as a Virtual Instance on a combined point of service and SLE POS Branch Server Device. SLE POS Subscription Offerings must not be used as general purpose servers or Client Device virtualization.

## Appendix D – SUSE OpenStack Cloud

### **SUSE OpenStack Cloud Control Node plus SUSE OpenStack Cloud Administration/Deployer Server**

The Unit of Measure is per Instance. This includes the control services needed to run a Private Cloud infrastructure on a single Physical Server. It also includes an installation framework that automates the installation and ongoing maintenance of the physical cloud infrastructure. At least one (1) SUSE OpenStack Cloud Control Node plus SUSE OpenStack Cloud Administration/Deployer Server is required for each SUSE OpenStack Cloud installation. SUSE OpenStack Cloud Control Nodes plus SUSE OpenStack Cloud Administration/Deployer Server include up to two (2) Subscription Offerings for SUSE Linux Enterprise Server for x86, & x86-64, Physical Deployment, and SUSE Linux Enterprise High Availability Extension to be used for the sole purpose of deploying the SUSE OpenStack Cloud Control Node and the SUSE OpenStack Cloud Administration/Deployer Server.

### **SUSE OpenStack Cloud Control Node**

The Unit of Measure is per Instance. This is an additional Instance running the control services needed to run a Private Cloud infrastructure on a single Physical Server for reliability or increased performance. SUSE OpenStack Cloud Control Node includes one (1) Subscription Offering for SUSE Linux Enterprise Server for x86, & x86-64, Physical or Virtualized Deployment, and SUSE Linux Enterprise High Availability Extension which may be used for the sole purpose of deploying the SUSE OpenStack Cloud Control Node.

### **SUSE OpenStack Cloud Control Node for z/VM**

The Unit of Measure is per Instance. This is an additional Instance running the control services needed to manage a Private Cloud IBM z/VM infrastructure on a single Physical Server for reliability or increased performance. The prerequisite for the Control Node for z/VM is at least one SUSE OpenStack Cloud Control Node plus a SUSE OpenStack Cloud Administration/Deployer Server Subscription Offering. A SUSE OpenStack Cloud Control Node includes one (1) Subscription Offering for SUSE Linux Enterprise Server for x86, & x86-64, Physical or Virtualized Deployment, and SUSE Linux Enterprise High Availability Extension which may be used for the sole purpose of deploying the SUSE OpenStack Cloud Control Node.

### **SUSE OpenStack Cloud Control Node for VMware**

The Unit of Measure is per Instance. This is an additional Instance running the control services needed to manage a Private Cloud using VMware infrastructure on a single Physical Server for reliability or increased performance. The prerequisite for the Control Node for VMware is at least one SUSE OpenStack Cloud Control Node plus a SUSE OpenStack Cloud Administration/Deployer Server Subscription Offering. A SUSE OpenStack Cloud Control Node includes one (1) Subscription Offering for SUSE Linux Enterprise Server for x86,& x86-64, Physical or Virtualized Deployment, and SUSE Linux Enterprise High Availability Extension which may be used for the sole purpose of deploying the SUSE OpenStack Cloud Control Node.

### **SUSE OpenStack Cloud Compute Node**

The Unit of Measure is per 1-2 Sockets per Physical Server, Virtualized Deployment. This is the Physical Server or Virtual Instance that is managed by SUSE OpenStack Cloud to either host KVM or Xen Virtual Machines for workloads running in the Private Cloud or to integrate with VMware vCenter. SUSE OpenStack Cloud Compute

Nodes require a separate Subscription Offering for SUSE Linux Enterprise Server for x86 & x86-64, Virtualized Deployment. If a SUSE OpenStack Cloud Compute Node is configured to be part of an optional SUSE Linux Enterprise High Availability cluster, the SUSE OpenStack Cloud Compute Node requires a separate Subscription Offering for SUSE Linux Enterprise High Availability.

### **SUSE OpenStack Cloud Swift Storage Node**

The Unit of Measure is per 1-2 Sockets. This is the Physical Server managed by SUSE OpenStack Cloud that hosts the object storage using OpenStack Swift. A Current SUSE OpenStack Cloud Swift Storage Node Subscription Offering is required for each Physical Server that is part of the SUSE OpenStack Cloud Swift Storage Cluster. Each SUSE OpenStack Cloud Swift Storage Node requires a separate Subscription Offering for SUSE Linux Enterprise Server for x86, & x86-64, Physical Deployment.

### **SUSE OpenStack Cloud Monitoring**

The Unit of Measure is per 1-2 Sockets per Physical Server, Virtualized Deployment. This is the Physical Server or Virtual Instance that is monitored by SUSE OpenStack Cloud Monitoring. This can include a SUSE OpenStack Compute or Control Node running in the SUSE OpenStack Cloud. SUSE OpenStack Cloud Monitored Compute Nodes and Control Nodes must provide the necessary SUSE Linux Enterprise Server Subscription Offerings as described in their detailed requirements above. The SUSE Linux Enterprise Server Subscription for the Monitored Control node is included with SUSE OpenStack Control Node.

# Appendix E – SUSE Manager

## SUSE Manager Subscription Offerings and Units of Measure

A SUSE Manager installation requires at least one SUSE Manager Server and for each Managed Instance a SUSE Manager Lifecycle Management Subscription Offering.

Additional functionality can be added for each Managed Instance or the SUSE Manager Server itself with a SUSE Manager Monitoring Subscription Offering.

Additional Virtual Machine management functionality can be added for each managed Virtualization Host with a SUSE Manager Virtualization Management Subscription Offering.

## SUSE Manager for Retail Architecture

A SUSE Manager for Retail installation requires at least one SUSE Manager Server.

Managed Instances connected to the SUSE Manager Server via the SUSE Manager for Retail Branch Server or the SUSE Manager for Retail Branch Server All-in-one, including the branch server and the point of service related workloads running on the branch server, do not require the SUSE Manager Lifecycle Management Subscription Offerings.

Each Managed Instance connected directly to the SUSE Manager Server requires a SUSE Manager Lifecycle Management Subscription Offering.

You may only deploy POS Client Device Managed Instances running SLEPOS with Current Subscriptions in Your SUSE Manager for Retail environment.

Virtual Machine Management and Monitoring can be provided with the SUSE Manager for Retail Branch Server All-in-one Subscription Offering.

## SUSE Manager Server

SUSE Manager Server is available for installation on a Physical Server or as a Virtual Instance. At least one SUSE Manager Server Subscription Offering is required for an installation. No additional workloads are permitted to be deployed on the same Instance.

## SUSE Manager Server Subscription Offering Options

For up to 50 Managed Instances (including Virtualization Hosts), the “SUSE Manager Server for up to 50 Managed Instances” Subscription Offering can be used. This Subscription Offering cannot be used for the SUSE Manager Server Master in a multilevel SUSE Manager Inter Server Sync setup (as described in the official “SUSE Manager Installation and Troubleshooting Guide” documentation, linked from <http://www.suse.com/documentation>). “SUSE Manager Server for up to 50 Managed Instances” Subscription Offering must not be used with an external database.

SUSE Manager Server Subscription Offering is not limited to 50 Managed Instances and can be used for the SUSE Manager Master Server in a multilevel SUSE Manager Inter Server Sync setup. The SUSE Manager Server Subscription Offering can either be used with the embedded database or an external Oracle database provided by You.

Both “SUSE Manager Server for up to 50 Managed Instances” and “SUSE Manager Server” Subscription Offerings can be used with an unlimited number of Sockets per Physical Server or per Virtual Machine.



## SUSE Manager Proxy

SUSE Manager Proxy is available for installation on a Physical Server or Virtual Instance or as a Container. Regardless of the deployment option chosen, each Instance of SUSE Manager Proxy requires a SUSE Manager Proxy Subscription Offering, a SUSE Manager for Retail Branch Server Subscription Offering or a SUSE Manager for Retail Branch Server All-in-one Subscription Offering. The SUSE Manager for Retail Branch Server Subscription Offering and the SUSE Manager for Retail Branch Server All-in-one Subscription Offering can only be used when the SUSE Manager Proxy is deployed as part of the SUSE Manager for Retail architecture, in typical point of service environments. No additional workloads may be deployed on the same Physical Server or Virtual Instance. However, where SUSE Manager Proxy is deployed with the SUSE Manager for Retail Branch Server Subscription Offering, workloads that are solely used to serve data and applications to Point of Service client devices can be deployed on the same Physical Server.

## SUSE Manager High Availability Servers

SUSE Manager Server and SUSE Manager Proxy can be set up as a cluster of 2 Instances using the SUSE Linux Enterprise High Availability Extension. Terms and conditions are available on request.

## Rules for Applying Subscription Offerings to Managed Instances

### Physical Servers

Except for the Arm AArch64 processor-based servers, SUSE Manager Lifecycle Management, SUSE Manager Virtualization Management Subscription and SUSE Manager Monitoring Subscription Offerings need to be applied on Physical Servers based on the number of Sockets per Physical Server. Subscription Offerings for 1 to 2 Sockets can be aggregated to provide Current Subscription Offerings for Physical Servers with more than 2 Sockets. For example, a 6 Socket Physical Server must have 3 “SUSE Manager Lifecycle Management up to 2 Sockets or 2 Virtual Machines” Subscription Offerings.

SUSE Manager Lifecycle Management Subscription Offerings for the Managed Instances are not required with the purchase of SUSE Manager for Retail Branch Server Subscription Offerings.

SUSE Manager Lifecycle Management Subscription Offerings for the Managed Instances in a branch, are not required when the SUSE Manager for Retail Branch Server Subscription Offerings has been rightfully acquired for that branch.

### Physical Servers based on Arm AArch64 processors

SUSE Manager Lifecycle Management for Arm need to be applied on Physical Servers based on the number of Cores or the number of Sockets per Physical Server.

For Physical Servers with less than 16 Arm Cores, the Subscription Offerings are based on groups of 4 Cores. These Subscription Offerings are stackable up to a total of 15 Cores per Physical Server. For example, an Arm Physical Server such as a Raspberry Pi with a total of 4 Cores would need a single, 4-Core group Subscription Offering. An Arm Physical Server with 12 Cores would require three 4-Core group Subscription Offerings. An Arm Physical Server with 15 Cores would require four 4-Core group Subscription Offerings.

For Physical Servers with 16 or more Cores, the SUSE Manager Lifecycle Management for Arm Subscription Offering is based on 1-2 Sockets. For example, an Arm Physical Server with 16 Cores would require a single 1-2 Socket Unlimited Virtual Machine Subscription Offering.

### Virtual Instances

Two Subscription Offerings are available for SUSE Manager Lifecycle Management and SUSE Manager Monitoring for Virtual Instances: You may choose either (1) per 2 Virtual Instances or (2) Unlimited Virtual Machines per Physical Server (as per preceding paragraph).

Per 2 Virtual Instances

The “SUSE Manager Lifecycle Management up to 2 Sockets or 2 Virtual Instances” Subscription Offerings and “SUSE Manager Monitoring up to 2 Sockets or 2 Virtual Machines” Subscription Offerings can be used to entitle 1 to 2 Virtual Machines to Subscription Offering Benefits.

Unlimited Virtual Machines

SUSE Manager Lifecycle Management includes lifecycle management of the Virtualization Hosts and all Virtual Guest Operating Systems. SUSE Manager Monitoring includes monitoring of the Virtualization Hosts and all Virtual Machines.

# Appendix F – SUSE Enterprise Storage

## SUSE Enterprise Storage Subscription Offerings and Units of Measure

SUSE Enterprise Storage (“SES”) has two distinct deployment methods, each method comes with its own Subscription Offerings and units of measure. You cannot mix and match these two:

- For traditional storage – not deployed on Kubernetes -, the customer uses the SUSE Enterprise Storage Base and SUSE Enterprise Storage Expansion Subscription Offerings.
- For deployment on Kubernetes, the “SUSE Enterprise Storage deployed with Rook” Subscription Offerings must be used.

SES is deployed in a SES Storage Cluster of SES Nodes. Multiple SES Storage Clusters can be deployed.

### SUSE Enterprise Storage Base (“SES Base”)

To receive Subscription Offering benefits for SES Base, a Current SES Base Subscription Offering is required. A SES Base consists of SES OSD Nodes and SES Infrastructure Nodes.

Unit of Measure for SES OSD Nodes is 1-2 Sockets per Physical Server. Subscription Offerings are Stackable to match or exceed the number of Sockets and if necessary, the Socket count per Physical Server must be rounded up to match the next available SUSE Enterprise Storage Subscription Offering. For example, a Physical Server with 4 Sockets needs 2 Subscription Offerings for 1-2 Sockets.

Unit of Measure for SES Infrastructure Nodes is one (1) Instance of a SES Infrastructure Node running on a Physical Server or Virtual Machine.

A SUSE Enterprise Storage Subscription Offering is required for each SES Node deployed on a Physical Server or Virtual Machine as part of the SES Storage Cluster. You can use a combination of Physical Servers or Virtual Machines running SES OSD Nodes and SES Infrastructure Nodes with one SES Base Subscription Offering but shall under no circumstances exceed:

1. Up to four (4) Instances of 1-2 Socket Physical Servers for SES OSD Nodes and
2. Up to six (6) Instances for SES Infrastructure Nodes running on Physical Servers or Virtual Machines.

Of these Instances should one or more SES NFS Gateways or SES CIFS/Samba Gateways be chosen, such SES NFS Gateway or SES CIFS/Samba Gateway includes one (1) Subscription Offering for SUSE Linux Enterprise High Availability Extension for the sole purpose of deploying such SES NFS Gateway or SES CIFS/Samba Gateway within the SES Storage Cluster.

When infrastructure components (such as monitors, gateways and admin component) are collocated on SES OSD Nodes, this is counted as one of the six (6) Instances of available SES Infrastructure Nodes in the SES Base Subscription Offering, in addition to being counted as one of the OSD Node entitlements.

It is permissible to deploy multiple infrastructure components on an Infrastructure Node and this will only count as one single Infrastructure Node entitlement. By way of example, it is permissible to deploy a Rados Gateway, a Monitor and an iSCSI Gateway on a single Infrastructure Node and this will still only be counted as one of the six (6) Infrastructure Instances included in the SES Base Subscription Offering.

A SES Storage Cluster built with a SES Base Subscription Offering may only be expanded by adding one or more SES Expansion Subscription Offerings. Only one (1) SES Base Subscription Offering can be used in a SES Storage Cluster. A SES Base Subscription Offering includes up to ten (10) Subscription Offerings of SUSE Linux Enterprise Server x86-64 or AArch64 for 1-2 Sockets per Physical Server or Virtual Machine, for which the respective SES Base

EULA limits scope of deployment to the sole purpose of deploying a SES Node within a SES Storage Cluster as defined above.

## **SUSE Enterprise Storage Expansion (“SES Expansion”)**

To receive Subscription Offering benefits for SES Expansion, a Current SES Expansion Subscription Offering is required.

A SES Expansion consists of one (1) SES OSD Node and one (1) SES Infrastructure Node.

Unit of Measure for a SES Expansion OSD Node is 1-2 Sockets per Physical Server. Subscription Offerings are Stackable to match or exceed the number of Sockets and if necessary, the Socket count per Physical Server must be rounded up to match the next available SES Expansion Subscription Offering. For example, a Physical Server with 4 Sockets needs two (2) Subscription Offerings for 1-2 Sockets.

Unit of Measure for SES Expansion Infrastructure Nodes is one (1) Instance of a SES Infrastructure Node running on a Physical Server or Virtual Machine. If this Instance is deployed as a SES NFS Gateway or SES CIFS/Samba Gateway, such SES NFS Gateway or SES CIFS/Samba Gateway includes one (1) Subscription Offering for SUSE Linux Enterprise High Availability Extension for the sole purpose of deploying such SES NFS Gateway or SES CIFS/Samba Gateway within the SES Storage Cluster.

When infrastructure components (such as monitors, gateways and admin component) are collocated on a SES OSD Expansion Node, this is counted as a single Infrastructure Node entitlement in addition to being counted as one of the OSD Node entitlements.

It is permissible to deploy multiple infrastructure components on an Infrastructure Node and this will only be counted as a single Infrastructure Node entitlement. By way of example, it is permissible to deploy multiple gateways on a single Infrastructure Expansion Node. This uses up the respective Infrastructure Node expansion entitlement.

The SES Expansion Subscription Offering includes up to two (2) Subscription Offerings for SUSE Linux Enterprise Server for x86-64 or AArch64 for 1-2 Sockets or 1-2 Virtual Machines (such Virtual Machines are deployable only for SES Expansion Infrastructure Nodes). The SES Expansion Node EULA limits the scope of deployment of the SUSE Linux Enterprise Server to the sole purpose of deploying a SES Node within a SES Storage Cluster as defined above.

## **SUSE Enterprise Storage deployed with Rook**

Unit of Measure for SUSE Enterprise Storage deployed with Rook is the number of OSD drives used. A single Subscription Offerings includes up to 12 OSDs. Subscription Offerings are counted for each individual cluster and are Stackable to match or exceed the number of OSDs used. For example, a storage cluster with 40 OSDs, needs 4 Subscription Offerings for SUSE Enterprise Storage for Rook. A Subscription Offering for SUSE Enterprise Storage for Rook can only be used within a single cluster.

This Subscription Offering is only applicable for a Kubernetes cluster running SUSE Enterprise Storage. The Kubernetes Subscription Offering must be purchased separately and is not included in the SUSE Enterprise Storage for Rook Subscription Offering. SUSE Enterprise Storage deployed with Rook is only supported if all nodes of the Kubernetes cluster have current Subscription Offerings for the operating system and for Kubernetes – for example SUSE CaaS Platform or other SUSE supported Kubernetes distributions.

# Appendix G – SUSE Linux Enterprise Desktop

## Operating Environments and Units of Measure for SUSE Linux Enterprise Desktop

Units of Measure do not differentiate between single core or multi-core or simultaneous multi-threading capable Processors.

### SUSE Linux Enterprise Desktop for Intel or AMD Processors (“x86” or “x86-64”), Physical Deployment

For a Device with 32-bit or 64-bit Processors, the number of required Subscription Offerings must match or exceed the number of Devices, where SUSE Linux Enterprise Desktop is deployed, installed, used or executed. The Subscription Offering must be either Basic or a mix of Standard or Priority. Virtualized Deployment of SUSE Linux Enterprise Desktop is not permitted with this Subscription Offering. One Subscription Offering cannot be used to entitle more than one Device.

# Appendix H – SUSE CaaS Platform

## Operating Environments and Units of Measure

Each Physical Server, Virtualization Host or Virtualization Environment on which SUSE CaaS Platform is deployed, installed, used or executed must have a Subscription Offering.

Units of Measure do not differentiate between single core, multi-core or simultaneous multi-threading capable Processors.

For Virtualization Environments, if the Unit of Measure chosen is per number of Sockets with Unlimited Virtual Machines per Physical Server, only Physical Servers for which the appropriate Subscription Offering has been acquired may be used to deploy such Virtualization Environment, irrespective of whether such Physical Server is actually used or for how long such Physical Server is used.

To change the deployment type of a Product during the Subscription Offering period, You must choose the highest valued Subscription Offering matching Your different deployment types for this Product. For example, if You deploy the higher valued SUSE CaaS Platform Subscription Offering for '1-2 Sockets with Unlimited Virtual Machines' during the Subscription Offering period for a deployment scenario matching a lower valued (when compared to the 1-2 Sockets with Unlimited Virtual Machines Subscription Offering) '1-2 Sockets or 1 Virtual Machine', You may continue to use the higher valued Subscription Offering for the remaining subscription period. However, You may not deploy the lower valued SUSE CaaS Platform Subscription Offering for '1-2 Sockets or 1 Virtual Machines' during the Subscription Offering period for a deployment type matching the higher valued '1-2 Sockets with Unlimited Virtual Machines' Subscription Offering.

## Subscription Offerings for 1-2 Sockets or 1 Virtual Machine

These Subscription Offerings are intended for flexible deployments on Physical Servers and low-density or cloud virtualization. The Unit of Measure for SUSE CaaS Platform is per 1-2 Sockets per Physical Server or 1 Virtual Machine. SUSE CaaS Platform is provided with Priority Subscription Offerings only.

Each Physical Server or Virtual Environment on which SUSE CaaS Platform is deployed, installed, used or executed must have a Current Subscription Offering. SUSE CaaS Platform Subscription Offerings are Stackable to match or exceed the number of Sockets and if necessary, the Socket count per Physical Server must be rounded up to match the next available SUSE CaaS Platform Subscription Offering. For example, a Physical Server with 4 Sockets needs 2 Subscription Offerings for 1-2 Sockets. A Subscription Offering for SUSE Linux Enterprise Server must not be used as a Subscription Offering for SUSE CaaS Platform. However, a Subscription Offering for SUSE CaaS Platform can alternatively (but not concurrently) be used as a SUSE Linux Enterprise Server Subscription Offering.

The SUSE CaaS Platform Migration Subscription Offering is compatible only with SUSE Linux Enterprise Server x86-64 Unlimited Virtualization Priority Subscription Offerings. Any other SUSE Linux Enterprise Server Subscription Offering must first be upgraded accordingly before SUSE CaaS Platform Migration Subscription Offerings can be acquired.

SUSE CaaS Platform for 1-2 Sockets or 1 Virtual Machines does not include support for any Hypervisor. Deployments of SUSE CaaS Platform in a Virtualization Environment require a SUSE Linux Enterprise Server, x86-64, 1-2 Sockets with Unlimited Virtual Machines Subscription Offering. SUSE CaaS Platform may also be deployed on third party virtualization solutions or as a single Virtual Machine on a public cloud.

## Subscription Offerings for 1-2 Sockets with Unlimited Virtual Machines

For high-density Virtualized Deployment a Subscription Offering for '1-2 Sockets with Unlimited Virtual Machines' is available. This Subscription Offering entitles You to deploy an unlimited number of Virtual Machines per 1-2 Sockets on a Virtualization Host. These Virtual Machines can be either SUSE CaaS Platform or SUSE Linux Enterprise Server for x86-64. For Virtualization Hosts with more than 2 Sockets, Subscription Offerings are Stackable to match or exceed the number of Sockets. This Subscription Offering can be used on any third-party Virtualization Host and also includes the entitlement to run SUSE Linux Enterprise for x86-64 Xen or KVM as the Virtualization Host.

Subscription Offerings for "1-2 Sockets with Unlimited Virtual Machines" may be deployed alternatively (but not concurrently) as 1 Virtual Machines on any Virtualization Host or with any cloud services provider which is authorized by SUSE (Bring Your Own Subscription or "BYOS"). Unlike Subscription Offerings for "1-2 Sockets or 1 Virtual Machines" ("Low-Density"), Subscription offerings for 1-2 Sockets with Unlimited Virtual Machines must be acquired for each Virtualization Host capable of deploying SUSE Products within a Virtualization Environment.

The SUSE CaaS Platform Migration Subscription Offering is compatible only with SUSE Linux Enterprise Server x86-64 Unlimited Virtualization Priority Subscription Offerings. Any other SUSE Linux Enterprise Server Subscription Offering must first be upgraded accordingly before SUSE CaaS Platform Migration Subscription Offerings can be acquired.

# Appendix I – SUSE Cloud Application Platform

## Operating Environments and Units of Measure

The Unit of Measure for SUSE Cloud Application Platform (“SUSE CAP”) is per 1 Core or 2 vCPUs. Each Physical Server or Virtual Machine on which SUSE CAP Container Workloads are deployed, installed, used or executed must have a Current SUSE CAP Subscription Offering.

SUSE CAP Subscription Offerings are Stackable to match or exceed the number of Cores or vCPUs (rounding up to an even number if counting vCPUs).

For Physical Servers, Cores are the unit of measure. For example, a Physical Server with 16 Cores needs 16 Subscription Offerings for ‘1 Core or 2 vCPUs’.

For Virtual Machine and Cloud deployments where the number of Physical Cores cannot be counted directly, vCPU pairs as reported by the hypervisor or cloud provider are counted instead. For example, an AWS m4.4xlarge instance type with 16 vCPUs requires 8 Subscription Offerings of ‘1 Core or 2 vCPUs’.

## Subscriptions with Infrastructure

SUSE CAP Subscription Offerings are available with or without supporting infrastructure entitlements. A “SUSE CAP (with Infrastructure)” Subscription Offering entitles You to use:

- (i) SUSE CaaS Platform Kubernetes Worker Nodes, which are counted towards the SUSE CAP Units of Measure.
- (ii) SUSE CaaS Platform Kubernetes Master Nodes solely to deploy and execute SUSE CAP Container Workloads, which are not counted towards the SUSE CAP Units of Measure.

For example, the following cluster would require 72 Subscription Offerings for ‘1 Core or 2 vCPUs’:

9 SUSE CaaS Platform Worker nodes with 16 vCPUs each running SUSE Cloud Application Platform (9x8 Subscription Offerings for ‘1 Core or 2 vCPUs’ are counted)

3 SUSE CaaS Platform Master nodes with 4 vCPUs each (Subscription Offerings are not counted)



# Appendix J – Long Term Service Pack Support

## Long Term Service Pack Support Subscription Offerings and Units of Measure

Long Term Service Pack Support (“LTSS”) Subscription Offering extends the support period of a SLES (x86, x86-64, s390x, ppc64, ppc64le) Service Pack and/or SLES for SAP Applications (x86-64) Service Pack as defined at <https://www.suse.com/lifecycle/>.

LTSS Subscription Offering is available as an additional offering for SLES (x86, x86-64, s390x, ppc64, ppc64le).

For SLES for SAP Application (x86-64, ppc64le) LTSS Subscription Offering is available to extend the Subscription Offering benefit period after expiration of Extended Service Pack Overlap Support (ESPOS).

SLES for High Performance Computing Long Term Service Pack Support (SLE HPC LTSS) (x86-64, AArch64) Subscription Offering is available to extend the Subscription Offering benefit period after expiration of Extended Service Pack Overlap Support (SLE HPC ESPOS), or to extend the SLE HPC Subscription Offering benefit period.

All LTSS Subscription Offerings require a matching and underlying (i) Current SUSE Linux Enterprise Server Subscription Offering or (ii) Current SLES for SAP Application (x86-64) Subscription Offering or (iii) SLE HPC (x86-64, AArch64) Subscription Offering. Your LTSS Subscription Offering must be registered at SUSE Customer Center (SCC), and you may be required to install the latest LTSS updates.

### LTSS for x86 & x86-64 for “up to 100 Instances”, “up to 500 Instances” and “unlimited Instances”

LTSS for x86 & x86-64 has the following Subscription Offering options:

- up to 100 Instances
- up to 500 Instances
- unlimited Instances

This LTSS Subscription Offering is offered strictly per Code Stream and is Hardware Architecture specific.

### LTSS for x86 & x86-64, 1-2 Sockets with Inherited Virtualization per Code Stream

This Subscription Offering entitles You to any current LTSS version and is not hardware architecture specific. One LTSS Subscription Offering is required per 1-2 Sockets. For Physical Servers with more than 2 Sockets, Subscription Offerings are Stackable to match or exceed the number of Sockets. Virtualization is inherited from the underlying SLES Subscription Offering.

By way of example, a Physical Server with 4 Sockets needs 2 Subscription Offerings for “1-2 Sockets or 1-2 Virtual Machines.” Six Virtual Machines of the same Code Stream of SLES under LTSS on a SLES Virtualization Host with four Sockets require two SLES Subscription Offerings for 1-2 Sockets with Unlimited Virtual Machines (for the host and VMs) and two LTSS Subscription Offerings of 1-2 Sockets (for the host and VMs).

As a second example, running three Virtual Machines with different Code Streams on the same four-socket SLES Virtualization Host requires two SLES Subscription Offerings for 1-2 Sockets with Unlimited Virtual Machines (for the host) and three LTSS Subscription Offerings (one for each Code Stream executed as VM guest).

LTSS for SLES for z Systems (s390x)

LTSS for SLES for z Systems has the following Subscription Offerings:

- up to 5 IFLs
- up to 10 IFLs
- unlimited IFLs

### **LTSS for SLES for POWER (ppc64) 1-2 Sockets with Inherited Virtualization per Code Stream**

This Subscription Offering entitles You to any current LTSS version for ppc64.

One LTSS Subscription Offering is required per 1 - 2 Sockets. For Physical Servers with more than 2 Sockets, Subscription Offerings are Stackable to match or exceed the number of Sockets. Virtualization is inherited from the underlying SLES Subscription Offering.

By way of example, a Physical Server with 4 Sockets needs 2 Subscription Offerings for “1-2 Sockets or 1-2 Virtual Machines”. As another example, running two Virtual Machines with different Code Streams on a SLES Virtualization Host with 2 Sockets requires:

- One SUSE Linux Enterprise Server Subscription Offerings for 1-2 Sockets with Unlimited Virtual Machines (for the Virtualization Host) and
- Two LTSS Subscription Offerings (one for each Code Stream)

### **SUSE Linux Enterprise for High Performance Computing Long Term Service Pack Support (“SLE HPC LTSS”) (x86-64, AArch64) 1-2 Sockets with Inherited Virtualization per Code Stream**

This Subscription Offering entitles You to any Current LTSS version for SUSE Linux Enterprise for High Performance Computing x86-64, AArch64.

One SLE HPC LTSS Subscription Offering is required per 1 - 2 Sockets per Code Stream. For Physical Servers with more than 2 Sockets, Subscription Offerings are Stackable to match or exceed the number of Sockets. Virtualization is inherited from the underlying SLES Subscription Offering.

By way of example, a Physical Server with 4 Sockets needs 2 Subscription Offerings for “1-2 Sockets or 1-2 Virtual Machines”. As another example, running two Virtual Machines with different Code Streams on a SLES Virtualization Host with 2 Sockets requires:

- One SUSE Linux Enterprise for High Performance Computing Subscription Offerings for 1-2 Sockets or 1-2 Virtual Machine and
- Two SLE HPC LTSS Subscription Offerings (one for each Code Stream)

### **Extended Service Pack Overlap Support (SLE HPC ESPOS) for SUSE Linux Enterprise for High Performance Computing (SLES for HPC)**

The SLE HPC ESPOS (x86-64, AArch64) extends the Subscription Offering benefit period for a particular SLE HPC (x86-64, AArch64) Service Pack. SLE HPC ESPOS entitles You to continue receiving SLE HPC ESPOS (x86-64, AArch64) Subscription Offering benefits under the same conditions as SLE HPC LTSS (per Code Stream and per Hardware Architecture) according the SUSE product lifecycle.

## **Extended Service Pack Overlap Support (ESPOS) for SLES for SAP Applications**

The SLES for SAP Applications (x86-64, ppc64le) Subscription Offering includes ESPOS. ESPOS extends the Subscription Offering benefit period for a particular SLES for SAP Applications (x86-64, ppc64le) Service Pack. ESPOS entitles customers of SLES for SAP Applications (x86-64, ppc64le) to continue receiving Subscription Offering benefits under the same conditions as LTSS (i.e. per Code Stream and Hardware Architecture dependent) according to the SUSE product lifecycle.

# Appendix K – SUSE Linux Enterprise for High Performance Computing

## SUSE Linux Enterprise for High Performance Computing and SUSE Linux Enterprise for High Performance Computing ESPOS (“SLE HPC ESPOS”)

The Unit of Measure for a SUSE Linux Enterprise for High Performance Computing (“SLE HPC”) Subscription Offering is per 1 - 2 Sockets or 1-2 Virtual Machine per Physical Server used as part of a SLE HPC Cluster. One Subscription Offering is required for a 1 - 2 Socket Physical Server. For Physical Servers with more than 2 Sockets, the number of Subscription Offerings must match or exceed the total number of pairs of Sockets of the Physical Server.

All SLE HPC Nodes within a SLE HPC Cluster must deploy the same SUSE Linux Enterprise Subscription Offering such as (a) “Standard” with SUSE Linux Enterprise for High Performance Computing ESPOS (“SLE HPC ESPOS”) or without ESPOS or (b) “Priority” with ESPOS or without ESPOS. When You acquire a LTSS Subscription Offering for one node in a particular SLE HPC Cluster, You must acquire sufficient Subscription Offerings in the applicable Unit to cover all acquired, installed, or deployed SLE HPC Nodes in that particular cluster.

The amount of Subscription Offerings for a particular SLE HPC Cluster must match or exceed the sum of Subscription Offerings of all Socket Pairs present in the SLE HPC Cluster.

For Physical Servers with more than 2 Virtual Machines, HPC Subscription Offerings are Stackable to match or exceed the number of Virtual Machines. For example, a Physical Server with 2 Sockets and 4 Virtual Machines needs 2 HPC Subscription Offerings for “1-2 Sockets or 1-2 Virtual Machines.”

A SLE HPC Cluster is defined by the following cumulative characteristics:

- One SLE HPC Cluster must consist of a minimum of four (4) Physical Nodes; and
- The SLE HPC Cluster is solely used for compute-intensive or high-performance data analysis distributed tasks sent to individual SLE HPC Compute Nodes within the SLE HPC Cluster (see “Definitions” for more details); and
- External network communication to and from the SLE HPC Cluster must only happen via the SLE HPC Head Nodes. With the exception of (a) communication for purely administrative purposes which in no way interferes with the computation task distributed to any HPC Compute Node and (b) data transfer directly related to computation of a particular computation task between any HPC Compute Node and a storage system or streaming data source. No direct or indirect communication between HPC Compute Nodes and external systems is allowed; and
- The ratio of SLE HPC Head Nodes to SLE HPC Compute Nodes must not exceed a ratio of 1 to 4.

# Glossary

**“Academic Institution”** means an educational institute as stated on <https://www.suse.com/licensing/academic/qualify/>.

**“Academic Use”** means the benefiting from a Subscription Offering by an Academic Institution.

**“Client”** is the client part of a client-server application.

**“Client Device”** is the client device of a solution with client and server device, e.g., SUSE Linux Enterprise Point of Service and SUSE Manager for Retail product family.

**“Client Server Application”** is an application whose design requires two or more parts to fulfill the dedicated purpose: one or more clients and one or more servers acting together.

**“Cloud Computing”** means a paradigm for enabling network access to a scalable and elastic pool of shareable physical or virtual resources with self-service provisioning and administration on-demand.

**“Cloud Services”** means one or more capabilities offered via Cloud Computing invoked using a defined interface.

**“Core”** means a subunit within a CPU on a single chip that handles the main computational activities of a computer. A CPU may have one or more Cores and therefore be a “Multi-Core CPU” if it has more than one Core.

**“Code Stream”** is a released version of SLES such as GA (initial release) or a particular Service Pack; each is defined to be a different Code Stream.

**“Container”** or **“Linux Containers”** are isolated Linux systems (processes or groups of processes) which share a single Linux kernel.

**“Container Workloads”** are processes running in Linux Containers on a scheduler such as Kubernetes, launched from OCI images.

**“CP”** means an activated Central Processor and is an IBM mainframe general processor unit for general purpose processing. CPs are also capable of running Linux. Spare CPs are not regarded as “activated CPs.” CPs which are exclusively dedicated to another LPAR (Logical Partition) are not regarded as activated CPs. Shared CPs are regarded as activated CPs.

**“CPU”** means “Central Processing Unit” and is the functional unit (i.e., the “computing part”) of the computer that interprets and executes instructions for a specific instruction set; it is made up of one or multiple Cores, including the control unit and the ALU.

**“CSP”**, or cloud service provider means a company offering a cloud-based platform, infrastructure, application, or storage services.

**“Current”** means an active, valid Subscription Offering. Once a Subscription Offering passes its expiration date, it is “Expired”.

**“Device”** means laptop, desktop, workstation, server or other physical entity which can process and transfer data.

**“Education Usage”**, or **“Educational Use”** has the same meaning as “Academic Use”.

**“Engine”** see IFL or CP.

**“Extension”** is a product which requires another product as a foundation to be operational. Examples are: SLES (as foundation) and SLE HA (as Extension), SLES (as foundation) and SMT (Subscription Management Tool as Extension), SLES (as foundation) and SLE HA and Geo SLE HA (as Extension).

**“Geographically Clustered”** means clusters of Physical Servers which are operated with a network signal latency greater than 15 milliseconds.

**“Hardware Architecture”** or **“Hardware Platform”** means a family of systems which is able to execute the same executable code or programs.

**“High Performance Computing Cluster (HPC Cluster)”** is defined as a single entity or Physical System to work on specific tasks by performing compute-intensive or I/O intensive operations on sets of data that are networked and managed to perform compute-intensive workloads or high performance data analysis workloads. The HPC Cluster must split tasks into subtasks which are distributed to one or more HPC Compute Nodes for computation. The HPC Cluster consists of a combination of multiple HPC Compute Nodes and at least one HPC Head Node.

**“HPC Head Node”** is a Physical Server used exclusively to perform management functions for the HPC Cluster. Typical functions include workload scheduling, input/output management, login nodes, HPC Cluster authentication, performance management, Spark Master and software deployment and patching. An HPC Head Node may not perform any function for systems that are not part of the cluster.

**“HPC Compute Nodes”** is a Physical Server in a HPC System which is connected to the HPC Head Node and is used solely to provide computational processing capacity for HPC workloads.

**“IFL”** means an Integrated Facility for Linux (“IFL”) on IBM z Systems. An IFL is an IBM mainframe processor capable of running the Linux operating system. An IFL needs to be activated during IML (Initial Microcode Load) and is capable of performing instruction processing. A deactivated IFL cannot execute any instruction. Spare IFLs or deactivated IFLs are not regarded to be activated IFLs. IFL Processors are also available on IBM Power servers with similar characteristics and restrictions as IFL Processors on IBM z Systems.

**“Inherited Virtualization”** means that an Extension inherits the virtualization type of the Product. The virtualization type is either i) deployment on a Physical Server with no virtualization (“Physical Deployment”) on 1-2 Sockets, or 1-2 Virtual Machines on a VMM, or ii) Virtualized Deployment per “1-2 Sockets with Unlimited (number of) Virtual Machines”.

**“IFLe”** means use of an IFL with an elastic pricing Subscription Offering.

**“Instance”** is a physical or virtual entity, which can be identified as such.

**“KVM”** is the abbreviation for “Kernel Virtual Machine”, a VMM available for different hardware architectures.

**“LPAR or DLPAR”** means Logical Partition or Dynamic Logical Partition. Different LPAR technologies vary regarding their features. One LPAR context is considered to represent one VM, and any LPAR technology is considered a VMM within the scope of this document.

**“Managed Instance”** is either an Instance of a third-party product or of a SUSE Product which is managed by SUSE Manager Server.

**“MCM”** is a Multi-layer Ceramic Module, typically used to achieve high physical integration of electronic components like Processor and cache components.

**“MSP”**, or managed service provider means a company that remotely manages a customer's IT infrastructure and/or end-user systems, typically on a proactive basis and under a subscription model.

**“NVMe”** means Non Volatile Memory Express.

**“Node”** is a physical entity capable of receiving and sending data and temporary storage and reading, writing or performing logical operations with the data. A Node typically consists of one or more Processors, memory, and

input / output devices connecting to other Nodes or other types of devices. It can also have access to directly attached persistent storage, and special purpose Processors.

**“Operating Environment”** can be a Physical Server or Virtualization Host or Virtualization Environment.

**“OSD”** means Object-based Storage Device and is a disk as seen by the operating system and is written to by SUSE Enterprise Storage. This can be a physical disk or a partition of an NVMe. **“Patch”** is a corrective fix for an issue. A patch can contain one or multiple files to replace or enhance existing executables, programs, applications or documents.

**“Physical Deployment”** means deployment or use within a physical hardware environment without abstracting software or Virtualization Host or Virtual Machine Monitor (VMM).

**“Physical Node”** means Physical Server.

**“Physical Server”** means a physical computer system, whether in a network that is shared by multiple users or on its own, regardless of whether the physical computer system has been partitioned by software. A Physical Server may contain one or multiple CPUs, Cores, or Processors, regardless of production capacity.

**“Physical System”** means Physical Server.

**“PowerVM”** is a virtualization technology to provide DLPARs or LPARs for IBM POWER systems, similar to a VMM.

**“powerKVM or KVM for POWER”** is a virtualization technology based on KVM, to provide VMs for POWER systems, similar to a VMM. PowerKVM has been withdrawn by IBM.

**“POWER or IBM Power or OpenPOWER”** is the name used for IBM POWER or third party POWER architecture system offerings. Over time, different names have been in place e.g. “POWER8, POWER7, POWER7+”, referring to different generations of these systems at different times. POWER processors are also used by third parties which offer systems according to the OpenPOWER specifications.

**“Private Cloud”** means a deployment model where Cloud Services are controlled and used exclusively by You.

**“Processor”** has the same meaning as CPU.

**“Product”** is a SUSE product, which does not require another product as a foundation to be operational. Examples are SUSE Linux Enterprise Server and SUSE Linux Enterprise Desktop.

**“PTF”** is a Problem Temporary Fix: it is an issue to correct one or more customer issues for the time being and is supported until a regular patch is released. Some PTFs might require resolution in the next Service Pack for technical and quality reasons.

**“Public Cloud”** means a deployment model where Cloud Services are potentially available to any Cloud Service customer and resources thereto are controlled by the Cloud Service provider.

**“Raw Storage Capacity”** means the total capacity of all storage devices that are allocated to and managed as part of a single Storage Cluster. This measure applies to all physical storage devices configured as part of the cluster. Each cluster is measured and billed independently.

**“SCC”** is the SUSE Customer Center at <https://scc.suse.com>.

**“SCM”** is a single chip module, typically used to achieve high physical integration of electronic components.

**“Security Fix”** is a corrective fix for a security issue.

**“Service Pack”** is a periodically released, installable collection of updates, fixes, and code enhancements.

**“SES Storage Cluster”** is a combination of Physical Servers and Virtual Machines running SUSE Linux Enterprise Server and SUSE Enterprise Storage functionality that is managed as a single entity to deliver storage services.

**“SES Object Storage Daemon or SES OSD Node”** is a Physical Server running SUSE Linux Enterprise Server and SUSE Enterprise Storage that provides data storage services by leveraging the SUSE Enterprise Storage Object Storage Daemon (OSD) functionality.

**“SES Object Gateway Node”** is one Instance on a Physical Server or Virtual Machine running SUSE Linux Enterprise Server and SUSE Enterprise Storage that is used to provide an object storage interface to a SES Storage Cluster.

**“SES Monitor or SES MON Node”** is one Instance on a Physical Server or Virtual Machine running both SUSE Linux Enterprise Server and SUSE Enterprise Storage and that monitors (Ceph Monitor) and manages (Ceph Manager) SES OSD Nodes within a SES Storage Cluster.

**“SES Management Node”** is one Instance on a Physical Server or Virtual Machine running SUSE Linux Enterprise Server, SUSE openATTIC and SUSE DeepSea that is used to provide storage management services for the SES Storage Cluster.

**“SES Metadata Server Node”** is one Instance on a Physical Server or Virtual Machine running SUSE Linux Enterprise Server and SUSE Enterprise Storage that is used to manage the file system namespace and provide a file system interface to a SES Storage Cluster.

**“SES iSCSI Gateway Node”** is one Instance on a Physical Server or Virtual Machine running SUSE Linux Enterprise Server and SUSE Enterprise Storage that is used to provide an iSCSI interface to a SES Storage Cluster.

**“SES NFS Gateway Node”** is one Instance on a Physical Server or Virtual Machine running SUSE Linux Enterprise Server, an optional instance of SUSE Linux Enterprise High Availability Extension and SUSE Enterprise Storage that is used to provide an NFS interface to a SES Storage Cluster.

**“SES CIFS/Samba Gateway Node”** is one Instance on a Physical Server or Virtual Machine running SUSE Linux Enterprise Server, an optional instance of SUSE Linux Enterprise High Availability Extension and SUSE Enterprise Storage that is used to provide a CIFS interface to a SES Storage Cluster.

**“SES Infrastructure Node”** is a Physical Server or Virtual Machine running an Instance of SES Management Node, or SES MON Node, or SES Metadata Server Node, or SES Object Gateway Node, or SES iSCSI Gateway Node, or SES NFS Gateway Node or SES CIFS/Samba Gateway Node.

**“SES Node”** is either a SES OSD Node or a SES Infrastructure Node.

**“SES Expansion Node”** is either a SES OSD Node or a SES Infrastructure Node in the context of a SES Expansion Subscription Offering

**“SMT (Simultaneous Multi-Threading)”** specifies the capability of a Processor to execute multiple instruction streams concurrently.

**“Socket”** is a location on the motherboard or other similar computer circuitry where a CPU has been physically installed on a System (populated). For the purposes of this document, the term Socket is used for Processor Cards, MCMs, SCMs or DCMs for POWER systems.

**“Socket Pair”** is up to two Sockets on a Physical Node.

**“Socket Pair Equivalent”** is concept used with IBM Power servers to compute a synthetic Socket Pair count by dividing the number of Physical CPUs assigned to a SUSE Product divided by the number of physical cores per Socket on that Physical Node.



**“Stackable”** means that multiple Subscriptions Offerings may be aggregated or "stacked" to match or exceed the number of Sockets in a Physical Server. For example, a Physical Server with four Sockets needs two Subscription Offerings for "1-2 Sockets or 1-2 Virtual Machines". Odd numbers of Sockets must be rounded up: e.g., three Sockets in a Physical Server scenario must carry two stacked Subscription Offerings for "1-2 Sockets or 1-2 Virtual Machines."

**“Storage Cluster”** is a group of servers running SUSE Linux Enterprise Server and SUSE Storage components that are managed as a single entity to deliver storage services.

**“Sub-Capacity”** is a concept used with IBM Power that allows for Subscription Offerings for SUSE Products to be based on less than the full capacity of activated Processors on the Physical Node for Power servers with four or more Sockets when PowerVM is used to limit the Processor capacity available to a SUSE Product.

**“Swift”** is the OpenStack Object Store.

**“User”** is a user or entity accessing the system and establishing a connection to the system, or an entry in a directory, regardless of which kind, e.g., a person, an object such as a company name.

**“vCPU”** - virtual central processing unit. One or more vCPUs are assigned to every Virtual Machine (VM) within a cloud environment. Each vCPU is seen as a single physical CPU core by the VM's operating system.

**“Virtualized Deployment”** means deployment or use of the product involving a VMM.

**“Virtual Device”** is a virtualized resource in a Virtual Machine context, e.g. virtualized processor, virtualized block or network device.

**“Virtualization Environment”** means a group of Virtualization Hosts on which You can deploy Virtual Machines as if they were running on a single Virtualization Host.

**“Virtualization Host”** is a single Physical Server which executes one or more Virtual Machines by a VMM.

**“Virtual Image”** see Virtual Instance.

**“Virtual Instance”** is one entity of an operating system, workload or application, which is executed in a virtual context created by a VMM.

**“Virtual Machine”** or **“VM”** or **“Virtual Guest”** means a virtualized context that can execute e.g. one operating system, workload, application, or multiples of such, like a Physical System. Some VMs can be migrated from one VMM context to another, residing on the same Physical System, or on different Physical Systems, or within logical partitions. Some VMMs allow nesting of VMMs (multiple layers of virtualization with the same or different VMMs).

**“Virtual Machine Monitor (VMM) or Hypervisor”** describes a software and/or hardware technology, which allows creation of one or multiple virtualized contexts for sharing and/or isolating resources of the underlying hardware. A VMM can, by way of example manage and expose these resources to an operating system, workload environment or application. VMMs include without limitation. KVM, Xen, Microsoft Hyper-V, VMware vSphere Hypervisor, DLPAR, LPAR, and z/VM.

**“Virtual System”** is a virtualized context which is able to abstract a Physical System, like a Virtual Machine. See VM.

**“Virtualization Technology”** means software and/or hardware technology used to implement e.g. a Virtual Machine Monitor (VMM) and supporting functions such as to manage the lifecycle of a Virtual Machine.

**“x86, x86-64, ia64, ppc64, ppc64le, s390, s390x and AArch64”** are the Linux instruction set architecture abbreviations for different type of Physical Systems and Processors instruction sets. By example: x86 for Intel and AMD 32-bit x86 Processors, x86-64 for Intel 64 and AMD64 64-bit Processors, ia64 for Intel Itanium Processor

Family, ppc64 for IBM POWER big endian Processor instruction set, ppc64le for POWER little endian Processor instruction set, s390x for IBM z Systems z/Architecture type Processors, and AArch64 for 64-bit Arm architecture Processors.

**“Xen”** is a Virtual Machine Monitor.

**“z Systems or IBM z Systems”** is the name used by IBM for mainframe type systems. Over time, different names have been used e.g. “IBM Z, IBM LinuxONE”, “IBM z Systems”, “IBM System z”, “IBM zEnterprise”, “IBM zSeries”, “IBM mainframe”, “IBM S/390”, referring to different generations of these systems at different times.

**EXHIBIT B to  
SUSE® Linux Enterprise GSA End User License Agreement for SUSE products**

VLA Agreement and VLA Program Guide

**Volume License Agreement**

**INTRODUCTION.** This Volume License Agreement (“Agreement”) is made between the SUSE entity fulfilling Your order (“SUSE”), and the customer accepting these terms (“Customer” or “You”). This Agreement applies to Your order submitted under SUSE’s Volume License Agreement Program (“VLA Program”). By submitting an order under the SUSE VLA Program to a SUSE Reseller, You agree to be bound by the terms of this Agreement. This Agreement is effective on the date Your order is accepted by SUSE (“Effective Date”).

1. **DEFINITIONS.** Capitalized terms used in this Agreement are defined as follows

1.1 Documentation means any user documentation and manuals (including electronic versions) provided by SUSE with a Software product.

1.2 Price List means the Corporate Price List as published periodically by SUSE.

1.3 Reseller means a SUSE-authorized entity that sells You subscriptions or services under the VLA Program.

1.4 Software means the SUSE software product licensed to You under this Agreement, excluding Services Deliverables.

1.5 Software Subscription or Subscription means the subscription you purchase under the VLA Program and includes the software upgrades, updates and technical support for the duration of the subscription.

1.6 Patch (Update) means a fix or compilation of fixes released by SUSE to correct operation defects (program bugs) in the Software.

1.7 Upgrade means any new version of Software which bears the same product name, including version changes evidenced by a number immediately to either the left or right of the decimal (e.g. SUSE Linux Enterprise Server 9.x to 10.x). If a question arises as to whether a product offering is an Upgrade or a new product, SUSE’s opinion will prevail, provided that SUSE treats the product offering the same for its end users generally.

2. **LICENSING.** The license grants and restrictions for the Software are contained in the End User License Agreement (“EULA”) accompanying the Software. A copy of the EULA is attached. Subject to Your payment of the applicable fees and compliance with this Agreement and the applicable EULA, Your license to use the Software will be perpetual, except as expressly provided otherwise (such as with beta products). To the extent of any conflict or ambiguity between the terms and conditions of this Agreement and the EULA, the terms and conditions of this Agreement will prevail. Ownership of Software is held by SUSE and/or its licensors.

3. **PROGRAM CHANGES.** The VLA Program Guide is available at

[https://www.suse.com/media/guide/volume\\_license\\_agreement\\_program\\_guide\\_suse.pdf](https://www.suse.com/media/guide/volume_license_agreement_program_guide_suse.pdf) and forms an integral part of this Agreement. To the extent of any conflict between the terms of this Agreement and the VLA Program Guide, the terms of this Agreement will prevail. Any non-material changes will apply only to purchases made after the effective date of the changes. Any material updates to this agreement shall be presented to Ordering Activity for review and will not be effective unless and until both parties sign a written agreement updating these terms.

4. **SUBSCRIPTIONS.** The SUSE Software Subscription services described in this section (the provision of Upgrades, Updates and technical support) are a mandatory part of the VLA, and Subscription fees must be paid for such services on all SUSE Software products for as long as this Agreement remains in effect. Should You elect to purchase a Subscription for existing Software products, all of Your installations for that product must be covered. Upon renewal, your payment of Subscription fees will be deemed a representation of the number of installations deployed for the Software. Additional VLA Maintenance requirements are located in the VLA Program Guide. During the period for which Subscription fees are fully paid for all installations, SUSE will provide You with the following:

Patches and Software Upgrades. If SUSE commercially releases any Upgrades and/or Updates during the period covered by Your Subscription, SUSE will make such Upgrades and/or Updates or Patches available to You within a reasonable period of time after they become commercially available. To obtain Upgrades and Updates, You will need to subscribe, at no extra cost, to SUSE’s Upgrade notification service. You will be entitled to install and use such Upgrades and/or Updates up to the number of installations for which You have purchased a Subscription. Use of Upgrades is subject to the restrictions of the EULA provided with the Upgrade.

Technical Support. SUSE will provide technical support services as described in the current, region-specific, support services guide published on [https://www.suse.com/media/flyer/suse\\_support\\_flyer.pdf](https://www.suse.com/media/flyer/suse_support_flyer.pdf) and attached hereto, the terms of which are incorporated into this Agreement. The level of technical support services to which You are entitled under the VLA Program is determined at the time of purchase. In order to receive technical support for a SUSE Software product, all of Your installations for that SUSE Software product must be covered by a Subscription.

4.1 Installed Base. You must purchase SUSE Subscriptions for all Your installations of the SUSE Software for the full duration of the Agreement. This includes SUSE products You previously acquired outside Your current VLA agreement. To receive Subscription services for installations that are not at the current product version, You must upgrade them by purchasing a Subscription for the same quantity of new installations for the current supported version. Each copy must be installed on a

machine corresponding to the part number describing such product offering (e.g., Customer cannot apply Subscription benefits received pursuant to a particular subscription offering, such as SLES for X-86, to a different platform for which the offering does not apply, such as SLES for zSeries). Any unauthorized use of the Subscription services will be treated as a material breach of this Agreement. If You wish to increase the number of installations of the Software product, You must purchase the required Software Subscriptions from a Reseller for each additional installation. Upon renewal, Your submission of a purchase order or payment of Subscription fees will be deemed a representation of the number of installations of the Software receiving Subscription benefits.

4.2 Ordering Subscriptions. Subscription fees are calculated on an annual basis, and all fees are due and payable in advance. Each Subscription period shall expire at the end of a one-year period (or the end of the multi-year period), no matter when during such period the Subscription was purchased, unless SUSE and Customer agree to synchronize the Subscription dates in alignment to and conterminous with Customer's other Subscriptions.

4.3 Refunds. If this Agreement is terminated due to SUSE's breach of this Agreement, SUSE will refund any Subscription fees paid for the time period past the first day of the month following the termination date. Subscription fees are not refundable except as expressly provided in this Agreement

## 5. SERVICES.

5.1 Consulting Services and Premium Support Services. Your optional purchase and SUSE's delivery of Services, such as Consulting and Premium Support ("Services") under the Agreement, are subject to the following terms, unless otherwise agreed in a separate agreement specifically covering those Services.

5.2 Consulting Statement of Work. The parties may choose to enter into a Statement of Work ("SOW") that describes the Services and may cover items such as project scope, code, documentation, media and other objects ("Deliverables"). Any such SOW will be governed by this Agreement's terms.

5.3 Consulting SOW Continuance. If a SOW extends beyond the term of the Agreement, this Agreement will continue in effect solely with respect to such SOW.

5.4 Consulting Completion Criteria. Services will be deemed complete unless within 10 days after delivery, You give SUSE written notice of aspects in which the Services do not meet the SOW requirements. Upon receipt of such written notice, SUSE will use commercially reasonable efforts to make such changes as will be required to correct any deficiencies; if SUSE is unable to correct the Services within a reasonable period of time, SUSE or You may terminate the relevant SOW and SUSE shall provide a refund of the amount You paid for the Services SUSE did not correct.

5.5 Premium Support Services. You may purchase additional optional services such as Premium Support Services as referenced in section 5.1. See <https://www.suse.com/support/> for more details.

5.6 License. Subject to payment of applicable fees for Services and Deliverables, SUSE grants You a nonexclusive, nontransferable, worldwide, perpetual license to reproduce and internally use the Deliverables. All proprietary rights notices must be faithfully reproduced and included on all copies (including any modifications or adaptations allowed by this Agreement or any SOW). Except as expressly provided otherwise in this Section or any SOW, SUSE (and/or its licensors) owns all right, title and interest, including all intellectual property rights, in any Deliverable developed, delivered and/or used by SUSE in the performance of any Services. Neither this Agreement nor any SOW changes ownership of any pre-existing materials.

## 6. ORDERING AND DELIVERABLES.

6.1 Orders. You must place an order for the appropriate number of Software Subscriptions through a Reseller. The price You pay for Software Subscriptions and support services will be the price you negotiate with Your Reseller in accordance with the GSA Schedule Pricelist. You must place an order for the appropriate number of new Software Subscription installations used or deployed within 30 days after first use of the installation. EXPIRING SOFTWARE SUBSCRIPTIONS AND SOFTWARE MAINTENANCE MAY BE RENEWED FOR AN ADDITIONAL 12 MONTHS AT THE THEN-CURRENT RENEWAL CHARGES BY BOTH PARTIES EXERCISING AN OPTION OR A NEW PURCHASE ORDER. YOU FURTHER AGREE THAT YOUR RESELLER OR SUSE MAY INVOICE YOU WITHOUT A PURCHASE ORDER FOR FEES OTHERWISE OWING UNDER THIS AGREEMENT.

Payment terms for any orders submitted directly to SUSE under this Agreement shall be net 30 days from the date of SUSE's invoice. Payments made later than the due date will accrue interest from the date due to the date paid at the rate indicated by the Prompt Payment Act (31 USC 3901 et seq) and Treasury regulations at 5 CFR 1315.

6.2 Taxes. VLA shall state separately on invoices taxes excluded from the fees, and the You agree 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.

6.3 Delivery. Unless otherwise agreed to, the Software (including its documentation) will be delivered to Customer in binary (electronic) format through electronic software distribution. For delivery from the USA to destinations within the USA, delivery terms are FCA (Free Carrier, INCOTERMS) SUSE's dock. SUSE will ship ground only and prepay freight from SUSE's dock to Your forwarder or named destination. All other freight arrangements will be billed to You. For delivery from the USA to destinations outside the USA, delivery terms are DAP-POE (Delivery At Place – Port of Entry, INCOTERMS). SUSE will select a carrier and will prepay shipping and handling charges. You will be responsible for all applicable import duties and value added tax, goods and services tax, or other similar taxes and fees. For delivery within Europe, the Middle-East and Africa ("EMEA"), delivery terms will be CPT (Carriage Paid To Destination, INCOTERMS). SUSE will select a carrier, prepay the freight and invoice You for freight and any handling costs. Destinations for EU countries will be Your nominated delivery point; for non-EU countries, destination will be the point of

import. CPT does not include the payment by SUSE of taxes or any applicable import duties.

6.4 **Title & Risk of Loss.** For shipment within the United States, title to any deliverables, exclusive of SUSE's rights to intellectual property, and risk of loss will pass to You upon delivery to Your carrier. For shipments from the U.S. to outside the U.S., title to and risk of loss will remain with SUSE until the shipment arrives at the importing country's entry port (or at a bonded warehouse within Canada or Mexico if Customer so requests shipment). For shipments within EMEA (i.e. originating in Ireland), title to and risk of loss passes to You at the Irish shipment point. If You insure shipment, the insurance will protect SUSE's interest until title passes as set forth above. Notwithstanding the above provisions, no title to Master Software is transferred to You.

6.5 **Price and Product Changes.** SUSE may revise the Price List at any time to (a) change the suggested list prices for Software, Subscriptions, and other services or deliverables, and (b) add or delete Software Subscriptions or other services or deliverables available for purchase. Notwithstanding the foregoing, for purposes of this Agreement, the price list shall be the approved GSA Schedule price list.

6.6 **Audit.** You will keep complete and accurate records of all Software use. SUSE may at its expense and upon no less than 5 working days written notice audit Your installation, use, or access of the Software and Your related records and VLA payments. As part of such audit, SUSE is entitled to obtain physical and electronic data concerning all Software installation, use, and access at each of Your offices, regardless of their location. At SUSE's option, the audit may be conducted at Your facilities or from a remote location. An audit may be conducted either by SUSE or by its authorized representative, and will not interfere unreasonably with Your business activities. An audit entity will be conducted no more often than once per calendar year at a location, unless a previous audit disclosed a material discrepancy. If an audit shows You have underpaid fees, You must promptly purchase from SUSE at list price sufficient Software Subscriptions to support the actual deployment, including Subscriptions for the time period of the shortfall.

## 7. TERM AND TERMINATION.

7.1 **Term.** This Agreement will begin on the Effective Date and will remain in effect until SUSE's Subscription obligations under any order accepted by SUSE under this Agreement are fulfilled.

7.2 **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, SUSE shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer.

7.3 **Effect of Termination.** Upon termination of this Agreement for any reason, Your right to acquire and received benefits for VLA Software Subscriptions under this Agreement will immediately terminate. However, unless Your VLA Program participation and this Agreement is terminated by reason of Your violation of

SUSE's intellectual property rights, Your right to continue to use any perpetual licenses will not be affected, including any Upgrades and Updates to which You were entitled under Subscription benefits.

## 8. LIMITED WARRANTY.

8.1 **Software.** SUSE warrants that the Software (including Upgrades/Updates) will conform substantially to the specifications in the Documentation, provided: (a) the Software is not modified by anyone other than SUSE, unless authorized by SUSE in writing; (b) You notify SUSE in writing of the nonconformity within 90 days after You first acquire a Subscription of the Software version; and (c) the Software is installed in a compatible environment. In this Section, "conform substantially" means that the Software conforms to the material specifications in the Documentation. SUSE's only obligation under this warranty, at its option, is to either cause the Software to conform substantially with its specifications or to refund to You the amount paid entitling You to the Upgrade upon Your return of all the Software. In the event of a refund, Your right to use the Software will automatically expire.

8.2 **Services.** SUSE warrants that any Services purchased under this Agreement via signed SOWs will be performed in a professional manner in accordance with generally accepted industry standards. As files may be altered or damaged in the course of SUSE providing technical services, You agree to take appropriate measures to isolate and back up Your systems. This warranty will be effective for 30 days following completion of the Services, in accordance with Section 5.3 above. Upon receipt of written notice of breach of this warranty, SUSE's obligation is to correct the Services so that they comply with this warranty. If SUSE is unable to correct the Services within a reasonable period of time, Your sole remedy is to terminate the relevant SOW and obtain a refund of the amount You paid to SUSE for the Services SUSE is unable to correct.

8.3 **Non-SUSE Products.** SUSE does not warrant non-SUSE products. Any such products are provided on an "AS IS" basis. Any technical or warranty service for non-SUSE products is provided by the product manufacturer in accordance with any applicable manufacturer's warranty.

8.4 **Disclaimer of Warranties.** EXCEPT AS EXPRESSLY SET FORTH IN THESE LIMITED WARRANTY SUBSECTIONS, SUSE AND ITS RESELLERS MAKE NO WARRANTY OR REPRESENTATION REGARDING ANY SOFTWARE OR SERVICES. TO THE EXTENT ALLOWED BY APPLICABLE LAW, SUSE AND ITS RESELLERS DISCLAIM AND EXCLUDE ALL OTHER EXPRESS, IMPLIED, AND STATUTORY WARRANTIES OR CONDITIONS, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, GOOD TITLE, AND NON-INFRINGEMENT. SUSE DOES NOT WARRANT THAT THE SOFTWARE OR SERVICES WILL BE WITHOUT DEFECT OR ERROR, SATISFY YOUR REQUIREMENTS, OR PROVIDE UNINTERRUPTED USE OF THE SOFTWARE.

## 9. LIABILITY LIMITATIONS.

9.1 **Indirect Damages.** TO THE EXTENT ALLOWED BY APPLICABLE LAW, NEITHER SUSE NOR CUSTOMER WILL BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR

CONSEQUENTIAL DAMAGES WHETHER UNDER CONTRACT OR IN TORT (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR INTERRUPTION OF BUSINESS, LOSS OF BUSINESS, LOSS OF PROFITS AND LOSS OF USE OF DATA) RELATED TO OR ARISING OUT OF THIS AGREEMENT, EVEN IF THE BREACHING PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS SECTION DOES NOT APPLY TO VIOLATIONS BY EITHER PARTY OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS.

9.2 Direct Damages. SUSE's liability for damages of any type arising out of or related to this Agreement shall be limited to the greater of 1.25 times the actual amounts paid by You for the Software Subscription, service, or deliverable in question, or US\$10,000. This subsection does not apply to any damages for fraud, death, personal injury or tangible property caused by the negligence or willful default of SUSE.

## 10. GENERAL.

10.1 Choice of Law. All matters arising out of or relating to the Agreement will be governed by the substantive Federal laws of the United States without regard to its choice of law provisions, unless the laws of the state, province, or country of Your domicile require otherwise, in which case the laws so required will govern.

10.1.1 However, if Your principal residence is in (a) a member state of the European Union or (b) a member state of the European Free Trade Association (c) the Republic of South Africa, or (d) Canada, the governing law is that of the country of Your principal residence (and for Canadian customers, the law of the Province of Ontario). If Your principal residence is in any other country in Europe the applicable law will be the law of the Federal Republic of Germany. If Your principal residence is in the Middle-East or Africa (except South Africa), the applicable law will be the law of England. To the extent allowed by applicable law, the terms of the United Nations Convention on the International Sale of Goods will not apply, even where adopted as part of the domestic law of the country whose law governs the relationship.

10.1.2 Each party will, at its own expense, comply with any applicable law, statute, administrative order or regulation. Any suit, action or proceeding arising out of or relating to the Agreement may only be brought before a court of appropriate jurisdiction in the state whose law governs this Agreement under the terms of this Section. If a party initiates legal proceedings related to this Agreement, the prevailing party will be entitled to recover reasonable attorney's fees.

10.2 Assignment. Neither party may transfer or assign any Agreement right or obligation without the prior written consent of the other.

10.3 Confidentiality Obligations. The receiving party of Confidential Information will exercise reasonable care to protect any Confidential Information from unauthorized disclosure or use. The receiving party may disclose Confidential Information only to its employees or agents with a need to know such information and will inform such employees and agents by way of policy or agreement that they are bound by confidentiality obligations. "Confidential Information" means the terms of this

Agreement and any other information that (i) if disclosed in tangible form, is marked in writing as confidential, or (ii) if disclosed orally or visually, is designated orally at the time of disclosure as "confidential." Confidential Information will not include information (a) already in the receiving party's possession without obligation of confidence; or (b) independently developed by the receiving party; or (c) that becomes available to the general public without breach of this Agreement; or (d) rightfully received by the receiving party from a third party without obligation of confidence; or (e) released for disclosure by the disclosing party with its written consent; or (f) required to be disclosed by law, regulation, or court order. SUSE recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which may require that certain information be released, despite being characterized as "confidential" by the vendor. These confidentiality obligations will survive 3 years after expiration or termination of this Agreement. SUSE retains the right to use its knowledge and experience (including processes, ideas, and techniques) learned or developed in the course of providing any services to You.

10.4 Publicity. You agree that SUSE may use Your participation in the VLA Program as a commercial reference to the extent permitted by the General Services Acquisition Regulation (GSAR) 552.203-71 unless You otherwise inform SUSE in writing.

10.5 Entire Agreement. This Agreement sets forth the entire agreement and understanding between the parties as to its subject matter. This Agreement supersedes all prior and contemporaneous agreements, proposals and statements on this subject matter. SUSE may change the terms of this Agreement by giving You notice by letter, email or other written publication. Such change applies as of the date SUSE specifies in the notice. You agree that you have consented to any such change if You do not notify SUSE in writing, prior to the effective date specified in SUSE's written publication, that You disagree with the change. Except as otherwise stated herein, this Agreement may only be modified in writing signed by authorized representatives of each party. Purchase order terms will not modify the Agreement unless the parties agree otherwise in writing.

10.6 Severability/Waiver. If a provision is invalid or unenforceable, the remaining provisions will remain in effect and the parties will amend the Agreement to reflect the original agreement to the maximum extent possible. No waiver of any contractual right will be effective unless in writing by an authorized representative of the waiving party. No waiver of a right arising from any breach or failure to perform will be deemed a waiver of any future right.

10.7 Notices. Notices to a party must be in writing and sent to the party's address provided above or such other address as a party may provide in writing. Notices may be delivered in a format reasonably chosen by the notifying party.

10.8 Force Majeure. Excusable delays shall be governed by FAR 52.212-4(f).

10.9 Survival. The provisions of this Agreement, which by their nature extend beyond termination of the Agreement, including Sections 2, Licensing, 6.6, Audit, 8, Limited Warranty, 9,

Liability Limitations, and 10, General, will survive termination of the Agreement.

10.10 Intellectual Property Rights/Remedies. Nothing in this Agreement waives or limits extra-contractual rights or remedies available to SUSE to protect its rights in the Software, including those available under U.S. copyright law, international treaties, or national copyright and intellectual property laws of the countries in which You may use the Software.

10.11 Export Compliance. Any products or technical information provided under this Agreement may be subject to U.S. export controls and the trade laws of other countries. The parties agree to comply with all export control regulations and to obtain any required licenses or item classification to export, re-export or import deliverables. The parties agree not to export or re-export to entities on the current U.S. export exclusion lists or to

any embargoed or terrorist supporting countries as specified in the Export Administration Regulations (EAR). The parties will not use deliverables for prohibited nuclear, missile, or chemical biological weaponry end uses as specified in the EAR. Please consult the Bureau of Industry and Security web page: [www.bis.doc.gov](http://www.bis.doc.gov) before exporting or re-exporting items subject to the EAR. Refer to: [www.suse.com/company/legal/](http://www.suse.com/company/legal/) for more information on exporting Software. Upon request, SUSE can provide information regarding applicable export restrictions. However, SUSE assumes no responsibility for Your failure to obtain any necessary export approvals.

Customer agrees to the terms of this Agreement and has caused it to be accepted by an authorized representative.

**Volume License Agreement**

# Program Guide

2021-01-14, v2.0



# Volume License Agreement – Program Guide

The SUSE Volume License Agreement (VLA) program offers a flexible, easy and affordable way to purchase SUSE products and solutions. There is no minimum purchase, no signed contract, and you can purchase from one of SUSE’s many authorized resellers.

(The information presented here is applicable worldwide, with exceptions as noted, and generally describes the VLA. This program guide is subject to change, however, for purposes of this Agreement, only changes made and agreed to in writing will be incorporated. All buying programs are governed by the terms and conditions of the specific licensing agreement, which incorporates the information provided in this program guide. For VLA, the terms and conditions of the program agreement can be found at: [https://www.suse.com/media/agreement/suse\\_vla.pdf](https://www.suse.com/media/agreement/suse_vla.pdf).)

## Licensing

**SUSE Software** – SUSE software products are delivered as subscriptions which allow you to use the software and its entitlements such as support and other services for a specified period, typically 1, 3, or 5 years. (Note: The approved price list for the “SUSE® Linux Enterprise GSA End User License Agreement for SUSE products” contract is the approved GSA Schedule price list. Only multi-year SKUs included as a part of this approved GSA Schedule price list will be allowed. In the event no multi-year SKUs are provided are on the approved GSA Schedule price list, then those SKUs will not be included as a part of this Agreement.) When you purchase a subscription for a SUSE product, you can use the subscription for the period for which subscription fees have been paid. Your subscription will include software upgrade, updates, and technical support for the duration of your subscription (hereafter, a “SUSE Subscription”).

When you purchase SUSE Subscriptions:

- The grants and restrictions for the use of the software are contained in the End User License Agreement (EULA) accompanying the software. A copy of the EULA can be obtained at: <https://www.suse.com/licensing/eula/>. For purposes of this agreement, the EULA is attached.
- The terms and conditions governing the SUSE Subscription offerings (e.g. counting options and units of measure) are specified at: [https://www.suse.com/products/terms\\_and\\_conditions.pdf](https://www.suse.com/products/terms_and_conditions.pdf).

For purposes of this Agreement, these terms are attached as Exhibit A.

- The terms and conditions of the VLA program can be found at: [https://www.suse.com/licensing/vla\\_documents/](https://www.suse.com/licensing/vla_documents/). For purposes of this Agreement, this VLA Program Guide is incorporated and attached to the Agreement.

When you purchase a SUSE Subscription from your authorized reseller via the VLA Program, the subscriptions and its entitlements for technical support and updates and upgrades will be delivered to you electronically by SUSE to your specified email address, directly upon receiving your valid order.

## SUSE Subscriptions

SUSE Subscriptions are a critical component of our SUSE buying programs. SUSE Subscriptions are part of our ongoing commitment to help you achieve success with your solutions and products. With SUSE Subscriptions, you receive the software upgrades, updates, and technical support you need to manage costs, minimize risks, and focus on meeting your business objectives.

**Product Upgrades and Updates** – SUSE Subscriptions provide you with immediate access to new software releases and updates without additional costs, complicated budgeting cycles or individual software purchase requests. You can obtain the latest upgrades and updates automatically for access to the features and functionality that can help you maintain the highest levels of security and productivity.

**Technical Support** – Your SUSE Subscription entitles you to a direct connection to our award-winning support organization.

Support Benefits	Standard SUSE Subscription 12x5	Priority SUSE Subscription 24x7x365
<b>ACCESS</b>		
<b>TECHNICAL SUPPORT INCIDENTS</b>	Unlimited	Unlimited
<b>RESPONSE TIME</b>	Severity 1 = 2 hours Severity 2 = 4 hours Severity 3 = Next business day Severity 4 = Next business day	Severity 1 = 1 hour Severity 2 = 2 hours Severity 3 = 4 hours Severity 4 = Next business day

**Rancher Support** – December 1, 2020, SUSE finalized the acquisition of Rancher Labs. For ease of continued business operations, SUSE will honor all existing Rancher customer contracts to avoid degradation of services received. Rancher customers will continue to receive support as more fully described at <https://rancher.com/support-maintenance-terms/>. Upon renewal of the Rancher subscription, Rancher customers on Rancher Standard technical support will transfer and renew at the SUSE Standard support level. Rancher customers who purchased Rancher Platinum technical support will transfer and renew at the SUSE Priority support level. Rancher customers may not downgrade Rancher Platinum technical support to SUSE Standard level of technical support. Upon renewal or future purchases of Rancher products and services, Rancher customers will transition into the relevant SUSE buying program.

## Pricing

VLA pricing is based on your program participation and current (published) recommended reseller pricing. However, your authorized reseller determines final pricing in accordance with the approved GSA Schedule price list.

Special VLA purchasing and subscription options, on top of the general VLA benefits, are available to qualified institutions. SUSE has the following special VLA programs:

- For federal government (VLA-FED)
- For recognized non-profit organizations (VLA-NPG)
- For schools or academic institutions (VLA-ED)
- For academic hospitals and public libraries (VLA-ED)
- For resellers who host SUSE Subscriptions on behalf of a customer (VLA-HOST)

Contact your authorized reseller to see if you qualify for any of these VLA programs and if additional benefits may apply.

### Establishing Your Volume License Agreement

Virtually all SUSE software products are available to VLA customers through our authorized resellers.

We require no special forms, but to be able to deliver and subsequently support you, your order to your reseller needs to include the following information with your Purchase Order:

- **Company name** – as registered with the Chamber of Commerce, and full address
- **Contact information**
  - Contact person
  - Phone
  - Email
  - Delivery Email (if different than contact email). This will be used for guaranteed software delivery and to get access to support.
- **Product order** – per product
  - Correct and valid part number(s) – i.e., available via current and published VLA Price List
  - Quantity
  - Subscription start and end dates – if period is different from the agreed subscription term (see paragraph ‘Detailed Purchasing Requirements’ for further details).
- **VLA customer number**
- **Any other information your authorized reseller requires to process the order, such as Billing Address, VAT Number, etc.**

With your first VLA order, you'll receive a VLA customer number which should accompany all future orders. Your authorized reseller will also receive this number and must use it to place your order with a distributor. You may choose and change resellers at any time – no notification to SUSE is required, and you can continue to use your VLA customer number. An overview of resellers can be found at <https://partner.suse.com/directory/>. These resellers have built a recognized level of SUSE solution expertise, however, you can select any other authorized reseller of your choice.

### Using Your Volume License Agreement Number

You are able to manage all subscription entitlements via a single VLA agreement number, provided that all purchases and deliveries go through the original purchasing entity location associated with the specific VLA contract.

Alternatively, each affiliated business location or division may choose to establish its own VLA number. If you wish, you can use one or several VLA numbers to administer SUSE products.

### Fulfilling Your Order

When you place an order with your authorized reseller, the authorized reseller transmits the order to an authorized distributor and then to SUSE. We fulfill the order directly. To help you receive and deploy the software as seamlessly as possible, we deliver SUSE Subscriptions and related documentation electronically. When you order, you will receive a web link to a page from which you can log in and download your software. We will send electronic media to the email address you provide on your order.

Software and media kits include the software you need to install your products. Although the software itself may not restrict additional installations, you may install only up to the number of SUSE Subscriptions for you have paid the relevant subscriptions fees.

**Purchasing Subscriptions for Your Entire Install Base** – To receive technical support benefits for SUSE products, you must have purchased Standard and/or Priority Subscriptions for all SUSE software acquired, deployed, or installed (see the SUSE Subscription Offering Terms and Conditions). You may mix Standard and Priority Subscription types according to the support coverage you need for specific servers. You must purchase SUSE Subscriptions for all instances of your SUSE product from the day you copy, install, deploy, or use it. If you have a SUSE Subscription for a product without covering all instances of the full install base that your company deploys, you might create compliance and contract infringements that could result in:

- Loss of access to technical support for any instance of the product affected
- Subscription compliance verification in line with agreement terms and conditions

- Additional costs: if you cannot provide reasonable evidence of the copying, installation, deployment, or use date, you may be required to pay back SUSE Subscription fees from the initial date of product purchase.

**SUSE Subscription Coverage Dates** – We sell SUSE Subscriptions in increments of 1, 3, or 5 years. (Note: The approved price list for the “SUSE® Linux Enterprise GSA End User License Agreement for SUSE products” contract is the approved GSA Schedule price list. Only multi-year SKUs included as a part of this approved GSA Schedule price list will be allowed. In the event no multi-year SKUs are provided are on the approved GSA Schedule price list, then those SKUs will not be included as a part of this Agreement.) We calculate the term from the first day of the following month through the purchased period. For example, for Subscription that you purchase on January 15, your billing term will begin on February 1, and expire on January 31 of the following year. While your term begins on the first of the month, you are entitled to receive coverage and benefits from the date of your Subscription purchase in the prior month. Many customers experience incremental growth, requiring them to make multiple SUSE Subscription purchases throughout the year. Therefore, you might have multiple renewals each year.

**Managing Your Subscriptions** – You can register, maintain, and view your Subscriptions at SUSE Customer Center: <https://scc.suse.com/login>. From SUSE Customer Center, you can also access technical support. If you experience issues registering with SCC after purchase of Subscriptions for a product, please contact [entitlements@suse.com](mailto:entitlements@suse.com).

### Renewing Your Subscriptions

You can easily manage the renewal of your purchased SUSE Subscriptions. SUSE may send you a renewal notification(s) via email to inform you when a purchased Subscription is getting close to expiration. However, not receiving such notification shall not relieve you of any obligations set forth in the VLA and VLA program requirements. The notification will contain the number of SUSE Subscriptions, as well as part numbers, that are up for renewal, so it is simple to provide this information to your reseller.

SUSE does not have renewal part numbers, so if you need a different number of Subscriptions from what is indicated on the renewal notification, simply adjust the required quantity on the order request to your authorized reseller. You may also add other SUSE products to the same order. However, please ensure that you conduct a proper count of needed SUSE Subscriptions, because your order will be deemed a correct representation of the number of SUSE Subscriptions.

**Renewing on Time** – SUSE may release several high-security patches every month (on average about 10 per month, depending upon the product), in addition to numerous other important but non-critical improvements. These allow you to avoid security vulnerabilities and reduce risk continuously. To ensure that you do not incur unintentional gaps in support – even as short as a few days – we recommend that you place SUSE Subscription renewal purchase orders with your reseller at least five days before the renewal due date.

In addition to the convenience of uninterrupted critical support services, compliance with software license policies, as well as contractual terms and conditions, uninterrupted services provide some additional key benefits:

- Reduce administrative time: Continuation of existing subscription key installment. In short, your existing environment does not require re-initiation of new subscription keys. If the order is placed on time, the old keys remain active, reducing the amount of time you have to register the environment.
- Avoid unintended service surprises: Continuation of SUSE technical support, project support, and/or consultancy is dependent upon the underlying Subscriptions. If those expire, the technical services – such as a Support Engineer or Long Term Support Services – are temporarily suspended as well.
- You want to keep your rights: Certain products may have “grandfather” rules through which SUSE allows use of product features that are no longer included in the most recent version (an may have become paid-for services instead). Breaking continuous support will also discontinue any “grandfather” benefits (including pricing) you may have received.

That may result in unaccounted for additional fees when finally renewing.

- Experience continuous support from 3<sup>rd</sup>-party vendors: When your Subscriptions are no longer supported, often your support for the underlying hardware or the support for the certified workloads that you run with the Subscriptions may also go partly unsupported, even if your maintenance support with the hardware vendor is still current.
- Receive continuous support for your service requests: Any open Service Request worked on by SUSE Engineering that is related to SUSE Subscriptions that are not current will be placed on hold. Also, many hardware and software vendors have level 3 (back-end) engineering integration with SUSE, where we work together on reported bugs and issues. In these cases as well, if the related Subscriptions and fees are no longer current, the reported issues will be put on hold.

SUSE wants to make sure you can benefit from the services and support that you need – continuously. Therefore, if you run into the situation of unforeseen delays in your SUSE Subscription renewal (or have any other renewal-related issues), please contact your SUSE Renewal Sales Representative directly as soon as possible so that we can help you address the potential gap in coverage.

**Co-Terming Your SUSE Subscriptions of the Same Product to One Date**

– Rather than having multiple renewals each year, you may consolidate your renewals to one convenient co-term date. You may want to do so for convenience either related to SUSE Subscriptions with different end dates or related to dates that are important for you to run the business (e.g., related to budget cycles or other hardware/software renewal dates).

To co-term SUSE Subscriptions, SUSE supports the purchase of a different subscription duration time frame than is standard for a part number. Depending on the product, SUSE Subscriptions may be available as 1, 3, or 5-year part numbers. When co-terming, the selected time frame cannot be shorter than stipulated by the chosen part number duration. In addition, your reseller needs to align with SUSE before placing the order.

For example: You would like to purchase a SUSE Subscription for Product A for 15 months to be able to co-term it with another subscription for the same product. You could do this by purchasing Product A, which has a part number valid for 1 year, and pro-rate it for 15 months instead.

However, in the same example, you would not be able to co-term Product A for 3 months instead because Product A has a minimal subscription duration set for 1 year.

In short, co-terming is always for a period longer than 1 year.

**Detailed Purchasing Requirements – What to Buy and When**

You must purchase Standard and/or Priority Subscriptions for all SUSE products acquired, installed, deployed or used during the full duration of your Subscription term. This includes all SUSE products you previously acquired outside of your participation in the VLA program and agreement. All SUSE products you deploy should be under current SUSE Subscription support via the VLA Program (or other SUSE authorized buying program<sup>1</sup>). You can review the support product information for your SUSE Subscriptions at: <https://www.suse.com/support/>.

**Subscription Availability, Past-version Product Rights –**

You can purchase SUSE Subscriptions during the General Support phase of the Product Support Lifecycle. Support beyond the General Support phase may be available for an additional fee plus current SUSE Subscriptions fees on the replacement product. With Subscriptions you are automatically entitled to new product upgrades and updates as soon as they become available. All products you license under the VLA are licensed for prior versions. You can purchase current SUSE

Subscriptions without having to redeploy your installed versions. For example, in many cases, if you purchase or subscribe to Product A 7.0, you may opt to use Product A 6.5 until you are ready to begin using the latest version. However, at no point may a previous version and updated version be simultaneously installed under the same Subscription. Although you have the flexibility to run older versions of products, full support may only be available on the most recent versions.

Some of the benefits of past-version product rights include:

- Flexibility – You can choose the product version you want to install, yet still be licensed to use an earlier version when you choose to do so.
- Lower Costs – You can purchase the latest version release and choose to use an older version of the software. Because you are already licensed for the current version, you can migrate to the current version when you are ready at no additional cost.

Although you may be using a prior product version, the latest version release of the SUSE software determines the licensing requirements for this product. For example, if you are licensed for Product B 8.0 (which is licensed or counted by users), but are using Product B 5.1 (which is licensed or counted by server connections), you would determine licensing counts by user.

When possible, you should use your existing, previous-version media for installation: we will not always have media available for previous-versions when you need new installations of previous-versions. You may not make new copies of previous versions.

An overview of the available support from the moment of General Availability (GA) of a product version, its Service Packs under support, and additional support services or restrictions can be found at: [www.suse.com/lifecycle](http://www.suse.com/lifecycle).

**Cancelling Your Auto Renewals – (NOTE: The following section does not apply to this Agreement.)**

**Through the VLA’s auto-renewal provision, continuous renewal of your SUSE Subscriptions assures guaranteed and uninterrupted support, even when your purchase order at an authorized reseller of choice may be delayed. In that case, SUSE provides uninterrupted support services and you have provided authorization for your authorized reseller to invoice you for the support services automatically.**

**To stop the continuous support for automatic invoicing agreement, you need to notify SUSE via a cancellation notification an adequate number of days as specified in the VLA before your renewal date. The address to use for Auto Renewals is the same as for cancellation of the VLA contract (see below).**

**Cancelling Your Volume License Agreement**

Termination of your VLA is governed by the Volume License Agreement. Termination takes effect after your last SUSE Subscriptions have expired. You must inform us an adequate number of days as specified in the VLA prior to the last SUSE Subscription expiration date.

Please use the following address:

<p><b>North America, Canada, Latin America, and Asia Pacific</b></p>	<p>Attn: Le  cor</p>
<p><b>Europe, Middle East, and Africa</b></p>	<p>SUSE So Attn: Cor Sandyford  <a href="#">EMEA C</a></p>

SUSE Subscription fees and other VLA purchases are not refundable except as may be expressly stated otherwise in your VLA agreement.

**Additional Support, Training, and Consulting Services**  
Our service offerings give you peace of mind as you design, build, and support your IT systems. You can build a customized pack to meet your needs and maximize the value of your investment in our products. Pricing for add-on support services is available on the VLA price list<sup>2</sup>.

We provide a broad spectrum of certification and training opportunities to support the solutions that power your business. We also provide direct consulting services to help you implement the best enterprise technology solutions based on our products. For services we provide under the MLA through a statement of work, the MLA terms (or a separately signed services agreement, if applicable), along with this Program Guide, govern the purchase of those services. If you have a non-standard MLA that does not contain services terms, in the absence of a separately signed services agreement, the SUSE standard terms and conditions accompanying the statement of work govern the purchase of those services and are considered as part of this Program Guide.

## Appendix

**Notifications for Software Updates** – You can subscribe to receive notifications of software updates at SUSE Customer Center. Visit [www.suse.com/support](http://www.suse.com/support) for links to SUSE Customer Center, discussion forums, available updates and more.

**Product Support Lifecycle** – You should periodically review the product support lifecycle information for your products. This information can be found on: [www.suse.com/lifecycle](http://www.suse.com/lifecycle).  
**Contact** – Contact your local SUSE authorized reseller or call SUSE Sales at 1(800) 796-3700.

## Notes

<sup>1</sup>The following SUSE Subscriptions are under valid support in combination with additional Subscriptions purchased via the VLA program:

- If obtained via Original equipment manufacturer (OEM) hardware or appliance delivery where the SUSE Subscription is valid;
- Active SUSE Subscriptions obtained either via a reseller or directly via another SUSE recognized buying program. For example, SUSE VLA-ED Program, SUSE Cloud Service Provider Program (CSP) or the SUSE Shop.
- Evaluation subscription within the approved evaluation program.
- Extended Evaluation use of SUSE subscriptions agreed to in additional SUSE programs among others but not limited to: SUSE Partner One Program (for demo and proof of concept purposes), SUSE Academic Program (for continuous education lab environment for promotion of open sources towards students).

The SUSE Master License Agreement (MLA) and Volume License Agreement (VLA) cannot be used by the same customer, and will require additional review and approval from SUSE.

<sup>2</sup>Instructor-led certified SUSE product and solution trainings are delivered by our authorized training partners and are related to but not directly part of the VLA buying program. For more details, check out <https://training.suse.com> for options.



Support Benefits	Standard Support Subscription	Priority Support Subscription
Access	12-hour, business days	24-hour, 365 days per year
Technical Support Service Requests	Unlimited	Unlimited















# SUSE Support

Implementing SUSE solutions for the first time or expanding your IT infrastructure to meet the needs of the digital economy? SUSE® Support is your key to success with your enterprise-grade, open source solutions with a global partner that is always on, experienced and treats you like family.

## Standards:

- **Always on:**  
Available when you need us. Connect online using forums, knowledgebase articles, documentation and chat (online or phone).
- **Experienced:**  
Over 25 years of open source experience, affording you the deep technical expertise to quickly troubleshoot issues. Collaboration with product engineers and managers.
- **Treats you like family:**  
With you every step of the way, from logging new incidents to problem resolution. Just like family, SUSE Support is transparent, proactive and honest.
- **Product:**  
SUSE Support

and communities to deliver enterprise-grade, open source solutions and will be your advocate for new features and upstream fixes for your open source solutions. Our holistic approach to support ensures you get the most of your software solutions. An open source solution backed by SUSE Support means you have the SUSE team behind you helping you achieve your business success.

**Backed by SUSE Support**  
Backed by SUSE Support means peace of mind for your business. From business critical systems to edge devices, if you are running open source software, you need to be sure you are backed with quality support. Because you cannot afford failure, downtime is not an option.

Support means you are using an enterprise grade, secure product that is hardened and secured for the most demanding of IT departments—yours.

You also receive proven, worldwide, follow-the-sun, personalized support from the leaders in open source. SUSE Support provides a holistic approach to support, ensuring that you get the most from your solutions, including access to hundreds of online articles, technical documentation, blogs and forums. The SUSE Support team cares about your business success.

SUSE Support is founded on three guiding principles:

1. **Always On.** SUSE Support is available when you need help. You can contact

us via phone, web or chat. SUSE provides flexible support options, so you always get the right level of support for your business. Follow the sun support means that you can access live people in your geography. You can also connect with SUSE through our forums (monitored by community members), knowledgebase articles and technical documentation.

2. **Experienced.** SUSE has more than 25 years of open source experience. Our support engineers have the deep technical knowledge to help you minimize downtime and quickly troubleshoot issues. Our support, product engineering and product management teams collaborate regularly with each other and the open source community, so we can proactively release multiple security patches and updates to your software.
3. **Treats You Like Family.** Our support engineers care about your success and are with you every step of the way, from logging a new incident to problem resolution, just like family. We are transparent and proactive and will communicate with you openly and honestly. Our goal is your complete satisfaction.

“A community-supported Linux distribution would not provide the required infrastructure and support, leaving our network at risk. We wanted an enterprisegrade solution and SUSE was the obvious choice.”

HELMUT TRILLER  
IT Director Backend and Cloud Services  
Knorr-Bremse

Backed by SUSE Support means your business is secure in the knowledge that it will always have a relationship with a SUSE team that provides business value and customer satisfaction.

**SUPPORT THE WAY YOU WANT IT**

SUSE Support comes in two tiers, standard and priority, giving you the flexibility to choose the level of support that best meets your needs.

For software used in non-critical production and test environments without the need for 24x7 support coverage, we offer a SUSE Standard Subscription. With this support option, you receive:

- Access to the team during business hours, in your local geography.
- Access to all updates, patches and security fixes.
- Unlimited support cases and access to all SUSE product information, knowledgebase articles and forums.

Standard	
Software Upgrades & Updates	Yes
Technical Support	Unlimited
Methods of Access	Chat, Phone, Web
Access Hours of	12x5
Access	2 Hours Severity 1 4 Hours Severity 2 Next Business Day Severity 3 Next Business

For software used in production environments and business-critical solutions, we offer the SUSE Priority Subscription. With this support option, you receive:

- All the benefits of the SUSE Standard Subscription.
- Access to the team 24x7.
- Rapid response times of as little as 60 minutes.

Priority	
Software Upgrades & Updates	Yes
Technical Support	Unlimited
Methods of Access	Chat, Phone, Web
Response	1 Hour Severity 1 2 Hours Severity 2 4 Hours Severity 2 Next Business Day

Choose the right open source solution for your business—choose a solution backed by SUSE Support

“The SUSE support is second to none—thanks to the close collaboration between SUSE, SAP and IBM, we get quick and comprehensive responses from the support team and can keep our systems running reliably.”

VOLKER FISCHER  
Senior Manager Server Services  
Bosch Group

# TARGUS WARRANTY

# TARGUS LIMITED WARRANTY

**WHO IS COVERED?** This limited warranty is non-transferable and covers only the original end purchaser. Coverage terminates when the original purchaser sells or otherwise transfers the product. An original or copy of a sales receipt from the original Targus authorized sales retailer is required for warranty service. This limited warranty does not cover products purchased from 3rd party sellers on online sales auction sites. Online sales auction confirmations are NOT accepted for warranty verification.

**WHAT IS COVERED?** Targus warrants that the following products (the "Product(s)") will be free from defects in workmanship and materials under normal use for the durations set forth immediately below ("Limited Warranty Period"):

- For Targus notebook cases, a limited lifetime warranty on the case for as long as the original end purchaser owns the product, with one (1) year from the date of original purchase on any electronic parts incorporated into such cases.
- For Targus docking stations and Targus CD/DVD carrying cases, three (3) years from the date of original purchase.
- For Targus power adapter products, two (2) years from the date of original purchase.
- For Targus tablet and e-Reader cases purchased before January 1, 2015, one (1) year from the date of original purchase.
- For Targus tablet and e-Reader cases purchased after January 1, 2015, a limited lifetime warranty on the case for as long as the original end purchaser owns the product, with one (1) year from the date of original purchase on any electronic parts incorporated into such cases.
- For smartphone cases and all other Targus products, one (1) year from the date of original purchase.

## WHAT IS NOT COVERED?

- Normal wear and tear of Product use;
- Misuse, lack of care, mishandling, accident, abuse or other abnormal use, or acts of God, such as floods and earthquakes;
- Use of the Product other than for its intended purpose;
- Damage caused by improper or unauthorized repair or maintenance;
- Product that has been modified or altered;
- Any product that is not manufactured by Targus (including, without limitation, any non-Targus product that is used in connection with the Product).

**HOW TO MAKE A WARRANTY CLAIM:** To report a warranty defect, please contact customer support through the [Ask a Question](#) tab located in our FAQ Knowledge Base. International customers should contact the [Targus office closest to you](#). Please include your telephone number so that we may contact you.

When submitting a warranty claim, we will require proof that the claim is valid. In this regard, we will always require that (i) you provide us with an original or copy of your sales receipt as proof of purchase and (ii) you return your product to us for warranty coverage verification. You are responsible for shipping costs to Targus but there is no charge for the inspection or the return postage. Targus is not liable for Products that are damaged or lost in transit to Targus. We recommend that you ship your returned Products to Targus via a trackable shipment method. You are responsible for customs fees, including, but not limited to, taxes, duties and brokerage.

All products returned to Targus will be subject to review for authenticity. Products determined to be counterfeit will be confiscated and turned over to our legal department for action. Counterfeit cases will not be returned and consumers should seek restitution from their original place of purchase.

**SOLE AND EXCLUSIVE REMEDY:** If we find that the Product is defective in materials or workmanship and otherwise meets the terms of the applicable limited warranty, your sole and exclusive remedy for a breach of this limited warranty, and Targus's sole and entire liability is, at Targus's option, to repair or replace the defective Product using new or refurbished parts or Products. Repair or replacement (including parts and labor and shipping costs) shall be made at Targus's expense. Targus reserves the right to send you a replacement product that is the same or of a similar style or a substitute equivalent that may not be of like kind (depending on availability). Replacement products are warranted as above for the remainder of the original applicable Product Warranty Period. For purposes of this limited warranty, "refurbished" means a product or part that has been substantially returned to its original specifications.

## WARRANTY DISCLAIMERS

EXCEPT AS EXPRESSLY SET FORTH ABOVE IN THIS LIMITED WARRANTY, TARGUS MAKES NO OTHER EXPRESS OR IMPLIED WARRANTIES TO THE EXTENT PERMITTED BY LAW AND SPECIFICALLY DISCLAIMS AND EXCLUDES ALL IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF NON-INFRINGEMENT OF THIRD PARTY RIGHTS, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. IF SUCH DISCLAIMER OF ANY IMPLIED WARRANTY IS NOT PERMITTED BY LAW, THE DURATION OF ANY SUCH IMPLIED WARRANTIES IS LIMITED TO THE DURATIONS SET FORTH IN THIS LIMITED WARRANTY. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES OR LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY MAY LAST, SO SUCH LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO YOU. THIS WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS AND YOU MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM JURISDICTION TO JURISDICTION.

## LIMITATION OF LIABILITY

IN NO EVENT SHALL TARGUS OR ITS SUPPLIERS BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR EXEMPLARY DAMAGES ARISING OUT OF THE USE OF THE PRODUCT, INCLUDING, WITHOUT LIMITATION, PROPERTY DAMAGE, LOSS OF VALUE OF THE PRODUCT OR ANY THIRD PARTY PRODUCTS THAT ARE USED IN OR WITH THE PRODUCT, OR LOSS OF USE OF THE PRODUCT OR ANY THIRD PARTY PRODUCTS THAT ARE USED IN OR WITH THE PRODUCT, EVEN IF TARGUS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. TARGUS HAS NO LIABILITY FOR ANY DAMAGE OR DESTRUCTION TO CONSUMER ELECTRONICS DEVICES OR OTHER PERSONAL PROPERTY THAT ARE IN OR CONNECTED TO THE PRODUCTS, INCLUDING, WITHOUT LIMITATION, LAPTOPS, TABLETS, SMARTPHONES, OR OTHER DEVICES, OR ANY LOSS OF DATA CONTAINED IN THE FOREGOING DEVICES. NOTWITHSTANDING ANY DAMAGES THAT YOU MIGHT INCUR FOR ANY REASON WHATSOEVER (INCLUDING, WITHOUT LIMITATION, ALL DAMAGES REFERENCED HEREIN AND ALL DIRECT OR GENERAL DAMAGES IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE), THE ENTIRE LIABILITY OF TARGUS AND ANY OF ITS SUPPLIERS SHALL BE LIMITED TO THE AMOUNT ACTUALLY PAID BY YOU FOR THE PRODUCT. SOME STATES AND/OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO YOU.

**Please Note:** Features and specifications of all Targus products are subject to change without notification.



# VEEAM EULA

# Veeam Software ("Veeam") End User Software License Agreement ("EULA")

## Important - Read Carefully

This EULA is a legally binding agreement between licensee end user ("End User") and Veeam setting forth the terms and conditions governing the use and operation of Veeam's proprietary computer software products (the "Software") and the written technical specifications for the use and operation of the Software (the "Documentation"). Where the sense and context permit, references in this EULA to the Software include the Documentation. By downloading and installing, copying or otherwise using the Software, and/or otherwise accepting this EULA, End User agrees to be bound by the terms and conditions of this EULA. If End User does not agree to or accept the terms of this EULA, End User may not access or use the Software.

## 1.0 Definitions

- 1.1 "Fee(s)" means any License, Maintenance, professional services, consulting or other Fees agreed to by the parties as set forth in a Transaction Document.
- 1.2 "Maintenance" and "Maintenance Policies" have the respective meanings set forth in Section 3.0.
- 1.3 "Transaction" and "Transaction Document" have the following meanings: "Transaction(s)" is a License transaction pursuant to which End User: i) accepts this EULA as provided above and ii) takes actual or constructive possession of the Software.
- 1.4 "Open Source" means various open source software components licensed under the terms of applicable open source license agreements included in the materials relating to such software. Open Source Software is composed of individual software components, each of which has its own copyright and its own applicable license conditions. A current list of Open Source Software used by Veeam can be found at <http://www.veeam.com/eula-oss.html>.

## 2.0 Grant of License

2.1 License Grant. When the Software is delivered to End User as part of a Transaction, End User will have, subject to the terms and conditions of this EULA, a perpetual, non-transferable, non-exclusive, license ("License"), to use the Software in object code format, solely for End User's internal business purposes for the management and processing of its own data and not the data of any third party(ies). Notwithstanding the above, subject to Section 7.0 Assignment, Veeam agrees that it will permit the transfer of fully paid licenses in the event the State merges or consolidates state entities.

## 3.0 Maintenance

Maintenance and support ("Maintenance") for the Software will be available in accordance with Veeam's applicable Maintenance Policies then in effect and shall commence on delivery of the Software. Provided End User is current on Maintenance, End User will receive (a) online support and (b) any Software updates, enhancements and/or improvements that are included or otherwise separately defined under the Maintenance Policies and are not licensed by Veeam at its discretion to its customers for a separate charge. Veeam's current Maintenance Policies can be found at [http://www.veeam.com/files/veeam\\_software\\_support\\_policy.pdf](http://www.veeam.com/files/veeam_software_support_policy.pdf).

## 4.0 Copyright and Other Restrictions

The Software is protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. The Software is licensed, not sold. The Software contains copyrighted material, trade secrets and other proprietary material of Veeam. All right, title and interest in the Software remains at all times with Veeam. In no event will End User directly or indirectly permit the Software to be decompiled, reverse engineered, or disassembled. End User will not disclose, transfer or otherwise make available the Software or the results of any benchmark or other tests of the Software, to any third party without the prior written consent of Veeam. End User shall not remove any proprietary notices from the Software. End User may make one copy of the Software solely for backup or archival purposes.

## 5.0 Audit

During the term of this Agreement and for a period of one year thereafter, Veeam may, during normal business hours and upon reasonable prior notice to End User, inspect the files, computer processors, equipment and facilities of End User to verify End User's compliance with this EULA.

## 6.0 Limited Warranty and Limitation of Liability

Veeam warrants that it has the right and authority to grant the License under this EULA. Veeam, subject to Ohio Revised Code Section 109.02, will defend or, at its option, settle any action against End User based upon a claim that its use of the Software infringes any patent, copyright or other intellectual property right of a third party, and will indemnify End User against any amounts awarded against End User as a result of the claim, provided Veeam is promptly notified of the assertion of the claim and has control of its defense or settlement. Veeam warrants that the Software, in its unmodified form as initially delivered or made available to End User, will perform substantially in accordance with the Documentation for a warranty period of ninety (90) days from the date the Software is delivered to End User. In the event the Software fails in a material respect to operate in accordance with the Documentation during the warranty period and Veeam is unable to correct the defect, Veeam's sole and exclusive liability and End User's sole and exclusive remedy shall be a refund of the License fee, if any, paid by End User for the Software. In the event a reported problem with the Software is End User's fault, End User agrees to reimburse Veeam for its correction efforts in accordance with its State Term Schedule rates. The foregoing limited warranty will not apply if failure of the Software is the result of damage or misuse caused by End User.

EXCEPT FOR THE LIMITED WARRANTY SET FORTH ABOVE, THE SOFTWARE IS PROVIDED "AS IS", WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY THAT THE SOFTWARE IS FREE OF DEFECTS, MERCHANTABILITY OR FIT FOR A PARTICULAR PURPOSE. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY VEEAM OR ANY THIRD PARTY, INCLUDING, WITHOUT LIMITATION, ANY VEEAM DISTRIBUTORS OR RESELLERS, SHALL CREATE ANY WARRANTY IN ADDITION TO, OR IN ANY WAY INCREASE THE SCOPE OF, THE LIMITED WARRANTY.

In no event will either party, its affiliates, resellers, or distributors or suppliers be liable for any indirect, special, incidental or consequential damages arising out of the use of or inability to use the Software, including, without limitation, damages for lost profits, loss of goodwill, work stoppage, computer failure or malfunction, or any and all other commercial damages or losses, even if advised of the possibility thereof.

VEEAM WILL BE LIABLE FOR ALL DIRECT DAMAGES DUE TO THE FAULT OR NEGLIGENCE OF VEEAM OR ITS BREACH OF ANY PROVISION OF THIS CONTRACT. IN NO EVENT SHALL VEEAM'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE TOTAL AMOUNT PAID BY THE STATE DURING THE 12 MONTHS PERIOD BEFORE THE DATE

OF THE CAUSE OF ACTION FOR WHICH CLAIMED DAMAGES AROSE. THE ABOVE LIMITATIONS DO NOT APPLY TO CLAIMS ARISING FROM COPYRIGHT OR PATENT INFRINGEMENT, PERSONAL INJURY (INCLUDING DEATH), AND PROPERTY DAMAGE CAUSED BY VEEAM.

## 7.0 Assignment

Except in the event of a sale or transfer by Veeam of all or substantially all of its assets or voting securities, neither party will assign all or any portion of its rights or obligations under this EULA to any third party without the prior written consent of the other party.

## 8.0 General

This Agreement and the State Term Schedule set forth Veeam's entire obligation and End User's exclusive rights with respect to the Software and, except to the extent otherwise specifically provided in a purchase order or other written communication or advertising signed or jointly issued by both parties with respect to the Software, supersedes any conflicting terms of any purchase order and any other communication or advertising with respect to the Software. In the event the terms of this Agreement are inconsistent with any terms of the State Term Schedule, the parties agree that the terms of this Agreement shall control. No failure of either party to exercise or enforce any of its rights under this EULA will act as a waiver of those rights. If any provision of this EULA is found illegal or unenforceable, it will be enforced to the maximum extent permissible, and the legality and enforceability of the other provisions of this EULA will not be affected. This EULA will be governed by the laws of the State of Ohio, without regard to its choice of law principles. The United Nations Convention for the International Sale of Goods will not apply.

## 9.0 Export Controls

The Software is subject to U.S. Export Administration Regulations. Veeam prohibits any export or re-export of Veeam Software products, services, or technical data to any destinations subject to U.S. embargoes or trade sanctions, except in compliance with the United States Export Administration Act and the related rules and regulations and similar non-U.S. government restrictions, if applicable. End User agrees not to use or make available the Software to or on behalf of any person that is a citizen, national, or resident of, or that is controlled by the government of the countries with which the U.S. may prohibit export transactions. The following countries are subject to the United States embargo or restricted trade sanctions: Burma (Myanmar), Cuba, Iran, North Korea, the Republic of South Sudan, the Republic of the Sudan, Syria, or any other country with which the United States may prohibit export transactions.

# VEEAM CUSTOMER SUPPORT REFERENCE GUIDE

## Overview

This Customer Support Guide details our support services, contact information, and best practices for contacting support to ensure quick response and issue resolution.

The Veeam Web site (<http://www.veeam.com>) provides a wealth of information at your fingertips. Refer to the following online resources before you contact Veeam Customer Support.

Community Forums	Exchange information with other Veeam customers and team behind the product; contains product-specific conferences. Maintained and moderated by product management team. Available at no additional charge.
Support Portal	<a href="http://support.veeam.com/">http://support.veeam.com/</a> Please log on to our Customer Center support portal to: <ul style="list-style-type: none"><li>• Manage your support cases.</li><li>• Request "one click update".</li><li>• Attach logs to existing cases.</li><li>• Obtain product downloads and patches.</li><li>• Manage your license</li></ul>
Knowledge Base	Browse how to articles and search for solutions to common questions at <a href="http://www.veeam.com/kb_search_results.html">http://www.veeam.com/kb_search_results.html</a>
Documentation	Review and download the latest product documentation online.

## Supported Languages

Veeam is pleased to offer first level technical support services in the following languages during normal business hours (8AM to 8PM Customer Local Time):

United States	English
Canada	English
Europe, Middle East, Africa	English, German, French, Spanish, Russian
Asia Pacific	English
Latin America	English, Spanish

After Customer Business hours all first level support in English only. All second and third level support is offered in English only.

## Support Programs

All customers with maintenance agreement in effect, regardless of their program, are entitled to contact support via web or phone 24x7x365 and open a case.

We offer two support response programs (Standard and Premium) to our customers and one program (Evaluation) for 60 days if you are evaluating our software.

### Evaluation Support

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Evaluation Support program provides software support services during business hours (Monday through Friday) as defined below during the defined evaluation period.

### Standard Support

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Standard Support program provides software support services during business hours as defined below along with upgrades and updates to the products. One year of Standard Support is included with product license purchase.

### Premium Support

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Premium Support program provides 24/7 software support services and fast response times for critical issues.

### Support Programs Comparison Matrix

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Service	Evaluation Support	Standard Support	Premium Support
Product updates	NA	Yes	Yes
Product upgrades	NA	Yes	Yes
Technical Support	Phone/ web	Phone/web	Phone/web

### Business Hours are defined as Follows and are Customer Local Time

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Support Program	Business Hours
Evaluation Support	Mon-Fri 8 am – 5 pm
Standard Support	Mon – Fri 8 am- 8 pm
Premium Support	24x7x365

## Severity Definitions and Response Time SLA

### Severity Level Guidelines

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Severity levels provide an indication of the urgency of an issue, and help us provide a rapid and effective response. Categorizing severity levels incorrectly hinders the overall case-handling process, and can adversely affect you. When you report an issue, you and the Veeam Support Analyst should discuss and agree upon an appropriate severity level. You have the option to change the severity level of an issue as business conditions change around the impact.

Response goals are intended to provide a target for initial response to an issue or query. We will work a Severity 1 issue around the clock for Standard and Premium Support if you have a technical resource available to work with us until:

- A resolution or workaround is in place and business impact has been mitigated.
- The severity is mutually downgraded.

### \*Evaluation Customers

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We make best effort to provide equivalent of "Standard Support" response times to customers with valid trial license during the official evaluation period.

### \*\*Free and NFR Licensed Products

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Depending on staff availability, we attempt to provide support for users using our free products. However, we do not currently provide response goals or response guarantees for this service.

We respond to problem reports based on the following guidelines:

\* Note when indicated Business hours are M-F 8AM – 8 PM local time.

Severity	Description	Target Premium Response SLA	Target Standard Response SLA
Severity 1	A business critical software component or a Veeam managed system is inoperable or unavailable; production system is down; or there is an emergency condition. Requires an immediate workaround or solution. Examples: Excessive abnormal terminations impacting all monitoring, backups and schedules or a down/offline production system cannot be restored; application or system failure caused by Veeam product.	1 hour	2 hours
Severity 2	Adversely impacting Production operations, but the production system is not down; product operates, but is seriously restricted. Examples: Production application response times or system performance are slow, system is available. Some monitoring or backups are impacted.	3 hours	8 business hours
Severity 3	A non-production issue; the majority of functions are still usable, a limited condition that can be readily circumvented. Example: non-Production application response times or system performance are slow, system is available. Some monitoring or backups are impacted.	6 hours	12 business hours
Severity 4	Minor issue or question that does not affect the product function, and can be readily circumvented. For example: "How to" questions; the text of a message, or page of documentation is worded poorly or misspelled, General Feedback, Feature Requests.	8 hours	24 business hours

## Contacting Customer Support

Your organization should designate a few representatives responsible for opening cases with Veeam, and receiving maintenance information. They should have the appropriate technical skills and system level access to work with Veeam Support Engineers in resolving open issues. These support contacts will be your interface to Veeam Support, and should be notified of all issues that surface within your organization. They will escalate issues to Veeam Support as necessary.

Be prepared to provide the following information:

- Your name, company name, and telephone number with extension
- Case number (if applicable)
- Product name, release level, and any maintenance applied to the product

## Logging a Case

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Any information you can provide regarding the issue you are experiencing could have a significant impact on how fast the issue is diagnosed and resolved. You will be asked to provide the following information:

- Issue description, impact on your system and business operations, issue severity, and the exact text of error messages and diagnostic details.
- Steps to reproduce the problem, known workarounds
- Contact number where you can be reached
- Best time to reach you, and contact method (i.e. email/phone)

## Submitting a Support Case

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To file a case you may use any method below. We encourage you to set the initial severity level for the problem when submitting a case and highly recommend using phone to submit Severity 1 issues.

### Via the Web

You can file a case using a web browser in **Customer Center**: <http://support.veeam.com/>. Please follow the new case wizard to open a case. Upon submitting the case you will receive an electronic confirmation with a unique case number sent to your email address. You will also be able to see the case in the open cases management tab.

### Via the Phone

To open a case using the phone call one of the phone numbers mentioned in **Contacts** below. After you log the case with the customer representative, your case will be assigned a unique number given to you over the phone. If required and depending on license type, support offering and severity level, your call will be transferred to an appropriate support engineer to resolve your issue over the phone.

### Following Up

A Support engineer will contact you by phone and/or email or a combination of both as appropriate during the resolution process. Severity levels may be adjusted with customer consent and mutual agreement on the degree of the impact based on the Severity definitions.



## Customer Support Issue Resolution

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Veeam Support provides trained resources to research and resolve issues on a timely basis. While an issue is open, the support team will keep you informed of the resolution status, and will notify you when a reported issue has been resolved. If at any point during the resolution process, you become dissatisfied with the handling of your issue, simply contact the case owner and request an escalation to the manager. This allows us to understand your concerns and make adjustments in resources if necessary.

We will make three attempts, on separate business days, to contact you for updates or information on an open case. If we are unable to make contact with you, we may close the case without your consent. If the issue continues to exist, you may open a new case and reference the old one.

Resolution of a support case can include any of the following actions:

- Software that provides a fix for the problem (case closed)
- Permanent business or system workaround (case closed)
- Temporary business or system workaround (case severity level is reduced)
- Action plan for the development of a fix or workaround: milestones and dependencies are set, communicated, and tracked (case severity level might be changed)
- Issue is a customer-specific customization or enhancement, and is not covered under maintenance (customer notification, case closed)

## Customer Satisfaction Surveys

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We periodically survey customers to obtain additional feedback on recent experiences with Customer Support, and the survey results are reviewed by management. When a support case is closed, an e-mail may be sent to the customer contact associated with the case. The e-mail contains a link to an online survey with questions covering areas such as the handling of the support case, professionalism, knowledge of the support analyst, and overall satisfaction with the management of the case.

## Product Lifecycle

Level of support services provided depends on the lifecycle phase determined for specific version of the product. Current versions of the products are eligible for full support that includes support services and updates/fixes while support for older versions may be limited. A list of known workarounds or existing fixes and assistance with upgrading to a supported version is available for customers using old or discontinued versions.

The list is updated each time there is a release, for the current list of products and their status please see the product release matrix located at <http://www.veeam.com/support/releasestatus.pdf>

## Support of Releases

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- New Releases – All new products issued for General Availability (GA).
- Current Releases – To maximize the quality of our service, Veeam limits technical support to the products listed on the release matrix.
- Releases designated as End of Fixes – Support is available, existing program fixes are available, but no new fixes will be created and no enhancements will be made.
- Releases designated as End of Support or Withdrawal from the Market - No support is available.
  - ❖ For unsupported releases, new product enhancements and fixes will not be available. Veeam does not have an obligation to provide support for software that has been publicly designated End of Support, Withdrawn from the Market, or similarly designated.

## Product Maintenance

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Our goal is to go beyond quickly solving problems, and actually preventing problems from occurring in the first place. As a result, stringent quality control procedures are built into the development and release cycle of new products and releases. A typical product goes through multiple test phases—Quality Assurance, Alpha Test, Beta Test, and Controlled Release before it is officially released.

Issues sometimes occur with complex software operating in equally complex and demanding environments. Fixes and resolutions are often rolled into the next product release, and others are included as part of the next maintenance release, and most urgent are addressed with a hotfix that can be applied on specific product version. When applicable we announce the availability of new releases on the Web and through e-mail.

## Supported Third Party Storage

Veeam will continue to be storage agnostic. However certain companies have partnered with Veeam to certify their storage and/or de-duplication appliances and offer specific configuration guides when appropriate to optimize the configuration for best performance. Please see the table and link to the guides below:

Storage Vendor Certification Matrix		
Storage Vendor	Model Numbers	Configuration Guide
ExaGrid	All EX Series models	<a href="#">ExaGrid Configuration Guide</a>
NetGear	All Ready NAS models	<a href="#">NETGEAR Configuration Guide</a>
HP	All StoreOnce models	Coming soon
Drobo	B800fs, B800i, B1200i	Coming soon
EMC	All Data Domain models	Coming soon
Quantum	Dxi Series	<a href="#">Quantum Configuration Guide</a>
Coraid	All SRX Models	Coming soon
Nimble Storage	All CS Series Models	Coming soon
Astute Networks		NA
Iomega	All StorCenter Models	Coming soon
HDS		Coming soon
Overland Storage	S1000 FC, ISCSI, SAS, S2000 ISCSI	Coming soon

## Third Party Software Support

We will assist you in problem analysis to determine whether the issue is caused by third party software or hardware. In order to isolate the problem and if we believe we have reason, we may ask you to remove third party software or hardware product.

If it is impossible to identify the cause of the problem we may contact the third party vendor using TSANet or ask you to open support case with third party vendor support organization.

## Contacts

### Web Support Page

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<http://support.veeam.com/>

### Phone Numbers

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Region	Phone number
United States	+1 (614) 339 8252
Canada	+1 (647) 694 0922
UK	+44 (845) 508 70 05
Netherlands	+31 (858) 88 06 55
Norway	+47 (85) 40 43 85
Denmark	+45 (78) 77 54 76
Belgium	+32 (78) 48 02 54
Sweden	+46 (10) 199 25 77
Germany	+49 (2241) 955 89 99
France	+33 (1) 70 61 83 74
Spain	+34 (91) 182 97 60
Italy	+39 (042) 604 75 05
New Zealand	+64 (9) 974 9594
Australia	+61 (26) 108 4305
Hong Kong	+852 5808 2870
Singapore	+65 3158 2239
Russian Federation	+7 (499) 703 12 82
Mexico	+52 (554) 741 14 93
Buenos Aires	+54 (115) 984 20 88
Santiago	+56 (2) 570 86 84
Colombia	+57 (1) 381 90 78
Brazil	+55 (11) 3958 7370

# VERITAS EULA

# VERITAS™

## MASTER LICENSE AGREEMENT

Customer Company Name:	General Services Administration									
Address:	Contact Name:	Email:								
	Address:	(All fields are required)								
	Country:									
Veritas Agreement Number: (To be filled in by Veritas)								O	T	H
Effective Date: (To be filled in by Veritas upon signature)										

This Master License Agreement ("Agreement") is entered into by and between Veritas Technologies LLC, a Delaware corporation, and Customer (identified above) as of the Effective Date defined above. This Agreement consists of these terms and conditions ("Master Terms") and any Addenda executed under these Master Terms. This Agreement applies to the Veritas software products available for purchase through the applicable GSA Schedule 70 contract from an authorized Veritas reseller, and any mention in the Agreement of "Professional Services" or other services available for additional fees does not add such services to the reseller's GSA Schedule contract.

Customer and Veritas agree as follows:

1. Definitions. All capitalized terms may be used in the singular or in the plural, as the context requires.

1.1 "Addendum" to this Agreement means any addendum, including its exhibits or attachments, executed between the parties from time to time, which references this Agreement and supplements or modifies these Master Terms.

1.2 "Business Critical Services" means Veritas's commercially-available Business Critical Services offerings, subject to the additional terms and conditions of the Business Critical Services Addenda in Attachment 4.

1.3 "Certificate" means the machine-generated certificate sent to Customer by Veritas to confirm a purchase of the applicable Licensed Software and/or Maintenance/Support and/or (at Veritas's discretion) certain Services.

1.4 "Customer" means the end user licensee named below.

1.5 "Documentation" means the user manuals and release notes accompanying the Licensed Software.

1.6 "Effective Date" of this Agreement means the relevant date assigned by Veritas upon acceptance of this Agreement.

1.7 "EULA" means Veritas's end user license agreement accompanying the Licensed Software. The only portion of the EULA that shall apply to the Licensed Software is the Section 17 (Additional Terms and Conditions) of each EULA. Such EULAs may be reviewed at any time at <http://www.veritas.com/legal/eulas>. For the avoidance of doubt, if an Ordering Activity places its order for Licensed Software, then such Ordering Activity is deemed to have reviewed and approved Section 17 of the applicable EULA.

1.8 "Licensed Software" means the Veritas software products in object code form, that are commercially available on Veritas's applicable in-country price list in effect at the time of Customer's order, and any software updates provided under Maintenance/Support.

1.9 "Maintenance/Support" means the commercially-available Veritas maintenance/technical support services ordered by Customer for the Licensed Software, provided pursuant to Veritas's then-current maintenance/support policies and processes.

1.10 "Managed Security Services" means Veritas's commercially-available managed security services offerings, subject to the additional terms and conditions of the Managed Security Addenda in Attachment 5.

1.11 "MSRP" means Veritas's then-current in-country suggested list price in effect at the time of Customer's order.

1.12 "Ordering Activity" means a government entity authorized to purchase under the applicable General Services Administration federal supply schedule at the time an order is placed.

1.13 "Professional Services" means Veritas's commercially-available professional services offerings, subject to the additional terms and conditions of the Professional Services Terms Addendum in Attachment 2.

1.14 "Services" means collectively, Professional Services, Business Critical Services and Managed Security Services.

1.15 "Subscription Software" means Licensed Software licensed on a non-perpetual (term-limited) basis, as set forth in the applicable Addendum or Certificate.

1.16 "Veritas" means the licensor entity named above.

1.17 "Territory" means the geographic area in which Customer is authorized to purchase, install and use the Licensed Software. For purposes of this Agreement, Customer's Territory is: the United States or any U.S. Government installation sites world-wide.

1.18 "Use Level" means the license unit of measurement or model, including operating system or machine tier limitation, if applicable, by which Veritas measures, prices and sells the right to use a given Licensed Software product, in effect at the time an order is placed, as indicated in the applicable Addendum, Certificate or EULA, in that order of precedence.

## 2. License Grant.

2.1 Except with respect to the limited assignability of Licensed Software as set forth in Section 2.2 below, and notwithstanding any license rights to the contrary in Section 8, Utilization Limitations of the applicable GSA Schedule Contract, Veritas grants Customer, a non-exclusive, non-transferable license in the Territory to use (and to allow Customer's Ordering Activities to use) the Licensed Software in accordance with the Documentation, solely in support of Customer's and Ordering Activities internal business operations, in the quantities and at the Use Levels purchased from Veritas. The term of each Licensed Software license granted under this Agreement shall be perpetual, except for Subscription Software, for which Customer purchases a term-limited license as set forth in an applicable Addendum or Certificate. For archival purposes, Customer may make a single uninstalled copy of the Licensed Software and Documentation. All copies made pursuant to this section shall be complete copies, and shall include all copyright, trademark, and other notices in the original. Customer may not otherwise copy the Licensed Software or Documentation without Veritas's prior written consent.

Customer or Ordering Activities may allow consultant(s) or outsourcer(s) to use Customer's Licensed Software licenses to deliver dedicated services to Customer or to an Ordering Activity, so long as such use is consistent with Customer's own permitted scope of use, and is compliant

with the terms of this Agreement. Customer and Ordering Activity agree that each is responsible for such third party access and use of the Licensed Software, to the same extent as if such consultant(s), outsourcer(s) or were Customer's employees.

If Customer purchases a Licensed Software license designated by Veritas for home use ("Home Use"), where available, then Customer may allow Customer's or an Ordering Activity's employee or dedicated consultant to use one copy of such Licensed Software on his or her personal home computer, provided such equipment is not owned or provided by Customer or an Ordering Activity, and provided such individual also has a computer licensed for such product at Customer's or the Ordering Activity's offices, but only for so long as such individual remains Customer's or the Ordering Activity's employee or dedicated consultant. The number of Home Use copies made and used cannot exceed the number of Home Use licenses purchased.

Veritas retains all title, copyright and other proprietary rights in the Licensed Software and Documentation, and in all copies, improvements, enhancements, modifications and derivative works thereof, including without limitation all patent, copyright, trade secret and trademark rights. Customer's rights to use the Licensed Software and Documentation shall be limited to those expressly granted in this Agreement and the applicable Addendum. All rights not expressly granted to Customer are retained by Veritas.

**Non-Software Products.** For any non-software products purchased by Customer under this Agreement, the terms and conditions for such products shall be as set forth in the applicable Certificates. For the avoidance of doubt, if an Ordering Activity places its order for non-software products, then such Ordering Activity is deemed to have reviewed and approved the applicable Certificate. The Dell Hardware/Appliance EULA is attached hereto as Attachment 3.

2.2 Customer may, based on its prime contract with a specific U.S. Government agency, assign Licensed Software licenses to such U.S. Government agency during the term of this Agreement. Customer must complete a License Assignment Request form in the form required by Veritas and otherwise comply with Veritas's then-current License Assignment Policy. Such assignment shall be at no additional cost to the U.S. Government, except for subsequent renewal of Maintenance/Support services, which the subject U.S. Government agency may or may not elect to procure. If Customer has obtained Maintenance/Support services in support of the Licensed Software, then Customer shall assign the remainder of any associated Maintenance/Support services to the U.S. Government agency to which Customer assigns the Licensed Software. Any U.S. Government agency to which Customer assigns Licensed Software and Maintenance/Support services under this Section must agree in writing to be bound by the terms and conditions of this Agreement. Certain purchasing Addenda may limit Customer's right to assign licenses purchased under and during the term of such Addenda.

3. **License Restrictions.** Customer shall not, without Veritas's prior written consent, conduct, cause or permit the: (a) use, copying, modification, rental, lease, sublicense, or transfer of the Licensed Software or Documentation, except as expressly provided in this Agreement; (b) creation of any derivative works based on the Licensed Software or Documentation; (c) reverse engineering, disassembly, or decompiling of the Licensed Software (except that Customer may decompile the Licensed Software for the purposes of interoperability only to the extent permitted by and subject to strict compliance under applicable law); (d) use of the Licensed Software or Documentation in connection with a service bureau or like activity whereby Customer, without purchasing a service bureau license from Veritas, operates or uses the Licensed Software or Documentation for the benefit of a third party; or (e) use of the Licensed Software or Documentation by any party other than Customer. In addition, Customer shall only use the number and type of Licensed Software licenses for which it has purchased an appropriate quantity and Use Level.

4. **Orders.** Customer may acquire copies of the Licensed Software, Maintenance/Support, Professional Services, Business Critical Services and/or Managed Security Services by submitting a Purchase Order to Veritas or to a Veritas Authorized Reseller.

5. **Delivery.**

5.1 **Delivery – Direct Orders to Veritas.** Customer elects to receive all Licensed Software via electronic download where available, and via tangible format where electronic download is not available. Customer acknowledges that Veritas may deliver upgrades and patches to Licensed Software under Maintenance/Support using tangible media as part of mass mailings. The terms of any physical delivery shall be F.O.B. destination.

5.2 **Delivery – Orders to Veritas Authorized Reseller.** Veritas shall not be responsible for delivery under terms other than those stated in Section 5.1, notwithstanding that Customer and a Veritas Authorized Reseller may negotiate other delivery terms.

6. **Maintenance/Support.** Customer may purchase Maintenance/Support for the applicable Licensed Software. Maintenance/Support is provided and performed subject to Veritas's then-current policies and processes. Veritas may amend its Enterprise Technical Support Policy from time to time in its sole discretion; provided, however, that for a period of five (5) years from the Effective Date of this Agreement, Veritas agrees that any such changes shall not significantly degrade the material elements of the Maintenance/Support plan offering provided to Customer. Substantive revisions of such Maintenance/Support policies or processes shall apply to Customer only when Maintenance/Support is renewed. Current Maintenance/Support terms and conditions are available at <http://go.veritas.com/support-fundamentals>.

7. **Services.**

(a) **Professional Services.** Customer may purchase Services, which are provided and performed pursuant to the Professional Services Terms Addendum in Attachment 1 and any applicable statement(s) of work.

(b) **Business Critical Services.** Customer may purchase such Business Critical Services, which are provided and performed pursuant to Attachment 3.

(c) **Managed Security Services.** Customer may purchase such Managed Security Services, which are provided and performed pursuant to Attachment 4.

8. **Payment Terms; Taxes**

8.1 **Payment.**

8.1.1 **Payment Terms – Direct Orders to Veritas.** Customer shall pay all invoices according to the terms of the applicable GSA Schedule Contract.

8.1.2 **Payment Terms – Orders to Veritas Authorized Reseller.** For orders placed with a Veritas Authorized Reseller, payment shall be in accordance with the terms and conditions negotiated between the Veritas Authorized Reseller and the Customer.

8.2 **Taxes.**

Taxes will not apply to charges for products or services directly paid for by the Federal Government, if such exemption is allowed by the tax jurisdiction in which the products or services are delivered.

9. **Warranties.**

9.1 **Media.** If Veritas provides Customer tangible media for Licensed Software, Veritas warrants that the magnetic media upon which the Licensed Software is recorded will not be defective under normal use, for a period of ninety (90) days from delivery. Veritas will replace any

defective media returned to it within the warranty period at no charge to Customer.

**9.2 Licensed Software.** Veritas warrants that the Licensed Software, as delivered by Veritas and when used in accordance with the Documentation, will substantially conform to the Documentation for a period of ninety (90) days from delivery. If the Licensed Software does not comply with this warranty and such non-compliance is reported by Customer to Veritas within the ninety (90) day warranty period, Veritas will do one of the following, selected at Veritas's reasonable discretion: either (a) repair the Licensed Software, (b) replace the Licensed Software with software of substantially the same functionality, (c) terminate the license and refund the relevant license fees paid for such non-compliant Licensed Software, or (d) in the case of software updates provided under Maintenance/Support, refund the relevant Maintenance/Support fees. The above warranties specifically exclude defects resulting from accident, abuse, unauthorized repair, modifications or enhancements, or misapplication.

**9.3 Maintenance/Support and Business Critical Services.** Veritas warrants, for a period of thirty (30) days from the date of performance of Maintenance/Support, that such Maintenance/Support will be performed in a manner consistent with generally accepted industry standards. For Maintenance/Support not performed as warranted in this provision, and provided Customer has reported such non-conformance to Veritas within thirty (30) days of performance of such non-conforming Maintenance/Support, Veritas will, in its reasonable discretion either correct any nonconforming Maintenance/Support or refund the relevant fees paid for the nonconforming Maintenance/Support.

#### **9.4 Professional Services and Managed Security Services**

(a) **Professional Services.** Veritas will provide the Professional Services described in the Statement of Work ("SOW") in a good and workmanlike manner and in accordance with generally accepted industry standards.

(b) **Managed Security Services.** Unless otherwise specified in the Managed Security Services Certificates attached hereto, the Managed Security Service(s) will be performed in a good and workmanlike manner and in accordance with: (a) generally accepted industry standards; and (b) the service level warranties indicated in the applicable Managed Security Service(s) Certificates.

**9.5 Disclaimer of Warranties: Exclusive Remedies.** THE WARRANTIES SET FORTH IN THIS SECTION 9 ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, CONCERNING THE LICENSED SOFTWARE AND RELATED MAINTENANCE/SUPPORT. THE REMEDIES SET FORTH ABOVE IN THIS SECTION 9 ARE CUSTOMER'S EXCLUSIVE REMEDY AND VERITAS'S SOLE LIABILITY WITH RESPECT TO THE APPLICABLE EXPRESS WARRANTIES SET FORTH ABOVE. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW VERITAS EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF SATISFACTORY QUALITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND STATUTORY OR OTHER WARRANTIES OF NON-INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS WITH RESPECT TO THIS AGREEMENT AND ITEMS OR ACTIVITIES CONTEMPLATED HEREUNDER. VERITAS DOES NOT WARRANT THAT THE LICENSED SOFTWARE SHALL MEET CUSTOMER'S REQUIREMENTS OR THAT USE OF THE LICENSED SOFTWARE SHALL BE UNINTERRUPTED OR ERROR FREE.

#### **10. Intellectual Property Claims.**

**10.1** Veritas shall defend, indemnify and hold Customer harmless from any claim asserting that the Licensed Software infringes any intellectual property right of a third party, and shall pay any and all damages finally awarded against the Customer by a court of final appeal, or agreed to in settlement by Veritas and attributable to such claim. Veritas's obligations under this provision are subject to Customer's doing the following: notifying Veritas of the claim in writing, as soon as

Customer learns of it; providing Veritas all reasonable assistance and information to enable Veritas to perform its duties under this Section. Notwithstanding the foregoing, Customer, through the Attorney General, acting by and through the attorneys of the US Department of Justice, may participate at Customer's expense in the defense of any such claim. Customer has the right to approve any settlement that affirmatively places on Customer an obligation that has a material adverse effect on Customer other than the obligations to cease using the affected Licensed Software or to pay sums indemnified hereunder. Such approval will not be unreasonably withheld.

**10.2** If the Licensed Software is found to infringe, or if Veritas determines in its sole opinion that it is likely to be found to infringe, then Veritas shall either (a) obtain for Customer the right to continue to use the Licensed Software; or (b) modify the Licensed Software so as to make such Licensed Software non-infringing, or replace it with a non-infringing equivalent substantially comparable in functionality in which case Customer shall stop using any infringing version of the Licensed Software, or (if Veritas determines in its sole opinion that (a) and/or (b) are not commercially reasonable), (c) terminate Customer's rights and Veritas's obligations under this Agreement with respect to such Licensed Software, and refund to Customer the license fee paid for the relevant Licensed Software, and provide a pro-rated refund of any unused, prepaid Maintenance/Support fees paid by Customer for the applicable Licensed Software.

**10.3** Notwithstanding the above, Veritas will have no liability for any infringement claim to the extent that it is based upon: (a) modification of the Software other than by Veritas; (b) combination, use, or operation of the Licensed Software with products not specifically authorized by Veritas to be combined with the Software as indicated in the Documentation; (c) use of the Licensed Software other than in accordance with the Documentation and this Agreement; or (d) Customer's continued use of infringing Licensed Software after Veritas, for no additional charge, supplies or offers to supply modified or replacement non-infringing Licensed Software as contemplated under 10.2(b) above.

THIS SECTION 10 STATES CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND VERITAS'S SOLE AND EXCLUSIVE LIABILITY REGARDING INFRINGEMENT OR MISAPPROPRIATION OF ANY INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY.

**11. LIMITATION OF LIABILITY.** EXCEPT AS LIMITED BY APPLICABLE LAW, THE FOLLOWING SHALL APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY AND REGARDLESS OF THE LEGAL BASIS FOR A CLAIM: IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR TO ANY PERSON FOR (i) ANY COSTS OF PROCUREMENT OF SUBSTITUTE OR REPLACEMENT GOODS AND SERVICES, LOSS OF PROFITS, LOSS OF USE, LOSS OF OR CORRUPTION TO DATA, BUSINESS INTERRUPTION, LOSS OF PRODUCTION, LOSS OF REVENUES, LOSS OF CONTRACTS, LOSS OF GOODWILL, OR ANTICIPATED SAVINGS OR WASTED MANAGEMENT AND STAFF TIME; OR (ii) ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL OR INDIRECT DAMAGES WHETHER ARISING DIRECTLY OR INDIRECTLY OUT OF THIS AGREEMENT.

THE FOREGOING SHALL APPLY EVEN IF (SUCH PARTY, ITS RESELLERS, SUPPLIERS OR ITS AGENTS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT FOR LIABILITY ARISING FROM VERITAS'S OBLIGATIONS UNDER SECTION 10 (INTELLECTUAL PROPERTY CLAIMS), OR LIABILITY ARISING FROM BREACH OF SECTION 12 (CONFIDENTIALITY) OR FROM CUSTOMER'S BREACH OF ITS PERMITTED SCOPE OF AUTHORIZED USE UNDER THIS AGREEMENT, AND REGARDLESS OF THE LEGAL BASIS FOR THE CLAIM, EACH PARTY'S MAXIMUM LIABILITY UNDER THIS AGREEMENT SHALL NOT EXCEED THE FEES PAID OR OWED FOR THE LICENSED SOFTWARE, MAINTENANCE/SUPPORT SERVICES OR HARDWARE GIVING RISE TO THE CLAIM. NOTHING IN THIS AGREEMENT SHALL EXCLUDE



OR LIMIT A PARTY'S LIABILITY FOR ANY LIABILITY WHICH CANNOT BE EXCLUDED OR LIMITED BY LAW. This Section 11, "Limitation of Liability", shall not impair the U.S. Government's right to recover for fraud or crimes arising out of or related to this Contract under any federal fraud statute, including the False Claims Act, 31 U.S.C. §§ 3729-3733. Furthermore, this clause shall not impair nor prejudice the U.S. Government's right to EXPRESS remedies provided in the applicable Schedule Contract (i.e. clause 552.238-72 – Price Reductions, clause 52.212-4(h) – Patent Indemnification, Liability for Injury or Damage (Section 3 of the Price List), and GSAR 552.215-72 – Price Adjustment – Failure to Provide Accurate Information).

## 12. Confidentiality.

12.1 "Confidential Information" means the non-public information that is exchanged between the parties, provided that such information is: (a) identified as confidential at the time of disclosure by the disclosing party ("Discloser"), or (b) disclosed under circumstances that would indicate to a reasonable person that the information ought to be treated as confidential by the party receiving such information ("Recipient"). A Recipient may use the Confidential Information that it receives from the other party solely for the purpose of performing activities contemplated under this Agreement ("Purpose"). For a period of five (5) years following the applicable date of disclosure of any Confidential Information, a Recipient shall hold the Confidential Information in confidence and not disclose the Confidential Information to any third party. A Recipient shall protect the Confidential Information by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized use, dissemination or publication of the Confidential Information as the Recipient uses to protect its own confidential information of a like nature. The Recipient may disclose the Confidential Information to agents and independent contractors with a need to know in order to fulfill the Purpose who have signed a nondisclosure agreement at least as protective of the Discloser's rights as this Agreement.

12.2 This provision imposes no obligation upon a Recipient with respect to Confidential Information which: (a) is or becomes public knowledge through no fault of the Recipient; (b) was in the Recipient's possession before receipt from the Discloser and was not subject to a duty of confidentiality; (c) is rightfully received by the Recipient without any duty of confidentiality; (d) is disclosed generally to a third party by the Discloser without a duty of confidentiality on the third party; or (e) is independently developed by the Recipient without use of the Confidential Information. The Recipient may disclose the Discloser's Confidential Information as required by law or court order provided: (i) the Recipient promptly notifies the Discloser in writing of the requirement for disclosure; and (ii) discloses only as much of the Confidential Information as is required. The Recipient's obligations with respect to the Confidential Information hereunder will survive any termination of the Agreement. Upon request from the Discloser or upon termination of the Agreement the Recipient shall return to the Discloser all Confidential Information and all copies, notes, summaries or extracts thereof or certify destruction of the same, except information that qualifies as a "Government Record" under the Federal Records Act (44 USC 3301).

12.3 Each party will retain all right, title and interest to such party's Confidential Information. Neither party to this Agreement acquires any patent, copyright or other intellectual property rights or any other rights or licenses under this Agreement except the limited right to use for fulfillment of the Purpose, as set forth in section 12.1 above. Nothing in this provision shall be construed to preclude either party from developing, using, marketing, licensing, and/or selling any product or service that is developed without use of the Confidential Information.

13. Verification. Except where prohibited by applicable federal law or security regulations, Customer or Ordering Activity as appropriate, agrees to keep accurate business records relating to its use and deployment of the Licensed Software. Upon thirty (30) days prior written notice, Customer agrees to provide Veritas written reports related to Customer's use of the Licensed Software to verify Customer's compliance with its obligations under this Agreement.

Such report shall include, at a minimum, the product name (including any options, agents and extensions), version number, quantity of each product, and the operating system/platform, hardware model, Host ID and street address location of the Designated Computer on each such copy is installed. In the event that Customer fails to provide reports acceptable to Veritas; once annually, Veritas may verify Customer's compliance with this Agreement by reviewing (upon five (5) business days' prior written notice) Customer's use and deployment of the Licensed Software. Either Veritas or an independent public accounting firm reasonably acceptable to both parties shall perform the audit during Customer's regular business hours with minimal disruption to Customer's ongoing business operations and adherence to any security measures the Customer deems appropriate, including any requirements under Federal security regulations that may require personnel clearances prior to accessing sensitive information or facilities. Any nondisclosure agreement Customer may require the independent public accounting firm to execute shall not prevent disclosure of the audit results to Veritas. All audits shall be subject to Customer's reasonable safety and security policies and procedures. In the event unauthorized deployments of Veritas products are disclosed by the audit, Veritas will submit a claim to the contracting officer of the Customer or relevant Ordering Activity.

## 14. Term and Termination.

14.1 Term. Unless terminated as set forth in the applicable GSA Schedule Contract, these Master Terms shall continue indefinitely, and each Addendum shall continue for the term set forth in such Addendum.

## 14.2 Termination.

The provisions of this Agreement regarding confidentiality, restrictions on use of intellectual property, limitations on liability and disclaimers of warranties and damages, audit, and Customer's payment obligations accrued prior to termination, shall survive any termination. The license grants for Licensed Software and terms regarding Maintenance/Support purchased prior to termination shall survive such termination.

## 15. General

15.1 Governing Law; Severability; Waiver. This Agreement shall be governed by and construed in accordance with the laws of the United States. Such application of law excludes any provisions of the United Nations Convention on Contracts for the International Sale of Goods, including any amendments thereto, and without regard to principles of conflicts of law. If any provision of this Agreement is found partly or wholly illegal or unenforceable, such provision shall be enforced to the maximum extent permissible, and the legality and enforceability of the other provisions of this Agreement shall remain in full force and effect. A waiver of any breach or default under this Agreement shall not constitute a waiver of any other right for subsequent breach or default.

15.2 Assignment. Except with respect to the Licensed Software as set forth in Section 2.2 above, and subject to FAR 42.12 (Novation and Change of Name Agreements and its successor regulations), neither party may assign this Agreement, in whole or in part and whether by operation of contract, law or otherwise, without the other party's prior written consent. Such consent shall not be unreasonably withheld or delayed. For purposes of this provision, a change of control shall constitute an assignment. Notwithstanding the foregoing, either party may, upon written notice to the non-assigning party, (i) assign this Agreement to a successor in interest to all or substantially all of its assets, whether by sale, merger, or otherwise, (ii) assign this Agreement to a parent company, or (iii) assign this Agreement to a wholly-owned subsidiary. All terms and conditions of the Agreement shall be binding upon any assignee hereunder; assignee's acceptance of these terms shall be evidenced by its performance hereunder.

15.3 Export. Customer acknowledges that the Licensed Software and related technical data and services (collectively "Controlled Technology") may be subject to the import and export laws of the United

States, specifically the U.S. Export Administration Regulations (EAR), and the laws of any country where Controlled Technology is imported or re-exported. Customer agrees to comply with all relevant laws and will not to export or re-export any Controlled Technology in contravention to U.S. law, nor to any prohibited country, entity, or person for which an export license or other governmental approval is required. All Controlled Technology is prohibited for export or re-export to Cuba, North Korea, Iran, Syria and Sudan and to any country subject to relevant trade sanctions. Customer hereby agrees that it will not export, re-export or sell any Controlled Technology for use in connection with chemical, biological, or nuclear weapons, or missiles, drones or space launch vehicles capable of delivering such weapons.

15.4 Government Rights. The Licensed Software and Documentation are deemed to be commercial computer software as defined in FAR Part 12 and its successor regulations, and subject to restricted rights as defined in FAR Section 52.227-19 "Commercial Computer Software - Restricted Rights" and DFARS 227.7202, "Rights in Commercial Computer Software or Commercial Computer Software Documentation", as applicable, and any successor regulations. Any use, modification, reproduction, release, performance, display or disclosure of the Licensed Software and Documentation by the Government shall be solely in accordance with the terms of this Agreement.

15.5 Entire Agreement. Any subsequent modifications to this Agreement shall be made in writing and must be duly signed by authorized representatives of both parties or they shall be void and of no effect. Unless an Ordering Activity and Veritas negotiate alternative terms, this Agreement prevails.

15.6 Force Majeure. Each party shall be excused from performance (other than payment obligations) for any period during which, and to the extent that, it is prevented from performing any obligation or service, in whole or in part, due to unforeseen circumstances or to causes beyond such party's reasonable control, including but not limited to acts of God, war, terrorism, riot, embargoes, acts of civil or military authorities, fire, floods, accidents, strikes, regulatory requirements or shortages of transportation, facilities, fuel, energy, labor or materials.

15.7 Notices. All notices required to be sent hereunder shall be in writing addressed to the relevant Contracting Officer or to Veritas's corporate headquarters, with a simultaneous cc: to the attention of Veritas's Legal Department/General Counsel. Notices shall be effective upon receipt, and shall be deemed to have been received as follows: (a) if personally delivered by courier, when delivered; (b) if mailed by first class mail, on the fifth business day after deposit in the mail with the proper address; or (c) if by certified mail, return receipt requested, on the date received.

15.8 Signatures. Facsimile signatures and signed facsimile copies of this Agreement, its Addenda, attachments and exhibits shall legally bind the parties to the same extent as originals. This Agreement with its accompanying Addendum/Addenda may be executed in multiple counterparts all of which taken together shall constitute one single agreement between the parties. The signatories hereto represent that they are duly authorized to sign this Agreement on behalf of their respective companies.

15.9 Subcontractors. Veritas may assign the Service(s) (Maintenance/Support, Business Critical Services or Managed Security Services) or any part thereof, and may additionally subcontract the Agreement and / or Service(s), provided that it remains responsible for any subcontractors performing on its behalf.

- Attachment 1 – Professional Services Addendum
- Attachment 2 – Hardware Warranty Agreement (Veritas 8160/8360/8380)
- Attachment 3 – Business Critical Services



ATTACHMENT 1

PROFESSIONAL SERVICES TERMS ADDENDUM



ATTACHMENT 1

PROFESSIONAL SERVICES TERMS ADDENDUM

1. **Statements of Work** (a) During the Term (as defined in Section 2 below) Veritas and Customer (including Ordering Activity) may agree upon a written statement of work, quote/order form, or certificate under this Addendum ("SOW"), that may include descriptions of services to be performed by Veritas ("Professional Services") and deliverables ("Deliverables") to be provided by Veritas, fees, duration and renewal of the Professional Services, and other responsibilities undertaken by Customer and/or Veritas. Certain Professional Services may require software, hardware and associated documentation to be separately provided by Veritas as part of the Service ("Service Components"). This Addendum will control in the event of any conflict with a SOW, unless otherwise specified in the SOW. However, the SOW may contain terms and conditions specific to the applicable Professional Services ordered which terms will have no effect on other SOWs.

2. **Term; Termination.** "Term" means the applicable effective period of this Addendum and/or of Professional Services under a Purchase Order or SOW. The Term of this Addendum will begin on the Effective Date and continue until termination. The Term for any Professional Services provided under this Addendum, which may include an initial set-up period, will be as set forth in the applicable Purchase Order or SOW and may be extended by mutual agreement of the parties. This Addendum and/or a SOW may be terminated in accordance with the terms of the applicable GSA Schedule contract.

3. The Purchase Order issued by the Ordering Activity shall include any additional terms and conditions negotiated between Veritas and the Ordering Activity regarding payment for Professional Services fees, travel and living expenses incurred in the course of performance and reseller fees.

4. **Rights in Deliverables.**

(a) **Ownership Rights.** Subject to Veritas's rights in Veritas Information and Veritas Derivative Work as each are defined below, all Deliverables created specifically for and provided to Customer by Veritas under an SOW will, upon final payment, become the property of Customer for Customer's internal business purposes. Any inventions, designs, intellectual property or other derivative works of Veritas Information, will vest in and be the exclusive property of Veritas ("Veritas Derivative Work"). Any inventions, designs, intellectual property or other derivative works of Customer Information (as defined below) will vest in and be the exclusive property of Customer ("Customer Derivative Work").

(b) **Pre-Existing Work.** Any pre-existing proprietary or Confidential Information of Veritas or its licensors used to perform the Professional Services, or included in any Deliverable, including, but not limited to Service Components, software, appliances, methodologies, code, templates, tools, policies, records, working papers, know-how, data or other intellectual property, written or otherwise, including Derivative Works will remain the exclusive property of Veritas and its licensors (collectively, "Veritas Information"). Any Customer pre-existing information, including but not limited to any Customer proprietary and Confidential Information provided to Veritas by Customer will remain the exclusive property of Customer or its licensors ("Customer Information"). For the purposes of this Addendum, Veritas Information and Customer Information will be deemed Confidential Information.

(c) **Retention.** Customer acknowledges that Veritas provides similar services to other customers and that nothing in this Addendum or a SOW will be construed to prevent Veritas from carrying on such business. Customer acknowledges that Veritas may at its sole discretion develop, use, market, distribute and license substantially similar Deliverables. Notwithstanding the preceding sentence, Veritas agrees that it will not market or distribute any Deliverables that include the Confidential Information of Customer.

(d) **License Grant.** In consideration of Customer's payment of applicable Fees, Veritas grants Customer a limited, non-exclusive, non-transferable license, to access and use, in accordance with the SOW and solely for Customer's internal business purposes: (i) Veritas Information, to the extent such information is necessary to utilize the Professional Services or incorporated into any Deliverable; and (ii) Service Components in the format provided by Veritas, for use on systems under Customer's control, solely in connection with the Professional Services for which such Service Components are provided.

(e) **License Restrictions.** Customer will not act to infringe the intellectual property rights of Veritas or its licensors, including Veritas Information. Other than as expressly permitted under this Addendum or applicable law, Customer will not copy, sublicense, sell, rent, lease or otherwise distribute Veritas Information, or permit either direct or indirect use of Veritas Information by any third party. Customer will not modify, reverse engineer, disassemble, decompile, or create derivative works of Veritas Information, or otherwise attempt to build a competitive product or service using Veritas Information. Notwithstanding the foregoing, the license grant set forth above may be further limited as set forth in any applicable SOW.

(f) In the event that Customer, based on its prime contract with the U.S. Government, requires that data from analysis tasks performed under a SOW be transferable to a specific U.S. Government agency, then Customer shall identify the prime contract number and the U.S. Government Agency in that SOW. Veritas will allow the transfer request to the specified U.S. Government Agency under the prime contract number identified in the SOW. The rights in technical data transferred to the U.S. Government under the prime contract number identified in a SOW are set forth in Section (g) below. This provision will only apply to an Ordering Activity if the parties so state in an applicable SOW with such Ordering Activity.

(g) **Government Rights.** The data resulting from analysis tasks performed under an applicable SOW are deemed to be Commercial Items as defined in FAR Part 12 and its successor regulations, subject to restricted rights as defined in DFARS 252.227-7015, "Technical Data - Commercial Items", and any successor regulations. Any use, modification, reproduction, release, performance, display or disclosure of such data by the U.S. Government agency identified in the applicable SOW shall be solely in accordance with the terms of this Agreement.

5. **Intellectual Property Indemnification.**

a) To the extent the Addendum includes provisions providing an express intellectual property indemnity for Licensed Software, such provision(s) are supplemented to add the Deliverables to the scope of the parties' obligations under such indemnification provisions, to the same extent as for such Licensed Software. Where Customer's use of the Deliverables is terminated pursuant to such provisions, the Deliverables shall be returned to Veritas and Veritas's sole liability, in addition to its indemnification obligations herein, shall be to refund to Customer the fees paid to Veritas for the relevant Services or portion thereof.

b) In the event that any willful misconduct or grossly negligent act or omission of a Party or its employees during the performance of Professional Services on Customer's premises causes or results in the (i) loss, damage to or destruction of physical property of the other Party or third parties, and/or (ii) death or injury to any person, then such Party will indemnify, defend and hold the Party harmless from and against any and all resulting claims, damages, liabilities, costs and expenses (including reasonable attorney's fees), subject to the Limitation of Liability of the Master Agreement, as supplemented below.

6. **Non-Solicitation.** During the Term of any applicable SOW, and for a period of one (1) year thereafter, neither Party will actively solicit for hire, nor knowingly allow its employees to solicit for hire, any employee of either Party associated with the performance of Professional Services under the applicable SOW without the prior written consent of the other Party. This provision will in no way restrict the right of either Party to solicit generally in the media for required personnel, and will not restrict employees, contractors, or representatives of either Party from pursuing on their own initiative employment opportunities from or with the other Party. In the event a Party violates this provision, the Parties may mutually agree to liquidated damages.



7. **Data Privacy.** For the purpose of providing Professional Services pursuant to this Addendum, Veritas will require Customer to supply certain personal information e.g. business contact names, business telephone numbers, business e-mail addresses. Customer acknowledges that Veritas is a global organization, and such personal information may be accessible on a global basis by Veritas affiliates or Veritas partners and subcontractors, including in countries that may have less protective data protection laws than the country in which Customer is located. By providing such personal information, Customer consents to Veritas using, transferring and processing this information on a global basis for the use described above. For any question regarding the use of personal information, Customer may contact Veritas Technologies LLC - Privacy Lead, 500 East Middlefield Road, Mountain View, CA 94043, U.S.A. Telephone 999-999-9999 Email: [privacy@veritas.com](mailto:privacy@veritas.com).

8. **Miscellaneous.** (a) While on Customer's premises, Veritas will ensure that its personnel follow all reasonable instructions, as such are provided to Veritas prior to the performance of the Professional Services. (b) Veritas is an independent contractor and will not be deemed an employee or agent of Customer. (c) Veritas has the right to subcontract the performance of the Professional Services to third parties, provided that Veritas remains responsible for the contractual obligations according to this Addendum and any SOW.

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**Attachment 2  
Hardware Appliance Warranty**

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## Attachment 2 Hardware Appliance Warranty

1. **HARDWARE/SOFTWARE.** The hardware ("Hardware") that accompanies this Warranty Agreement is to be used only with the Licensed Software. "Licensed Software" means the Veritas software product, in object code form, that is pre-loaded, pre-installed, or included as a media kit accompanying the Hardware, including any documentation provided with such software. You may not use the Licensed Software unless You have purchased a separate license for such Licensed Software. Your use of the Licensed Software shall comply with the terms and conditions of the Master License Agreement that has been accepted as part of the applicable GSA Schedule contract and the License Instrument applicable for such Licensed Software. "License Instrument" means one or more of the following applicable documents which further defines Your license rights to the Licensed Software: a Veritas license certificate or a similar license document issued by Veritas, or a written agreement between You and Veritas, that accompanies, precedes or follows the Master License Agreement for the Licensed Software.

2. **OWNERSHIP.** The Licensed Software is the proprietary property of Veritas or its licensors and is protected by copyright law. Veritas and its licensors retain any and all rights, title and interest in and to the Licensed Software, including in all copies, improvements, enhancements, modifications and derivative works of the Licensed Software. Your rights to use the Licensed Software shall be limited to those expressly granted in this Warranty Agreement. All rights not expressly granted to You are retained by Veritas and/or its licensors.

3. **GEOGRAPHIC USE LOCATION.** Prior to using the Hardware, You must register a service tag for such Hardware in the location You intend to use the Hardware ("Geographic Use Location"). In the event You wish to change Your Geographic Use Location, You must re-register the Hardware using the tag transfer process located at [https://www.veritas.com/support/en\\_US/contact](https://www.veritas.com/support/en_US/contact). Any change to the Geographic Use Location and/or any service request which requires Veritas to obtain additional information and/or validate information to acknowledge and approve warranty service entitlements may result in a delay in providing such warranty service entitlements.

4. **LIMITED WARRANTY.** Veritas warrants that the Hardware shall be free from defects in material and workmanship under normal authorized use and service and will substantially conform to the written documentation accompanying the Hardware for the applicable Warranty Period (defined in this Section 4) and as specified at the time of original purchase and in the packing slip documentation accompanying Your Hardware. The standard warranty period is three (3) years from the date of original purchase of the Hardware ("Standard Warranty Period"). However, if at time of original purchase You acquired extended warranty, as indicated in the packing slip documentation accompanying Your Hardware, the Hardware shall be warranted for a period of up to five (5) years from the date of original purchase ("Extended Warranty Period"). "Standard Warranty Period" and "Extended Warranty Period" shall collectively be referred to as "Warranty Period". Upon confirmation of a defect or failure of a Hardware, or component thereof, to perform as warranted in this Section 4, and depending on the then-current Geographic Use Location of the Hardware, Your sole and exclusive remedy for defective Hardware, or component thereof, if notified within the Warranty Period, shall be for Veritas, at its sole option and discretion, to:

(i) repair or replace the defective Hardware, or component thereof, with either a new or refurbished replacement Hardware, or component thereof, as applicable;

(ii) provide onsite repair services for any defective Hardware, or component thereof; or

(iii) repair or replace any defective Hardware returned to Veritas through Veritas's Returned Merchandise Authorization Services process for Hardware.

All defective Hardware, or component thereof, which has been replaced, shall become the property of Veritas. All defective Hardware, or component thereof, which has been repaired shall remain Your property. EXCEPT FOR THE SPECIFIC WARRANTIES OR REMEDIES SET FORTH UNDER THE APPLICABLE GSA SCHEDULE, THE FOREGOING IS YOUR SOLE AND EXCLUSIVE REMEDY, AND VERITAS'S SOLE AND EXCLUSIVE LIABILITY FOR VERITAS'S BREACH OF THIS LIMITED WARRANTY.

5. **LIMITED HARDWARE WARRANTY SUPPORT SERVICES.** During the Warranty Period, warranty support services will be provided in accordance with (i) the service procedures identified by Veritas in Section 7, below, and (ii) the then-current Veritas Enterprise Technical Support Policy in accordance with Section 6 (Maintenance/Support) of the Agreement.

The Geographic Use Location of the Hardware will determine whether You are entitled to either warranty service consisting of (a) Next Business Day Service, (b) Same Day Service or (c) Return Merchandise Authorization Services as detailed below in this Section 5. Upon discovery of any failure of the Hardware, or component thereof, during the Warranty Period, the following options are available to You.

- A. **Next Business Day Service.** You may initiate a request for next business day onsite repair services if You have purchased such services as part of Your warranty support. A service technician will, in most cases, be dispatched to arrive at Your location for onsite repair services on the next business day, Monday through Friday 8:00 AM to 6:00 PM local time, excluding regularly observed holidays. If the service technician is dispatched for onsite repair services after 5:00 PM local time, the service technician may take additional business day(s) to arrive at Your Geographic Use Location.
- B. **Same Day Service.** If You have purchased the optional same day service upgrade, then for an additional fee and if offered in the then current Geographic Use Location, You may initiate a request for same day onsite services. A service technician will, in most cases, be dispatched to arrive at Your location for onsite service within the same day after dispatch, twenty-four (24) hours a day, seven (7) days a week (including holidays), provided the service location is between one hundred twenty-five (125) miles from the nearest parts stocking location.
- C. **Return Merchandise Authorization Process.** In the event Veritas does not have Next Business Day Service, or Same Day Service available in Your then current Geographic Use Location or, if, Veritas determines in its sole discretion that Next Business Day, or Same Day Service may not be appropriate You are required to contact Veritas within ten (10) days after such failure and seek a return material authorization ("RMA") number. Veritas will promptly issue the requested RMA as long as Veritas determines that You meet the conditions for warranty service. The allegedly defective Hardware, or component thereof, shall be returned to Veritas, securely and properly packaged, freight and insurance prepaid, with the RMA number prominently displayed on the exterior of the shipment packaging and with the Hardware. Veritas will have no obligation to accept any Hardware which is returned without an RMA number. Veritas reserves the right, in its sole option, to repair or replace defective Hardware, or component thereof. With respect to a return of defective Hardware, or component

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thereof, Veritas and Customer or Ordering Activity will negotiate mutually agreeable transportation or other direct costs. With respect to a return of functional Hardware, or return of Hardware ordered in error by Customer, Customer will pay any transportation costs. Any credits are subject to Veritas's then-current RMA (Return Materials Authorization) policies/process.

6. **SERVICE PARTS INSTALLATION.** Regardless of the service response level purchased, some component parts are specifically designed for easy removal and replacement by You; such parts are designated as Customer Self Replaceable ("CSR"). If during the troubleshooting and diagnosis, the Veritas technical support analyst determines that the repair can be accomplished with a CSR designated part, Veritas will ship the CSR designated part directly to You. CSR parts fall into two categories:

(A) **Optional CSR parts.** Optional CSR parts are designed for simple installation by You; however, depending on the type of service that was purchased with the Supported Product, Veritas may provide an onsite technician to replace the parts.

(B) **Mandatory CSR parts.** Mandatory CSR parts are designed for simple installation by You and Veritas does not provide installation labor services to install Mandatory CSR parts. If You request that Veritas and/or the Veritas Authorized Reseller replace these parts, You will be charged a fee for this service.

7. **HARDWARE WARRANTY SERVICE PREREQUISITES. IN ORDER TO EXERCISE ANY OF THE WARRANTY RIGHTS CONTAINED IN THIS WARRANTY AGREEMENT, YOU MUST COMPLY WITH THE FOLLOWING PROCEDURES:**

(A) **have available an original sales receipt or bill of sale demonstrating proof of purchase with Your warranty claim;**

(B) **separately procure and maintain during the entire Warranty Period, an active maintenance contract for the Licensed Software, as designated by Veritas and corresponding support ("Software Support and Maintenance");**

(C) **identify for Veritas the then current Geographic Use Location for the Hardware, in accordance with Veritas's requirements.**

(D) **Prepare for the Call.** You must have the following information and materials ready when You call the technician: Your system's invoice and serial numbers; the then current Geographic Use Location service tag number for the Hardware; model and model numbers; the current version of the operating environment You are using; and the brand names and models of any peripheral devices (such as a mouse and/or keyboard) You are using.

(E) **Call For Assistance.** For warranty service and support call the support telephone numbers provided upon purchase of Your Software Support and Maintenance.

(F) **Explain Your Problem to the Technician.** Now You are ready to describe the problem You are having with Hardware. Let the technician know what error message You are getting and when it occurs; what You were doing when the error occurred; and what steps You may have already taken to solve the problem.

(G) **Cooperate with the Technician.** Experience shows that most system problems and errors can be corrected over the phone as a result of close cooperation between the user and the technician. Listen carefully to the technician and follow the technician's directions.

(H) **Software/Data Backup.** If the technician is unable to resolve the problem over the phone and determines that onsite support services as identified in Section 5, above, is necessary, the following standard procedure applies:

**Software/Data Backup.** You understand and agree that Veritas and its licensors are not responsible for any loss of software or data. You should back up the software and data on the hard disk drive of Your Hardware and on any other storage device(s) in the Hardware.

8. **HARDWARE WARRANTY SERVICE RESTRICTIONS/EXCLUSIONS.** The warranties contained in this Warranty Agreement will not apply to any Hardware which:

- a) has been altered, supplemented, upgraded or modified in any way not authorized by Veritas;
- b) has been repaired except by Veritas or its designee;

Additionally, the warranties contained in this Warranty Agreement do not apply to repair or replacement caused or necessitated by: (i) events occurring after risk of loss passes to You such as loss or damage during shipment; (ii) acts of God including without limitation natural acts such as fire, flood, wind earthquake, lightning, or similar disaster; (iii) improper use, environment, installation or electrical supply, improper maintenance, or any other misuse, abuse or mishandling (such as, but not limited to, use of incorrect line voltages, use of incorrect fuses, use of incompatible, defective, or inferior devices, supplies, or accessories, improper or insufficient ventilation, or failure to follow operating instructions) by anyone other than Veritas (or its representatives); (iv) governmental actions or inactions; (v) strikes or work stoppages; (vi) Your failure to follow applicable use or operations instructions or manuals; (vii) Your failure to implement, or to allow Veritas or its designee to implement, any corrections or modifications to the Hardware made available to You by Veritas; (viii) the moving of the Hardware from one Geographic Use Location to another or from one entity to another or (ix) such other events outside Veritas's reasonable control.

9. **WARRANTY DISCLAIMERS. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AND EXCEPT TO THE EXTENT THIS WARRANTY DISCLAIMER CONFLICTS WITH ANY WARRANTIES EXPRESSLY STATED IN THE APPLICABLE GSA SCHEDULE, THE WARRANTIES SET FORTH IN SECTION 4 ARE YOUR EXCLUSIVE WARRANTIES AND ARE IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS. VERITAS MAKES NO WARRANTIES OR REPRESENTATIONS THAT THE HARDWARE WILL MEET YOUR REQUIREMENTS OR THAT OPERATION OR USE OF THE HARDWARE WILL BE UNINTERRUPTED OR ERROR-FREE. YOU MAY HAVE OTHER WARRANTY RIGHTS, WHICH MAY VARY FROM STATE TO STATE AND COUNTRY TO COUNTRY.**

## 10. GENERAL

10.1. **COMPLIANCE WITH APPLICABLE LAW.** You are solely responsible for Your compliance with, and You agree to comply with, all applicable laws, rules, and regulations in connection with Your use of the Hardware.

10.2. **INTERNATIONAL COMMERCE TERMS (INCOTERMS):** Delivery of all items shall be in accordance with the Agreement.





**Attachment 3  
Business Critical Services**

- **BUSINESS CRITICAL ADVANCED ACCESS**
- **BUSINESS CRITICAL SERVICES REMOTE PRODUCT SPECIALIST**
- **BUSINESS CRITICAL SERVICES – CLEARED SUPPORT/VERIFIED SUPPORT**

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## Attachment 3 Business Critical Services

Where the terms of the following Business Critical Services Certificates issued separately to the Customer conflict with the terms of the Attachment 3 Certificates, the terms of the following Certificates shall control for each respective Business Critical Services support offering:

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## Business Critical Advanced Access

- **BCS-AA Offering:** Commencing on the issue date set forth on the face of this Certificate, Veritas will provide to Licensee BCS-AA for the Product Family/Families (as defined below) listed on the face of this Certificate, under the terms and conditions listed below, until the end date set forth on the face of the Certificate.
  - **Product Family:** The following URL <http://go.veritas.com/bcs-aa-coverage> lists, by Product Family, the underlying Veritas software products ("Software") eligible for coverage under BCS-AA. Licensee acknowledges that BCS-AA only applies to Software under the specific Product Family for which Licensee has purchased BCS-AA and that the list of Software may be revised and updated by Veritas from time to time without notice to Licensee. If additional Veritas software is added to the list of Software after the issue date set forth on the face of the Certificate, for the Product Family covered under this Certificate, no additional BCS-AA fee shall apply for BCS-AA coverage of such additional Software.
  - **BCS-AA Services:** BCS-AA for each Product Family purchased by Licensee consists of the following services. Such services will be provided during each annual term for applicable Eligible Software: (i) priority call queuing; (ii) direct access to a Senior Veritas Technical Services Engineers for Severity 1 and Severity 2 Cases; (iii) access to the Business Critical Services website; and (iv) unlimited number of Designated Contacts per Product Family. Delivery of BCS-AA services is in English.
  - **Renewal Term; Fees for Renewal Term.** Unless otherwise terminated, Licensee's annual subscription for BCS-AA may be renewed for additional periods of twelve (12) months each (each, a "Renewal Term"), subject to general availability of BCS-AA on the applicable GSA price list and subject to Licensee's satisfaction of all requirements set forth in this Certificate. If Licensee purchases the Renewal Term through a Veritas authorized reseller, then the amount of fees for Licensee's Renewal Term and payment terms will be those fees and terms that are separately arranged between Licensee and such distributor/reseller.
- II. **Prerequisites for BCS-AA:**
- **Required Maintenance/Support.** Licensee may only subscribe to receive BCS-AA (as defined in Section I above) during such time as Licensee has and maintains a valid support agreement for Essential Support for the Software. Designated Contacts shall be established in accordance with any then current Veritas policies. Additionally, Licensee is required to maintain consistency across all Software within a Product Family and may not exclude any individual Software product within a Software Family for coverage under this Certificate.
  - **Payment.** Licensee's right to receive BCS-AA is subject to payment of applicable annual fees for both all required Essential Support and such BCS-AA. If Licensee's failure to pay the BCS-AA fees constitutes a material breach of the contract, then Veritas shall have the right to suspend or terminate the provision of BCS-AA for the Eligible Software. If Licensee's failure to pay for required Essential Support constitutes a material breach of the contract, then Veritas shall also have the right to suspend or terminate the provision of Essential Support for such unsupported Eligible Software, and in which case Veritas may also suspend or terminate BCS-AA for that Eligible Software. A material breach shall be deemed to occur if the Licensee fails to pay the contractually specified BCS-AA fees and/or Essential Support fees without justification for a period of sixty (60) days or more from the date when payment was due. If Licensee has a site license then Licensee is required to maintain Essential Support for all Software covered under a site license. The requirements in this Certificate to maintain and pay for Essential Support for the Eligible Software are separate from and do not change Licensee's obligation to maintain and pay for Essential Support for Software under any other agreement between Veritas and Licensee.
- III. **Terms and Conditions:**
- **Limitations.** Notwithstanding anything to the contrary herein, Licensee shall have no right to sell, resell, outsource, or otherwise transfer the benefits of BCS-AA to any third party under any circumstances. Licensee shall not assign, delegate, or subcontract any of its rights or obligations under this Certificate absent Veritas's written consent, except to the extent expressly permitted under the License Agreement.
  - **Termination.** Veritas may terminate Licensee's BCS-AA under this Certificate for Licensee's non-payment pursuant to Section II of this Certificate. Licensee's BCS-AA under this Certificate will also automatically terminate upon any termination of the License Agreement or any termination of required Essential Support pursuant to Section II of this Certificate. No refund will be due for any termination of BCS-AA under this Certificate. **Acknowledgement of Use of Personal Data.** Licensee recognizes that Veritas will require Licensee to supply certain personal data (such as business contact names, business telephone numbers, business e-mail addresses), in order for Veritas to provide BCS-AA and to keep Licensee apprised of support and product updates. Licensee acknowledges that Veritas is a global organization, and such personal data may be accessible on a global basis to enable Veritas to provide BCS-AA. By providing such personal data, Licensee consents to Veritas using, transferring and processing this personal data on a global basis for the purposes described above.

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**BUSINESS CRITICAL SERVICES DATACENTER PACKAGE**  
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# VERITAS™

## BUSINESS CRITICAL SERVICES REMOTE PRODUCT SPECIALIST

### I. BCS-RPS Offering

Commencing on the issue date set forth on the face of this Certificate, Veritas will provide to Licensee BCS-RPS for the Product Family/Families (as defined below) listed on the face of this Certificate, under the terms and conditions listed below, until the end date set forth on the face of the Certificate.

- **Product Family:** The following URL <http://go.veritas.com/bcs-rps-coverage> lists, by Product Family, the Software eligible for coverage under BCS-RPS. Licensee acknowledges that BCS-RPS only apply to Software under the specific Product Family for which Licensee has purchased BCS-RPS and that the list of Software may be revised and updated by Veritas from time to time without notice to Licensee. If additional Veritas software is added to the list of Software after the issue date set forth on the face of the Certificate, no additional BCS-RPS fee shall apply for BCS-RPS coverage of such additional Software provided that Licensee has purchased BCS-RPS for the relevant Product Family.
- **BCS-RPS Services:** BCS-RPS for each Product Family purchased by Licensee consists of the following services. Such services will be provided during each annual term for applicable Software: (i) six (6) Designated Contacts per Product Family; (ii) Priority Call Queuing; (iii) Access to a Shared or Dedicated Remote Product Specialist, as such terms are defined at <http://go.veritas.com/bcs-service-descriptions> during regional business hours. All calls will be directed to an advanced team outside of regional business hours or in the event the Remote Product Specialist is not available.
- **Renewal Term; Fees for Renewal Term.** Unless otherwise terminated, Licensee's annual subscription for BCS-RPS may be renewed for additional periods of twelve (12) months each (each, a "Renewal Term"), subject to general availability of BCS-RPS on the applicable GSA price list and subject to Licensee's payment of the applicable BCS-RPS fees as well as payment of the annual fees for required Essential Support. If Licensee purchases the Renewal Term through a Veritas authorized reseller, then the amount of fees for Licensee's Renewal Term and payment terms will be those fees and terms that are separately arranged between Licensee and such reseller.

### II. Prerequisites for BCS-RPS:

- **Required Maintenance/Support.** Licensee may only subscribe to receive BCS-RPS (as defined in Section I above) during such time as Licensee has and maintains a valid support agreement for Essential Support for the Software. BCS-RPS is only applicable to Software installed in production environments.
- **Payment.** Licensee's right to receive BCS-RPS is subject to payment of applicable annual fees for both all required Essential Support and such BCS-RPS. If Licensee's failure to pay the BCS fees constitutes a material breach of the contract, then Veritas shall have the right to suspend or terminate the provision of BCS-RPS for the Eligible Software. If Licensee's failure to pay for required Essential Support constitutes a material breach of the contract, then Veritas shall also have the right to suspend or terminate the provision of Essential Support for such unsupported Eligible Software, and in which case Veritas may also suspend or terminate BCS-RPS for that Eligible Software. A material breach shall be deemed to occur if the Licensee fails to pay the contractually specified BCS fees and/or Essential Support fees without justification for a period of sixty (60) days or more from the date payment was due. If Licensee has a site license then Licensee is required to maintain Essential Support for all Software covered under a site license. The requirements in this Certificate to maintain and pay for Essential Support for the Software are separate from and do not change Licensee's obligation to maintain and pay for Essential Support for Software under any other agreement between Veritas and Licensee.

### III. Terms and Conditions:

- **Designated Contacts:** Any Designated Contact may call Veritas for assistance; provided that Designated Contacts can only request BCS-RPS for Software. Designated Contacts shall have a thorough understanding of the Software for which they are the named contact(s). Veritas reserves the right to request replacement of any Designated Contact if Veritas reasonably deems that such Designated Contact lacks the necessary technical and product knowledge to assist Veritas with the timely resolution of a Licensee problem. Licensee will use its best efforts to designate a replacement Designated Contact with appropriate technical and product knowledge as soon as is reasonably practicable. Licensee recognizes that the lack of suitably-qualified Designated Contacts may affect Veritas's ability to provide the BCS-RPS hereunder.
- **Limitations.** Notwithstanding anything to the contrary herein, Licensee shall have no right to sell, resell, outsource, or otherwise transfer the benefits of BCS-RPS to any third party under any circumstances. Licensee shall not assign, delegate, subcontract any of its rights or obligations under this Certificate absent Veritas's written consent, except to the extent expressly permitted under the License Agreement.
- **Termination.** Veritas may terminate Licensee's BCS-RPS under this Certificate for Licensee's non-payment pursuant to Section II of this Certificate. Licensee's BCS-RPS under this Certificate will also automatically terminate upon any termination of the License Agreement or any termination of required Essential Support in accordance with Section II. Except as otherwise provided herein, no refund will be due for any termination of BCS-RPS under this Certificate.
- **Acknowledgement of Use of Personal Data.** Licensee recognizes that Veritas will require Licensee to supply certain personal data (such as business contact names, business telephone numbers, business e-mail addresses), in order for Veritas to provide BCS-RPS and to keep Licensee apprised of support and product updates. Licensee acknowledges that Veritas is a global organization, and such personal data may be accessible on a global basis to enable Veritas to provide BCS-RPS. By providing such personal data, Licensee consents to Veritas using, transferring and processing this personal data on a global basis for the purposes described above.

**Veritas Business Critical Services – Cleared Support Services  
Verified Support**

- I. **CSS-VS Services:** Commencing on the issue date set forth on the face of this Certificate, Veritas will provide to Licensee CSS-VS Services for the Supported Products (as defined below), listed on the face of this Certificate, for the period set forth on the face of this Certificate ("Term").
- **CSS-VS Services.** CSS-VS Services shall mean: (i) support services consisting of initial verification of Licensee's entitlement and subsequent remote diagnostic and troubleshooting performed only by United States citizens in the fifty (50) states of the United States and (ii) performed at up to a total of three (3) Supported Data Centers as designated in writing by Licensee to Veritas.
  - **Supported Products.** The following URL <http://go.veritas.com/cleared-support-services> lists the Supported Products, for which CSS-VS Services are provided under this Certificate, subject to purchase by Licensee of Essential Support for each Product Title designated by Licensee to be covered hereunder. Licensee acknowledges that the list of Supported Products may be revised and updated by Veritas from time to time without notice to Licensee.
  - **Renewal Term; Fees for Renewal Term.** Unless otherwise terminated, upon request, Licensee's annual subscription for CSS-VS Services may be renewed for additional periods of twelve (12) months each (each, a "Renewal Term"), subject to general availability of CSS-VS Services on the applicable GSA price list and subject to Licensee's satisfaction of all requirements set forth in this Certificate. In the event the Ordering Activity wishes to renew such CSS-VS Services, the CSS-VS fees charged to such Ordering Activity or to a Veritas authorized distributor/reseller, as applicable, for each twelve (12) month period of any Renewal Term, shall be the BCS fees for the immediately preceding twelve (12) month period ("Base CSS-VS Services Fee") plus an increase not to exceed more than three percent (3%) over the Base CSS-VS Services Fee. If Licensee purchases the Renewal Term through a Veritas authorized distributor/reseller, then the amount of fees for Licensee's Renewal Term and payment terms will be those fees and terms that are separately arranged between Licensee and such distributor/reseller.
- II. **Prerequisites for CSS-VS Services:**
- **Required License Agreement and Maintenance/Support.** Licensee must hold a valid license agreement ("License Agreement") for the underlying Software Product Title and have a current support agreement for Essential Support for each Software Product Title. Designated Contacts for CSS-VS Services shall be those same Designated Contacts established in connection with Essential Support for each Product Title designated by Licensee for coverage hereunder.
  - **Payment.** Licensee's right to receive CSS-VS Services is subject to payment of applicable annual fees for (i) all required Essential Support and (ii) CSS-VS Services. If Licensee's failure to pay the BCS fees constitutes a material breach of the contract, then Veritas shall have the right to suspend or terminate the provision of CSS-VS for the Supported Products. If Licensee's failure to pay for required Essential Support constitutes a material breach of the contract, then Veritas shall also have the right to suspend or terminate the provision of Essential Support for such unsupported Product Titles, and in which case Veritas may also suspend or terminate CSS-VS for such Support Products. A material breach shall be deemed to occur if the Licensee fails to pay the contractually specified BCS fees and/or Essential Support fees without justification for a period of sixty (60) days or more from the date payment was due.
- III. **Terms and Conditions:**
- **Limitations.** Licensee shall have no right to sell, resell, outsource, or otherwise transfer the benefits of CSS-VS Services to any third party under any circumstances. Licensee shall not assign, delegate, or subcontract any of its rights or obligations under this Certificate absent Veritas's written consent, except to the extent expressly permitted under the License Agreement.
  - **Termination.** Licensee's CSS-VS Services may be terminated (i) by Veritas for Licensee's non-payment of applicable fees in accordance with Section II; or (ii) automatically upon any termination of the License Agreement or any termination of required Essential Support in accordance with Section II. No refund will be due for any termination of CSS-VS Services.
  - **Acknowledgement of Use of Personal Data.** Licensee recognizes that Veritas will require Licensee to supply certain personal data (such as business contact names, business telephone numbers, business e-mail addresses), in order for Veritas to provide CSS-VS Services and to keep Licensee apprised of support and product updates. Licensee acknowledges that Veritas is a global organization, and such personal data may be accessible on a global basis to enable Veritas to provide CSS-VS Services. If and by providing such personal data, Licensee consents to Veritas using, transferring and processing this personal data on a global basis for the purposes described above.

Veritas DeepSight Early Warning Services Certificate  
Silver, Gold, and Platinum Services  
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**Veritas DeepSight Early Warning Services Certificate**

**DeepSight Early Warning Services Starter Pack, DeepSight Early Warning Services Advanced Pack, DeepSight Early Warning Services Add-on to MSS and DeepSight DataFeeds Early Warning Services User Add-on Services**

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**Attachment 4**  
**Managed Security Services**  
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**Veritas: Additional Terms**

Performance of products specifically disclaims fitness for a particular purpose. See Terms and Conditions (Section 9.5 of the GSA EULA)

Veritas does not provide an inspection/acceptance period for its products and services. See terms and conditions attachment (Section 9.5 of the GSA EULA).

## SUBSCRIPTION SOFTWARE ADDENDUM

<b>Customer Company Name:</b>	<b>General Services Administration Ordering Activity</b>
<b>Title and/or Effective Date of Master Agreement:</b>	Master License Agreement to Promark Technology, Inc. GSA Schedule 70 GS-35F-303DA
<b>Veritas Agreement Number (VAN) of Primary Agreement:</b> <b>Veritas Agreement Number (VAN) of this Addendum:</b>	MLA64891.01 SUB110637.01
<b>“Effective Date” of this Addendum:</b>	April 4, 2023

This Addendum is entered into by and between the Customer identified above (“**Customer**”), and Veritas, defined as each of the Veritas entities signing this Addendum (individually, “**Veritas**”), under the Primary Agreement referenced above (“**Agreement**”), the terms of which are incorporated by reference.

The following Subscription Software terms shall supplement the terms of the Agreement:

1. **Maintenance/Support.** Subscription Software includes related Maintenance/Support as reflected in the Certificate. Maintenance/Support is provided and performed subject to Veritas’ then-current terms, policies and processes.
2. **Licensed Quantity; Subscription Term.** The quantity of Subscription Software licensed to Customer (“**Licensed Quantity**”) and the term of a Subscription Software entitlement (“**Subscription Term**”) are as set forth in the Certificate.
3. **Pricing Benefit.** The following pricing benefit is available for Subscription Software licensed for at least a three (3) year term: Provided the relevant Agency Contracting Officer approves based on the type of contract, during an initial Subscription Term, orders may be submitted for additional quantities of the same Subscription Software product at the same pricing as the initial subscription pricing, prorated for the portion of that Subscription Term remaining at the time the additional quantity is added. The Subscription Term for any additional Subscription Software will terminate on the same date as the initial subscription. Customer is required to enable or submit reporting pursuant to Section 5 and otherwise be in compliance with the Agreement in order to receive this pricing benefit. This pricing benefit does not apply to promotional or one-time incentive pricing or to Appliance Software. For purposes of this section, “Appliance Software” means Subscription Software that is (1) separately licensed by Veritas as “appliance software” and/or (2) pre-loaded, pre-installed or included as a media kit accompanying a hardware appliance unit sold as a Veritas Appliance or as part of a Veritas appliance solution (such as Flex Scale software).
4. **Grace Capacity; Periodic Reviews.** The following terms apply to Subscription Software licensed for at least a three (3) year term:
  - a) Each Subscription Software license purchase includes a growth allowance of the greater of (i) ten percent (10%) of the Licensed Quantity (rounded up to the next full unit) or (ii) one (1) unit of the Subscription Software (“**Grace Capacity**”). Customer is required to enable or submit reporting pursuant to Section 5, participate in Periodic Reviews and otherwise be in compliance with the Agreement to receive the Grace Capacity.
  - b) Customer will participate in an annual review of its Subscription Software usage during the Subscription Term (“**Periodic Review**”). An interim review may also be triggered by use of Subscription Software in excess of the Grace Capacity or exceptional usage of the Subscription Software.
  - c) If Customer’s use of the Subscription Software during the relevant measurement period exceeds the Licensed Quantity plus the Grace Capacity, then Customer will pay the fees associated with all usage in excess of the Licensed Quantity, pro-rated for the remainder of the Subscription Term. Pricing and term for excess usage purchases will be as set forth in Section 3. Customer will submit an Order to Veritas or customer’s authorized channel partner for such excess usage promptly upon Veritas’ request and/or pay any invoice for such excess usage as provided in the Agreement or the applicable terms.
5. **Reporting.**
  - a) **Automated Reporting.** Customer shall enable any usage reporting mechanism or tool included in the Subscription Software and automatically upload usage reporting to Veritas for all deployed Subscription Software (“**Automated Reporting**”). If Customer cannot automatically upload usage reporting, then Customer shall manually upload Automated Reporting on each Report Due Date (as defined below).

- (b) **Manual Reporting.** If the Subscription Software does not include a usage reporting mechanism or tool, then Customer shall provide manual reporting as described below during the Subscription Term:
- i. **Manual reports are due: (i) on an annual basis, no later than ninety (90) days prior to the anniversary date of the first day of the Subscription Term or a Periodic Review, if applicable; and (ii) no later than thirty (30) days after a written request for a manual report from Veritas (each, a "Report Due Date").**
  - ii. **Each manual report shall identify the following information on a cumulative basis, with respect to the Subscription Software: the product name (including license type), version number, quantity of each product/amount of capacity deployed, hardware model, and the regional location of the computer on which each such copy is installed.**
  - iii. **All manual reporting shall be submitted to [Usage.Analytics@veritas.com](mailto:Usage.Analytics@veritas.com) or any successor address.**
  - iv. The rights and obligations in Sections 4 and 5 are in addition to Veritas' audit and verification rights included in the Agreement.

**6. Subscription Software Orders; Termination.**

- a) **Orders.** Subscription Software fees are based on Licensed Quantity and not actual usage. Licensed Quantity of Subscription Software cannot be decreased during the relevant Subscription Term. Multi-year Subscription Terms may be invoiced annually, as agreed by the parties.
- b) **Termination.** In the event of a termination for convenience, all paid annual software subscription fees will not be prorated and no refund shall be provided. In the event of any termination of this Addendum with the Agreement, the survival terms of the Agreement shall apply; provided, however, that notwithstanding anything to the contrary in the Agreement, Customer's payment obligations for all outstanding Subscription Software Orders, including installment payments, and the audit and verification rights in the Agreement shall also survive to the extent permitted by applicable law. In no event will termination relieve Customer of its obligation to pay any fees due or payable to Veritas for the period prior to the effective date of termination.

7. **Limitation of Liability – Subscription Software.** Section 11, "Limitation of Liability" shall be amended as follows to apply to any claims arising from Subscription Software. In the second sentence, insert "OR THE FEES PAID OR OWED DURING THE PRECEDING TWELVE (12) MONTH PERIOD FOR THE SUBSCRIPTION SOFTWARE GIVING RISE TO THE CLAIM." at the end of the second sentence.

8. **Miscellaneous.** Capitalized terms used in this Addendum have the meanings given, and plural and possessive terms will be interpreted accordingly. In the event of a conflict between the Agreement and the terms of this Addendum, the terms of this Addendum shall prevail.

# **VMWARE TERMS & CONDITIONS & EULA**

# VMware Government Product Warranty

## Warranty for VMware Government Products

Notwithstanding any contrary terms contained in the applicable product EULA with regard to the Software distributed under valid VMware Government SKUs, the following additional warranty terms shall apply:

### VMware warrants as follows:

To customers who have purchased the VMware Software or Services through an applicable VMware Government SKU: As of the date of purchase of said goods and services (a) the Software designated by VMware at <http://www.vmware.com/help/accessibility.html> (or a VMware successor site) is, to VMware's knowledge, compliant with Section 508 of the Rehabilitation Act (29 USC 794d) as amended by the Workforce Investment Act of 1998, except where VMware has otherwise identified in its published Voluntary Product Accessibility Template (VPAT), posted at the aforementioned site; and (b) VMware will make available a U.S. Person as defined by 22 CFR Parts 120-130, International Traffic in Arms Regulations (ITAR) to provide technical support as a part of the Services.

If the applicable Software and/or Services purchased through an applicable VMware government SKU do not substantially conform to the aforementioned warranties, your sole remedy will be that VMware shall, at its option, publish a VPAT for Software that may be non-compliant with Section 508 (in the case of non-conformity to the aforementioned Section (a)), make a U.S. person available upon request to provide technical support (in the case of non-conformity to the aforementioned Section (b)) or refund the license or service fees you paid, if any, provided that (a) such Software has been properly installed and used at all times and in accordance with the instructions in the applicable end-user documentation; (b) no modification, alteration or addition has been made to such Software product by persons other than VMware or VMware's authorized representative; and (c) VMware receives prompt written notice of the non-conformity following shipment (in the case of Software) and/or following commencement of the Services (in the case of Services).

**EXCEPT FOR THE EXPRESS LIMITED WARRANTIES PROVIDED IN THE APPLICABLE PRODUCT EULA AND AS SPECIFIED ABOVE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE MANDATORY LAW, VMWARE AND ITS LICENSORS PROVIDE SUCH SOFTWARE AND/OR SERVICES WITHOUT ANY WARRANTIES OF ANY KIND, EXPRESS, IMPLIED, STATUTORY, OR IN ANY OTHER PROVISION OF THIS EULA OR COMMUNICATION WITH YOU.**



# VMWARE EULA





## VMWARE END USER LICENSE AGREEMENT

Last updated: 03 May 2021

THE TERMS OF THIS END USER LICENSE AGREEMENT (“EULA”) GOVERN YOUR USE OF THE SOFTWARE, REGARDLESS OF ANY TERMS THAT MAY APPEAR DURING THE INSTALLATION OF THE SOFTWARE.

BY DOWNLOADING, DEPLOYING, OR USING THE SOFTWARE, YOU AGREE TO BE BOUND BY THE TERMS OF THIS EULA. IF YOU DO NOT AGREE TO THE TERMS OF THIS EULA, YOU MUST NOT DOWNLOAD, DEPLOY, OR USE THE SOFTWARE, AND YOU MUST DELETE OR RETURN THE UNUSED SOFTWARE TO US OR THE VMWARE CHANNEL PARTNER FROM WHICH YOU ACQUIRED IT WITHIN THIRTY (30) DAYS OF ITS ACQUISITION AND REQUEST A REFUND OF THE LICENSE FEE, IF ANY, THAT YOU PAID FOR THE SOFTWARE.

**EVALUATION LICENSE.** If you license the Software for evaluation purposes (an “Evaluation License”), your use of the Software is only permitted for a period of thirty (30) days (unless we specify otherwise), and you may not use the Software with production data. Notwithstanding any other provision in this EULA, an Evaluation License of the Software is provided “AS IS” without indemnification, support or warranty of any kind, express or implied.

### 1. LICENSE GRANT.

- 1.1. General License Grant.** We grant you a non-exclusive, non-transferable (except as set forth in Section 12.1 (Transfers; Assignment)) license to deploy the Software within the Territory and to use the Software and the Documentation during the term of the license, solely for your internal business operations, and subject to the provisions of the Product Guide. Unless otherwise set forth in the Order, licenses granted to you will be for use of object code only and will commence on Delivery.
- 1.2. Users and Third-Party Agents.** Under the License granted to you in Section 1.1 (General License Grant), you may permit your Users to use the Software, and you may permit Third-Party Agents to deploy and use the Software on your behalf for the sole purpose of delivering services to you. You will be responsible for your Users’ and Third-Party Agents’ compliance with this EULA, and any breach of this EULA by a User or Third-Party Agent will be deemed to be a breach by you.
- 1.3. Copying Permitted.** You may copy the Software and Documentation as necessary to deploy and use the number of copies licensed, but otherwise for archival purposes only.
- 1.4. Benchmarking.** You may use the Software to conduct internal performance testing and benchmarking studies. You may only publish or distribute the results of the studies to third parties if we have reviewed and approved of the methodology, assumptions, and other parameters of the study prior to publication and distribution. Please contact us at [benchmark@vmware.com](mailto:benchmark@vmware.com) to request review and approval.
- 1.5. Services for Affiliates.** You may use the Software to deliver IT services to your Affiliates, provided that those Affiliates may not directly use the Software.
- 1.6. Open Source Software.** Open Source Software is licensed to you under the OSS’s own applicable license terms, which can be found in either the `open_source_licenses.txt` file accompanying the Software, the Documentation, or as applicable the corresponding Source Files (as defined below) for the OSS available at [www.vmware.com/download/open\\_source.html](http://www.vmware.com/download/open_source.html). These OSS license terms are consistent with the license granted in Section 1 (License Grant) and may contain additional rights benefiting you. The OSS license terms take precedence over this EULA to the extent that this EULA imposes greater restrictions on you than the applicable OSS license terms. To the extent the license for any Open Source Software requires us to make available to you the corresponding source code and/or modifications (the “Source Files”), you may obtain a copy of the applicable Source Files from our website at [www.vmware.com/download/open\\_source.html](http://www.vmware.com/download/open_source.html) or by sending a written request, with your name and address, to: VMware, Inc., 3401 Hillview Avenue, Palo Alto, CA 94304, United States of America. All requests should clearly specify: Open Source Files Request, Attention: General Counsel. This offer to obtain a copy of the Source Files is valid for three years from the date you acquired the Software.

### 2. RESTRICTIONS; OWNERSHIP.

- 2.1. License Restrictions.** Without our prior written consent, you must not, and must not allow any third party to: (a) use the Software in an application services provider, service bureau, hosted IT services, or similar capacity for third parties, except as specified in Section 1.5 (Services for Affiliates); (b) disclose to any third party the results of any benchmarking testing or comparative or competitive analyses of the Software done by you or on your behalf, except as specified in Section 1.4 (Benchmarking); (c) make available the Software in any form to any third parties, except as specified in Section 1.2 (Users and Third-Party Agents); (d) transfer or sublicense the Software or Documentation to an Affiliate or any third party, except as expressly permitted in Section 12.1 (Transfers; Assignment); (e) use the Software in conflict with the terms and

restrictions of the Software's licensing model and other requirements specified in the Product Guide and/or the applicable Order; (f) except to the extent permitted by applicable mandatory law, modify, translate, enhance, or create derivative works from the Software, or reverse engineer, decompile, or otherwise attempt to derive source code from the Software, except as specified in Section 2.2 (Decompilation); (g) remove any copyright or other proprietary notices on or in any copies of the Software; or (h) violate or circumvent any technological restrictions within the Software or specified in this EULA, such as via software or services.

- 2.2. Decompilation.** Notwithstanding Section 2.1, you may decompile the Software to the extent the laws of the Territory give you the express right to do so to obtain information necessary to render the Software interoperable with other software; provided, however, (a) you must first request that information from us, (b) you must provide all reasonably requested information to allow us to assess your claim, and (c) we may, in our discretion, provide that interoperability information to you, impose reasonable conditions (including a reasonable fee) on that use of the Software, or offer to provide alternatives to reduce any potential adverse impact on our proprietary rights in the Software.
- 2.3. Ownership.** The Software and Documentation (including all copies and portions), all improvements, enhancements, modifications and derivative works of the Software or Documentation, and all Intellectual Property Rights in the Software and Documentation, are and will remain the sole and exclusive property of VMware and its licensors. Your rights to deploy and use the Software and Documentation are limited to those expressly granted in this EULA and any applicable Order. No other rights are implied with respect to the Software, Documentation, or any related Intellectual Property Rights. You are not authorized to use (and must not permit any third party to use) the Software or Documentation except as expressly authorized by this EULA or the applicable Order. We reserve all rights not expressly granted to you. We do not transfer any ownership rights in any Software or Documentation.
- 2.4. Guest Operating Systems.** Some Software allows Guest Operating Systems and application programs to run on a computer system. You acknowledge that you are responsible for obtaining and complying with any licenses necessary to operate any third-party software.
- 3. ORDER.** Your Order is subject to this EULA. No Orders are binding on us until we accept them. Orders for Software are deemed accepted upon Delivery of the Software included in the Order. Purchase orders issued to us do not have to be signed by you to be valid and enforceable. All Orders are non-refundable and non-cancellable except as expressly provided in this EULA. Any refunds to which you are entitled under this EULA will be remitted to you or to the VMware channel partner from which you purchased your Software license.
- 4. RECORDS AND AUDIT.** You must maintain accurate records of your use of the Software sufficient to show compliance with the terms of this EULA. We have the right to audit those records and your use of the Software to confirm compliance with the terms of this EULA. That audit is subject to reasonable prior notice and will not unreasonably interfere with your business activities. We may conduct no more than one (1) audit in any twelve (12) month period, and only during normal business hours. You must reasonably cooperate with us and any third-party auditor and you must, without prejudice to our other rights, address any non-compliance identified by the audit by paying additional fees. You must reimburse us for all reasonable costs of the audit if the audit reveals either underpayment of more than five (5%) percent of the Software fees payable by you for the period audited, or that you have materially failed to maintain accurate records of Software use.
- 5. SUPPORT SERVICES.** Support and subscription services for the Software ("**Support Services**") are provided pursuant to the Support Services Terms and are not subject to this EULA. You have no rights to any updates, upgrades or extensions or enhancements to the Software unless you separately purchase Support Services or they are included with your purchase of a license to the Software as provided in the Product Guide.

## 6. WARRANTIES.

- 6.1. Software Warranty: Duration and Remedy.** We warrant that the Software will, for a period of ninety (90) days following notice of availability for electronic download or delivery ("**Warranty Period**"), substantially conform to the applicable Documentation, provided that the Software: (a) has been properly installed and used at all times in accordance with the applicable Documentation; and (b) has not been modified or added to by persons other than us or our authorized representative. We will, at our own expense and as our sole obligation and your exclusive remedy for any breach of this warranty, either replace the Software or correct any reproducible error in the Software reported by you in writing during the Warranty Period. If we determine that we are unable to correct the error or replace the Software, we will refund the fees paid for that Software, and the License for that Software will terminate.
- 6.2. Disclaimer of Warranty.** OTHER THAN THE LIMITED WARRANTY IN SECTION 6.1, TO THE MAXIMUM EXTENT PERMITTED BY LAW, WE, FOR OURSELVES AND ON BEHALF OF OUR SUPPLIERS, DISCLAIM ALL WARRANTIES WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ANY WARRANTY ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE, RELATING TO THE SOFTWARE AND DOCUMENTATION. NEITHER WE NOR OUR SUPPLIERS WARRANT THAT THE SOFTWARE WILL OPERATE UNINTERRUPTED, THAT IT WILL BE FREE FROM DEFECTS OR ERRORS, OR THAT IT WILL MEET (OR IS DESIGNED TO MEET) YOUR BUSINESS REQUIREMENTS.

## 7. INTELLECTUAL PROPERTY INDEMNIFICATION.

- 7.1. Defense and Indemnification.** Subject to the remainder of this Section 7, we will: (a) defend you against any Infringement Claim; and (b) indemnify you from all fines, damages, and costs finally awarded against you by a court of competent jurisdiction or a government agency, or agreed to in a settlement, with regard to any Infringement Claim. These obligations are applicable only if you: (i) provide us with notice of the Infringement Claim within a reasonable period after learning of the claim (provided that any delay in providing the notice will relieve us of our indemnification obligations only to the extent that the delay prejudices us); (ii) allow us sole control over the defense and settlement of the Infringement Claim; and (iii) reasonably cooperate in response to our requests for assistance with regard to the Infringement Claim. We will not, without your prior written consent, which may not be unreasonably withheld, conditioned, or delayed, enter into any settlement of any Infringement Claim that obligates you to admit any liability or to pay any unreimbursed amounts to the claimant. You may not settle or compromise any Infringement Claim without our prior written consent.
- 7.2. Remedies.** If the Software becomes, or in our opinion is likely to become, the subject of an Infringement Claim, we will, at our option and expense: (a) procure the rights necessary for you to keep using the Software; or (b) modify or replace the Software to make it non-infringing; or (c) terminate the License to the affected Software and discontinue the related Support Services, and, upon your certified deletion of the affected Software, refund: (i) for a Perpetual License, the fees paid for the License to the affected Software, less straight-line depreciation over a three (3) year useful life beginning on the date of Delivery of the Software and any unused, prepaid fees for Support Services, or (ii) for Subscription Software, any prepaid fees, prorated for the remaining portion of the then-current Subscription Term.
- 7.3. Exclusions.** We will have no obligation under this Section 7 or otherwise with respect to any Infringement Claim based on: (a) combination of the Software with non-VMware products or content; (b) use for a purpose or in a manner for which the Software was not designed; (c) use of any older version of the Software when use of a newer version would have avoided the infringement; (d) any modification to the Software other than those made by us or with our express written approval; (e) any claim that relates to open source software or freeware technology or any derivative or other adaptations thereof that is not embedded by us into the Software; or (f) any Software provided on a no charge, beta, or evaluation basis.
- 7.4.** TO THE EXTENT PERMITTED BY APPLICABLE LAW, THIS SECTION 7 STATES YOUR SOLE AND EXCLUSIVE REMEDY AND OUR ENTIRE LIABILITY FOR ANY INFRINGEMENT CLAIMS.

## 8. LIMITATION OF LIABILITY.

- 8.1. Disclaimer.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT WILL WE BE LIABLE FOR ANY LOST PROFITS OR BUSINESS OPPORTUNITIES, LOSS OF USE, LOSS OF CONTENT OR DATA FOR ANY REASON (INCLUDING POWER OUTAGES, SYSTEM FAILURES, OR OTHER INTERRUPTIONS), LOSS OF REVENUE, LOSS OF GOODWILL, BUSINESS INTERRUPTION, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES UNDER ANY THEORY OF LIABILITY, WHETHER BASED IN CONTRACT, TORT, NEGLIGENCE, PRODUCT LIABILITY, OR OTHERWISE. THIS LIMITATION WILL APPLY REGARDLESS OF WHETHER A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF THOSE DAMAGES AND REGARDLESS OF WHETHER ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE. BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE FOREGOING LIMITATION MAY NOT APPLY.
- 8.2. Cap on Monetary Liability.** OUR LIABILITY FOR ANY CLAIM UNDER THIS EULA WILL NOT EXCEED THE GREATER OF THE LICENSE FEES YOU PAID FOR THE SOFTWARE GIVING RISE TO THE CLAIM OR \$5000.
- 8.3. Exclusions.** THE LIMITATION OF LIABILITY IN SECTIONS 8.1 AND 8.2 WILL NOT APPLY TO (i) OUR INDEMNIFICATION OBLIGATIONS UNDER SECTION 7 OF THIS EULA OR (ii) ANY LIABILITY WHICH MAY NOT BE EXCLUDED BY LAW.
- 8.4. Further Limitations.** Our suppliers have no liability of any kind under this EULA. You may not bring a claim directly against any of them under this EULA. Our liability with respect to any third-party software embedded in the Software is subject to this Section 8. You may not bring a claim under this EULA more than eighteen (18) months after the cause of action arises.

## 9. TERMINATION.

- 9.1. EULA Term.** The term of this EULA begins on Delivery of the Software and continues until this EULA is terminated in accordance with this Section 9.
- 9.2. Termination for Cause.** We may terminate this EULA effective immediately upon written notice to you if: (a) any payment due under this EULA is not received within ten (10) days after receiving our written notice that payment is past due; (b) you materially breach any other provision of this EULA and fail to cure within thirty (30) days after receipt of our written notice of the breach; (c) you materially breach any provision of this EULA in a manner that cannot be cured; or (d) you terminate or suspend your business.
- 9.3. Termination for Insolvency.** We may terminate this EULA effective immediately upon written notice to you if you become insolvent, admit in writing your inability to pay your debts as they mature, make an assignment for the benefit of creditors, become subject to control of a trustee, receiver or similar authority, or become subject to any bankruptcy or insolvency

proceeding.

- 9.4. Effect of Termination.** Upon termination of this EULA: (a) all Licenses to the Software granted to you under this EULA will immediately end; (b) you must stop all use of the Software and return to us or certify destruction of the Software and License Keys (including copies), and (c) you must return or, if we request, destroy, any of our or our suppliers' Confidential Information in your possession or under your control (other than information that must be retained pursuant to law). Any provision that, by its nature and context is intended to survive termination or expiration of the EULA, will survive, including Sections 1.6 (Open Source Software), 2 (Restrictions; Ownership), 4 (Records and Audit), 6.2 (Software Disclaimer of Warranty), 8 (Limitation of Liability), 9 (Termination), 10 (Confidential Information), 12 (General), 13 (Definitions), and 14 (Terms Applicable to U.S. Federal End Users). Except as otherwise expressly provided in this EULA or as required by applicable law or regulation, termination of this EULA will not entitle you to any refunds, credits, or exchanges.

## 10. CONFIDENTIAL INFORMATION.

- 10.1. Protection.** Either party may use Confidential Information of the other party disclosed to it in connection with this EULA to exercise its rights and perform its obligations under this EULA or as otherwise permitted by this EULA. The Recipient will disclose the Discloser's Confidential Information only to the Recipient's employees or contractors who have a need to know the Confidential Information for purposes of this EULA and who are under a duty of confidentiality no less restrictive than as specified in this Section 10. Recipient will protect the Discloser's Confidential Information from unauthorized use, access, or disclosure in the same manner as the Recipient protects its own confidential or proprietary information of a similar nature but with no less than reasonable care.
- 10.2. Exceptions.** The Recipient's obligations under Section 10.1 with respect to any of the Discloser's Confidential Information will terminate if the Recipient can demonstrate that the information: (a) was already rightfully known to the Recipient at the time of disclosure by the Discloser without any obligation of confidentiality; (b) was disclosed to the Recipient by a third party who had the right to make that disclosure without any confidentiality restrictions; (c) is, or through no fault of the Recipient has become, generally available to the public; or (d) was independently developed by Recipient without access to or use of Discloser's Confidential Information. In addition, the Recipient will be allowed to disclose Confidential Information to the extent that disclosure is required by law or by order of a court or similar judicial or administrative body of competent jurisdiction, provided that the Recipient notifies the Discloser of the required disclosure promptly and in writing and cooperates with the Discloser, at the Discloser's request and expense, in any lawful action to contest or limit the scope of the required disclosure.
- 10.3. Injunctive Relief.** Nothing in this EULA limits either party's ability to seek equitable relief.
- 11. ACCOUNT, OPERATIONS AND USAGE DATA.** We collect your contact information and information about your purchase to manage your account and fulfill your Orders. We also process (a) information necessary to facilitate the delivery of the Software, including verifying compliance with the terms of this EULA, invoicing, and providing Support Services, and (b) Software configuration, performance, and usage data for the purposes of improving VMware products and services and user experience, and other analytics purposes as set forth in the Product Guide. To the extent any of that data includes information which identifies an individual, we will process that information in accordance with VMware's Products & Services Privacy Notice available at <https://www.vmware.com/help/privacy.html>.

## 12. GENERAL.

- 12.1. Transfers; Assignment.** Except to the extent transfer may not legally be restricted or as permitted by our transfer and assignment policies and in all cases following the process set forth at [www.vmware.com/support/policies/licensingpolicies.html](http://www.vmware.com/support/policies/licensingpolicies.html), you must not assign this EULA, any Order, or any right or obligation pursuant to this EULA, or delegate any performance under this EULA, without our prior written consent, which consent will not be unreasonably withheld, conditioned, or delayed. Any other attempted assignment or transfer by you will be void. We may use our Affiliates or other suppliers to provide services to you, provided that we remain responsible to you for the performance of the services.
- 12.2. Notices.** Any notice by us to you under this EULA will be given: (a) by email to the email address associated with your account, if you have subscribed to this method of receiving notices; or (b) by posting in the VMware customer portal. You must direct legal notices or other correspondence to VMware, Inc., 3401 Hillview Avenue, Palo Alto, California 94304, United States of America, Attention: Legal Department.
- 12.3. Waiver.** Waiver of a breach of any provision of this EULA will not constitute a waiver of any later breach of that provision, or waiver of a breach of any other provision.
- 12.4. Severability.** If any part of this EULA is held to be invalid or unenforceable, all remaining provisions will remain in force to the extent feasible to effectuate the intent of the parties.
- 12.5. Compliance with Laws.** Each party must comply with all laws applicable to the actions contemplated by this EULA.

- 12.6. Export Control; Government Regulations.** You acknowledge that the Software is provided subject to the U.S. Export Administration Regulations, may be subject to the export control laws of the applicable territory, and that diversion contrary to applicable export control laws is prohibited. You represent that (1) you are not, and are not acting on behalf of, (a) any person who is a citizen, national, or resident of, or who is controlled by the government of any country to which the United States has prohibited export transactions; or (b) any person or entity listed on the U.S. Treasury Department list of Specially Designated Nationals and Blocked Persons, or the U.S. Commerce Department Denied Persons List or Entity List; and (2) you will not permit the Software to be used for, any purposes prohibited by law, including, any prohibited development, design, manufacture or production of missiles or nuclear, chemical or biological weapons. The Software and Documentation are deemed to be “commercial computer software” and “commercial computer software documentation”, respectively, pursuant to Defense Federal Acquisition Regulation Supplement (“**DFARS**”) Section 227.7202 and Federal Acquisition Regulation (“**FAR**”) Section 12.212(b), as applicable. Any use, modification, reproduction, release, performing, displaying or disclosing of the Software and Documentation by or for the U.S. Federal Government shall be governed solely by the terms and conditions of this EULA.
- 12.7. Construction.** The headings of sections of this EULA are for convenience and are not to be used in interpreting this EULA. As used in this EULA, the word “including” means “including but not limited to”.
- 12.8. Language.** This EULA is in English, and the English language version governs any conflict with a translation into any other language.
- 12.9. Governing Law.** If your billing address is in the United States, this EULA is governed by the laws of the State of California and the federal laws of the United States. If your billing address is outside the United States, this EULA is governed by the laws of Ireland. Conflict of law rules are expressly disclaimed. The U.N. Convention on Contracts for the International Sale of Goods does not apply.
- 12.10. Third-Party Rights.** Other than as expressly provided in this EULA, this EULA does not create any rights for any person who is not a party to it, and only persons who are parties to this EULA may enforce any of its terms or rely on any exclusion or limitation contained in it.
- 12.11. Order of Precedence.** In the event of conflict or inconsistency among the Product Guide, this EULA and the Order, the following descending order of precedence applies unless otherwise set forth in an enterprise license agreement: (a) the Product Guide, (b) this EULA and (c) the Order. This EULA supersedes any conflicting or additional terms and conditions of any purchase order, acknowledgement or confirmation, or other document issued by you for or regarding the Software.
- 12.12. Entire Agreement.** This EULA, together with all accepted Orders and the Product Guide, contains the entire agreement of the parties with respect to the subject matter of this EULA and supersedes all previous or contemporaneous communications, representations, proposals, commitments, understandings and agreements, whether written or oral, between the parties regarding its subject matter. This EULA may be amended only in a writing signed by authorized representatives of both parties.

### 13. DEFINITIONS.

- 13.1. “Affiliate”** means, with respect to a party at a given time, an entity that is directly or indirectly controlled by, is under common control with, or controls that party, where “control” means an ownership, voting, or similar interest representing fifty percent (50%) or more of the total interests outstanding of that entity.
- 13.2. “Confidential Information”** means information or materials provided by one party (“**Discloser**”) to the other party (“**Recipient**”) which is in tangible form and labelled “confidential” or the like, or information which a reasonable person knew or should have known to be confidential. The following information is considered our Confidential Information whether or not marked or identified as such: (a) License Keys; (b) information regarding our pricing, product roadmaps or strategic marketing plans; and (c) non-public materials relating to the Software.
- 13.3. “Delivery”** means either delivery of the physical media (if applicable) or the date you are notified of availability for electronic download.
- 13.4. “Documentation”** means that documentation that we generally provide with the Software, as revised by us from time to time, and which may include end user manuals, operation instructions, installation guides, release notes, and on-line help files regarding the use of the Software.
- 13.5. “Guest Operating Systems”** means instances of third-party operating systems licensed by you, installed in a Virtual Machine, and run using the Software.
- 13.6. “Infringement Claim”** means any claim by a third party that the Software infringes any patent, trademark or copyright of that third party, or misappropriates a trade secret (but only to the extent that the misappropriation is not a result of your actions) under the laws of: (a) the United States; (b) Canada; (c) the European Economic Area; (d) the United Kingdom; (e)

Australia; (f) New Zealand; (g) Japan; or (h) the People's Republic of China, to the extent that those countries are part of the Territory for the License.

- 13.7. "Intellectual Property Rights"** means all worldwide intellectual property rights, including copyrights, trademarks, service marks, trade secrets, know how, inventions, patents, patent applications, moral rights, and all other proprietary rights, whether registered or unregistered.
- 13.8. "License"** means a license granted under Section 1.1 (General License Grant).
- 13.9. "License Key"** means a serial number that enables you to activate the Software.
- 13.10. "License Term"** means the duration of a License as specified in the Order.
- 13.11. "Open Source Software" or "OSS"** means software components embedded in the Software and provided under separate license terms, which can be found either in the open\_source\_licenses.txt file (or similar file) provided within the Software or at [www.vmware.com/download/open\\_source.html](http://www.vmware.com/download/open_source.html).
- 13.12. "Order"** means a purchase order, enterprise license agreement, or other ordering document for Software governed by this EULA, issued by you to us or to your VMware channel partner and is accepted by us as set forth in Section 3 (Order).
- 13.13. "Perpetual License"** means a License to the Software with a perpetual term.
- 13.14. "Product Guide"** means the current version of the VMware Product Guide at the time of your Order, which can be found through links at [www.vmware.com/download/eula](http://www.vmware.com/download/eula).
- 13.15. "Support Services Terms"** means our then-current support policies, copies of which are posted at [www.vmware.com/support/policies](http://www.vmware.com/support/policies).
- 13.16. "Software"** means the VMware computer programs listed on our commercial price list to which you acquire a license under an Order, together with any related software code we provide pursuant to a support and subscription service contract and that is not subject to a separate license agreement.
- 13.17. "Subscription Software"** means Software that is licensed for a specific term ("**Subscription Term**").
- 13.18. "Territory"** means the country or countries in which you have been invoiced, except as otherwise provided in the Product Guide. If the Territory for your Software includes any European Economic Area member states or the United Kingdom, you may deploy that Software throughout the European Economic Area and the United Kingdom.
- 13.19. "Third-Party Agent"** means a third party delivering information technology services to you pursuant to a contract with you.
- 13.20. "U.S. Federal End User"** means any of the following agencies or establishments of the U.S. Federal Government: (a) executive departments as defined by 5 U.S.C. 101, (b) military departments as defined by 5 U.S.C. 102, (c) government corporations as defined by 5 U.S.C. 103, (d) independent establishments as defined by 5 U.S.C. 104, and (e) any establishment in the legislative or judicial branch of the U.S. Federal Government (except the Senate, the House of Representatives, the Architect of the Capitol, and any activities under the Architect's direction).
- 13.21. "User"** means an employee, contractor, or Third-Party Agent that you have authorized to use the Software as permitted under this EULA.
- 13.22. "Virtual Machine"** means a software container that can run its own operating system and execute applications like a physical machine.
- 13.23. "VMware", "We", or "Us"** means VMware, Inc., a Delaware corporation, if the billing address for your Order is in the United States, or VMware International Unlimited Company, a company organized and existing under the laws of Ireland, if the billing address for your Order is outside the United States.
- 13.24. "You"** means you individually or the legal entity that you represent. If you are entering into the EULA for an entity, you represent that you have the authority to bind that entity.
- 14. TERMS APPLICABLE TO U.S. FEDERAL END USERS.** If you are a U.S. Federal End User, the following terms and conditions supersede or modify the referenced provisions of this EULA.

**14.1.** Replace the second paragraph of the preamble with the following:

"BY PURCHASING THE SOFTWARE UNDER A CONTRACT OR ORDER THAT INCORPORATES THIS EULA, YOU (THE U.S. FEDERAL END USER) AGREE TO BE BOUND BY THE TERMS OF THIS EULA."

**14.2.** Replace the first sentence of Section 1.1 ("General License Grant") with the following:

"We grant you a non-exclusive, non-transferable (except as set forth in Section 12.1 (Transfers; Assignment)), commercial item license to deploy the Software within the Territory and to use the Software and the Documentation during the term of the license, solely for your internal business operations, and subject to the provisions of the Product Guide."

**14.3.** Replace Section 1.5 ("Services for Affiliates") with "Reserved."

**14.4.** Replace subsection (a) in the first sentence of Section 2.1 ("License Restrictions") with the following:

"(a) use the Software in an application services provider, service bureau, hosted IT services, or similar capacity for third parties;"

**14.5.** Replace Section 3 ("Order") with the following:

"Your Order is subject to this EULA. No Orders are binding on us until we accept them, and all Orders must expressly incorporate this EULA. Orders for Software are deemed accepted upon Delivery of the Software included in the Order. Purchase orders issued to us do not have to be signed by you to be valid and enforceable unless required by applicable law. All Orders are non-refundable and non-cancellable except to the extent required by applicable law or as expressly provided in this EULA. Any refunds to which you are entitled under this EULA will be remitted to you or to the VMware channel partner from which you purchased your Software license."

**14.6.** Replace Section 4 ("Records and Audit") with the following:

"You must maintain accurate records of your use of the Software sufficient to show compliance with the terms of this EULA. We have the right to audit those records and your use of the Software, at our own expense, to confirm compliance with the terms of this EULA. That audit is subject to reasonable prior notice and will not unreasonably interfere with your business activities. We may conduct no more than one (1) audit in any twelve (12) month period, and only during normal business hours. Neither we nor any third-party auditor shall have physical access to your computing devices in connection with any such audit without your prior written consent. You must reasonably cooperate with us and any third-party auditor. We reserve the right to seek recovery of any underpayments revealed by the audit in accordance with 41 U.S.C. chapter 71 (Contract Disputes) and FAR 52.233-1 (Disputes) or other applicable agency supplement. No payment obligation shall arise on your behalf until the conclusion of the dispute process. If an audit necessitates access to classified information, as that term is defined in the National Industrial Security Program Operating Manual (NISPOM), then the audit will be conducted by auditor(s) possessing a personal security clearance as defined in the NISPOM ("PCL") at the appropriate level. In those cases, VMware and any third-party auditor will disclose Classified Information only to person(s) who both possess a PCL and have a need to know."

**14.7.** Replace Section 7.1 ("Defense and Indemnification") with the following:

"Subject to the remainder of this Section 7 and 28 U.S.C. 516, we will (a) defend you against an Infringement Claim; and (b) indemnify you from costs and damages finally awarded against you by a court of competent jurisdiction or a government agency or agreed to in a settlement approved by us. These obligations are applicable only if you: (i) provide us with notice of any Infringement Claim within a reasonable period after learning of the claim (provided that any delay in providing the notice will relieve us of our indemnification obligations only to the extent that the delay prejudices us); (ii) allow us the opportunity to participate in the claim's defense and settlement as provided in applicable laws, rules, or regulations; and (iii) reasonably cooperate in response to our requests for assistance with regard to the Infringement Claim. You must make every effort to permit us to participate fully in the defense or settlement of any Infringement Claim; however, we acknowledge that such participation will be under the control of the U.S. Department of Justice.

**14.8.** Replace Section 7.2 (“Remedies”) with the following:

“If the Software becomes, or in our opinion is likely to become, the subject of an Infringement Claim, we will, at our option and expense:

(a) procure the rights necessary for you to keep using the Software; or (b) modify or replace the Software to make it non-infringing. If we determine that the foregoing alternatives are not reasonably available, then you agree to terminate the License to the affected Software and discontinue the related Support Services upon our written request, and, upon your certified deletion of the affected Software, we will refund: (i) for a Perpetual License, the fees paid for the License to the affected Software, less straight-line depreciation over a three (3) year useful life beginning on the date of Delivery of the Software and any unused, prepaid fees for Support Services, or (ii) for Subscription Software, any prepaid fees, prorated for the remaining portion of the then-current Subscription Term. Nothing in this Section 7.2 (Remedies) will limit our obligations under Section 7.1 (Defense and Indemnification), provided that you replace the allegedly infringing Software upon our making alternate Software available to you, or that you discontinue using the allegedly infringing Software upon receiving VMware’s written request to terminate the affected License. The foregoing is subject to the U.S. Federal Government’s right to require continued use of the Software pursuant to 28 U.S.C. 1498. In the event of such continued use, you agree to notify us in writing and undertake at your expense the defense of any Infringement Claim against you, and we shall have no further indemnification obligation; however, we may participate at our own expense in the defense of any Infringement Claim if the claim is against us.”

**14.9.** Replace the last sentence of Section 8.4 (“Further Limitations”) with the following:

“You may not bring a claim under this EULA more than eighteen (18) months after the cause of action arises or such longer period as is mandated by 41 U.S.C. chapter 71 (Contract Disputes). Nothing in this Section 8 will impair the U.S. Federal Government’s right to recover for fraud or crimes arising out of this EULA as permitted under any applicable federal fraud statute, including the False Claims Act (31 U.S.C. 3729-3733), or for personal injury or death resulting from VMware’s negligence.”

**14.10.** Add the following to the beginning of Section 9.2 (“Termination for Cause”):

“Subject to, and to the extent not prohibited by, 41 U.S.C. chapter 71 (Contract Disputes) and FAR 52.233-1 (Disputes),”

**14.11.** Replace Section 9.3 (“Termination for Insolvency”) with the following:

**“9.3. Termination by You.** You may terminate this EULA in accordance with FAR 52.212-4(l) or FAR 52.212-4(m), if applicable.”

**14.12.** Replace Section 12.1 (“Transfers; Assignment”) with the following:

“Except to the extent transfer may not legally be restricted or as permitted by our transfer and assignment policies and in all cases following the process set forth at [www.vmware.com/support/policies/licensingpolicies.html](http://www.vmware.com/support/policies/licensingpolicies.html), you must not assign this EULA, any Order, or any right or obligation pursuant to this EULA, or delegate any performance under this EULA, without our prior written consent, which consent will not be unreasonably withheld, conditioned, or delayed. We may assign our right to receive payment in accordance with the Assignment of Claims Act (31 U.S.C. 3727) and FAR 52.212-4(b), and we may assign this EULA to the extent not prohibited by the Anti-Assignment Act (41 U.S.C. 15). Subject to the requirements of FAR 42.12 (Novation and Change-of-Name Agreements), you shall recognize our successor in interest following a transfer of our assets or a change in our name. Any other attempted assignment or transfer by either party will be void. Subject to the foregoing, this EULA will be binding upon and will inure to the benefit of the parties and their respective successors and assigns. We may use our affiliates or other suppliers to provide services to you, provided that we remain responsible to you for the performance of the services.”

**14.13.** Replace Section 12.9 (“Governing Law”) with the following:

“This EULA is governed by the applicable federal laws of the United States. The U.N. Convention on Contracts for the International Sale of Goods does not apply.”



**14.14.** Add the following to the end of Section 12.10 (“Third-Party Rights”):

“Notwithstanding the foregoing, for any Orders placed with a VMware channel partner, the VMware channel partner may bring a claim to enforce the terms of this EULA at our request and on our behalf.”

**14.15.** Replace Section 12.11 (“Order of Precedence”) with the following:

**“12.11. Product Guide.** The Product Guide is incorporated by reference in this EULA. To the extent that any terms and conditions in this EULA or in the Product Guide are inconsistent with applicable federal law, they shall be deemed deleted and unenforceable as applied to your Order. In the event of conflict or inconsistency among the Product Guide and this EULA, the Product Guide shall take precedence unless otherwise provided in an enterprise license agreement. This EULA supersedes any conflicting or additional license terms contained in any purchase order, acknowledgement or confirmation, or other document issued by you for or regarding the Software.”

**14.16.** Replace Section 12.12 (“Entire Agreement”) with the following:

“This EULA and the Product Guide contain the entire agreement of the parties with respect to the subject matter of this EULA and supersede all previous or contemporaneous communications, representations, proposals, commitments, understandings and agreements, whether written or oral, between the parties regarding its subject matter. This EULA may be amended only in writing signed by authorized representatives of both parties.”

**14.17.** Replace Section 13.1 (“Affiliate”) with “Reserved.”

**14.18.** Replace Section 13.12 (“Order”) with the following:

“‘Order’ means a purchase order, enterprise license agreement, or other ordering document issued by you to us or to your VMware channel partner that references and incorporates this EULA and is accepted by us as set forth in Section 3 (Order).”

**14.19.** Replace Section 13.15 (“Support Services Terms”) with the following:

“‘Support Services Terms’ means our then-current support policies, copies of which are posted at [www.vmware.com/support/policies](http://www.vmware.com/support/policies), subject to FAR 52.212-4(u) and General Services Acquisition Manual (“GSAM”) 552.232-78 (Commercial Supplier Agreements— Unenforceable Clauses).”

**14.20.** Replace Section 13.18 (“Territory”) with the following:

“‘Territory’ means the United States of America, including U.S. Federal Government Facilities located outside of the United States of America, except as otherwise provided in the Product Guide. For purposes of this section, “U.S. Federal Government Facilities” means buildings that are both 100% owned and controlled by the U.S. Federal Government and includes land, bases, installations, vessels, craft, and ships that are both 100% owned and controlled by the U.S. Federal Government. In the foregoing sentence, “owned” also includes leased throughout the entire term of the Order.”

**14.21.** Replace Section 13.23 (“VMware,” “We,” or “Us”) with the following:

“‘VMware,’ ‘We,’ or ‘Us’ means VMware, Inc., a Delaware corporation.”

# **ZEBRA EULA, WARRANTY, DOA, ONE CARE TERMS & CONDITIONS**

END USER LICENSE AGREEMENT  
(RESTRICTED SOFTWARE)

IMPORTANT PLEASE READ CAREFULLY: This End User License Agreement ("EULA") is a legal agreement between the Ordering Activity under GSA Schedule contracts ("you" or "Ordering Activity" ) ("Licensee") and ZIH Corp ("Zebra") for software, owned by Zebra and its affiliated companies and its third party suppliers and licensors, that accompanies this EULA, which includes machine-readable instructions used by a processor to perform specific operations other than machine-readable instructions used for the sole purpose of booting hardware during a startup sequence ("Software"). BYBOTH PARTIES EXECUTING THIS EULA IN WRITING, YOU ACKNOWLEDGE ACCEPTANCE OF THE TERMS OF THIS EULA.

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Certain items of the Software may be subject to open source licenses.

1.1 Authorized Users. For a standalone Software application, the licenses granted are subject to the condition that you ensure the maximum number of authorized users accessing and using the Software either alone or concurrently is equal to the number of user licenses for which you are entitled to use either through a Zebra channel partner member or Zebra. You may purchase additional user licenses at any time upon payment of the appropriate fees to the Zebra channel partner member or Zebra.

1.2 Software Transfer. You may only transfer this EULA and the rights to the Software or updates granted herein to a third party in connection with the support or sale of a device which the Software accompanied or in connection with a standalone Software application during the Entitlement Period or as covered by a Zebra support contract. In such event, the transfer must include all of the Software (including all component parts, the media and printed materials, any upgrades, and this EULA) and you may not retain any copies of the Software. The transfer may not be an indirect transfer, such as a consignment. Prior to the transfer, the end user receiving the Software must agree to all the EULA terms. If Licensee is purchasing Zebra Products and licensing Software for end use by a U.S. Government end user, Licensee may transfer such Software license, but only if: (i) Licensee

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4. **MACHINE DATA.** "Machine Data" means anonymized usage data collected by devices sold (or licensed) under this Agreement such as battery management (time to empty, standby current, average current), device system time, CPU processing load, free RAM, number of running processes, network information (name, identifier), device identifier, firmware version, hardware version device type, audio volume, LED state, beeper volume, backlight level, key light, odometer count, reboot, reboot cause, total storage and physical memory availability, power cycle count, and device up time.  
Notwithstanding anything else in this Agreement, all title and ownership rights in and to Machine Data are held by Zebra. In the event, and to the extent you are deemed to have any ownership rights in Machine Data, you hereby grant Zebra a limited, revocable, non-exclusive right and license to use Machine Data.
5. **LOCATION INFORMATION.** The Software may enable you to collect location-based data from one or more client devices which may allow you to track the actual location of those client devices. Zebra specifically disclaims any liability for your use or misuse of the location-based data. You agree to pay all reasonable costs and expenses of Zebra arising from or related to third party claims resulting from your use of the location-based data.
6. **SOFTWARE RELEASES.** During the Entitlement Period, Zebra or Zebra's channel partner members may make available to you software releases as they become available after the date you obtain your initial copy of the Software. This EULA applies to all and any component of the release that Zebra may make available to you after the date you obtain your initial copy of the Software, unless Zebra provides other license terms along with such release. To receive Software provided through the release, you must first be licensed for the Software identified by Zebra as entitled to the release. We recommend that you periodically check availability of a Zebra support contract to ensure that you are entitled to receive any available Software releases. Some features of the Software may require you to have access to the internet and may be subject to restrictions imposed by your network or internet provider.
7. **EXPORT RESTRICTIONS.** You acknowledge that the Software is subject to export restrictions of various countries. You agree to comply with all applicable international and national laws that apply to the Software, including all the applicable export restriction laws and regulations.

8. ASSIGNMENT. You may not assign this Agreement or any of your rights or obligations hereunder (by operation of law or otherwise) without the prior written consent of Zebra. Zebra may not assign this Agreement and its rights and obligations without your prior written consent. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties to it and their respective legal representatives, successors and permitted assigns.
9. TERMINATION. This EULA is effective until terminated. 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, Zebra 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.
- Upon termination of this EULA, you must cease all use of the Software and destroy all copies, full or partial, of the Software.
10. LIMITED WARRANTY. Zebra warrants that the SOFTWARE will, for a period of sixty (60) days from the date of your receipt, perform substantially in accordance with SOFTWARE written materials accompanying it. EXCEPT AS EXPRESSLY SET FORTH IN THE FOREGOING UNLESS SEPARATELY STATED IN A WRITTEN EXPRESS LIMITED WARRANTY, ALL SOFTWARE PROVIDED BY ZEBRA IS PROVIDED "AS IS" AND ON AN "AS AVAILABLE" BASIS, WITHOUT WARRANTIES OF ANY KIND FROM ZEBRA, EITHER EXPRESS OR IMPLIED. TO THE FULLEST EXTENT POSSIBLE PURSUANT TO APPLICABLE LAW, ZEBRA DISCLAIMS ALL WARRANTIES EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY OR WORKMANLIKE EFFORT, FITNESS FOR A PARTICULAR PURPOSE, RELIABILITY OR AVAILABILITY, ACCURACY, LACK OF VIRUSES, NON- INFRINGEMENT OF THIRD PARTY RIGHTS OR OTHER VIOLATION OF RIGHTS. ZEBRA DOES NOT WARRANT THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE. TO THE EXTENT THAT THE SOFTWARE COVERED BY THIS EULA INCLUDES EMULATION LIBRARIES, SUCH EMULATION LIBRARIES DO NOT WORK 100% CORRECTLY OR COVER 100% OF THE FUNCTIONALITY BEING EMULATED, ARE OFFERED "AS IS" AND WITH ALL FAULTS, AND ALL THE DISCLAIMERS AND LIMITATIONS CONTAINED IN THIS PARAGRAPH AND THIS AGREEMENT APPLY TO SUCH EMULATION LIBRARIES. SOME JURISDICTIONS DO NOT ALLOW EXCLUSIONS OR LIMITATIONS OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSIONS OR LIMITATIONS MAY NOT APPLY TO YOU. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM ZEBRA OR ITS AFFILIATES SHALL BE DEEMED TO ALTER THIS DISCLAIMER BY ZEBRA OF WARRANTY REGARDING THE SOFTWARE, OR TO CREATE ANY WARRANTY OF ANY SORT FROM ZEBRA.
11. THIRD-PARTY APPLICATIONS. Certain third-party applications may be included with, or downloaded with this Software. Zebra warrants that the Certain third-party applications will, for a period of sixty (60) days from the date of your receipt, perform substantially in accordance with Certain third-party applications written materials accompanying it. EXCEPT AS EXPRESSLY SET FORTH IN THE FOREGOING, Zebra makes no representations whatsoever about any of these applications. Since Zebra has no control over such applications, you acknowledge and agree that Zebra is not responsible for such applications. You expressly acknowledge and agree that use of third party applications is at your sole risk and that the entire risk of unsatisfactory quality, performance, accuracy and effort is with you. You agree that Zebra shall not be responsible or liable, directly or indirectly, for any damage or loss, including but not limited to any damage to or loss of data, caused or alleged to be caused by, or in connection with, use of or reliance

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13. RESERVED..
14. MODIFICATION. No modification of this Agreement shall be binding unless it is in writing and is signed by an authorized representative of the party against whom enforcement of the modification is sought.
15. U.S. GOVERNMENT END USERS RESTRICTED RIGHTS. This provision only applies to U.S. Government end users. The Software is a "commercial item" as that term is defined at 48 C.F.R. Part 2.101, consisting of "commercial computer software" and "computer software documentation" as such terms are defined in 48 C.F.R. Part 252.227-7014(a)(1) and 48 C.F.R. Part 252.227-7014(a)(5), and used in 48 C.F.R. Part 12.212. Consistent with 48 C.F.R. Part 12.212, 48 C.F.R. Part 252.227-7015, and other relevant sections of the Code of Federal Regulations, as applicable, the Software is distributed and licensed to U.S. Government end users (a) only as a commercial item, and (b) with only those rights as are granted to all other end users pursuant to the terms and conditions contained herein.

16. APPLICABLE LAW. This EULA is governed by the Federal laws of the United States. This EULA shall not be governed by the UN Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded.

**Limited Warranty.** Zebra Technologies International, LLC, including affiliates and subsidiaries under Zebra's common control ("Zebra"), warrants to the End-User Customer as follows:

### Definitions

- **"End-User Customer"** means the original user of the Product.
- **"Hardware"** means the physical, tangible Product purchased from Zebra including machine readable instructions provided for the sole purpose of booting the Hardware during startup.
- **"Product"** means Zebra branded Hardware, Software or replacement parts.
- **"Software"** means, collectively, any Zebra provided machine-readable instructions used by a processor to perform specific operations other than machine-readable instructions used for the sole purpose of booting the Hardware during startup.

### Hardware Warranty

Unless otherwise stated by Zebra in the Product warranty exceptions list at [Link TBD], or in a sales agreement between Zebra and End-User Customer, Hardware is warranted for a period of twelve (12) months from date of shipment from Zebra or, with proof of purchase, from the purchase date whichever is later, against defects in workmanship and materials, provided the Hardware remains unmodified and is operated under normal and proper conditions and in accordance with Zebra published specifications. The sole obligation of Zebra for defective Hardware is limited to repair or replacement (at Zebra's sole discretion) on a "return to service depot" basis with Zebra's prior authorization. End-User Customer is responsible for shipment to Zebra and assumes all costs and risks associated with this transportation. Zebra shall be responsible for return shipment to End-User Customer, unless Zebra, in Zebra's sole and absolute discretion, determines that the corresponding Hardware has no defect or is not under warranty, in which case End-User Customer shall be responsible also for return shipment. No charge will be made to End-User Customer for warranty repairs. Zebra shall not be responsible for any damage to or loss of any Software programs, data or removable data storage media, or the restoration or reinstallation of any Software programs or data. No technical support shall be provided during the Hardware warranty term other than to identify if a warranty repair is needed.

Warranty repair shall be performed in a good and workmanlike manner. The repair shall conform in all material respects to the applicable Zebra published specification for a period of thirty (30) days following completion of the repair or until the end of the original warranty period, whichever is longer. End-User Customer's sole and exclusive remedy in regard to warranty repair shall be to request Zebra to re-perform the non-conforming warranty repair.

### Software "as is"

Software is licensed "as is" with no warranty. Notwithstanding the above, unless otherwise stated by Zebra in the Product warranty exceptions list at [Link TBD] or in a sales agreement between Zebra and End-User Customer, for restricted software and for licensed demoware, as identified at zebra.com, End-User Customer may, for a period of 90 days from when the instance of Software or Hardware are first shipped by Zebra or, with proof of purchase or license, from the purchase date whichever is later, obtain if available, releases, from <https://www.zebra.com/us/en/support-downloads.html> and technical support.

Technical support definitions and related matters can be found at <https://www.zebra.com/us/en/support-downloads.html>



## General

The above warranty provisions are not transferrable by an End-User Customer and shall not apply to any Product

(i) that has been repaired, tampered with, altered or modified, except by Zebra or its authorized repairer providers; (ii) to the extent that in Zebra's sole determination the defects or damage result from normal wear and tear, misuse, negligence, improper storage, water or other liquids including contamination with bodily fluids, battery leakage, use of parts or accessories not approved or supplied by Zebra including but not limited to Printheads, media, supplies, batteries and other peripherals, or failure to perform operator handling and scheduled maintenance instructions supplied by Zebra; or (iii) that has been subjected to unusual physical or electrical stress, abuse, or accident, or forces or exposure beyond normal use within the specified operational and environmental parameters set forth in the applicable specification.

EXCEPT FOR THE EXPRESS WARRANTIES STATED ABOVE, ZEBRA DISCLAIMS ALL WARRANTIES AND CONDITIONS ON HARDWARE, SOFTWARE OR WARRANTY REPAIR FURNISHED, INCLUDING ALL IMPLIED TERMS, CONDITIONS AND WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR USE OR PURPOSE AND THAT SOFTWARE, SOLUTION, OR WARRANTY REPAIR WILL MEET YOUR REQUIREMENTS, THAT THE SOFTWARE OR THE PROVISION OF WARRANTY REPAIR WILL BE UNINTERRUPTED, PRIVATE, TIMELY, SECURE, ACCURATE OR ERROR-FREE, THAT DEFECTS OR ERRORS IN SOFTWARE WILL BE CORRECTED, OR THAT HARDWARE OR SOFTWARE, WILL BE COMPATIBLE WITH FUTURE PRODUCTS OR SOFTWARE VERSIONS OR INTEROPERATE WITH THIRD PARTY HARDWARE OR SOFTWARE. THE REMEDY SET FORTH IN THIS HARDWARE WARRANTY SECTION ABOVE IS END-USER CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR WARRANTY CLAIMS, AND IS EXPRESSLY IN LIEU OF ALL OTHER REMEDIES THAT MAY BE AVAILABLE TO END-USER CUSTOMER AT LAW OR IN EQUITY. Some jurisdictions do not allow the exclusion or limitation of implied warranties, so the above limitation or exclusion may not apply to the particular End-User Customer.

ZEBRA SHALL NOT UNDER ANY CIRCUMSTANCES WHATSOEVER BE LIABLE TO ANY END-USER CUSTOMER OR ANY THIRD PARTY FOR LOSS OF PROFITS (DIRECT OR INDIRECT), ANY DESTRUCTION OR LOSS OF DATA (DIRECT OR INDIRECT), DIMINUTION OF GOOD WILL, OR ANY SPECIAL, CONSEQUENTIAL, OR INCIDENTAL DAMAGES WHATSOEVER WITH RESPECT TO ANY CLAIM IN CONNECTION WITH ZEBRA PRODUCTS. Some jurisdictions do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation or exclusion may not apply to the particular End User Customer.

FOR TRANSACTIONS IN AUSTRALIA AND NEW ZEALAND, THE TERMS IN THIS WARRANTY STATEMENT, EXCEPT TO THE EXTENT LAWFULLY PERMITTED, DO NOT EXCLUDE, RESTRICT, OR MODIFY, AND ARE IN ADDITION TO, THE MANDATORY STATUTORY RIGHTS APPLICABLE TO THE SALE OF PRODUCTS TO SUCH END-USER CUSTOMERS.

**Technical support Availability:** Zebra will provide Technical support during the following business hours (excluding Zebra-observed holidays):

- North America (NA) and Latin America (LA): Monday–Friday 8 am to 8 pm (Eastern Standard Time)
- Europe, the Middle East and Africa (EMEA): Monday–Friday 8 am to 7 pm (Central European Time)
- Asia Pacific (APAC): Monday–Friday 8 am to 6 pm (Singapore Time)

Technical support details can be found at: <https://www.zebra.com/us/en/support-downloads.html>

## DOA (DEFECTIVE ON ARRIVAL)

Defective on Arrival (DOA) is defined as a product that fails to meet Zebra's documented performance specifications upon initial use by the end user.

The company who purchased the products directly from Zebra, whether it be a distributor, OEM, channel partner or end user (all referenced herein as "Company") should contact Zebra's customer support at [ems.support@zebra.com](mailto:ems.support@zebra.com) or 1-866- 653-5350 and provide the Required Information as specified below.

**Required information:** Company should provide the Zebra sales order number or purchase order number, date product was received, Zebra's invoice number, product number, quantity, serial number, address where replacement units are to be shipped, contact name, telephone number and email address and full detail description of the problem.

Zebra's DOA administrator team will provide Company a return case number (Zebra's DOA number) and shipping instructions for the return of faulty units to Zebra's specified warehouse.

### DOA timing:

1. For products sold by Zebra directly to **end users** – Zebra allows thirty five (35) days from Zebra ship date to file a DOA claim.
2. For products sold to end users by Zebra **channel partners** – Zebra allows thirty five (35) days for the end user to notify the channel partner and additional thirty (30) days for the channel partner to notify Zebra commencing from Zebra ship date. Zebra will allow a total of sixty five (65) days since Zebra's ship date to file a DOA claim.
3. Products sold to **distributors** or **OEM customers** – Zebra will allow ninety five (95) days from the Zebra ship date for Distributor to file DOA claim. The claim should be submitted to the DOA administrator team. Any claim outside of the 95 days will be directed down the product warranty route. The distributor should troubleshoot the product prior to contacting Zebra.

NOTE: For any DOA units purchased by an OEM or a channel partner from distribution, the OEM or the channel partner are required to file a DOA claim with the distributor.

### DOA process:

- DOA administrator team provides Company with DOA return number and return shipping instructions.
- Company has twenty (20) business days from receipt of such number and shipping instructions to return faulty units to Zebra's designated carrier as per Zebra's shipping instructions. If the goods are not returned within such period, the Order Administrator sends DOA reminder notifications to Company.
- Company may request an extension of the DOA return period by providing valid business justification to the DOA administrator team.
- If Company does not request an extension of the DOA return period and material is not received in Zebra's specified warehouse within twenty (20) business days from receipt by Company of the return number and shipping instructions, Order Management will, within three (3) business days, or cancel the DOA request and require the Company to submit a new request.

### DOA Acceptance Criteria

Zebra will not accept returned products with the following conditions:

- Have signs of abuse or excessive wear, returned with incomplete kit / missing accessories, are not in the original packaging or suffered shipping damage
- Packaged in other than the original packaging with the original boxes/inserts/accessories
- Are not in their original shipped conditions and have additional hardware or software features in them.

If the DOA Acceptance Criteria are not met, Company will provide Zebra with a carrier account number to return the product back to the Company.

- Only products included on the DOA return shipping instructions should be shipped back to Zebra. Zebra will not take responsibility for returning or replacing any returned product that is not documented or originally reported and approved for return.

**Returned material that does not meet all the requirements stated above, will be considered as a Return Under warranty.**



## SERVICES TERMS AND CONDITIONS

These Terms and Conditions, together with the underlying GSA Schedule Contract, Schedule Pricelist, and Service Order Form, as applicable (collectively, the "Agreement"), shall apply to and govern: (i) all direct sales of services by Zebra Technologies International, LLC, or any of its Affiliates (collectively and individually referred to as "Seller") to End Users; (ii) all sales of Services by Seller to End Users through Authorized Partners; and (iii) all sales of Services by Seller to Company.

TERMS OR CONDITIONS THAT ARE DIFFERENT FROM OR IN ADDITION TO THOSE CONTAINED HEREIN ARE HEREBY REJECTED AND OF NO FORCE OR EFFECT. Any prior or contemporaneous representations, agreements, comments, covenants, or assertions that relate to the subject matter of the Agreement, whether written or oral, are not enforceable.

### 1.0 Definitions

**"Acceptance Notice"** means a Zebra communicated written notice of acceptance of a Service Order Form or Purchase Order for Services placed by Authorized Partner or Contracting Party.

**"Affiliates"** means any other entity directly or indirectly controlling or controlled by or with common control with one of the parties of more than 50% of the voting stock, limited liability company interest, general partnership interest or voting interest in any such corporation, limited liability company or partnership.

**"Authorized Partner"** means a Reseller or a Distributor.

**"Company"** means an Authorized Partner who subcontracts Seller to perform Services while contracting directly with an End User and serving as the End User's sole point of contact with respect to the Services.

**"Contracting Party"** means the party with which Seller consummates the sale of Services (depending on the structure of the sale) and to which the Agreement shall apply. For direct sales by Seller to End Users and sales of Services by Seller to End Users through Authorized Partners, the Contracting Party means: End Users. For sales of Services by Seller or by Authorized Partners to Company, the Contracting Party means: Company.

**"Distributor"** means Zebra authorized distributors listed on Zebra's website at <http://www.zebra.com> or any equivalent thereof and located in the Region.

**"e-Contract"** means Services purchased via an electronic medium, including but not limited to those via Electronic Data Interchange (commonly referred to as EDI), or Seller's My-Symbol-Order Web portal (also known as MSO).

**"End User"** means a customer who buys Services for its own use and not for resale, either directly from Seller or through an Authorized Partner.

**"Purchase Order"** means written or electronically submitted purchase order by Authorized Partner or Contracting Party to Seller for the purchase of Services under this Agreement.

**"Reseller"** means any company that holds a reseller certificate and could include members in Seller's channel partner program and other dealers.

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**"Services"** mean service offers identified by a Seller designated SKU number or other identifying factor established by Seller and described in writing to the End User or to Company.

**"Service Order Form"** means a document in a format prescribed and issued by Seller for the Services to be performed by Seller to End User or to Company. The Service Order Form is included as part of this Agreement. Each Service Order Form will incorporate this Agreement by reference and must be signed or electronically accepted by the Parties.

### 2.0 Nature of Agreement.

By Company's signing of the Service Order Form, or by End User's submission to Seller or to an Authorized Partner of a purchase order for Services, Company or End User (as applicable) orders and agrees to pay for those Services listed in the Service Order Form or Purchase Order, as applicable, and Seller agrees to deliver such Services.

### **3.0 Term.**

Subject to Company's or End User's (as applicable) compliance with all of the terms and conditions of the Agreement and Acceptance Order by Seller of Contracting Party or Authorized Partner's Service Order Form (as applicable), Services shall be supplied to Contracting Party or to Authorized Partner for the term defined in the applicable SKU or as otherwise agreed to in writing by Seller.

### **4.0 Supported Equipment.**

**4.1** Seller will provide the Services with such levels of skills and experience as it deems appropriate to perform the Services. Seller's obligation to deliver the Services is subject to Seller's receipt of all required information regarding the Contracting Party and the supported products as Seller shall request. This information may include, but is not limited to: Authorized Partner or Contracting Party billing address; product's installation address; authorized contact names; valid serial numbers, and service start date. Where available, for e-Contract orders, the Authorized Partner and Contracting Party must provide to Seller a valid authorized buyer's e-mail address and company address.

Automatic Addition ("Auto-Add") of additional units of product and Automatic Renewals are available only to End Users who purchase Services directly from Seller. Purchasers of Services through Seller Authorized Partners may change, add or delete product units to the Agreement only by submitting a written order via a Seller Authorized Partner. Auto-Add and Automatic Renewals are not available to Company under the Agreement.

**4.2** Seller may require from the Contracting Party a proof of purchase of the particular unit of product and the Services for such product. The Services shall cover the particular units of Seller products described in the Acceptance Notice issued by Seller which will, among other things, identify the product number and associated serial number for each unit of product covered. During provision of the Services, if replacement parts or units of products are needed, such parts will be new or refurbished, and such units of products will be products equivalent to new in performance.

**4.3** The Agreement covers the individual units of the Seller products identified in the Acceptance Notice, including any Auto-Add units that are acquired by the End User for which Seller will issue a separate Acceptance Notice.

### **5.0 Service Charges.**

Services price(s) as listed are for each particular category of Services related to it. Authorized Partner shall state separately on invoices taxes excluded from the fees, and the Contracting Party agrees either to pay the amount of the taxes (based on the current value of the Services) or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3. The price(s) will remain as listed during the initial term of Agreement in accordance with the GSA Pricelist.

### **6.0 Invoicing and Payment Terms.**

For Services purchased directly from Seller, invoices will be provided by Seller up to forty- five (45) days in advance of the applicable period during which Services will be performed. Unless specified otherwise in any other agreement between the parties covering the subject matter hereof, all payment terms are net thirty (30) days from the date of invoice. Seller reserves the right, at any time, to revoke any credit extended if payment is in arrears for more than thirty (30) days after notice, or if in Seller's sole and absolute discretion, Seller determines that the Authorized Partner's or the Contracting Party's credit does not warrant further extension of credit. Additionally, Seller may charge a late payment interest in the amount governed by the Prompt Payment Act (31 USC 3901 et seq) and Treasury regulations at 5 CFR 1315.. For Services purchased through or from an Authorized Partner or from Company, the payment terms agreed to between End User and such Authorized Partner or Company will apply as between such End User and the Authorized Partner or Company (as applicable).

### **7.0 Limitations.**

Service coverage does not include physical damage, misuse, unauthorized alterations or attempts to repair, abnormal operating environments, manmade or natural disasters, direct lightning damage, or damage to consumable items such as tapes, diskettes, ribbons, paper, cables, print heads, batteries or chargers, and does not include any associated equipment or system except as affected by the particular covered product, unless also specifically covered in writing by Seller. Products submitted for repair under these conditions will be subject to an additional fee ,to be agreed upon by the Contracting Party, to bring product up to Seller's specifications. Seller warrants that Services will be performed in a good and workmanlike manner and for a period of ninety (90) days following completion.

### **8.0 Services outside of Scope of Standard Offers.**

Where services are requested that are outside the scope of the services covered under Seller's standard Service offering as described in the SDD's, such services will require additional payment by Contracting Party in accordance with Seller's prevailing rates. Prior to carrying out such services, Seller shall issue a quote to the Contracting Party for payment via a credit card if the additional payment is less than \$1,000. Seller requires a purchase order if the additional payment is greater than \$1,000.

#### **9.0 Right to Inspect.**

Seller reserves the right to inspect any unit of product that is not been covered by a Seller service agreement or Seller service warranty and, if necessary, make it operational. Contracting Party will be responsible for an inspection fee as well as the cost of any repair work that may be necessary to make the product acceptable for coverage under the Agreement, these fees must be set forth and agreed upon by the Contracting Party prior to the performance of the repair work..

**10.0 Contracting Party Responsibilities.** Contracting Party's responsibilities include, among other things: (a) immediately notifying Seller if there is any change regarding the information provided as part of the Agreement or the products (this may impact Seller's ability to perform and require additional fees); (b) making all reasonable efforts to cooperate with Seller in resolving problems remotely, including without limitation executing self-tests or diagnostic programs; (c) standard ; (d) ensuring compatibility of non-supported products, accessories and devices with the product(s); (e) maintaining security of proprietary and confidential information, including without limitation by implementing a procedure for reconstruction of lost or altered files or data programs; and (f) fulfilling such other responsibilities that may be identified in or required by any associated SDD's.

#### **11.0 Changes and Notices.**

**11.1** Seller may change the serial number of product(s) covered by the Services when the original product is damaged beyond economic repair and a replacement product is provided or when the Services provides for an advance replacement product. Seller will provide Contracting Party with notification of the replacement unit serial number.

**11.2** In addition to requesting the Auto-Add feature, where applicable, End User may request a change of the unit(s) of each product covered under the Agreement by forwarding those changes in writing to Seller at: 3 Overlook Point, Lincolnshire, Illinois 60069 Attn: Service Contract Administration. Additions to the Agreement may be accepted by Seller, and if accepted, shall be effective thirty (30) days after receipt. Fees for such additional units of product shall be prorated for the remaining term under the then-current Agreement. Products submitted for repair while not under Services or warranty will be charged Seller's repair rate prevailing at the time such service is provided in accordance with the GSA Pricelist prior to placing them under this Agreement and all fees associated with any such repair work must be set forth by Seller and agreed upon by the Contracting Party prior to repair

**11.3** With the exception of 11.1 and 11.2, all other notices required to be given under this Agreement shall be in writing and delivered in any of the following ways: (i) hand; (ii) facsimile; (iii) email; or (iv) overnight courier to the appropriate party as follows:

- (a) Notices to Contracting Party or Authorized Partner shall be sent to their primary business address as indicated on their Service Order Form or in its profile or as further notified to Zebra in writing.
- (b) Notices to Zebra shall be sent to the address shown below and as notified by Zebra from time to time:

Zebra Technologies International, LLC 3 Overlook  
Point, Lincolnshire, Illinois 60069 Attn: Service  
Contract Administration.

#### **12.0 Termination.**

Termination does not relieve the parties of their respective accrued obligations hereunder. Seller must deliver all Services due until the termination date, and Contracting Party must pay for all Services delivered.. 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, Seller shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer.

#### **13.0 Force Majeure.**

Excusable delays shall be governed by FAR 52.212-4(f).

#### **14.0 Limitation of Liabilities.**

TO THE MAXIMUM EXTENT PERMITTED BY LAW, SELLER WILL NOT BE LIABLE TO CONTRACTING PARTY AND/OR TO AUTHORIZED PARTNERS, ITS AFFILIATES OR ANY OTHER PERSON FOR ANY LOST REVENUES, PROFITS, GOODWILL OR USE, THE COST OF SUBSTITUTED PRODUCTS OR SERVICES, BUSINESS INTERRUPTION OR ANY DAMAGE TO OR LOSS OF ANY SOFTWARE PROGRAMS, DATA OR REMOVABLE DATA STORAGE MEDIA, FOR THE RESTORATION OR REINSTALLATION OF ANY SOFTWARE PROGRAMS OR DATA, OR FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL OR PUNITIVE DAMAGES OF ANY KIND HOWEVER CAUSED RELATED TO THE SERVICES OR THE AGREEMENT, OR THE INABILITY TO USE THE PRODUCTS, WHETHER ARISING UNDER CONTRACT, TORT (INCLUDING STRICT LIABILITY AND NEGLIGENCE), EQUITY OR ANY OTHER THEORY OF LIABILITY, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF THOSE DAMAGES OR EVEN IF THOSE DAMAGES ARE FORESEEABLE. CONTRACTING PARTY'S AND/OR AUTHORIZED PARTNER'S EXCLUSIVE REMEDY IS EXPRESSLY LIMITED TO PERFORMANCE OF THE SERVICES PROVIDED FOR BY THE AGREEMENT OR THE FAIR MARKET VALUE THEREOF. SELLER'S ENTIRE LIABILITY FOR DAMAGES TO AND/OR CONTRACTING PARTY AND/OR AUTHORIZED PARTNERS OR OTHERS RESULTING FROM SERVICES PERFORMED UNDER THE AGREEMENT SHALL IN NO EVENT EXCEED THE CONTRACT PRICE PAID BY CONTRACTING PARTY AND/OR AUTHORIZED PARTNERS, EXCEPT FOR INSTANCES OF PHYSICAL INJURY TO PERSON OR TANGIBLE PERSONAL PROPERTY DAMAGE. TANGIBLE PERSONAL PROPERTY DOES NOT INCLUDE, WITHOUT LIMITATION, DATA, RECORDS, OR DOCUMENTS OR ANY OTHER RECORDED INFORMATION. (SUCH DATA, RECORDS, DOCUMENTS OR OTHER RECORDED INFORMATION ARE EXCLUDED AS TANGIBLE PROPERTY REGARDLESS OF IN WHAT MEDIUM, INCLUDING ELECTRONIC, THEY ARE STORED). SELLER DISCLAIMS ALL WARRANTIES WITH RESPECT TO THE SERVICES, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR USE OR NON-INFRINGEMENT. NEITHER PARTY MAY BRING A LEGAL ACTION UNDER THE AGREEMENT OR RELATED TO THE SERVICES MORE THAN TWO YEARS AFTER THE CAUSE OF ACTION AROSE UNLESS PROVIDED OTHERWISE BY APPLICABLE NON-WAIVABLE LAW. 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.

#### **15.0 Holidays.**

Seller will observe all local public holidays and no Services shall be provided on these days.

#### **16.0 Reserved.**

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#### **17.0 Entire Agreement**

No subsequent agreement, arrangement, relationship or understanding between the parties shall be valid, effective or enforceable and no obligation or liability shall be created on behalf of either party hereto unless and until it is contained in writing, signed by a duly authorized representative of each party. The Agreement, together with the underlying GSA Schedule Contract, Schedule Pricelist, Purchase Order(s), constitutes the entire understanding between Seller Authorized Partner and Contracting Party with respect to the subject matter hereof and supersedes and replaces all prior and contemporaneous agreements, whether written or oral, as to such subject matter. If a conflict exists between this Agreement and the SKU or any of SKU's related SDD's the Agreement shall prevail.

#### **18.0 Assignment.**

The Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns. Contracting Party or Seller may not transfer or assign its interests in the Agreement, in whole or in part, without the prior written consent of the other party.

#### **19.0 Governing Law and Venue.**

**19.1** The Agreement shall be governed by the Federal laws of the United States.

#### **20.0 Export Control.**

Authorized Partner and/or Contracting Party acknowledges its understanding that any products, services, and technology, including technical data (collectively the "Supplied Items") Authorized Partner and/or Contracting Party receives from Seller, and any use, export, re-export, re-sale, release, or other transfer of any Supplied Item or of any product, software or technology manufactured outside of the United States that contains or is the product of any Supplied Item may be subject to the jurisdiction of the export controls and trade sanctions of the United States pursuant to United States Export Administration Act of 1979 and related laws, and these export controls and trade sanctions may be extraterritorial. Authorized Partner and/or Contracting Party represents and warrants that: (i) Authorized Partner and/or Contracting Party is not located in, under the control of, or a national or resident of Cuba, Iran, North Korea, North Sudan, Syria, or to any other country subject to restriction under applicable U.S. laws and

regulations, and it will not transfer, export, or re-export, directly or indirectly, any Supplied Items to such countries or to any nationals thereof; (ii) Authorized Partner and/or Contracting Party will not use Supplied Items in any activity related to the development, production, use, maintenance, or proliferation of weapons of mass destruction, including, without limitation, uses related to nuclear, missile, and/or chemical/biological development and/or production, and Authorized Partner and/or Contracting Party will not transfer, export, or re-export, directly or indirectly, Supplied Items, including any new products developed from or manufactured using Supplied Items, to any party engaged in any such activity; (iii) Authorized Partner and/or Contracting Party will not transfer, export, or re-export any Supplied Items, including new products developed from or manufactured using Supplied Items, directly or indirectly, to any party identified on a restricted party list published by the U.S. government or any other government, or to any party otherwise prohibited under any applicable law from receiving Supplied Items; and Authorized Partner and/or Contracting Party is neither on any such restricted party list nor under the control of an entity on any such list; (iv) Authorized Partner and/or Contracting Party will not transfer, export, or re-export, directly or indirectly, any Supplied Items, including new products developed from or manufactured using Supplied Items, that are subject to the jurisdiction and regulations of a U.S. government or any other government, nuclear regulatory agency and/or defense regulatory agency, without the proper written government authorization, if applicable; and (v) Authorized Partner and/or Contracting Party acknowledges that the use, development, production, transfer, export or re-export of certain Supplied Items may be subject to export and re-export licensing requirements of the U.S. or other nations, and Authorized Partner and/or Contracting Party acknowledges that it will comply with all applicable export and compliance laws and regulations whenever it transfers, exports, or re-exports Supplied Items, including new products developed from or manufactured using Supplied Items, and acknowledges that such controlling laws and regulations may be amended from time to time. With respect to Authorized Partner's and/or Contracting Party's transfer, export or re-export sales of the Supplied Items, Seller will not be responsible for obtaining any necessary export licenses relating to the Supplied Items.

Authorized Partner and/or Contracting Party acknowledges its understanding that any Supplied Items Authorized Partner and/or Contracting Party receives from Seller, and any use, export, re-export, re-sale, release, or other transfer of any Supplied Item or of any product, software or technology manufactured outside of the country of export that contains or is the product of any Supplied Item may be subject to the jurisdiction of the export controls and trade sanctions of the country of export and that such export controls and trade sanctions may be extraterritorial. In addition to the laws and regulations of the United States, the Supplied Items may be subject to the export controls and trade sanctions of Australia, China, EU, Hong Kong, Japan, Malaysia, or Singapore. With respect to Authorized Partner's and/or Contracting Party's transfer, export or re-export sales of the Supplied Items from those countries, Seller will not be responsible for obtaining any necessary export licenses relating to the Supplied Items.

#### **21.0 Third-Party Rights.**

If applicable, a person who is not party to the Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Agreement, but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

#### **22.0 Language.**

The parties hereto confirm that it is their wish that the Agreement, as well as all other documents relating hereto, including all notices, have been and shall be drawn up in the English language only.

Les parties confirment qu'il est leur souhait que l'accord et tous les autres documents qui lui sont associés, y compris les notifications entre les parties, ont été et doivent être rédigés en anglais.

Las partes involucradas confirman que es su deseo que el Acuerdo, así como todos los otros documentos asociados al mismo, incluyéndose notificaciones entre partes, han sido, y deberán ser elaborados, en idioma Inglés.