

# Confidentiality Title Page

## PROPRIETARY STATEMENT

This proposal includes data that shall not be disclosed outside The Cooperative Council of Governments and Equalis Group and shall not be duplicated, used, or disclosed – in whole or in part – for any purpose other than to evaluate EC America’s potential to deliver on a future proposal or quotation. This restriction does not limit The Cooperative Council of Governments and Equalis Group’s right to use information contained in this data if it is lawfully obtained from another source without restriction. The data subject to this restriction are contained in sheets marked by the following statements:

“CONFIDENTIAL – THE INFORMATION IN THIS SECTION IS MARKED CONFIDENTIAL”

OR

“CONFIDENTIAL – THE INFORMATION IN THIS TABLE IS MARKED CONFIDENTIAL”

### **This document is in response to:**

RFP #:

COG-2139

ISSUED BY:

The Cooperative Council of Governments

On Behalf of Equalis Group

6001 Cochran Road, Suite 333

Cleveland, Ohio 44139

DATED:

October 7, 2022



***REQUEST FOR PROPOSALS:***  
Cloud Solutions

***RFP #:***  
COG-2139

***ISSUED BY:***  
The Cooperative Council of Governments  
On Behalf of Equalis Group

*6001 Cochran Road, Suite 333  
Cleveland, Ohio 44139*

***DATED:***  
October 7, 2022

***SECTION TWO:***  
Proposal Submission Documents, Technical Proposal, Cost  
Proposal and Other Required Forms

## **TABLE OF CONTENTS**

<b>PROPOSAL FORM CHECKLIST.....</b>	<b>3</b>
<b>PROPOSAL FORM 1: TECHNICAL PROPOSAL .....</b>	<b>4</b>
<b>PROPOSAL FORM 2: COST PROPOSAL.....</b>	<b>32</b>
<b>PROPOSAL FORM 3: DIVERSITY VENDOR CERTIFICATION PARTICIPATION .....</b>	<b>33</b>
<b>PROPOSAL FORM 4: CERTIFICATIONS AND LICENSES .....</b>	<b>34</b>
<b>PROPOSAL FORM 5: UNRESOLVED FINDINGS FOR RECOVERY .....</b>	<b>35</b>
<b>PROPOSAL FORM 6: MANDATORY DISCLOSURES .....</b>	<b>36</b>
<b>PROPOSAL FORM 7: DEALER, RESELLER, AND DISTRIBUTOR AUTHORIZATION .....</b>	<b>37</b>
<b>PROPOSAL FORM 8: MANDATORY SUPPLIER &amp; PROPOSAL CERTIFICATIONS .....</b>	<b>38</b>
<b>PROPOSAL FORM 9: CLEAN AIR ACT &amp; CLEAN WATER ACT.....</b>	<b>39</b>
<b>PROPOSAL FORM 10: DEBARMENT NOTICE .....</b>	<b>40</b>
<b>PROPOSAL FORM 11: LOBBYING CERTIFICATIONS.....</b>	<b>41</b>
<b>PROPOSAL FORM 12: CONTRACTOR CERTIFICATION REQUIREMENTS .....</b>	<b>42</b>
<b>PROPOSAL FORM 13: BOYCOTT CERTIFICATION.....</b>	<b>43</b>
<b>PROPOSAL FORM 14: FEDERAL FUNDS CERTIFICATION FORMS .....</b>	<b>44</b>
<b>PROPOSAL FORM 15: ARIZONA CONTRACTOR REQUIREMENTS .....</b>	<b>50</b>
<b>PROPOSAL FORM 16: NEW JERSEY REQUIREMENTS.....</b>	<b>52</b>
<b>PROPOSAL FORM 17: GENERAL TERMS AND CONDITIONS ACCEPTANCE FORM .....</b>	<b>63</b>
<b>PROPOSAL FORM 18: EQUALIS GROUP ADMINISTRATION AGREEMENT DECLARATION.....</b>	<b>64</b>
<b>PROPOSAL FORM 19: MASTER AGREEMENT SIGNATURE FORM .....</b>	<b>65</b>

# PROPOSAL FORM CHECKLIST

**The following documents must be submitted with the Proposal**

The below documents can be found in Section 2; Proposal Submission and Required Bid Forms and must be submitted with the proposal. Please note Proposal Form 2 is a separate attachment (attachment B).

## TECHNICAL PROPOSAL

- Proposal Form 1: Technical Proposal**

**PROPOSAL PRICING:** Attachment B is provided separately in a Microsoft Excel file and is required to complete your cost proposal.

- Proposal Form 2: Cost Proposal**

## OTHER REQUIRED PROPOSAL FORMS:

- Proposal Form 3: Diversity Vendor Certification Participation**
- Proposal Form 4: Certifications and Licenses**
- Proposal Form 5: Unresolved Findings for Recovery**
- Proposal Form 6: Mandatory Disclosures**
- Proposal Form 7: Dealer, Reseller, and Distributor Authorization**
- Proposal Form 8: Mandatory Supplier & Proposal Certifications**
- Proposal Form 9: Clean Air Act & Clean Water Act**
- Proposal Form 10: Debarment Notice**
- Proposal Form 11: Lobbying Certification**
- Proposal Form 12: Contractor Certification Requirements**
- Proposal Form 13: Boycott Certification**
- Proposal Form 14 Federal Funds Certification Forms**
- Proposal Form 15: Arizona Contractor Requirements**
- Proposal Form 16: New Jersey Requirements**
- Proposal Form 17: General Terms and Conditions Acceptance Form**
- Proposal Form 18: Equalis Group Administration Agreement Declaration**
- Proposal Form 19: Master Agreement Signature Form**

*(The rest of this page is intentionally left blank)*

# PROPOSAL FORM 1: TECHNICAL PROPOSAL

## 1. OVERVIEW & QUALIFICATIONS

### 1.1. Company Information

<b>1.1.1. Company Name:</b>	EC America Inc., (a subsidiary of immixGroup, Inc.)	
<b>1.1.2. Corporate Street Address:</b>	8444 Westpark Drive, Suite 200 McLean, VA 22102	
<b>1.1.3. Website:</b>	<a href="https://www.immixgroup.com/government/">https://www.immixgroup.com/government/</a>	
<b>1.1.4. Formation.</b> In what year was the company formed? For how long has your company been operating under its present business name? If your company has changed its business name, include the most recent prior business name and the year of the name change.	EC America, Inc., (EC America) a Virginia Corporation, is a wholly owned subsidiary of immixGroup, Inc. Formerly known as Selbre Government Sales, Inc., the company was founded in 1998 and changed its name to EC America, Inc., in 2002. In 2008, all outstanding shares of EC America, Inc.'s stock were acquired by immixGroup, Inc.  Please find the attached document "EC America Formation Supplemental Information"	
<b>1.1.5. Primary Point of Contact.</b> Provide information about the Bidder representative/contact person authorized to answer questions regarding the proposal submitted by your company:	Contact Name:	Lisa Kilgore
	Title:	Contract Specialist – State, Local, Education
	Phone:	720-418-7843
	E-Mail Address:	Elizabeth.Kilgore@immixGroup.com
<b>1.1.6. Authorized Representative.</b> Print or type the name of the Bidder representative authorized to address contractual issues, including the authority to execute a contract on behalf of Bidder, and to whom legal notices regarding contract termination or breach, should be sent (if not the same individual as in 1.1.9., provide the following information on each such representative and specify their function).	Contact Name:	Chauncey Kehoe
	Title:	Contracts Manager – State, Local, Education
	Phone:	703-639-1565
	E-Mail Address:	Chauncey_Kehoe@immixGroup.com

<b>1.2. Financial Strength &amp; Legal Considerations</b>	
<p><b>1.2.1. <i>Financial Strength.</i></b> Demonstrate your financial strength and stability with meaningful data. This could include, but is not limited to, such items as financial statements, SEC filings, credit &amp; bond ratings, letters of credit, and detailed reference letters. Note: you may mark this information as a “Trade Secret” per the terms outlined in the RFP.</p>	<p>immixGroup’s parent company, Arrow Electronics, is a B2B enabler and global distributor of products, services, and solutions to industrial and commercial users of electronic components and enterprise software. Headquartered in Centennial, Colorado, with 2021 sales of nearly \$35 billion, Arrow Electronics guides innovation forward for over 125,000 of the world's leading suppliers of technology used in homes, businesses, and daily life. Through a network of more than 345 locations serving over 80 countries, Arrow brings electronics and information technology to enterprises in industrial and commercial markets including aerospace and defense, transportation, finance, health, and manufacturing. Arrow distributes products across many categories including data center infrastructure, cloud services (public, private, hybrid, virtual), and the many new technologies of the Internet of Things (IoT). SEC filings are made available at:</p> <p><a href="https://investor.arrow.com/financials/sec-filings/default.aspx">https://investor.arrow.com/financials/sec-filings/default.aspx</a></p>
<p><b>1.2.2. <i>Bankruptcy &amp; Insolvency.</i></b> Describe any bankruptcy or insolvency for your organization (or its predecessors, if any) or any principal of the firm in the last three (3) years.</p>	<p>None</p>
<p><b>1.2.3. <i>Litigation.</i></b> Describe any litigation in which your company has been involved in the last three (3) years and the status of that litigation.</p>	<p>No material litigations to disclose.</p>
<b>1.3. Industry Qualifications</b>	
<p><b>1.3.1. <i>Company Identification.</i></b> How is your organization best identified? Is it a manufacturer or developer, distributor, dealer, reseller, or service provider?</p>	<p>EC America is known in the industry as a value-added distributor.</p>
<p><b>1.3.2. <i>Manufacturer Authorization.</i></b> If your company is best described as a distributor/dealer/reseller (or similar entity), please certify that your organization is authorized to sell on behalf of the products and services you represent.</p>	<p>EC America certifies that it is authorized to distribute and resell the following product brands below. EC America has also provided letters of authorization (LOAs) from each supplier brand included in this response.</p> <p><u>Proposed Suppliers:</u></p> <p>Citrix Systems, Inc. (Citrix) Commvault Systems, Inc. (Commvault)</p>

	<p>LogRhythm, Inc. (LogRhythm)  Netreo Inc. (Netreo)  Nutanix Inc. (Nutanix)  Open Text Inc. (Opentext)  Palo Alto Networks (Palo Alto) Qlik  SmartBear Software Inc. (SmartBear)  Tanium  Kronos Incorporated, a UKG company (Kronos)  Veeam Software Corporation (Veeam)</p> <p>The respective LOAs are attached in a zip file named "EC America Supplier LOAs"</p>
<p><b>1.3.3. <i>Authorized Distributors, Agents, Dealers, or Resellers.</i></b> Describe the different channels in which this contract will be made available to Equalis Group Members. Your response should include, but is not limited to, whether your organization will serve as the single point of sale or if the contract will be made available through a network of distributors, agents, dealers, or resellers.</p> <p><b>NOTE:</b> Bidders intending to authorize distributors, agents, dealers, or resellers must complete <b><u>Proposal Form 7 - Dealer, Distributor and Reseller Authorization Form.</u></b></p>	<p>EC America has proposed 12 supplier brands for this proposal.</p> <p>As a value-added distributor, EC America can adapt its go-to-market strategy to best meet the supplier where they are in their selling strategy. Below are the two most common ways EC America works with suppliers.</p> <p>Most suppliers prefer that EC America serve as their distributor. This means that EC America maintains a network of resellers/dealers authorized to sell on behalf of the supplier and public sector contracts.</p> <p>For some supplier brands, EC America acts as the direct reseller. As a result, EC America is the only point of sale for government agencies and end users.</p> <p>EC America’s ability to act as a distributor and/or reseller provides customers with flexible purchasing options that meet their procurement needs.</p>
<p><b>1.3.4. <i>Network Relationship.</i></b> If your company is best described as a manufacturer, developer, or service provider, please describe how your dealer network operates to sell and deliver the Products &amp; Services proposed in this RFP. If applicable, is your network independent or company owned?</p>	<p>EC America is recognized as a public sector innovator, developing, and delivering programs designed to ensure the success of large government programs and contract vehicles. A few of our current successes include NASA’s SEWP V, GSA’s Multiple Award Schedules, DoD ESI BPAs, and a variety of state and local government contracts such as NCPA, Oklahoma, Ohio STS, California CMAS, Texas DIR, and NASPO Value Point. For a more in-depth look at our contract vehicles please feel free to check out</p>

our website's  
'contract vehicle tab';  
<https://www.immixgroup.com/government/>

Our strong network of partnerships with more than 300 leading original equipment suppliers (OEMs) and 1,200 technology resellers and service providers spans every socio-economic category and technology specialization. Through EC America's innovative programs and services, our channel partners have the


resources to successfully deliver IT solutions to public sector customers. As a result, they can carry out their initiatives and serve their citizens effectively. One such innovation is the SLED Support Center (SSC). It is a one-stop-shop providing engineering support, market intelligence, as well as compliance, and contract expertise. The SSC also offers access to flexible capital solutions to help bridge budgeting and funding gaps in fiscal cycles.

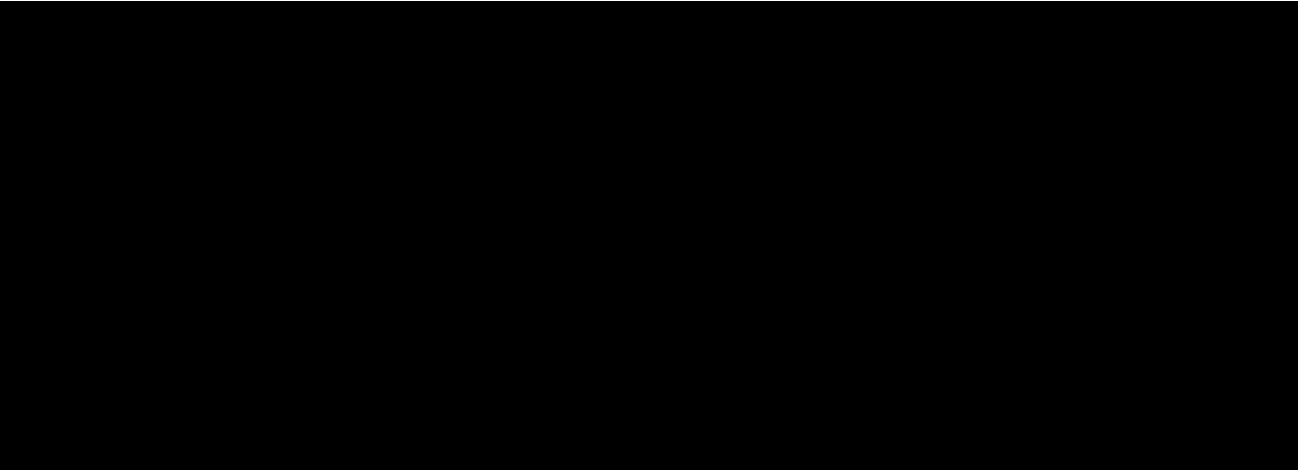
EC America, Inc.'s proprietary Trusted Supplier Program a part of our Supply Chain Risk Management (SCRM) plan allows us to guarantee the authenticity of every product we deliver while meeting legal and regulatory requirements. We can ensure our government customers can buy with confidence, mitigating the risk of receiving counterfeit or potentially tainted products and parts.

EC America has extensive knowledge and experience supporting all phases of the government acquisition life cycle. We specialize in providing contracting models, systems, and services to complex enterprise technology companies and the government agencies they serve. Our rapid growth, leading reputation, and diverse capabilities are the result of highly efficient operations and a business model focused on empowering partners. Our consistent, significant year-over-year revenue growth is a prime indicator of EC America's financial strength and stability.

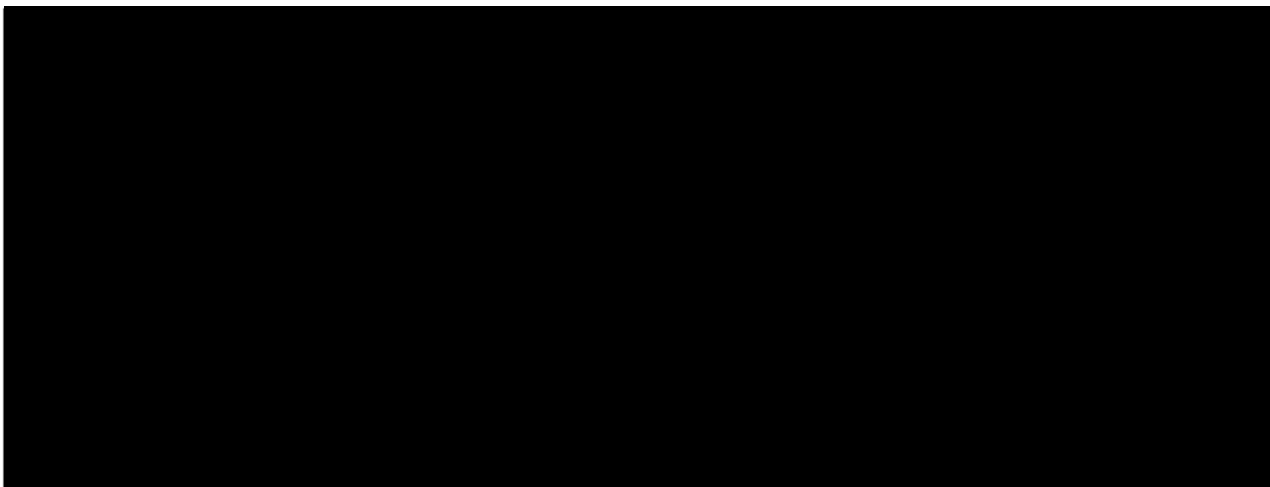
EC America's staff is widely respected and relied upon for its professional, ethical business approach. Our success is based upon the leadership of a highly experienced management team. Our current staff



	<p>has deep expertise in meeting each customer’s specific requirements and in the technology required to satisfy those needs.</p> <p>It is this dedicated focus on serving the government that makes EC America the partner of choice for nearly every federal government agency, numerous state and local agencies, and a growing number of leading IT vendors.</p> <p>Please note if awarded, that as a value-added distributor EC America can utilize its extensive relationships with suppliers and resellers to provide more specific information about their operations and ensure all are in total compliance.</p>
<p><b>1.3.5. Industry Experience.</b> How long has your company provided the products and services outlined in your response to this RFP? What percentage of your company’s revenue in each of the last three (3) full calendar years was generated from these products and services?</p>	<p><b>CONFIDENTIAL – THE INFORMATION IN THIS SECTION IS MARKED CONFIDENTIAL</b></p> 



<p><b>1.3.6. Geographic Reach.</b> Describe your company's service area in the United States and which areas you intend to offer services under a resulting contract if awarded.</p>	<p>EC America, through its network of resellers and suppliers, reaches every geographical area of the United States.</p> <p>EC America intends to offer products and services to all eligible customers under a resultant award.</p>
<p><b>1.3.7. Certifications and Licenses.</b> Provide a detailed explanation outlining the licenses and certifications that are i) required to be held, and ii) actually held by your organization (including third parties and subcontractors that you use). Has your company maintained these certifications on an ongoing basis? If not, when and why did your company lose any referenced certifications?</p> <p><b>NOTE:</b> Provide copies of any of the certificates or licenses included in your response in <b>Proposal Form 4 - Certifications and Licenses.</b></p>	<p>EC America, Inc. holds an ISO 9001:2015 certification. Please find a copy of the certification attached: file name "EC America, Inc., ISO 9001:2015 Certification"</p> <p>EC America's authorized resellers/dealers are located and registered throughout states in the U.S. Each of those states has its registration processes for small businesses, HUB, minority-owned, etc. Upon request, EC America can work with the resellers to provide documentation around certifications.</p>
<p><b>1.4. Public Sector Experience</b></p>	
<p><b>1.4.1. Public Sector Cooperative Contracts.</b> Provide a list of the public sector cooperative contracts (e.g., state term contracts, public sector cooperatives, etc.) you currently hold and the annual revenue through those contracts in each of the last three (3) calendar year. Please exclude information and data associated with Federal or GSA contracts</p>	<p><b>CONFIDENTIAL – THE INFORMATION IN THIS SECTION IS MARKED CONFIDENTIAL</b></p>



<p><b>1.4.2. Education Success.</b> What is the i) total dollar amount, and ii) percentage of your company's total annual revenue generated by sales to educational institutions (i.e., K-12 schools &amp; school districts and high education)?</p>	<p><b>CONFIDENTIAL – THE INFORMATION IN THIS SECTION IS MARKED CONFIDENTIAL</b></p> <p>[REDACTED]</p>
<p><b>1.4.3. Government Success.</b> What is the i) total dollar amount, and ii) percentage of your company's total annual revenue generated by sales to local governments (i.e., municipalities, counties, special districts, and state agencies)?</p>	<p><b>CONFIDENTIAL – THE INFORMATION IN THIS SECTION IS MARKED CONFIDENTIAL</b></p> <p>[REDACTED]</p>
<p><b>1.4.4. Customer References.</b> Provide references of at least five (5) local government or educational institution customers for which your company has provided products and services similar in nature and scope to those defined in this RFP in the last three (3) years. Each reference should include:</p> <ul style="list-style-type: none"> <li>a. Customer contact person and their title, telephone number, and email address;</li> <li>b. A brief description of the products and services provided by your company;</li> <li>c. Customer relationship starting and ending dates; and,</li> <li>d. Notes or other pertinent information relating to the customer and/or the products and services your company provided.</li> </ul>	<p><u>Reference #1:</u>  <b>Butler County, Pennsylvania</b>  <b>Customer Name:</b> Jim Venturini  <b>Customer Title:</b> Information Technology Director  <b>Customer Number:</b> 724-543-2500  <b>Customer Email:</b> jventuri@co.butler.pa.us</p> <p><b>Brief Description:</b>  The customer purchased CBT Nuggets' on-demand Cybersecurity and IT training subscriptions for the team.</p> <p><b>Customer relationship start and end date:</b>  COTS purchase in January 2022. Support ongoing as customer needs/warrants more training.</p> <p><u>Reference #2:</u>  <b>University of Southern California</b>  <b>Customer Name:</b> Fan Gao  <b>Customer Title:</b> Senior Vendor Management Analyst  <b>Customer Number:</b> 213-821-2842  <b>Customer Email:</b> fangao@usc.edu</p> <p><b>Brief Description:</b>  Customer bought Blue Prism to help augment their human workforce with a Digital Workforce (robot).</p> <p><b>Customer relationship start and end date:</b>  COTS purchase in January 2022. Support and additional products can be purchased.</p> <p><u>Reference #3:</u>  <b>Lake County, Ohio</b>  <b>Customer Name:</b> Cory Vojak  <b>Customer Title:</b> Director of Workforce Development  <b>Customer Number:</b> 440-350-2372  <b>Customer Email:</b> Cory.Vojack@lakecountyohio.gov</p> <p><b>Brief Description:</b>  The customer bought Coursera Government</p>

	<p>Enterprise License (training) for 126-500 users.  <b>Customer relationship start and end date:</b>  COTS purchased in February 2022. Customers can renew and obtain additional support as needed</p> <p><u>Reference #4:</u>  <b>Rockland County, New York</b>  <b>Customer Name:</b> Kathy McSharar  <b>Customer Title:</b> CPPO Purchaser II  <b>Customer Number:</b> 845-364-3821  <b>Customer Email:</b> mcsharak@co.rockland.ny.us</p> <p><b>Brief Description:</b>  The customer purchased Authentic8 cloud-native web browsing environment.  <b>Customer relationship start and end date:</b>  COTS purchased in March of 2022. Customers can renew and/or purchase support as needed.</p> <p><u>Reference #5:</u>  <b>The Chickasaw Nation Department of Commerce</b>  <b>Customer Name:</b> Keegan West  <b>Customer Title:</b> Information Technology Buyer  <b>Customer Number:</b> 580-272-1389  <b>Customer Email:</b> Keegan.West@chickasaw.net</p> <p><b>Brief Description:</b>  The customer bought Varonis software solutions that protect data from insider threats and cyberattacks.  <b>Customer relationship start and end date:</b>  COTS purchased in September 2022. Customers can purchase support and additional technology as needed.</p>
--	---

## 2. Products & Services

### 2.1. PRODUCTS & SERVICES

<p><b>2.1.1. Product &amp; Services Description(s).</b>  Provide a detailed description of the products and services you are offering as a part of your proposal.</p> <p>Your response may include, but is not limited to, information related to differentiators, manufacturing capabilities &amp; advantages, warranty information, turnkey capabilities,</p>	<p>Government-wide mandates such as the Cloud First Policy and Federal Data Center Consolidation Initiatives, coupled with the need for flexibility, increased mission efficiencies, and cost savings, are driving the adoption of cloud computing across government agencies. However, federal procurement and contracting systems, budgetary processes, and current laws make it difficult for agencies to adopt the mandated policies. Agency mission requirements continue to expand under increasing budget constraints, requiring</p>
---	---

installation or set-up, training services, maintenance services, or any other piece of information that would help understand the breadth and depth of your products and service offering.

**IMPORTANT.** This description along with the products and services included in the **Attachment B – Cost Proposal** will be utilized to define the overall products and services available under an awarded contract.

simultaneous delivery of new capabilities while ensuring mission success – all with little to no fault tolerance. To ensure success, agencies need to embrace an agile, flexible, and scalable approach to a cost-effective IT environment.

Those tasked with leveraging emerging cloud capabilities to rearchitect their environments need to take advantage of evolving technologies. Representing a broad selection of industry-leading brands, EC America helps government customers meet cloud mandates and increase the flexibility of their infrastructures through:

- A wide selection of industry-leading cloud solutions
- The most rapid path for acquisition
- Insight into how other agencies are embracing cloud adoption
- Aid in mapping requirements to available products for relevant, effective solutions
- Vendor-neutral cloud computing services

A Wide Range of Industry-Leading Cloud Services & Products. To realize the benefits of the cloud, you need rapid, reliable access to the strongest tools available – and the ability to help you choose the right solutions.

EC America delivers a wide range of technologies from more than 20 pure cloud vendors. Coupled with an understanding of emerging capabilities to harness the value of cloud architectures, EC America offers flexible financing models and an extensive ecosystem of cloud solution providers to transform hundreds of traditional software models into cloud offerings.

- Securely virtualize workloads
- Host solutions in public, private, hybrid, and/or community clouds
- Provision resources to increase infrastructure efficiencies
- Take advantage of increased IT flexibility and elasticity
- Leverage agile development to accelerate the delivery of applications

Innovative Consumption Models:

EC America’s extensive public sector knowledge and experience combined with flexible financial options enable us to supply cloud solutions to meet government customer and channel partner needs. Our vendor partnerships and an extensive array of IT services allow us to offer multiple delivery

options:

- Software as a Service (SaaS)
- Platform as a Service (PaaS)
- Infrastructure as a Service (IaaS)

Experience and Insight to Deliver the Ideal Cloud Solution:

EC America's cloud computing specialists have extensive knowledge of each of the product suites we represent, so we can map your requirements to the right cloud solution. And with nearly two decades of experience providing technology products to every federal agency and major state and local governments, we can offer valuable insight into how other customers are successfully addressing information management challenges like yours.

In addition, our diverse cloud vendor portfolio enables us to bundle complementary products together to save you money and speed up procurement.

Preferred Contract Vehicles and Business Partners Acting as a prime contractor or through partnerships with 800+ solution providers spanning every socio-economic status and technology specialization, EC America supplies easy access to technology products and services through the contract vehicles you prefer and the partners you trust.

Guaranteed Product Authenticity:

As the complexity of the technology supply chain increases, the risk posed by counterfeit or potentially tainted products and parts has never been greater. EC America, Inc.'s Trusted Supplier Program guarantees the authenticity of any product delivered while meeting legal and regulatory requirements – at no added cost – so you can buy with confidence.

Proposed Suppliers:

Citrix Systems, Inc. (Citrix)

Commvault Systems, Inc. (Commvault)

LogRhythm, Inc. (LogRhythm)

Netreo Inc. (Netreo)

Nutanix Inc. (Nutanix)

Open Text Inc.

(Opentext)

Palo Alto Networks (Palo Alto)

Qlik

SmartBear Software Inc. (SmartBear)

Tanium

Kronos Incorporated, a UKG company (Kronos)

Veeam Software Corporation (Veeam)

**Citrix**

Citrix is a leader in virtual apps and desktops. Citrix cloud services, allow users to more effectively use other Citrix technologies. Making it easier to move sensitive data to any cloud or cloud hybrid. Citrix has an extensive line-card of cloud and cloud-capable products. From Citrix DaaS, and Citrix Analytics for Performance to Citrix Secure Internet Access and Citrix EndPoint Management. The Citrix DaaS, Desktop as a Service, provides a secure workspace experience on any device. It's a managed DaaS solution, plus the advantage of more IT agility, more corporate security, and more end-user productivity.

**Commvault**

From a single Commvault dashboard, you can understand the current state of data across public, private and hybrid cloud environments. Commvault's Intelligent Data Services platform closes the business integrity gap while ensuring data stays available for business growth. These services can be provided anywhere: on-premises, hybrid, or multi-cloud, delivered via software as a service (SaaS), integrated appliance, or managed by partners. Commvault complements today's top public and private clouds with automated and proven tools designed to meet the data recovery SLAs of even the most complex organizations.

**LogRhythm**

LogRhythm Cloud provides a complete security information and event management (SIEM) system. The LogRhythm SIEM experience provides the flexibility of a SaaS solution. Data is secured and optimized simultaneously for transfer through encryption both in transit and at rest. Offering 24x7 infrastructure monitoring and applying the latest software patches and updates seamlessly. LogRhythm Cloud provides an intuitive, browser-based UI to make incident response and remediation easier than ever. Additionally, there's no hardware to manage and maintain. Immediate access is granted to a fully functioning SIEM by simply importing log data. The rapid deployment of the LogRhythm Cloud saves considerable time over an on-prem deployment. LogRhythm's cloud-based SIEM is the most complete SaaS SIEM on the market with the same robust and powerful analyst

capabilities as an on-prem SIEM Platform.

**Netreo**

Netreo transforms cloud monitoring from reactive to proactive. This ensures the top performance of mission-critical cloud applications. The Netreo proactive cloud monitoring identifies and prevents issues before they impact customers. Netreo provides fully automated onboarding, an intuitive UI, and customizable dashboards that automate device discovery and configuration. This vastly reduces training time and equips IT personnel with the data they need to make improvements. Through the reduction of alert noise and automation of recurring administrative tasks, Netreo continually improves operational efficiencies and overall value by reducing alert noise, performing configuration self-tuning, and automating recurring administrative tasks.

**Nutanix**

The Nutanix Cloud platform is a hybrid cloud infrastructure with unified multi-cloud management, unified storage, database services, and desktop services. It supports any application and workload, in all locations. Nutanix's, automated infrastructure management enables 1-click deployment of the cloud, patching, provisioning, and scaling with intuitive UI. The self-service IaaS allows users the power to furnish their own apps and services with built-in role-based governance. Nutanix offers, flexible storage options. Storage can be sized precisely to fit all needs and expanded quickly and easily as needs grow. Storage policies are applied on a per-workload basis. Nutanix cloud platform provides automated and secure networking with flexible and open compute AHV and advanced organizing system storage.

**OpenText**

OpenText cloud products are here to get users at any level started with information management and are the global market leader for Information Management. The OpenText Cloud products specialize in seamless systems integration, collaboration, and management across ecosystems, using a single digital backbone. OpenText offers solutions for content management, business networks, user experience management, security developer information management, AI & analytics, and digital process automation. OpenText, can help



manage information end-to-end, connect what matters, and accelerate business in the cloud.

#### **Palo Alto**

Palo Alto has two major cloud solutions; cloud-delivered security services and a cloud-native application protection platform. The cloud-delivered security solution is fully integrated and accessible from anywhere. The security service is the industry's most complete coverage in a single, all-in-one portfolio. Backed by the Palo Alto world-renowned Unit 42 threat research team. The Palo Alto cloud security service shares threat vector intelligence from 85,000 global customers across a seamless product ecosystem. This provides a one-of-a-kind protection stopping known, unknown, and zero-day threats 180x faster than any other solution. Prisma Cloud is a fully integrated, unified integrated Cloud-Native Application Protection Platform (CNAPP). The Prisma Cloud secures applications from code to cloud. This allows development operation and security teams to more efficiently accelerate secure development and deployment more. Fully flexible scalability, for customer, needs at the start of the cloud migration and throughout the expansion of the platform's use cases.

#### **Qlik**

Qlik cloud is an end-to-end data integration and analytics cloud platform. One platform, Qlik Cloud, transforms raw data into action by providing real-time information to drive immediate action. Qlik cloud is built for active intelligence, using real-time, AI-driven data and analytics. Providing ultimate flexibility with an open SaaS platform that is cloud-agnostic and allows for a hybrid deployment. Users have full access to a cloud platform without vendor lock-in. Compute entirely in Qlik's cloud or via a hybrid deployment. This adaptable analytics deployment option protects data location and local governance needs while providing unmatched performance and scale. Qlik cloud's active intelligence removes the need for manual resource-intensive tasks. Through automation, proactive data insights trigger action from relevant systems and downstream activities.

#### **SmartBear**

SmartBear products range from test automation, app stability management, test management and BDD, API lifecycle, performance testing,

collaboration, and open source. All of the SmartBear tools work seamlessly together on their own, or with tools from other suppliers. One of SmartBear's products, BitBar, is the most flexible cloud-based testing solution for mobile devices and browsers, allowing for manual and automated tests. BitBar helps users to stay ahead of the development curve. SmartBear understands that automation can't cover everything. However, the test automation products at SmartBear identify errors

faster, and can seamlessly fall in step with users' current processes. Performance testing is a major hurdle for all, SmartBear has apps in place to make sure everything is ready for high-traffic moments. Test management and BDD can be overwhelming, with massive amounts of data, SmartBear clears the path, allowing users to focus on the project goals and guide decisions. All of SmartBear's products focus on quality, scalability, and agility. The risk of rapid transformation is completely taken care of with SmartBear.

#### **Tanium**

Tanium provides the best platform to secure and manage your cloud-based infrastructure. Migrating to the cloud is a big undertaking, Tanium can provide critical insight, and identify opportunities to secure infrastructure beforehand. Strategic migration is a must, Tanium provides a new management paradigm that makes migration easier than ever. Starting with the identification of the correct applications to migrate, closing vulnerabilities before moving, and setting up a strategy for ongoing cloud operations that promotes security and efficiency. Tanium use cases in the cloud include endpoint protection, security hygiene, threat detection and response, IT Operations, and asset management.

#### **Kronos**

Kronos is the global leader in workforce management solutions, that are cloud capable. The Kronos line of products, enables organizations to control labor costs, minimize compliance risk, and improve workforce productivity. Kronos has applications for time and attendance, scheduling, absence management, HR and payroll, hiring, and labor analytics. The AI-powered workforce solutions can be tailored to meet the needs of each industry and provides intelligent platforms with operational

	<p>insights. Kronos provides three solution platforms and the opportunity to use individual applications to meet the needs of workforces big and small. For the public sector, Kronos understands the need to reduce compliance risk, increase operational efficiencies and retain top talent.</p> <p><b><u>Veeam</u></b></p> <p>The Veeam platform is the number one Hybrid Cloud Backup solution. Veeam understands that legacy backup doesn't stretch across the cloud and to succeed it is imperative that organizations have a native backup for all environments, ownership, and control of data as well as centralized management and visibility. Additionally, organizations of any size are enabled to securely store and manage cloud data with comprehensive support for the major public cloud platforms like AWS, Microsoft Azure, and Google Cloud. Users can protect exabytes of cloud data while avoiding overspending through policy-based management, immutability, and proactive cost calculation. Veeam's single-platform cloud backup solution, supports multiple clouds, with fast, flexible, and reliable backup, archiving, recovery and replication.</p>
<p><b>2.1.2. Additional Offering.</b> Please include any additional products and services not included in the scope of the solicitation that you think will enhance and add value to this contract's participating agencies.</p>	<p>As the IT landscape evolves, new emerging technologies are brought to the market. These technologies include new cloud offerings as well as software. EC America is pleased to offer CCOG's eligible customers a complete catalog of offerings to help further secure and support their network.</p>
<p><b>2.1.3. Open Market Products.</b> Provide a detailed description of your ability to accommodate requests for Open Market Products. Open Market Products is a category of products that cannot be found in your standard catalog offering or non-inventoried products.</p>	<p>As a distributor, EC America is always welcoming new emerging technologies to our catalog. These technologies are new to the market and bring government customers innovative technology options. As these options may not be available on federal contracts such as GSA, we would welcome the opportunity to offer them to CCOG's eligible customers either through an open market line item or a special discounting program.</p> <p>Additionally, as the evolving IT landscape changes with security requirements and new advances in technology, our suppliers may occasionally bring new technology to the market. With these new categories, we would like to offer CCOG's eligible customers the ability to buy from our growing catalog of innovative solutions. We can do this</p>

	<p>through open market pricing and/or streamlining the existing supplier discount on the award pricelist.</p>
<p><b>2.1.4. Warranty.</b> Provide a copy of the manufacturer’s warranty. If required, please attach the warranty as an attachment, as instructed in this document. Describe notable features and/or characteristics of the warranty that a public sector customer would find interesting or appealing. Pricing related to the any extended warranty options must be included in <b><u>Attachment B – Cost Proposal.</u></b></p>	<p>EC America, Inc., shall pass through the Supplier’s warranty and any end user license agreement (EULA) to the State. EC America has supplied the applicable supplier EULAs as a ZIP file titled “EC America Supplier EULAs”.</p>
<p><b>2.1.5. Security.</b> Describe the security protocols in place to ensure the safe transmission of information being shared through your products and services.</p>	<p>Most of EC America’s proposed suppliers in this response are either FedRAMP or StateRAMP certified. Those that are not, are either in the process or their cloud offering doesn’t meet the requirements for certification.</p> <p><u>EC America, Inc.’s Proposed Suppliers:</u>  Citrix Systems, Inc. (Citrix) → FedRAMP Authorized Moderate</p> <p>Commvault Systems, Inc. (Commvault) → FedRAMP in Process High</p> <p>LogRhythm, Inc. (LogRhythm) → evaluating FedRAMP and StateRAMP</p> <p>Netreo Inc. (Netreo) → evaluating FedRAMP and StateRAMP</p> <p>Nutanix Inc. (Nutanix) → FedRAMP Authorized Moderate</p> <p>Open Text Inc. (Opentext) → FedRAMP in Process Moderate</p> <p>Palo Alto Networks (Palo Alto) → FedRAMP Authorized Moderate</p> <p>Qlik → FedRAMP Authorized Moderate</p> <p>SmartBear Software Inc. (SmartBear) → evaluating FedRAMP and StateRAMP</p> <p>Tanium → FedRAMP in Process Moderate</p> <p>Kronos Incorporated, a UKG company (Kronos)</p>

	<p>→ evaluating FedRAMP and StateRAMP</p> <p>Veeam Software Corporation (Veeam) → evaluating FedRAMP and StateRAMP</p>
--	--

### 3. Business Operations

#### 3.1.1. Logistics

<p><b>3.1.2. <i>Distribution &amp; Shipping Capabilities.</i></b> Describe how supplier proposes to distribute the products/services in Bidder’s defined geographic reach.</p> <p>Your response may include, but is not limited to, information related to the number of distribution facilities, supply chain partners, fill rates, on-time delivery rates, and your ability to accommodate expedited orders.</p>	<p>As a leading value-added IT distributor that delivers mission-driven results to the public sector through our vast partner ecosystem, EC America is able to leverage our 300+ manufacturers and 1,200 solutions providers to provide product implementation, integration, and configuration services to our government customers. Leveraging our strong Channel Partner Network of certified supplier partners, solution providers, systems integrators, and value-add resellers (VARs) coupled with EC America’s project management oversight services, we ensure product support and successfully project completion.</p> <p>Delivery of products and services will be fulfilled by the respective suppliers and resellers/dealers. EC America will provide oversight of delivery by requiring suppliers to provide proof of entitlement (POE) for products and services. POE can be an email from the customer confirming receipt of delivery and/or delivery confirmation from the delivery method (FedEx, UPS, USPS). EC America will also conduct a customer satisfaction follow-up within 30 days of delivery.</p>
--	--

#### 3.2. Customer Service

<p><b>3.2.1. <i>Customer Service Department.</i></b> Describe your company’s customer service department &amp; operations. Your description may include, but is not limited to, hours of operation, number and location of service centers, parts outlets, number of customer service representatives. Clarify if the service centers are owned by your company of if they are a network of subcontractors.</p>	<p>EC America’s commitment to customer satisfaction is proven throughout its core business processes, from order processing and tracking to invoicing and beyond; all customers who have the product delivered to them through EC America are tracked in our Quality Management System. EC America keeps several work instructions and policies surrounding ensuring customer service and customer satisfaction. Every month, we measure our follow-up efforts with customers to ensure receipt of the product, ensure satisfaction with the order process, and help where appropriate. In all cases, our metrics are on target and better than industry standards.</p> <p>EC America is committed to supplying customers</p>
---	---

	<p>with the following support services free of charge:</p> <ul style="list-style-type: none"> <li>• Timely and accurate quarterly sales reports, based on current offerings and prices</li> <li>• Timely dispatch of up-to-date hard and soft copy ordering guides</li> <li>• Commercially available technical specifications, either on-line or in hard copy form, for any product available on our contracts, per a customer's request</li> <li>• Configuration analysis to figure out the suitability, correctness, and availability of our offerings to the customer's requirement</li> </ul> <p>Further, EC America account teams supply acknowledgment within four (4) business hours of receipt of a quote request or purchase order; validated purchase orders are generally processed within 24 hours. Order receipt methods include mail, phone, and electronic means such as facsimile, e-mail, or other internet-based communications. Order status reports are available on-demand by contacting your account manager.</p> <p>The standard hours of operation for our customer service department are 8:30-5:30 EST, Monday through Friday. However, it has been our experience that the processing of orders and the need for customer and technical service spikes throughout the year, reflecting various fiscal year ends. As such, we use a cross-trained workforce to adapt to high-volume workloads and supply extended coverage when needed to ensure that resources are available to customers as-needed during non-work hours, especially during End of Month (EOM) and End of Quarter (EOQ).</p>
<p><b>3.2.2. Training &amp; Support.</b> Describe any training or other support resources you provide to support end users in better understanding how to utilize your products and services?</p>	<p>EC America believes that training should start within its own four walls and build outwards. This ensures that the customer is not only receiving training on the technology they have just bought but through those whom they bought it from. EC America's sales staff is trained to communicate effectively and, in some cases, can offer high-level information on technology brands that we carry.</p> <p>Additionally, customers can receive training and support through EC America's authorized resellers/dealers as well as through the supplier's sales support staff.</p>

<p><b>3.2.3. Implementation.</b> Outline any implementation or other resources you provide in helping to configure your solutions, whether during the initial startup, or ongoing as part of the software maintenance.</p>	<p>EC America is pleased to offer implementation and other resources to CCOG's eligible customers through the suppliers proposed in this response.</p> <p>EC America's proposed suppliers and resellers/dealers will be delivering implementation services where needed.</p>
<p><b>3.3. Customer Set Up; Order &amp; Invoice Processing; Payment</b></p>	
<p><b>3.3.1. Order &amp; Invoice Process.</b> Describe your company's proposal development, order, and invoice process. Your response should include, but is not limited to, acceptable payment methods and standard payment terms.</p>	<p>EC America's sales teams have access to proposal templates that include boilerplate summaries of each business unit. We also have Statement of Work (SOW) templates for projects that will include implementation, travel, and expenses. These templates help streamline our process and ensure the government is receiving consistent documentation when working with EC America</p> <p><u>EC America's Purchase Order Process:</u></p> <p>Once EC America receives the customer purchase order (PO), a sales order cover is generated by our Inside Sales Representative. That sales order cover is then sent to our Oder Operations Team who follows a set of repeatable steps until they produce an output. The output is a PO to our supplier. This PO is then sent to the supplier for processing. This entire process has been ISO certified and is audited every few years.</p> <p><u>EC America's Invoice Process:</u></p> <p>EC America's invoicing process starts once the customer confirms receipt of the product, otherwise known as Proof of Entitlement (POE). Once POE has been indexed into our system, our Billing department will generate an invoice that will go out to the customer. Our customers will always receive the same invoice template. This ensures we are delivering consistent, reliable documentation each time we do business with the government.</p> <p><u>EC America's Standard Payment Terms:</u></p> <p>EC America's standard payment terms are NET 30.</p>

## 4. PRICING

### 4.1. Cost Proposal

<p><b>4.1.1. Pricing Model.</b> Provide a description of your pricing model or methodology identifying how the model works for the products and services included in your proposal. Your response should describe how the proposed pricing model is able to be audited by an Equalis Group member to assure compliance with the pricing in the Master Agreement.</p>	<p>EC America is proposing a discount percentage off MSRP on all products and services offered under the resultant contract. This methodology is commonly used across all major state, local, education, and federal contracts. This method is used on the GSA IT contracts.</p> <p>EC America publishes on its external website a pricelist for each contract that includes the following information:</p> <ul style="list-style-type: none"><li>- Supplier name</li><li>- Supplier part number</li><li>- Supplier part description</li><li>- MSRP</li><li>- Customer-facing pricing (price after discount applied)</li></ul> <p>If needed, EC America can also make public the discounts for each supplier line.</p> <p>By providing this information, customers and CCOG will be able to validate pricing provided to them by EC America and/or EC America's authorized resellers/dealers.</p> <p>For the purpose of this response, EC America will be mirroring GSA pricing. This pricing will be reflected in Attachment B - Cost Proposal.</p> <p>Note: EC America is in the process of adding Netro to the GSA contract (GS-35F-0511T). We are providing the same discount and pricing to CCOG as in our GSA submission.</p>
<p><b>4.1.2. Auditable.</b> Describe how the proposed pricing model is able to be audited by public sector agencies or CCOG to assure compliance with pricing in the Master Agreement.</p>	<p>Along with the public-facing pricelist and discounts, EC America also maintains an internal pricelist management system. This system archives pricing data for any changes that occur to a specific part number in our system. If the part number changes (description, price increase, decrease, and/or unit of measure), the pricelist management system will keep track of these changes in chronological order.</p> <p>This data is proprietary to EC America, however, upon request, EC America can provide information to CCOG on a case-by-case basis.</p>



<p><b>4.1.3. Cost Proposal Value.</b> Which of the following statements best describes the pricing offered included in Bidder’s cost proposal.</p>	<p>The prices offered in your Cost Proposal are:</p> <p><input type="checkbox"/> lower than what you offer other group purchasing organizations, cooperative purchasing organizations, or state purchasing departments.</p> <p><input checked="" type="checkbox"/> equal to what you offer other group purchasing organizations, cooperative purchasing organizations, or state purchasing departments.</p> <p><input type="checkbox"/> higher than what you offer other group purchasing organizations, cooperative purchasing organizations, or state purchasing departments.</p> <p><input type="checkbox"/> not applicable. Please explain below.</p>
	<p>EC America will be mirroring GSA pricing. This pricing will be reflected in Attachment B - Cost Proposal.</p>
<p><b>4.1.4. Additional Savings.</b> Describe any quantity or volume discounts or rebate programs included in your Cost Proposal.</p>	<p>EC America will provide volume discounts and program-specific rebates when made available by the supplier to CCOG customers.</p>
<p><b>4.1.5. Pricing Open Market or Sourced Goods.</b> If relevant, propose a method for the pricing of Open Market Items. For example, you may supply such items "at cost" or "at cost plus a percentage" or you supply a quote for each such request.</p> <p><b>NOTE:</b> For a definition of Open Market Items, please refer to <b>Part One, Section 5 – Pricing.</b></p>	<p>EC America will provide the same pricing methodology as noted above: discount percentage off MSRP for all products (on contract and open market).</p>
<p><b>4.1.6. Total Cost of Acquisition.</b> Identify any total cost of acquisition costs that are <b>NOT</b> included in the pricing submitted with your response. This cost includes all additional charges that are not directly identified as freight or shipping charges. For example, list costs for items like installation, set up, mandatory training, or initial inspection. Identify any parties that impose such costs and their relationship to the Bidder.</p>	<p>EC America will include all costs associated with purchasing the Commercial off the Shelf (COTs) products proposed in this response in the pricing document. There are no other costs associated with this response.</p>
<p><b>5. <u>Go-To-Market Strategy</u></b></p>	
<p><b>5.1. Bidder Organizational Structure &amp; Staffing of Relationship</b></p>	
<p><b>5.1.1. Key Contacts.</b> Provide contact information and resumes for the person(s) who will be responsible for the following areas;</p>	<p>Please find in the file named “EC America Key Contacts Resumes” the resumes of the following individuals.</p> <ol style="list-style-type: none"> <li>1. Executive Contact: Sudhir Verma</li> <li>2. Contract Manger: Lisa Kilgore</li> </ol>

<ol style="list-style-type: none"> <li>1. Executive Contact</li> <li>2. Contract Manager</li> <li>3. Sales Leader</li> <li>4. Reporting Contact</li> <li>5. Marketing Contact.</li> </ol> <p>Indicate who the primary contact will be if it is not the Sales Leader</p>	<ol style="list-style-type: none"> <li>3. Sales Leader: Meghan Cohen</li> <li>4. Reporting Contact: Lisa Kilgore</li> <li>5. Marketing Contact: Jennifer Forte</li> </ol> <p>Primary contact: Lisa Kilgore</p>
---	--

<p><b>5.1.2. Sales Organization.</b> Provide a description of your sales organization, including key staff members, the size of the organization, in-house vs. third-party sales resources, geographic territories, vertical market segmentation, etc.</p>	<p>EC America has divided its sales team into four business units: Cyber Security Group (CSG), Infrastructure Systems Group (ISG), EnterpriseSoftware Group (ESG), and Enterprise Cyber Group (ECG).</p> <p>EC America’s sales organization is designed to identify, manage, and close business opportunities for our suppliers efficiently and effectively. The sales team includes:</p> <ul style="list-style-type: none"> <li>• <i>Director of Sales:</i> Sets direction for the sales organization to exceed sales goals and grow vendor and partner relationships; holds key executive relationships with suppliers and partner community</li> <li>• <i>Sales Manager:</i> Oversees Supplier Manager, Inside Sales Manager, and Renewals Manager to execute against business plan and ensure the growth of the business and alignment to overall corporate strategic initiatives and objectives</li> <li>• <i>Supplier Manager:</i> Overall business owner and primary point of contact for suppliers; oversees day-to-day activities of the team and ensures sales and marketing activities are in alignment with the supplier’s initiatives</li> <li>• <i>Inside Sales Manager:</i> Oversees operational processes to ensure quality management, SLAs, and pipeline management; manages Insides Sales Representatives and supplies career development and coaching</li> <li>• <i>Inside Sales Representatives:</i> Execute the quoting, order processing, and pipeline management of the account; able to collaborate with partners to submit deal registrations; supplies pipeline reporting on</li> </ul>
--	--

	<p>a regular cadence to suppliers</p> <ul style="list-style-type: none"> <li>• <i>Channel Development Representatives:</i> Coordinate channel value activities and execute sales for the account; find and recruit net new partners; plan enablement activities for both sales-focused and technical-focused events</li> <li>• <i>Lead Development Associates:</i> Set meetings for suppliers' sales reps and partner ecosystem in target accounts; work with supplier team on proper training and messaging</li> </ul> <p>In addition, the CCOG contract the State and Local programs team, including dedicated Contracts Specialists, led by Chauncey Kehoe, SLED Program Contracts Manager.</p>
<p><b>5.2. Contract Implementation Strategy &amp; Expectations</b></p>	
<p><b>5.2.1. Contract Expectation.</b> What are your company's expectations in the event of a contract award?</p>	<p>EC America's expectations for a resultant contract award include, but are not limited to:</p> <ol style="list-style-type: none"> <li>1. Contract Kickoff with CCOG: to include introductions to CCOG and the EC America team.</li> <li>2. Programmatic Kickoff with CCOG's Contract Team: Understanding key contract activities, deliverables, quarterly meetings, and marketing activities.</li> <li>3. Events Discussion: find CCOG conferences, vendor days, and/or webinars.</li> </ol>
<p><b>5.2.2. Five (5) Year Sales Vision &amp; Strategy.</b> Describe your company's vision and strategy to leverage a resulting contract with Equalis over the next five (5) years. Your response may include but is not limited to; the geographic or public sector vertical markets being targeted; your strategy for acquiring new business and retaining existing business; how the contract will be deployed with your sales team; and the time frames in which this will be completed.</p>	<p>We understand that the ultimate success of this contract for both EC America and CCOG will heavily depend on marketing efforts; EC America has a large and experienced marketing department that will actively market the CCOG contract directly to customers, suppliers, and Resellers with a rollout of these activities:</p> <ul style="list-style-type: none"> <li>• Online Promotion <ul style="list-style-type: none"> <li>• Co-branded press release (within 30 days of award)</li> <li>• Host and record an informational online seminar to be made available to our Supplier and Partner community on-demand introducing the CCOG</li> </ul> </li> </ul>

contract

- Dedicated contract website
- Product-specific educational webinars
- Social amplification through EC America's SLED team
- Customer- and Vendor-facing electronic brochure (PDF downloadable version on EC America's website)
- Trade Show Presence
  - Annual participation in the National Institute of Government Purchasing (NIGP) Conference where EC America will provide attendees with contract handouts and contract line card information
  - Annual participation in EDUCAUSE events where EC America will advertise respective CCOG contract
  - EC America will be conducting twelve webinars throughout the year with varying topics and will include CCOG contract highlights during sessions
- Advertising
  - Participation at supplier and reseller events where EC America will highlight the benefits of the CCOG contract
  - Conference-specific hard copy handouts
  - Social and Public Media outreach such as promoting the contract, events, and/or news on LinkedIn, Facebook, and Twitter
    - Continuation of the SLED 101 series in the government sales insider blog - blog post on benefits of CCOG contract

EC America's process emphasizes marketing information through the channel – our partners are the ones speaking daily with the customer community, and we amplify our market presence by supporting their efforts. We will provide marketing kits to partners to help them promote the contract vehicle with specific messaging approved by CCOG; the kits will include sample tweets, a contract FAQ, customer talking points, a link to the contract

website, and a press release for the partner to publish. We will begin implementing these activities within 90 days of award and continue to execute these marketing plans throughout the life of the contract to maintain an elevated level of awareness within the industry.

In addition to our marketing activities, EC America's implementation plan includes action items across multiple business units designed to boost engagement and speed up the ramp-to-revenue timetable.

#### **Sales Teams**

- Meet with awarded suppliers to design and execute a tailored SLED strategy
- Develop a tailored training package for suppliers' sales teams, inclusive of CCOG-approved cobranded collateral
- Execute lead generation activities in efforts to build out sales pipelines

#### **Partner Alliances**

- Work to strengthen the depth and breadth of initial award: consult with resellers and service providers in our channel network to add eligible resellers/dealers to the contract
- Publicize award in monthly partner newsletter
- Find synergistic relationships between resellers and suppliers to offer a one-stop-shop contract for potential customers using preferred resellers

#### **Contracts/Programs**

- Work to strengthen the depth and breadth of the initial award: consult with additional suppliers on the EC America line card to add eligible suppliers to the CCOG vehicle
- Establish reporting and fee remittance workflow in EC America systems
- Set up contract profiles and pricelists in EC America systems
- Work with the marketing team to develop and launch a contract brochure, and dedicated webpage on our corporate website
- Create training curriculum and present materials to the sales team, supplier(s), and resellers/dealers

	<p>Sales team training in the EC America organization is centralized through our online education portal. Some of the courses are offered by instructor-led virtual training along with 24/7/365 access to online courses and organizational knowledge banks. Continuous learning is a highly valued practice at EC America and upon award, the EC America Contracts/Programs team will develop a curriculum to educate the salesforce, including authorized partners, on how to market the new contract. This course will serve to raise awareness of the CCOG contract, instruct reps on how to drive revenue through the vehicle, and ensure compliance with all orders received under the contract.</p>
<p><b>5.2.3. Sales Objectives.</b> What are your top line sales objectives in each of the five (5) years if awarded this contract?</p>	<p>Based on EC America’s experience with cooperatives and understanding of the need for Cloud-based contracts for executive state agencies, we believe that the ramp-up time for a resultant contract will be much less than other cooperatives.</p> <p>Year 1: \$3M  Year 2: \$7M  Year 3: \$7M  Year 4: \$8M  Year 5: \$8M</p>
<p><b>6. ADMIN FEE &amp; REPORTING</b></p>	
<p><b>6.1. Bidder Organizational Structure &amp; Staffing of Relationship</b></p>	

<p><b>6.1.1. Administrative Fee.</b> Equalis Group only generates revenue when the Winning Supplier generates revenue based on contract utilization by current and future Members.</p> <p>The administrative fee is normally calculated as a percentage of the total Spend for agencies accessing product and services through the Master Agreement and is typically two percent (2%) to three percent (3%). In some categories, a flat fee or another fee structure may be acceptable.</p> <p><b>Please provide your proposed Administrative Fee percentage or structure.</b></p> <p><b>NOTE:</b> The proposed Administrative Fee language for this contract is based on the terms disclosed in the <b><u>Attachment A – Model Administration Agreement.</u></b></p>	<p>EC America currently holds several cooperatives with varying administrative fees. We have found that the cooperatives that are the most successful tend to be those that have an administrative fee at or below 2%. That said, the federal cooperative, GSA, and many statewide contracts that point back to GSA mirror the GSA administrative fee of 0.75%. This fee is easily digestible when participating resellers/dealers are in the deal flow. For example, the Ohio State Term Schedule, New Mexico Price Agreements, Texas DIR, and the Commonwealth of Kentucky all mirror the GSA administrative fee amount of 0.75%. That said, we have seen that cooperative fees tend to be higher, usually around the 1-2% mark.</p> <p>We have found that the 3% administrative fee hinders business under the distributor model as we are not able to supply margin relief to our resellers. The fee cuts into everyone’s margin and therefore reduces the use of cooperatives with that fee amount.</p>
<p><b>6.1.2. Sales &amp; Administrative Fee Reporting.</b> Equalis Group requires monthly reports detailing sales invoiced the prior month and associated Administrative Fees earned by the 15<sup>th</sup> of each month. Confirm that your company will meet this reporting requirement. If not, explain why and propose an alternative time schedule for providing these reports to Equalis Group.</p>	<p>EC America confirms acceptance of this requirement.</p>
<p><b>6.1.3. Self-Audit.</b> Describe any self-audit process or program that you plan to employ to verify compliance with your proposed contract with Equalis Group. This process includes ensuring that Members obtain the correct pricing, reports reflect all sales made under the Contract, and Winning Supplier remit the proper admin fee to Equalis.</p>	<p>EC America has a Point of Sales Reporting Portal that is used by our authorized resellers/dealers. EC America’s authorized resellers/dealers working under EC America contracts, are contractually bound to report sales conducted under EC America’s state, local, education, cooperative, and federal contracts each month. They are contractually bound to report on the 15th day of the following month. Once the portal has closed, EC America’s POS system applies internal rules to identify if the price sold to the customer is compliant. Meaning does the sold price match what we are contractually bound to sell at under the contract. Did the reseller/dealer overcharge the government? Did the reseller/dealer sell a product that is not on the contract? Was there</p>

a clerical error? The system will provide us with a report on the sales for that month. From there, the contract specialist assigned to the respective contract will go through each line of data and follow ISO-certified steps to resolve pricing/part discrepancies. This activity is conducted each week by six contract specialists.

For sales that are done directly through EC America and the customer, we have set in place a quoting tool that prevents sales operations specialists from overcharging the government and/or quoting products that are not on contract. This “do not pass go” feature ensures that the customers are receiving products at or below the contractually agreed upon price and for products that are on contract.

EC America’s extensive reporting capabilities and document repository provide the necessary foundation to meet the reporting requirements of this RFP.



## PROPOSAL FORM 2: COST PROPOSAL

A template for the Cost Proposal has been included as **Attachment B** and must be uploaded as a separate attachment to a Bidder's proposal submission. Bidders are permitted to revise any part of the spreadsheet to the Cost Proposal to accurately reflect the column titles, details, discounts, pricing categories of products, services, and solutions being offered to Equalis Group Members.

Bidder's Cost Proposal must include the information requested in **Section 5 - Pricing**.

**NOTE:** Cost Proposals will remain sealed and will only be opened and reviewed for those Bidders that meet the minimum Technical Proposal score threshold as described in **Section 6.2 - Evaluation and Scoring of Proposals**.

*(The rest of this page is intentionally left blank)*

## PROPOSAL FORM 3: DIVERSITY VENDOR CERTIFICATION PARTICIPATION

**Diversity Vendor Certification Participation** - It is the policy of some Members participating in Equalis Group to involve minority and women business enterprises (M/WBE), small and/or disadvantaged business enterprises, disabled veterans business enterprises, historically utilized businesses (HUB) and other diversity recognized businesses in the purchase of goods and services. Respondents shall indicate below whether or not they hold certification in any of the classified areas and include proof of such certification with their response.

**a. Minority Women Business Enterprise**

Respondent certifies that this firm is an MWBE: Yes No

List certifying agency: [Click or tap here to enter text.](#)

**b. Small Business Enterprise (SBE) or Disadvantaged Business Enterprise (“DBE”)**

Respondent certifies that this firm is a SBE or DBE: Yes No

List certifying agency: [Click or tap here to enter text.](#)

**c. Disabled Veterans Business Enterprise (DVBE)**

Respondent certifies that this firm is an DVBE: Yes No

List certifying agency: [Click or tap here to enter text.](#)

**d. Historically Underutilized Businesses (HUB)**

Respondent certifies that this firm is an HUB: Yes No

List certifying agency: [Click or tap here to enter text.](#)

**e. Historically Underutilized Business Zone Enterprise (HUBZone)**

Respondent certifies that this firm is an HUBZone: Yes No

List certifying agency: [Click or tap here to enter text.](#)

**f. Other**

Respondent certifies that this firm is a recognized diversity certificate holder: Yes No

List certifying agency: [Click or tap here to enter text.](#)

[\\*Please note: EC America’s authorized resellers/dealers are located and registered throughout states in the U.S. Each of those states has its registration processes for small businesses, HUB, minority-owned, etc. Upon request, EC America can work with the resellers to provide documentation around certifications.](#)

## PROPOSAL FORM 4: CERTIFICATIONS AND LICENSES

Provide a copy of all current licenses, registrations and certifications issued by federal, state and local agencies, and any other licenses, registrations or certifications from any other governmental entity with jurisdiction, allowing Bidder to provide the products and services included in their proposal which can include, but not limited to licenses, registrations or certifications. M/WBE, HUB, DVBE, small and disadvantaged business certifications and other diverse business certifications, as well as manufacturer certifications for sales and service must be included if applicable

Please also list and include copies of any certificates you hold that would show value for your response not already included above.

EC America, Inc. holds an ISO 9001:2015 certification. Please find a copy of the certification attached: file name

“EC America, Inc., ISO 9001:2015 Certification”

EC America’s authorized resellers/dealers are located and registered throughout states in the U.S. Each of those states has its registration processes for small businesses, HUB, minority-owned, etc. Upon request, EC America can work with the resellers to provide documentation around certifications.

Most of EC America’s proposed suppliers in this response are either FedRAMP or StateRAMP certified. Those that are not, are either in the process or their cloud offering doesn’t meet the requirements for certification. Upon request, EC America can work with the resellers to provide documentation around certifications.

**Note:**

If requested EC America, can work to provide any licenses, registrations and certifications held by our proposed suppliers and their partners.

(The rest of this page is intentionally left blank)

## PROPOSAL FORM 5: UNRESOLVED FINDINGS FOR RECOVERY

**O.R.C. Chapter 9.24** prohibits CCOG from awarding a contract to any entity against whom the Auditor of State has issued a finding for recovery, if such finding for recovery is “unresolved” at the time of award. By submitting a proposal, a Bidder warrants that it is not now, and will not become, subject to an “unresolved” finding for recovery under **O.R.C. Chapter 9.24** prior to the award of any contract arising out of this RFP, without notifying CCOG of such finding. The Proposal Review Team will not evaluate a proposal from any Bidder whose name, or the name of any of the subcontractors proposed by the Bidder, appears on the website of the Auditor of the State of Ohio as having an “unresolved” finding for recovery.

Is your company the subject of any unresolved findings for recoveries?

- Yes
- No

## PROPOSAL FORM 6: MANDATORY DISCLOSURES

### 1. *Mandatory Contract Performance Disclosure.*

Disclose whether your company's performance and/or the performance of any of the proposed subcontractor(s) under contracts for the provision of products and services that are the same or similar to those to be provided for the Program which is the subject of this RFP has resulted in any formal claims for breach of those contracts. For purposes of this disclosure, "**formal claims**" means any claims for breach that have been filed as a lawsuit in any court, submitted for arbitration (whether voluntary or involuntary, binding or not), or assigned to mediation. For any such claims disclosed, fully explain the details of those claims, including the allegations regarding all alleged breaches, any written or legal action resulting from those allegations, and the results of any litigation, arbitration, or mediation regarding those claims, including terms of any settlement. While disclosure of any formal claims will not automatically disqualify a Bidder from consideration, at the sole discretion of Equalis Group, such claims and a review of the background details may result in a rejection of a Bidder's proposal. Equalis Group will make this decision based on the Proposal Review Team's determination of the seriousness of the claims, the potential impact that the behavior that led to the claims could have on the Bidder's performance of the work, and the best interests of Members.

Provide statement here. Company and subcontractors do not have any active, unresolved, or outstanding breach of contract claims for any government end use contracts held by company.

### 2. *Mandatory Disclosure of Governmental Investigations.*

Indicate whether your company and/or any of the proposed subcontractor(s) has been the subject of any adverse regulatory or adverse administrative governmental action (federal, state, or local) with respect to your company's performance of services similar to those described in this RFP. If any such instances are disclosed, Bidders must fully explain, in detail, the nature of the governmental action, the allegations that led to the governmental action, and the results of the governmental action including any legal action that was taken against the Bidder by the governmental agency. While disclosure of any governmental action will not automatically disqualify a Bidder from consideration, such governmental action and a review of the background details may result in a rejection of the Bidder's proposal at Group's sole discretion. Equalis Group will make this decision based on the Proposal Review Team's determination of the seriousness of the claims, the potential impact that the behavior that led to the claims could have on the Bidder's performance of the work, and the best interests of Members.

Provide statement here. Company and subcontractors do not have any active, unresolved, or outstanding government investigations for performance against any government end use contracts held by company.

## PROPOSAL FORM 7: DEALER, RESELLER, AND DISTRIBUTOR AUTHORIZATION

CCOG allows Suppliers to authorize dealers, distributors, and resellers to sell the products and services made available through, and consistent with the Terms and Conditions set forth in, the Master Agreement. If Supplier intends to authorize their dealers, distributors, or resellers access to the Master Agreement in the event of a contract award Supplier must provide a list, either in the form of a document or a weblink, to identify those organizations who are being authorized access to the Master Agreement.

Will the Supplier authorize dealers, distributors, resellers access to Master Agreement?

- Yes**  
 **No**

If yes, how will Supplier disclose which organization(s) will have access to the Master Agreement? This list can be updated from time to time upon CCOG's approval.

Bidder Response:

EC America, Inc. is currently proposing the suppliers listed below. If awarded, a specific webpage will be created for this contract on our parent company, immixGroup's website. This webpage will be routinely updated by the EC America to reflect the most current and accurate information. If any other organizations are added EC America will update the CCOG specific contract vehicle webpage on the immixGroup website.

- Citrix
- Commvault
- Kronos
- Palo Alto Networks, Inc.
- Qlik
- Veeam
- LogRhythm
- Netreo
- Nutanix
- OpenText
- Smartbear
- Tanium

## PROPOSAL FORM 8: MANDATORY SUPPLIER & PROPOSAL CERTIFICATIONS

CCOG may not enter into contracts with any suppliers who have been found to be ineligible for state contracts under specific federal or Ohio statutes or regulations. Bidders responding to any CCOG RFP MUST certify that they are NOT ineligible by signing each of the statements below. **Failure to provide proper affirming signature on any of these statements will result in a Bidder's proposal being deemed nonresponsive to this RFP.**

I, Chauncey Kehoe, hereby certify and affirm that EC America, Inc., has not been debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in transactions by the United States Department of Labor, the United States Department of Health and Human Services, or any other federal department or agency as set forth in 29 CFR Part 98, or 45 CFR Part 76, or other applicable statutes.

**AND**

I, Chauncey Kehoe, hereby certify and affirm that EC America, Inc., is in compliance with all federal, state, and local laws, rules, and regulations, including but not limited to the Occupational Safety and Health Act and the Ohio Bureau of Employment Services and the following:

- Not penalized or debarred from any public contracts or falsified certified payroll records or any other violation of the Fair Labor Standards Act in the last three (3) years;
- Not found to have violated any worker's compensation law within the last three (3) years;
- Not violated any employee discrimination law within the last three (3) years;
- Not have been found to have committed more than one (1) willful or repeated OSHA violation of a safety standard (*as opposed to a record keeping or administrative standard*) in the last three (3) years;
- Not have an Experience Modification Rating of greater than 1.5 (a penalty-rated employer) with respect to the Bureau of Workers' Compensation risk assessment rating; and
- Not have failed to file any required tax returns or failed to pay any required taxes to any governmental entity within the past three (3) years.

**AND**

I, Chauncey Kehoe, hereby certify and affirm that EC America, Inc., is not on the list established by the Ohio Secretary of State, pursuant to **ORC Section 121.23**, which identifies persons and businesses with more than one unfair labor practice contempt of court finding against them.

**AND**

I, Chauncey Kehoe, hereby certify and affirm that EC America, Inc. either is not subject to a finding for recovery under **ORC Section 9.24**, or has taken appropriate remedial steps required under that statute to resolve any findings for recovery, or otherwise qualifies under that section to enter into contracts with CCOG.

I, Chauncey Kehoe, hereby affirm that this proposal accurately represents the capabilities and qualifications of EC America, Inc., and I hereby affirm that the cost(s) proposed to CCOG for the performance of services and/or provision of goods covered in this proposal in response to this CCOG RFP is a firm fixed price structure as described in the Cost Proposal, inclusive of all incidental as well as primary costs. (*Failure to provide the proper affirming signature on this item may result in the disqualification of your proposal.*)

## PROPOSAL FORM 9: CLEAN AIR ACT & CLEAN WATER ACT

The Bidder is in compliance with all applicable standards, orders or regulations issued pursuant to the Clean Air Act of 1970, as Amended (42 U.S. C. 1857 (h), Section 508 of the Clean Water Act, as amended (33 U.S.C. 1368), Executive Order 117389 and Environmental Protection Agency Regulation, 40 CFR Part 15 as required under OMB Circular A-102, Attachment O, Paragraph 14 (1) regarding reporting violations to the grantor agency and to the United States Environment Protection Agency Assistant Administrator for the Enforcement.

Authorized signature:

  
\_\_\_\_\_

Printed Name:

Chauncey Kehoe

Company Name:

EC America, Inc. (a subsidiary of immixGroup, Inc.)

Mailing Address:

8444 Westpark Drive, Suite 200 McLean, VA 22102

Email Address:

Chauncey\_Kehoe@immixgroup.com

Job Title:

Contracts Manager – State, Local, Education



## PROPOSAL FORM 10: DEBARMENT NOTICE

I, the Bidder, certify that my company has not been debarred, suspended or otherwise ineligible for participation in Federal Assistance programs under Executive Order 12549, "Debarment and Suspension", as described in the Federal Register and Rules and Regulations.

Respondents Name:

Chauncey Kehoe

Mailing Address:

8444 Westpark Drive, Suite 200 McLean, VA 22102

Signature



Title of Signatory:

Contracts Manager – State, Local, Education

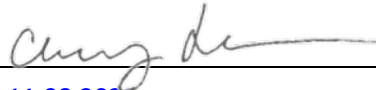
## PROPOSAL FORM 11: LOBBYING CERTIFICATIONS

Submission of this certification is a prerequisite for making or entering into this transaction and is imposed by **Section 1352, Title 31, U.S. Code**. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Any person who fails to file the required certification shall be subject to civil penalty of not less than ten thousand dollars (\$10,000) and not more than one hundred thousand dollars (\$100,000) for each such failure.

The undersigned certifies, to the best of his/her knowledge and belief, on behalf of Bidder that:

1. No Federal appropriated funds have been paid or will be paid on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of a Federal contract, the making of a Federal grant, the making of a Federal loan, the entering into a cooperative agreement, and the extension, continuation, renewal, amendment, or modification of a Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all covered sub-awards exceeding one hundred thousand dollars (\$100,000) in Federal funds at all appropriate tiers and that all sub-recipients shall certify and disclose accordingly.

Signature:

  
\_\_\_\_\_

Date:

11.08.2022

# PROPOSAL FORM 12: CONTRACTOR CERTIFICATION REQUIREMENTS

## 1. Contractor's Employment Eligibility

By entering the contract, Contractor warrants compliance with the Federal Immigration and Nationality Act (FINA), and all other federal and state immigration laws and regulations. The Contractor further warrants that it is in compliance with the various state statutes of the states it will operate this contract in.

Participating Government Entities including School Districts may request verification of compliance from any Contractor or subcontractor performing work under this Contract. These Entities reserve the right to confirm compliance in accordance with applicable laws.

Should the Participating Entities suspect or find that the Contractor or any of its subcontractors are not in compliance, they may pursue any and all remedies allowed by law, including, but not limited to: suspension of work, termination of the Contract for default, and suspension and/or debarment of the Contractor. All costs necessary to verify compliance are the responsibility of the Contractor.

The Respondent complies and maintains compliance with the appropriate statutes which requires compliance with federal immigration laws by State employers, State contractors and State subcontractors in accordance with the E-Verify Employee Eligibility Verification Program.

Contractor shall comply with governing board policy of the CCOG Participating entities in which work is being performed.


## 2. Fingerprint & Criminal Background Checks

If required to provide services on school district property at least five (5) times during a month, contractor shall submit a full set of fingerprints to the school district if requested of each person or employee who may provide such service. Alternately, the school district may fingerprint those persons or employees. An exception to this requirement may be made as authorized in Governing Board policy. The district shall conduct a fingerprint check in accordance with the appropriate state and federal laws of all contractors, subcontractors or vendors and their employees for which fingerprints are submitted to the district. Contractor, subcontractors, vendors and their employees shall not provide services on school district properties until authorized by the District.

The Respondent shall comply with fingerprinting requirements in accordance with appropriate statutes in the state in which the work is being performed unless otherwise exempted.

Contractor shall comply with governing board policy in the school district or Participating Entity in which work is being performed.

Signature:

  
\_\_\_\_\_

Date:

11.08.2022

## PROPOSAL FORM 13: BOYCOTT CERTIFICATION

Bidder must certify that during the term of any Agreement, it does not boycott Israel and will not boycott Israel. "Boycott" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

Does Bidder agree? CK  
(Initials of Authorized Representative)

## PROPOSAL FORM 14: FEDERAL FUNDS CERTIFICATION FORMS

When a participating agency seeks to procure goods and services using funds under a federal grant or contract, specific federal laws, regulations, and requirements may apply in addition to those under state law. This includes, but is not limited to, the procurement standards of the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, 2 CFR 200 (sometimes referred to as the "Uniform Guidance" or "EDGAR" requirements).

All bidders submitting proposals must complete this Federal Funds Certification Form regarding bidder's willingness and ability to comply with certain requirements which may be applicable to specific participating agency purchases using federal grant funds. This completed form will be made available to Members for their use while considering their purchasing options when using federal grant funds. Members may also require Supplier Partners to enter into ancillary agreements, in addition to the contract's general terms and conditions, to address the member's specific contractual needs, including contract requirements for a procurement using federal grants or contracts.

**For each of the items below, respondent should certify their agreement and ability to comply, where applicable, by having respondents authorized representative complete and initial the applicable lines after each section and sign the acknowledgment at the end of this form.** If a Bidder fails to complete any item in this form, CCOG will consider the respondent's response to be that they are unable or unwilling to comply. A negative response to any of the items may, if applicable, impact the ability of a participating agency to purchase from the Supplier Partner using federal funds.

### **1. Supplier Partner Violation or Breach of Contract Terms**

Contracts for more than the simplified acquisition threshold currently set at one hundred fifty thousand dollars (\$150,000), which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 USC 1908, must address administrative, contractual, or legal remedies in instances where Supplier Partners violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

Any contract award will be subject to Terms and Conditions of the Master Agreement, as well as any additional terms and conditions in any purchase order, participating agency ancillary contract, or Member construction contract agreed upon by Supplier Partner and the participating agency which must be consistent with and protect the participating agency at least to the same extent as the CCOG Terms and Conditions.

The remedies under the contract are in addition to any other remedies that may be available under law or in equity. By submitting a proposal, you agree to these Supplier Partner violation and breach of contract terms.

Does Bidder agree?                     CK                      
(Initials of Authorized Representative)

### **2. Termination for Cause or Convenience**

When a participating agency expends federal funds, the participating agency reserves the right to immediately terminate any agreement in excess of ten thousand dollars (\$10,000) resulting from this procurement process in the event of a breach or default of the agreement by Offeror in the event Offeror fails to: (1) meet schedules, deadlines, and/or delivery dates within the time specified in the procurement solicitation, contract, and/or a purchase order; (2) make any payments owed; or (3) otherwise perform in accordance with the contract and/or the procurement solicitation. Participating agency also reserves the right to terminate the contract immediately, with written notice to offeror, for convenience, if participating agency believes, in its sole discretion that it is in the best interest of participating agency to do so. Bidder will be compensated for work performed and accepted and goods accepted by participating agency as of the termination date if the contract is terminated for convenience of participating agency. Any award under this

procurement process is not exclusive and participating agency reserves the right to purchase goods and services from other offerors when it is in participating agency's best interest.

Does Bidder agree? CK  
(Initials of Authorized Representative)

### 3. **Equal Employment Opportunity**

Except as otherwise provided under 41 CFR Part 60, all participating agency purchases or contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 shall be deemed to include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR Part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

The equal opportunity clause provided under 41 CFR 60-1.4(b) is hereby incorporated by reference. Supplier Partner agrees that such provision applies to any participating agency purchase or contract that meets the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 and Supplier Partner agrees that it shall comply with such provision.

Does Bidder agree? CK  
(Initials of Authorized Representative)

### 4. **Davis-Bacon Act**

When required by Federal program legislation, Supplier Partner agrees that, for all participating agency prime construction contracts/purchases in excess of two thousand dollars (\$2,000), Supplier Partner shall comply with the Davis-Bacon Act (40 USC 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, Supplier Partner is required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determinate made by the Secretary of Labor. In addition, Supplier Partner shall pay wages not less than once a week.

Current prevailing wage determinations issued by the Department of Labor are available at [www.wdol.gov](http://www.wdol.gov). Supplier Partner agrees that, for any purchase to which this requirement applies, the award of the purchase to the Supplier Partner is conditioned upon Supplier Partner's acceptance of the wage determination.

Supplier Partner further agrees that it shall also comply with the Copeland "Anti-Kickback" Act (40 USC 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States". The Act provides that each Supplier Partner or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

Does Bidder agree? CK  
(Initials of Authorized Representative)

**5. Contract Work Hours and Safety Standards Act**

Where applicable, for all participating agency contracts or purchases in excess of one hundred thousand dollars (\$100,000) that involve the employment of mechanics or laborers, Supplier Partner agrees to comply with 40 USC 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 USC 3702 of the Act, Supplier Partner is required to compute the wages of every mechanic and laborer on the basis of a standard work week of forty (40) hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of forty (40) hours in the work week. The requirements of 40 USC 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

Does Bidder agree? CK  
(Initials of Authorized Representative)

**6. Right to Inventions Made Under a Contract or Agreement**

If the participating agency's Federal award meets the definition of "funding agreement" under 37 CFR 401.2(a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance or experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

Supplier Partner agrees to comply with the above requirements when applicable.

Does Bidder agree? CK  
(Initials of Authorized Representative)

**7. Clean Air Act and Federal Water Pollution Control Act**

Clean Air Act (42 USC 7401-7671q.) and the Federal Water Pollution Control Act (33 USC 1251-1387), as amended – Contracts and subgrants of amounts in excess of one hundred fifty thousand dollars (\$150,000) must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 USC 7401-7671q.) and the Federal Water Pollution Control Act, as amended (33 USC 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

When required, Supplier Partner agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act and the Federal Water Pollution Control Act.

Does Bidder agree? CK  
(Initials of Authorized Representative)

## **8. Debarment and Suspension**

Debarment and Suspension (Executive Orders 12549 and 12689) – A contract award (see 2 CFR 180.220) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1966 Comp. p. 189) and 12689 (3CFR Part 1989 Comp. p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

Supplier Partner certifies that Supplier Partner is not currently listed on the government-wide exclusions in SAM, is not debarred, suspended, or otherwise excluded by agencies or declared ineligible under statutory or regulatory authority other than Executive Order 12549. Supplier Partner further agrees to immediately notify the Cooperative and all Members with pending purchases or seeking to purchase from Supplier Partner if Supplier Partner is later listed on the government-wide exclusions in SAM, or is debarred, suspended, or otherwise excluded by agencies or declared ineligible under statutory or regulatory authority other than Executive Order 12549.

Does Bidder agree?           CK            
(Initials of Authorized Representative)

## **9. Byrd Anti-Lobbying Amendment**

Byrd Anti-Lobbying Amendment (31 USC 1352) – Supplier Partners that apply or bid for an award exceeding one hundred thousand dollars (\$100,000) must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 USC 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award. As applicable, Supplier Partner agrees to file all certifications and disclosures required by, and otherwise comply with, the Byrd Anti-Lobbying Amendment (31 USC 1352).

Does Bidder agree?           CK            
(Initials of Authorized Representative)

## **10. Procurement of Recovered Materials**

For participating agency purchases utilizing Federal funds, Supplier Partner agrees to comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act where applicable and provide such information and certifications as a participating agency maybe required to confirm estimates and otherwise comply. The requirements of Section 6002 includes procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds ten thousand dollars (\$10,000) or the value of the quantity acquired during the preceding fiscal year exceeded ten thousand dollars (\$10,000); procuring solid waste management services in a manner that maximizes energy and resource recovery, and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.



Does Bidder agree? CK  
(Initials of Authorized Representative)

**11. Profit as a Separate Element of Price**

For purchases using federal funds in excess of one hundred fifty thousand dollars (\$150,000), a participating agency may be required to negotiate profit as a separate element of the price. See, 2 CFR 200.324(b). When required by a participating agency, Supplier Partner agrees to provide information and negotiate with the participating agency regarding profit as a separate element of the price for a particular purchase. However, Supplier Partner agrees that the total price, including profit, charged by Supplier Partner to the participating agency shall not exceed the awarded pricing, including any applicable discount, under Supplier Partner’s Group Purchasing Agreement.

Does Bidder agree? N/A – All Goods and Services offered are Commercial Products or Commercial Services per FAR 2.101 and not subject to cost disclosure requirements.  
(Initials of Authorized Representative)

**12. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment**

Vendor agrees that recipients and subrecipients are prohibited from obligating or expending loan or grant funds to procure or obtain, extend or renew a contract to procure or obtain, or enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system from companies described in Public Law 115-232, section 889. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country are also prohibited.

Does Bidder agree? CK  
(Initials of Authorized Representative)

**13. Domestic preferences for procurements**

For participating agency purchases utilizing Federal funds, Bidder agrees to provide proof, where applicable, that the materials, including but not limited to, iron, aluminum, steel, cement, and other manufactured products are produced in the United States.

“Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

“Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

Does Bidder agree? CK  
(Initials of Authorized Representative)

**14. General Compliance and Cooperation with Members**

In addition to the foregoing specific requirements, Vendor agrees, in accepting any purchase order from a Member, it shall make a good faith effort to work with Members to provide such information and to satisfy such requirements as may apply to a particular participating agency purchase or purchases including, but not limited to, applicable recordkeeping and record retention requirements.

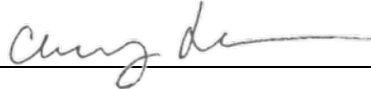
Does Bidder agree? CK  
(Initials of Authorized Representative)

**15. Applicability to Subcontractors**

Offeror agrees that all contracts it awards pursuant to the Contract shall be bound by the foregoing terms and conditions.

Does Bidder agree? CK  
(Initials of Authorized Representative)

By signature below, I certify that the information in this form is true, complete, and accurate and that I am authorized by my company to make this certification and all consents and agreements contained herein.

Authorized signature: 

Printed Name: Chauncey Kehoe  
Company Name: EC America Inc., (a subsidiary of immixGroup, Inc.)  
Mailing Address: 8444 Westpark Drive, Suite 200 McLean, VA 22102  
Job Title: Contracts Manager – State, Local, Education

# PROPOSAL FORM 15: ARIZONA CONTRACTOR REQUIREMENTS

*Please answer the following question. If yes, please complete Proposal Form 15.*

Does the awarded supplier intend to make their products and services available to public agencies in the State of Arizona?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
--	--

In the event the Awarded Supplier desires to pursue public sector opportunities in the State of Arizona, it is important to understand the requirements for working with those public agencies. The documentation and information contained in this proposal form are intended to provide the respondent with documentation that could be relevant to the providing products & services to public agencies in the State of Arizona. It is the responsibility of the public agency to ensure they are in compliance with local requirements.

### **AZ Compliance with Federal and State Requirements**

Contractor agrees when working on any federally assisted projects with more than \$2,000.00 in labor costs, to comply with all federal and state requirements, as well as Equal Opportunity Employment requirements and all other federal and state laws, statutes, etc. Contractor agrees to post wage rates at the work site and submit a copy of their payroll to the member for their files. Contractor must retain records for three years to allow the federal grantor agency access to these records, upon demand. Contractor also agrees to comply with the Arizona Executive Order 75-5, as amended by Executive Order 99-4.

When working on contracts funded with Federal Grant monies, contractor additionally agrees to comply with the administrative requirements for grants, and cooperative agreements to state, local and federally recognized Indian Tribal Governments.

### **AZ compliance with workforce requirements**

Pursuant to ARS 41-4401, Contractor and subcontractor(s) warrant their compliance with all federal and state immigration laws and regulations that relate to their employees, and compliance with ARS 23-214 subsection A, which states, "... every employer, after hiring an employee, shall verify the employment eligibility of the employee through the E-Verify program"

CCOG reserves the right to cancel or suspend the use of any contract for violations of immigration laws and regulations. CCOG and its members reserve the right to inspect the papers of any contractor or subcontract employee who works under this contract to ensure compliance with the warranty above.

### **AZ Contractor Employee Work Eligibility**

By entering into this contract, contractor agrees and warrants compliance with A.R.S. 41-4401, A.R.S. 23-214, the Federal Immigration and Nationality Act (FINA), and all other Federal immigration laws and regulations. CCOG and/or CCOG members may request verification of compliance from any contractor or sub-contractor performing work under this contract. CCOG and CCOG members reserve the right to confirm compliance. In the event that CCOG or CCOG members suspect or find that any contractor or subcontractor is not in compliance, CCOG may pursue any and all remedies allowed by law, including but not limited to suspension of work, termination of contract, suspension and/or debarment of the contractor. All cost associated with any legal action will be the responsibility of the contractor.

### **AZ Non-Compliance**

All federally assisted contracts to members that exceed \$10,000.00 may be terminated by the federal grantee for noncompliance by contractor. In projects that are not federally funded, Respondent must agree to meet any federal, state or local requirements as necessary. In addition, if compliance with the federal regulations

increases the contract costs beyond the agreed upon costs in this solicitation, the additional costs may only apply to the portion of the work paid by the federal grantee.

**Registered Sex Offender Restrictions (Arizona)**

For work to be performed at an Arizona school, contractor agrees that no employee or employee of a subcontractor who has been adjudicated to be a registered sex offender will perform work at any time when students are present, or reasonably expected to be present. Contractor agrees that a violation of this condition shall be considered a material breach and may result in the cancellation of the purchase order at the CCOG member's discretion. Contractor must identify any additional costs associated with compliance to this term. If no costs are specified, compliance with this term will be provided at no additional charge.

**Offshore Performance of Work Prohibited**

Due to security and identity protection concerns, direct services under this contract shall be performed within the borders of the United States.

**Terrorism Country Divestments:** In accordance with A.R.S. 35-392, CCOG and CCOG members are prohibited from purchasing from a company that is in violation of the Export Administration Act. By entering into the contract, contractor warrants compliance with the Export Administration Act.

The undersigned hereby accepts and agrees to comply with all statutory compliance and notice requirements listed in this document.

Does Bidder agree?                     CK                      
(Initials of Authorized Representative)

Date:   11.08.2022

# PROPOSAL FORM 16: NEW JERSEY REQUIREMENTS

Please answer the following question. If yes, please complete Proposal Form 15.

Does the awarded supplier intend to make their products and services available to public agencies in the State of New Jersey?	<input checked="" type="checkbox"/>	Yes
	<input type="checkbox"/>	No

**\*Please note that if awarded and requested EC America, Inc. and relevant partners will complete the New Jersey forms/requirement.**

In the event the Awarded Supplier desires to pursue public sector opportunities in the State of New Jersey, it is important to understand the requirements for working with those public agencies. The documentation and information contained in this proposal form are intended to provide the respondent with documentation that could be relevant to the providing products & services to public agencies in the State of New Jersey. It is the responsibility of the public agency to ensure they are in compliance with local requirements.

New Jersey vendors are also required to comply with the following New Jersey statutes when applicable:

- All anti-discrimination laws, including those contained in N.J.S.A. 10:2-1 through N.J.S.A. 10:2-14, N.J.S.A. 10:5-1, and N.J.S.A. 10:5-31 through 10:5-38.
- Compliance with Prevailing Wage Act, N.J.S.A. 34:11-56.26, for all contracts within the contemplation of the Act.
- Compliance with Public Works Contractor Registration Act, N.J.S.A. 34:11-56.26
- Bid and Performance Security, as required by the applicable municipal or state statutes.

## A. Ownership Disclosure Form (N.J.S. 52:25-24.2)

Pursuant to the requirements of P.L. 1999, Chapter 440 effective April 17, 2000 (Local Public Contracts Law), the Respondent shall complete the form attached to these specifications listing the persons owning 10 percent (10%) or more of the firm presenting the proposal.

**Company Name:** Click or tap here to enter text.

**Street:** Click or tap here to enter text.

**City, State, Zip Code:** Click or tap here to enter text.

### **Complete as appropriate:**

I, Click or tap here to enter text, certify that I am the sole owner of Click or tap here to enter text, that there are no partners and the business is not incorporated, and the provisions of N.J.S. 52:25-24.2 do not apply.

**OR:**

I, Click or tap here to enter text, a partner in Click or tap here to enter text, do hereby certify that the following is a list of all individual partners who own a 10% or greater interest therein. I further certify that if one (1) or more of the partners is itself a corporation or partnership, there is also set forth the names and addresses of the stockholders holding 10% or more of that corporation's stock or the individual partners owning 10% or greater interest in that partnership.

**OR:**

I, Click or tap here to enter text, an authorized representative Click or tap here to enter text, a corporation, do hereby certify that the following is a list of the names and addresses of all stockholders in the corporation who own 10% or more of its stock of any class. I further certify that if one (1) or more of such stockholders is itself a corporation or partnership, that there is also set forth the names and addresses of the stockholders holding 10% or more of the corporation's stock or the individual partners owning a 10% or greater interest in that partnership.

**(Note: If there are no partners or stockholders owning 10% or more interest, indicate none.)**

**Name**

**Address**

**Interest**

---

---

---

---

I further certify that the statements and information contained herein, are complete and correct to the best of my knowledge and belief.

Signature:

\_\_\_\_\_

Date:

[Click or tap here to enter text.](#)

**B. Non-Collusion Affidavit**

**Bidder Name:** Enter Bidder Name

**Street Address:** Enter Bidder Name

**City, State Zip:** Enter Bidder Name

State of New Jersey

County of Insert County name

I, Insert name here. of the Insert name of City in the County of Insert name of County, State of Insert name of State of full age, being duly sworn according to law on my oath depose and say that:

I am the Insert name of job title of the firm of Insert company name. the Bidder making the Proposal for the goods, services or public work specified under the Harrison Township Board of Education attached proposal, and that I executed the said proposal with full authority to do so; that said Respondent has not directly or indirectly entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free, competitive bidding in connection with the above proposal, and that all statements contained in said bid proposal and in this affidavit are true and correct, and made with full knowledge that the Harrison Township Board of Education relies upon the truth of the statements contained in said bid proposal and in the statements contained in this affidavit in awarding the contract for the said goods, services or public work.

I further warrant that no person or selling agency has been employed or retained to solicit or secure such contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by

Authorized signature:

Job Title: Insert job title here.

Subscribed and sworn before me

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Notary Public of New Jersey

My commission expires \_\_\_\_\_, 20\_\_\_\_

SEAL

C. **Affirmative Action Affidavit (P.L. 1975, C.127)**

Company Name: [Click or tap here to enter text.](#)

Street Address: [Click or tap here to enter text.](#)

City, State, Zip Code: [Click or tap here to enter text.](#)

**Bid Proposal Certification:**

*Indicate below your compliance with New Jersey Affirmative Action regulations. Your proposal will be accepted even if you are not in compliance at this time. No contract and/or purchase order may be issued, however, until all Affirmative Action requirements are met.*

**Required Affirmative Action Evidence:**

*Procurement, Professional & Service Contracts (Exhibit A)*

*Suppliers must submit with proposal:*

1. A photo copy of their Federal Letter of Affirmative Action Plan Approval  
OR
2. A photo copy of their Certificate of Employee Information Report  
OR
3. A complete Affirmative Action Employee Information Report (AA302)

**Public Work – Over \$50,000 Total Project Cost:**

No approved Federal or New Jersey Affirmative Action Plan. We will complete Report Form AA201-A upon receipt from the Harrison Township Board of Education

Approved Federal or New Jersey Plan – certificate enclosed

*I further certify that the statements and information contained herein, are complete and correct to the best of my knowledge and belief.*

Authorized Signature: \_\_\_\_\_

Title of Signatory: [Click or tap here to enter text.](#)

Date: [Click or tap here to enter text.](#)

**P.L. 1995, c. 127 (N.J.A.C. 17:27)**

**MANDATORY AFFIRMATIVE ACTION LANGUAGE**

**PROCUREMENT, PROFESSIONAL AND SERVICE CONTRACTS**

During the performance of this contract, the contractor agrees as follows:

The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation. The contractor will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry,



marital status, sex, affectional or sexual orientation. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this non-discrimination clause.

The contractor or subcontractor, where applicable will, in all solicitations or advertisement for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation.

The contractor or subcontractor, where applicable, will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer advising the labor union or workers' representative of the contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to P.L. 1975, c. 127, as amended and supplemented from time to time and the Americans with Disabilities Act.

The contractor or subcontractor agrees to attempt in good faith to employ minority and female workers trade consistent with the applicable county employment goal prescribed by N.J.A.C. 17:27-5.2 promulgated by the Treasurer pursuant to P.L. 1975, C.127, as amended and supplemented from time to time or in accordance with a binding determination of the applicable county employment goals determined by the Affirmative

Action Office pursuant to N.J.A.C. 17:27-5.2 promulgated by the Treasurer pursuant to P.L. 1975, C.127, as amended and supplemented from time to time.

The contractor or subcontractor agrees to inform in writing appropriate recruitment agencies in the area, including employment agencies, placement bureaus, colleges, universities, labor unions, that it does not discriminate on the basis of age, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.

The contractor or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job-related testing, as established by the statutes and court decisions of the state of New Jersey and as established by applicable Federal law and applicable Federal court decisions.

The contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and lay-off to ensure that all such actions are taken without regard to age, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation, and conform with the applicable employment goals, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

The contractor and its subcontractors shall furnish such reports or other documents to the Affirmative Action Office as may be requested by the office from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Affirmative Action Office for conducting a compliance investigation pursuant to Subchapter 10 of the Administrative Code (NJAC 17:27).

---

Signature of Procurement Agent

D. C. 271 Political Contribution Disclosure Form

## PUBLIC AGENCY INSTRUCTIONS

This page provides guidance to public agencies entering into contracts with business entities that are required to file Political Contribution Disclosure forms with the agency. **It is not intended to be provided to contractors.** What follows are instructions on the use of form local units can provide to contractors that are required to disclose political contributions pursuant to N.J.S.A. 19:44A-20.26 (P.L. 2005, c. 271, s.2). Additional information is available in Local Finance Notice 2006-1 ([https://www.nj.gov/dca/divisions/dlgs/resources/lfns\\_2006.html](https://www.nj.gov/dca/divisions/dlgs/resources/lfns_2006.html)).

1. The disclosure is required for all contracts in excess of \$17,500 that are **not awarded** pursuant to a “fair and open” process (N.J.S.A. 19:44A-20.7).
2. Due to the potential length of some contractor submissions, the public agency should consider allowing data to be submitted in electronic form (i.e., spreadsheet, pdf file, etc.). Submissions must be kept with the contract documents or in an appropriate computer file and be available for public access. **The form is worded to accept this alternate submission.** The text should be amended if electronic submission will not be allowed.
3. The submission must be **received from the contractor and** on file at least 10 days prior to award of the contract. Resolutions of award should reflect that the disclosure has been received and is on file.
4. The contractor must disclose contributions made to candidate and party committees covering a wide range of public agencies, including all public agencies that have elected officials in the county of the public agency, state legislative positions, and various state entities. The Division of Local Government Services recommends that contractors be provided a list of the affected agencies. This will assist contractors in determining the campaign and political committees of the officials and candidates affected by the disclosure.
  - a) The Division has prepared model disclosure forms for each county. They can be downloaded from the “County PCD Forms” link on the Pay-to-Play web site at [https://www.state.nj.us/dca/divisions/dlgs/programs/pay\\_2\\_play.html](https://www.state.nj.us/dca/divisions/dlgs/programs/pay_2_play.html) They will be updated from time-to-time as necessary.
  - b) A public agency using these forms **should edit them to accurately reflect the correct legislative district(s)**. As the forms are county-based, **they list all legislative districts** in each county. **Districts that do not represent the public agency should be removed from the lists.**
  - c) Some contractors may find it easier to provide a single list that covers all contributions, regardless of the county. These submissions are appropriate and should be accepted.
  - d) The form may be used “as-is”, subject to edits as described herein.
  - e) The “Contractor Instructions” sheet is intended to be provided with the form. It is recommended that the Instructions and the form be printed on the same piece of paper. The form notes that the Instructions are printed on the back of the form; where that is not the case, the text should be edited accordingly.
  - f) The form is a Word document and can be edited to meet local needs, and posted for download on web sites, used as an e-mail attachment, or provided as a printed document.
5. It is recommended that the contractor also complete a “Stockholder Disclosure Certification.” This will assist the local unit in its obligation to ensure that contractor did not make any prohibited contributions to the committees listed on the Business Entity Disclosure Certification in the 12 months prior to the contract. (See Local Finance Notice 2006-7 for additional information on this obligation) A sample Certification form is part of this package and the instruction to complete it is included in the Contractor Instructions. **NOTE: This section is not applicable to Boards of Education.**

## CONTRACTOR INSTRUCTIONS

Business entities (contractors) receiving contracts from a public agency in the state of New Jersey that are NOT awarded pursuant to a "fair and open" process (defined at [N.J.S.A. 19:44A-20.7](#)) are subject to the provisions of P.L. 2005, c. 271, s.2 ([N.J.S.A. 19:44A-20.26](#)). This law provides that 10 days prior to the award of such a contract, the contractor shall disclose contributions to:

- any State, county, or municipal committee of a political party
- any legislative leadership committee\*
- any continuing political committee (a.k.a., political action committee)
- any candidate committee of a candidate for, or holder of, an elective office:
  - of the public entity awarding the contract
  - of that county in which that public entity is located
  - of another public entity within that county
  - or of a legislative district in which that public entity is located or, when the public entity is a county, of any legislative district which includes all or part of the county. The disclosure must list reportable contributions to any of the committees that exceed \$300 per election cycle that were made during the 12 months prior to award of the contract. See [N.J.S.A. 19:44A-8](#) and [19:44A-16](#) for more details on reportable contributions.

[N.J.S.A. 19:44A-20.26](#) itemizes the parties from whom contributions must be disclosed when a business entity is not a natural person. This includes the following:

- individuals with an "interest" ownership or control of more than 10% of the profits or assets of a business entity or 10% of the stock in the case of a business entity that is a corporation for profit
- all principals, partners, officers, or directors of the business entity or their spouses
- any subsidiaries directly or indirectly controlled by the business entity
- IRS Code Section 527 New Jersey based organizations, directly or indirectly controlled by the business entity and filing as continuing political committees, (PACs). When the business entity is a natural person, "a contribution by that person's spouse or child, residing therewith, shall be deemed to be a contribution by the business entity." [[N.J.S.A. 19:44A-20.26\(b\)](#)] The contributor must be listed on the disclosure. Any business entity that fails to comply with the disclosure provisions shall be subject to a fine imposed by ELEC in an amount to be determined by the Commission which may be based upon the amount that the business entity failed to report. The enclosed list of agencies is provided to assist the contractor in identifying those public agencies whose elected official and/or candidate campaign committees are affected by the disclosure requirement. It is the contractor's responsibility to identify the specific committees to which contributions may have been made and need to be disclosed. The disclosed information may exceed the minimum requirement. The enclosed form, a content-consistent facsimile, or an electronic data file containing the required details (along with a signed cover sheet) may be used as the contractor's submission and is disclosable to the public under the Open Public Records Act. The contractor must also complete the attached Stockholder Disclosure Certification. This will assist the agency in meeting its obligations under the law.

**NOTE: This section does not apply to Board of Education contracts.**

[N.J.S.A. 19:44A-3\(s\)](#): "The term "legislative leadership committee" means a committee established, authorized to be established, or designated by the President of the Senate, the Minority Leader of the Senate, the Speaker of the General Assembly or the Minority Leader of the General Assembly pursuant to section 16 of P.L.1993, c.65 (C.19:44A-10.1) for the purpose of receiving contributions and making expenditures."

## C. 271 POLITICAL CONTRIBUTION DISCLOSURE FORM

Required Pursuant To [N.J.S.A. 19:44A-20.26](#)

This form or its permitted facsimile must be submitted to the local unit no later than 10 days prior to the award of the contract.

**Part I – Vendor Information**

Vendor Name:	Insert vendor name here.		
Address:	Insert street address here.		
City:	Insert City Here.	State:State.	Zip:Zip Code

The undersigned being authorized to certify, hereby certifies that the submission provided herein represents compliance with the provisions of N.J.S.A. 19:44A-20.26 and as represented by the Instructions accompanying this form.

	Insert Full Name	Insert Title.
Signature of Vendor	Printed Name	Title

**Part II – Contribution Disclosure**

Disclosure requirement: Pursuant to N.J.S.A. 19:44A-20.26 this disclosure must include all reportable political contributions (more than \$300 per election cycle) over the 12 months prior to submission to the committees of the government entities listed on the form provided by the local unit.

Check here if disclosure is provided in electronic form.

Contributor Name	Recipient Name	Date	Dollar Amount
			\$

Check here if the information is continued on subsequent page(s)



**List of Agencies with Elected Officials Required for Political Contribution Disclosure**

**N.J.S.A. 19:44A-20.26**

**County Name:**

State: Governor, and Legislative Leadership Committees

Legislative District #s:

State Senator and two members of the General Assembly per district.

County:

Freeholders

County Clerk

Sheriff

{County Executive}

Surrogate

Municipalities (Mayor and members of governing body, regardless of title):

**USERS SHOULD CREATE THEIR OWN FORM, OR DOWNLOAD FROM [WWW.NJ.GOV/DCA/LGS/P2P](http://WWW.NJ.GOV/DCA/LGS/P2P) A COUNTY-BASED, CUSTOMIZABLE FORM.**

**E. Stockholder Disclosure Certification**

**Name of Business:**

I certify that the list below contains the names and home addresses of all stockholders holding 10% or more of the issued and outstanding stock of the undersigned.

**OR**

I certify that no one stockholder owns 10% or more of the issued and outstanding stock of the undersigned.

**Check the box that represents the type of business organization:**

- Partnership
- Corporation
- Sole Proprietorship
- Limited Partnership
- Limited Liability Corporation
- Limited Liability Partnership
- Subchapter S Corporation

**Sign and notarize the form below, and, if necessary, complete the stockholder list below.**

Stockholders:

Name: Stockholder Name	Name: Stockholder Name
Home Address: Home Address	Home Address: Home Address
Name: Stockholder Name	Name: Stockholder Name

Home Address: Home Address	Home Address: Home Address
Name: Stockholder Name  Home Address: Home Address	Name: Stockholder Name  Home Address: Home Address
Subscribed and sworn before me this ____ day of _____, 2__.	_____
(Notary Public)	(Affiant)
My Commission expires:	_____
	(Print name & title of affiant)
	(Corporate Seal)

**\*Please note that if awarded and requested EC America, Inc. and relevant partners will complete the New Jersey forms/requirement.**

## PROPOSAL FORM 17: GENERAL TERMS AND CONDITIONS ACCEPTANCE FORM

Check one of the following responses to the General Terms and Conditions in this solicitation, including the Master Agreement:

We take no exceptions/deviations to the general terms and conditions

*(Note: If none are listed below, it is understood that no exceptions/deviations are taken.)*

We take the following exceptions/deviations to the general terms and conditions. All exceptions/deviations must be clearly explained. Reference the corresponding general terms and conditions that you are taking exceptions/deviations to. Clearly state if you are adding additions terms and conditions to the general terms and conditions. Provide details on your exceptions/deviations below:

Section 2.5 (e) should be deleted entirely and replaced with the following to account for Orders placed under this Agreement:

**"e. Order of Precedence."**

- (1) General Terms and Conditions, including any attachment and exhibits
- (2) Terms contained within an Order issued Pursuant to these General Terms and Conditions, including any statements of work incorporated into said Order
- (3) Documents referenced or included in any proposal submitted in response to a solicitation

Section 2.10 Effects of Termination should be revised to delete the first sentence entirely. Company requests this modification as Orders which are issued under the General Terms and Conditions prior to Termination should survive Termination. Failure to do so will create harm and administrative burden on the customers of this program.

*(Note: Unacceptable exceptions shall remove your proposal from consideration for award. CCOG shall be the sole judge on the acceptance of exceptions/deviations and the decision shall be final.)*



## PROPOSAL FORM 18: EQUALIS GROUP ADMINISTRATION AGREEMENT DECLARATION

**Attachment A - Sample Administration Agreement of this solicitation is for reference only. Contracting with Equalis Group and the Winning Supplier will occur after contract award.**

Execution of the Administration Agreement is required for the Master Agreement to be administered by Equalis Group. **Attachment A - Sample Administration Agreement** defines i) the roles and responsibilities of both parties relating to marketing and selling the Program to current and prospective Members, and ii) the financial terms between Equalis Group and Winning Supplier.

Redlined copies of this agreement should not be submitted with the response. Should a respondent be recommended for award, this agreement will be negotiated and executed between Equalis Group and the respondent. Respondents must select one of the following options for submitting their response.

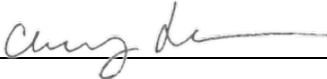
Bidder agrees to all terms and conditions outlined in the **Attachment A - Sample Administration Agreement.**

Bidder wishes to negotiate directly with Equalis Group on terms and conditions outlined in the Sample Administration Agreement. Negotiations will commence after CCOG has completed contract award.

# PROPOSAL FORM 19: MASTER AGREEMENT SIGNATURE FORM

**BIDDERS MUST SUBMIT THIS FORM COMPLETED AND SIGNED WITH THEIR RESPONSE TO BE CONSIDERED FOR AWARD.**

The undersigned hereby proposes and agrees to furnish Products & Services in strict compliance with the terms, specifications, and conditions contained within this RFP and the Master Agreement at the prices proposed within the submitted proposal unless noted in writing. The undersigned further certifies that he/she is an officer of the company and has authority to negotiate and bind the company named below and has not prepared this proposal in collusion with any other Bidder and that the contents of this proposal as to prices, terms or conditions of said proposal have not been communicated by the undersigned nor by any employee or agent to any person engaged in this type of business prior to the official opening of this proposal.

Company Name EC America, Inc. (a subsidiary of immixGroup, Inc.)  
Address 8444 Westpark Drive, Suite 200 McLean, VA 22102  
City/State/Zip McLean, VA 22102  
Phone Number 703-639-1565  
Email Address Chauncey\_Kehoe@immixgroup.com  
Printed Name Chauncey Kehoe  
Job Title Contracts Manager – State, Local, Education  
Authorized Signature 

### Initial Term of the Master Agreement

Contract Effective Date: January 1, 2023  
Contract Expiration Date: December 31, 2026  
Contract Number: [REDACTED]

*(Note: Contract Number will be applied prior to CCOG and Equalis Group countersigning.)*

The Cooperative Council of Governments, Inc.  
6001 Cochran Road, Suite 333  
Cleveland, Ohio 44139

Equalis Group, LLC.  
5550 Granite Parkway, Suite 298  
Plano, Texas 75024

By: \_\_\_\_\_  
Name: Scott A. Morgan  
As: CCOG Board President  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: Eric Merkle  
As: SVP, Procurement & Operations  
Date: \_\_\_\_\_

*Last Revised: February 3, 2020*

## CITRIX LICENSE AGREEMENT

This is a legal agreement ("AGREEMENT") between the end-user customer ("you"), and the providing Citrix entity (the applicable providing entity is hereinafter referred to as "CITRIX"). This AGREEMENT includes the Data Processing Agreement, the Citrix Services Security Exhibit and any other documents incorporated herein by reference. Your location of receipt of the Citrix product (hereinafter "PRODUCT") and maintenance (hereinafter "MAINTENANCE") determines the providing entity as identified at <https://www.citrix.com/buy/licensing/citrix-providing-entities.html>. BY INSTALLING AND/OR USING THE PRODUCT, YOU AGREE TO BE BOUND BY THE TERMS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, DO NOT INSTALL AND/OR USE THE PRODUCT. Nothing contained in any purchase order or any other document submitted by you shall in any way modify or add to the terms and conditions contained in this AGREEMENT.

### 1. PRODUCT LICENSES.

- a. End User Licenses. Citrix hereby grants Customer a non-exclusive worldwide license to use the software in a software PRODUCT and the software installed in an appliance PRODUCT under the license models and for the term identified at <https://www.citrix.com/buy/licensing/product.html>. Unless otherwise noted, each product license may be loaded on only a single license server, appliance or appliance instance, as applicable. Any experimental features delivered with such software will be identified and are licensed only for internal testing purposes. Notwithstanding anything set forth in this AGREEMENT or at the referenced website, your use of open source software shall in all ways be exclusively governed by the open source license indicated as applicable to the code at <https://www.citrix.com/buy/licensing/open-source.html>. Your license to software in a Software or Appliance PRODUCT will be activated by license keys that allow use of the PRODUCT in increments defined by the license model purchased ("License Keys"). "Software" means a Citrix proprietary and/or open source software program in object code form licensed hereunder. "Appliance" means a hardware appliance with installed Software. License Keys for other CITRIX products or other editions of the same PRODUCT may not be used to increase the allowable use for your edition of the PRODUCT.
- b. Partner Demo. If a Software PRODUCT is labeled "Partner Demo," notwithstanding any term to the contrary in this AGREEMENT, your license permits use only if you are a current CITRIX authorized distributor or reseller, and then only for demonstration, test, or evaluation purposes in support of your end-user customers, and not for any other purpose, including without limitation customer training or production purposes. Note that a Partner Demo PRODUCT may disable itself upon the expiration of the License Key. In no event may a Partner Demo PRODUCT be used beyond expiration.
- c. Evaluation. If a PRODUCT is labeled "Evaluation," notwithstanding any term to the contrary in this AGREEMENT, your license permits use only if you are an end-user customer and then only for your internal demonstration, test, or evaluation purposes, and not for any other purpose, including without limitation production purposes. Your license is for ninety (90) days with no right to MAINTENANCE, the Limited Warranty, or Infringement Indemnification. Note that an Evaluation PRODUCT may disable itself upon the expiration of the License Key. In no event may an Evaluation PRODUCT be used beyond expiration. If the Evaluation PRODUCT is an appliance, it must be returned upon such expiration.
- d. Archive Copy. You may make one (1) copy of the software in a Software or Appliance PRODUCT in machine-readable form solely for backup, provided that you reproduce all proprietary notices on the copy.

2. MAINTENANCE AND SUBSCRIPTION LICENSES. The MAINTENANCE plan applicable to this PRODUCT is identified at <https://www.citrix.com/buy/licensing/product.html> and plan entitlements and requirements are explained at <https://www.citrix.com/support/programs.html>. Entitlements may include cloud services that shall be delivered under the terms of the End User Services Agreement at <https://www.citrix.com/buy/licensing/agreements.html>. MAINTENANCE is included with subscription licenses for the term purchased, but for other licenses, is required at the time of PRODUCT purchase, and must be purchased separately. MAINTENANCE as purchased separately is available for an initial one (1) year or at your option multi-year term and may automatically renew or be extended by your purchase of available annual renewals (the "MAINTENANCE Term"). **The MAINTENANCE or subscription**

**license offering you purchase determines how renewals work. If you purchase an auto-renewing offering, your purchase constitutes your agreement to auto-renewals for same term as initially purchased. You maintain the right to give e-mail notice of non-renewal to Citrix prior to any auto-renewal. Citrix will provide e-mail notice of each renewal at least sixty (60) days in advance of renewal. Renewal options for Maintenance and license subscriptions available in your ordering location are identified at <https://www.citrix.com/buy/licensing/citrix-cloud-services-renewals.html>. Ensure you confirm the renewal option you purchase prior to purchase. You may view your renewals selection for your purchases at any time at <https://www.mycitrix.com/>.** Unless you complete a renewal through a Citrix authorized reseller, you understand and agree that a renewal will be through Citrix. Fees may increase and discounts may not apply to renewals. All orders, including for renewals, are subject to acceptance by Citrix in its discretion. MAINTENANCE for a Software or Appliance PRODUCT begins upon delivery of the License Keys. Under MAINTENANCE, CITRIX will make any Updates for the PRODUCT covered by the plan available to you. An "Update" shall mean a generally available release of the same edition of the Software for the same PRODUCT that Citrix may make available from time to time. CITRIX is not obligated to make any Updates available. Updates shall be subject to the terms of this AGREEMENT, except that Updates are not covered by the Limited Warranty applicable to the PRODUCT, to the extent permitted by applicable law. You acknowledge that CITRIX may develop and market new or different software or appliance offerings or editions of the PRODUCT that use portions of the PRODUCT and that perform all or part of the functions performed by the PRODUCT. Nothing contained in this AGREEMENT shall give you any rights with respect to such new or different offerings or editions. MAINTENANCE purchased separately will be available for a PRODUCT until it is no longer offered in accordance with the applicable CITRIX PRODUCT Lifecycle Support Policy posted at <https://www.citrix.com/support/product-lifecycle.html>. Any deliveries of Updates shall be electronic. MAINTENANCE includes technical support, and may include online services, and, for hardware only, an extended hardware warranty, as stated at <https://www.citrix.com/support/programs.html>. The offering you purchase determines your entitlement and usage rights. In addition to MAINTENANCE, you may also purchase CITRIX consulting services as may be available (including installation services, remote monitoring services or technical consulting). CITRIX' provision of technical support or consulting services is predicated upon the following responsibilities being fulfilled by you: (i) you will designate a primary administrative contact for technical support; (ii) you agree to perform reasonable problem determination activities and reasonable problem resolution activities as suggested by CITRIX; (iii) you are responsible for implementing procedures necessary to safeguard the integrity and security of software and data from unauthorized access and for reconstructing any lost or altered files resulting from catastrophic failures; (iv) you are responsible for procuring, installing, and maintaining all equipment, telephone lines, communications interfaces, and other hardware at your site and providing CITRIX with access to your facilities as required to operate the PRODUCT and permitting CITRIX to perform the service; and (v) you are required to implement all currently available and applicable software hotfixes, hotfix rollup packs, and service packs or their equivalent for the PRODUCT in a timely manner. CITRIX is not required to provide any technical support for problems arising out of: (i) your or any third party's alterations or additions to the PRODUCT, operating system or environment; (ii) CITRIX provided alterations or additions to the PRODUCT that do not address Errors or Defects; (iii) any functionality not defined in the user documentation published by CITRIX and included with the PRODUCT (hereinafter "Documentation"); (iv) use of a Software PRODUCT on a processor or peripherals other than the processor and peripherals defined in the Documentation; (v) any PRODUCT that has reached End-of-Life; and (vi) any consulting deliverables from CITRIX, you or any third party. An "Error" is defined as a failure in the PRODUCT to materially conform to the functionality defined in the Documentation. A "Defect" is defined as a failure in the PRODUCT to conform to the specifications in the Documentation. In situations where CITRIX cannot provide a satisfactory resolution to your critical problem through normal technical support methods, CITRIX may engage its product development team to create a private fix. Private fixes are designed to address your specific situation and may not be further distributed by you. CITRIX retains all right, title, and interest in and to all fixes, packs and their equivalent. Any private fixes are not provided as part of the PRODUCT under the terms of this AGREEMENT and they are not covered by the Limited Warranty or Infringement Indemnification applicable to the PRODUCT, to the extent permitted by applicable law. With respect to CITRIX consulting services, all intellectual property rights in all deliverables, pre-existing works and derivative works of such pre-existing works, as well as developments made, conceived, created, discovered, invented, or reduced to practice in the performance of the consulting services are and shall remain the sole and absolute property of CITRIX, subject to a worldwide, non-exclusive license to you for internal use.

3. DESCRIPTION OF OTHER RIGHTS, LIMITATIONS, AND OBLIGATIONS. Except as expressly set forth in Section 13, you may not transfer, rent, timeshare, grant rights in or lease the PRODUCT except to the extent such foregoing restriction is prohibited by applicable mandatory law. Any attempt to do so in violation of this prohibition shall be void. If you purchased or otherwise received replacement License Keys as part of a PRODUCT upgrade or trade-up, or a new product release with new product licenses under MAINTENANCE, you agree to destroy the original License Keys and retain no copies after installation of the new License Keys and PRODUCT. Solely for the purpose of migrating users, you are permitted a ninety (90) day grace period to run both your new and old License Keys in production. This period begins with your purchase of the upgrade or trade-up, or with your download of the new release under MAINTENANCE. You shall provide the serial numbers of the original License Keys and corresponding replacement License Keys to the reseller and, upon request, directly to CITRIX, for tracking purposes. In the event you make a transfer of the PRODUCT in the EU or EER, to the extent permitted by law and notwithstanding the terms of this AGREEMENT, you must uninstall the PRODUCT and License Keys, cease your use, transfer them to the transferee and retain no copies. You are responsible for ensuring that the transferee accepts the terms of this AGREEMENT. You must provide evidence that the conditions for a lawful transfer of the PRODUCT are met. All Limited Warranty, MAINTENANCE and Infringement Indemnification rights will terminate automatically upon such transfer and will not be available to the transferee, including the ability to purchase MAINTENANCE. You must comply with applicable export laws with respect to such a transfer. You may not modify, translate, reverse engineer, decompile, disassemble, create derivative works based on or copy the PRODUCT, except as expressly licensed in this AGREEMENT or to the extent such foregoing restriction is expressly prohibited by applicable mandatory law. You may not remove any proprietary notices, labels or marks on the PRODUCT. If you are a Citrix competitor for the relevant PRODUCT, you may not use the PRODUCT directly or indirectly for competitive benchmarking or other competitive analysis, unless permitted under applicable law. Notwithstanding the foregoing, this AGREEMENT shall not prevent or restrict you from exercising additional or different rights to any portions of the PRODUCT that are open source software. To the extent permitted by applicable law, you agree to allow CITRIX to audit your compliance pursuant to the terms explained at: <https://www.citrix.com/about/legal/product-license-compliance.html>. With respect to your purchase of a product trade-up or upgrade, or your implementation of a product release with new product licenses under MAINTENANCE, you are permitted a 90-day grace period to run both your new and the old PRODUCT licenses in production. This period runs from your purchase of the trade-up or upgrade, and from your download of the new release under your MAINTENANCE program. You agree to destroy the old licenses and retain no copies after the grace period. Certain PRODUCTS include a license overdraft feature that enables you to use a limited number of additional licenses to prevent access denial. Any overdraft feature is offered as a convenience, not as a license entitlement. Any overdraft licenses used must be purchased within thirty (30) days of first use. Note that a PRODUCT may be provided with identified experimental features which are not part of the PRODUCT and which are not covered by MAINTENANCE and the Limited Warranty. Such features are offered "AS IS" and may never become part of the PRODUCT or any CITRIX commercial product. Citrix makes no representations or certifications with respect to experimental features.

ALL RIGHTS IN THE PRODUCT NOT EXPRESSLY GRANTED ARE RESERVED BY CITRIX OR ITS LICENSORS. CITRIX and/or its licensors own and retain all title and ownership of all intellectual property rights in and to the PRODUCT, including any adaptations, modifications, translations, derivative works or copies, and any relating to the design, manufacture, or operation of the same.

4. INFRINGEMENT INDEMNIFICATION. In the event of any claim, suit, or proceeding brought against you based on an allegation that a PRODUCT, experimental features or consulting deliverable hereunder (excluding open source software) infringes upon any patent, copyright or trade secret of any third party ("Infringement Claim"), CITRIX shall defend, or at its option, settle, such Infringement Claim, and shall pay all costs (including reasonable attorney's fees) associated with the defense of such Infringement Claim, and all damages finally awarded or settlements undertaken by CITRIX in resolution of such Infringement Claim, provided you: (i) promptly notify CITRIX in writing of your notification or discovery of an Infringement Claim such that CITRIX is not prejudiced by any delay in such notification; (ii) give CITRIX sole control over the defense or settlement of the Infringement Claim; and (iii) provide reasonable assistance in the defense of the same. Following notice of an Infringement Claim, or if CITRIX believes such a claim is likely, CITRIX may at its sole expense and option: (i) procure for you the right to continue to use the alleged infringing PRODUCT, experimental feature or consulting deliverable; (ii) replace or modify the PRODUCT, experimental feature or consulting deliverable to make it non-infringing; or (iii) accept return of the PRODUCT,

experimental feature or consulting deliverable and, for the PRODUCT, provide you with a prorated refund for the licenses, other than as to subscription licenses, using a three (3) year straight line depreciation basis for the PRODUCT, and for subscription licenses, provide you with a refund of any unused, prepaid fees and relief from any subsequent annual payments due with respect to such licenses, and, for a consulting deliverable, refund payments made for the deliverable. CITRIX assumes no liability, and shall have no liability, for any Infringement Claims or allegations of infringement based on: (i) your use of any PRODUCT, experimental feature or consulting deliverable after notice that you should cease use of such PRODUCT, experimental feature or consulting deliverable due to an Infringement Claim; (ii) any modification of the PRODUCT, experimental feature or consulting deliverable by you or at your direction; (iii) your combination of the PRODUCT, experimental feature or consulting deliverable with non-CITRIX hardware, software, services, data or other content or materials if such Infringement Claim would have been avoided by the use of the PRODUCT, experimental feature or consulting deliverable alone. THE FOREGOING STATES YOUR EXCLUSIVE REMEDY WITH RESPECT TO ANY INFRINGEMENT CLAIM OR ALLEGATION OF INFRINGEMENT.

5. LIMITED WARRANTY AND DISCLAIMER. CITRIX warrants that for a period of ninety (90) days from delivery of the License Keys, the software in a Software or Appliance PRODUCT will perform substantially in accordance with the PRODUCT's Documentation. Citrix warrants that for a period of one (1) year from delivery of the License Keys, the hardware in an Appliance PRODUCT, will be free from defects in material and workmanship in normal use. This hardware warranty does not cover any of the following: (i) improper installation, maintenance, adjustment, repair or modification by Customer or a third party; (ii) misuse, neglect, or any other cause other than ordinary use, including without limitation, accidents or acts of God; (iii) improper environment, excessive or inadequate heating or air conditioning, electrical power failures, surges, water damage or other irregularities; (iv) third party software or software drivers; or (v) damage to hardware during shipment of an Appliance PRODUCT. CITRIX and its licensors' and suppliers' ("SUPPLIERS'") entire liability and your exclusive remedy under this Software or hardware warranty (which is subject to your return of the PRODUCT to CITRIX or an authorized reseller) will be, at the sole option of CITRIX and subject to applicable law, to replace the PRODUCT or to refund the purchase price paid (and for subscription licenses, provide relief from any subsequent annual payments due with respect to such licenses), and to terminate your software licenses to the PRODUCT. CITRIX will provide MAINTENANCE (including consulting services, if purchased separately) in a professional and workmanlike manner, but CITRIX cannot guarantee that every question or problem raised by you will be resolved or resolved in a certain amount of time. Citrix does not warrant in any form the results or achievements of the PRODUCT, technical support, consulting services or related deliverables. With respect to technical support, CITRIX' and its SUPPLIERS' entire liability and your exclusive remedy under this warranty is re-performance of the services. With respect to consulting services, CITRIX' and its SUPPLIERS' entire liability and your exclusive remedy under this warranty is re-performance of the services or, if re-performance is not possible or conforming, refund of amounts paid for the non-conforming services.

TO THE EXTENT PERMITTED BY APPLICABLE LAW AND EXCEPT FOR THE ABOVE LIMITED WARRANTY, CITRIX AND ITS SUPPLIERS MAKE AND YOU RECEIVE NO WARRANTIES OR CONDITIONS, EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE; AND CITRIX AND ITS SUPPLIERS SPECIFICALLY DISCLAIM WITH RESPECT TO THE PRODUCT, ANY EXPERIMENTAL FEATURES, MAINTENANCE AND ANY OTHER SOFTWARE OR SERVICE DELIVERED HEREUNDER, ANY CONDITIONS OF QUALITY, AVAILABILITY, RELIABILITY, SECURITY, LACK OF VIRUSES, BUGS, OR ERRORS, AND ANY IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF TITLE, QUIET ENJOYMENT, QUIET POSSESSION, MERCHANTABILITY, NONINFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE. THE PRODUCT AND MAINENANCE ARE NOT DESIGNED, MANUFACTURED, DELIVERED OR INTENDED FOR ANY USE WHERE FAILURE COULD LEAD DIRECTLY TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE. YOU ASSUME RESPONSIBILITY FOR THEIR SELECTION TO ACHIEVE YOUR INTENDED RESULTS, AND FOR THEIR INSTALLATION, USE, AND RESULTS OBTAINED THEREFROM.

6. DATA PROTECTION AND GDPR COMPLIANCE. Citrix agrees to deal with personal data relevant to Customer's end-users in accordance with applicable data protection laws and regulations and the following: (a) with respect to

personal data provided in connection with sales and marketing activities or use of Citrix websites, the Citrix Privacy Policy at <https://www.citrix.com/about/legal/privacy/>; (b) with respect to any personal information of European Union residents processed in connection with services, the Data Processing Agreement at <https://www.citrix.com/buy/licensing/citrix-data-processing-agreement.html> ("European Union General Data Protection Regulation Terms"); and (c) with respect to services, the Citrix Services Security Exhibit at <https://www.citrix.com/buy/licensing/citrix-services-security-exhibit.html>. Customer agrees to provide any notices and obtain any consent necessary for Citrix to access and process personal and other data as specified in this Agreement. The Privacy Policy, the Data Processing Agreement and the Citrix Services Security Exhibit are incorporated herein by reference.

7. EXPORT RESTRICTION. You agree that you will not export, re-export, or import the PRODUCT, MAINTENANCE or any other software or service delivered hereunder in any form without the appropriate government licenses. You understand that under no circumstances may the PRODUCT, MAINTENANCE or any other software or service delivered hereunder be exported to: (i) any country subject to U.S. embargo, (ii) U.S.-designated denied persons or prohibited entities, or (iii) U.S. specially designated nationals.
8. LIMITATION OF LIABILITY. EXCEPT FOR CITRIX' INDEMNIFICATION OBLIGATIONS EXPRESSLY SET FORTH IN SECTION 4, AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, YOU AGREE THAT NEITHER CITRIX NOR ITS AFFILIATES, SUPPLIERS, OR AUTHORIZED DISTRIBUTORS SHALL BE LIABLE FOR ANY LOSS OF DATA OR PRIVACY, LOSS OF INCOME, LOSS OF OPPORTUNITY OR PROFITS, COST OF RECOVERY, LOSS, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, ARISING FROM YOUR USE OF THE PRODUCT, EXPERIMENTAL FEATURES, EVALUATION PRODUCT, MAINTENANCE OR ANY OTHER SOFTWARE OR SERVICE DELIVERED HEREUNDER, OR DAMAGE ARISING FROM YOUR USE OF THIRD PARTY PRODUCTS OR HARDWARE, OR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR INDIRECT DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, OR YOUR EXPORTATION, REEXPORTATION, OR IMPORTATION OF ANY OR ALL OF THE SAME. THIS LIMITATION WILL APPLY EVEN IF CITRIX, ITS AFFILIATES, SUPPLIERS, OR AUTHORIZED DISTRIBUTORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND THESE LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED HEREIN. EXCEPT FOR CITRIX' INDEMNIFICATION OBLIGATIONS EXPRESSLY SET FORTH IN SECTION 4 (UNLESS NOTED AT <https://www.citrix.com/buy/licensing/product.html>), AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL THE TOTAL AGGREGATE LIABILITY OF CITRIX, ITS AFFILIATES, SUPPLIERS, OR AUTHORIZED DISTRIBUTORS EXCEED THE AMOUNT PAID FOR THE RELEVANT PRODUCT (DURING THE RELEVANT TERM IF SUBSCRIPTION), RELEVANT MAINTENANCE TERM OR CONSULTING DELIVERABLE. TOTAL AGGREGATE LIABILITY IS LIMITED TO \$100.00 US FOR ANY EXPERIMENTAL FEATURES OR ANY EVALUATION PRODUCT. YOU ACKNOWLEDGE THAT THE LICENSE, MAINTENANCE AND CONSULTING FEES REFLECT ALLOCATIONS OF RISK. SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO YOU. For purposes of this AGREEMENT, the term "AFFILIATE" shall mean any entity that controls, is under common control with, or is controlled by CITRIX, where "control" means the ownership, direct or indirect, of a majority of CITRIX' stock or other interest entitled allowing the owner to direct the affairs of CITRIX. AFFILIATES, suppliers, and authorized distributors are intended to be third party beneficiaries of this AGREEMENT.
9. PURCHASE, TERMINATION AND SURVIVAL. If you purchase a multi-year offering, or multi-year renewal, your purchase is for the full value of all years of the offering, even if required payments are annual. In the event you fail to pay any annual payment on a multi-year offering, or multi-year renewal, and such default shall continue for a period of thirty (30) days, then any and all remaining amounts for the relevant purchase shall become immediately due and payable. All purchases are final with no right of return, and neither CITRIX nor any reseller or distributor will be obligated to pay, nor will you be due, any refund of amounts paid by you, other than under the Limited Warranty or

Infringement Indemnification terms of this AGREEMENT. All purchases are subject to applicable taxes. This AGREEMENT is effective until terminated. You may terminate this AGREEMENT at any time by removing the software of your Software PRODUCT(s) from your computers and destroying all copies, and by removing the software of your Appliance PRODUCT(s) from the hardware, and then providing written notice to CITRIX with the serial numbers of your License Keys. CITRIX may terminate this AGREEMENT at any time for your breach of this AGREEMENT. Unauthorized copying of the software in a Software or Appliance PRODUCT or the Documentation or otherwise failing to comply with the license grant or restrictions of this AGREEMENT will result in automatic termination of this AGREEMENT and will make available to CITRIX all other legal remedies. You agree and acknowledge that your material breach of this AGREEMENT shall cause CITRIX irreparable harm for which monetary damages alone would be inadequate and that, to the extent permitted by applicable law, CITRIX shall be entitled to injunctive or equitable relief without the need for posting a bond. Upon termination of this AGREEMENT, the PRODUCT licenses and associated MAINTENANCE purchased hereunder will terminate and you must immediately destroy the software in a Software or Appliance PRODUCT and the Documentation, and all backup copies thereof. Any termination of consulting services is subject to the applicable scope definition, and you shall pay for services provided prior to the termination. Those provisions of this AGREEMENT, which are intended by the parties to survive, shall survive termination of this AGREEMENT, including without limitation, the Limitation of Liability terms.

10. U.S. GOVERNMENT END-USERS. If you are a U.S. Government agency, you hereby acknowledge and agree that the software in a Software or Appliance PRODUCT constitutes "Commercial Computer Software" as defined in Section 2.101 of the Federal Acquisition Regulation ("FAR"), 48 CFR 2.101. Therefore, in accordance with Section 12.212 of the FAR (48 CFR 12.212), and Sections 227.7202-1 and 227.7202-3 of the Defense Federal Acquisition Regulation Supplement ("DFARS") (48 CFR 227.7202-1 and 227.7202-3), the use, duplication, and disclosure of the software and related Documentation by the U.S. Government or any of its agencies is governed by, and is subject to, all of the terms, conditions, restrictions, and limitations set forth in this standard commercial license AGREEMENT. If, for any reason, FAR 12.212 or DFARS 227.7202-1 or 227.7202-3 or these license terms are deemed not applicable, you hereby acknowledge that the Government's right to use, duplicate, or disclose the software and related Documentation are "Restricted Rights" as defined in 48 CFR Section 52.227-14(a) (May 2014) or DFARS 252.227-7014(a)(15) (Feb 2014), as applicable. Manufacturer is Citrix Systems, Inc., 851 West Cypress Creek Road, Fort Lauderdale, Florida 33309.
11. AUTHORIZED DISTRIBUTORS AND RESELLERS. CITRIX authorized distributors and resellers do not have the right to make modifications to this AGREEMENT or to make any additional representations, commitments, or warranties binding on CITRIX.
12. CHOICE OF LAW AND VENUE. The location of your providing entity will determine the choice of law and venue as identified at <https://www.citrix.com/buy/licensing/citrix-providing-entities.html>. If any provision of this AGREEMENT is invalid or unenforceable under applicable law, it shall be to that extent be deemed omitted and the remaining provisions will continue in full force and effect. To the extent a provision is deemed omitted, the parties agree to comply with the remaining terms of this AGREEMENT in a manner consistent with the original intent of the AGREEMENT. No waiver is effective unless signed by the party to be bound.
13. ASSIGNMENT AND SUBCONTRACTING. Neither party hereto may assign this AGREEMENT, or any rights or obligations under it except as permitted by law or as set forth below, without the prior written consent of the other party, unless assigned to a successor in interest, or pursuant to a merger, or a sale or transfer of all or substantially all of the party's assets. You shall provide notice to CITRIX upon completion of any permitted assignment. In addition, you may assign this AGREEMENT to a majority-owned affiliate, and CITRIX may assign this AGREEMENT, or any rights or obligations under it to any AFFILIATE or any third party acquiring or otherwise assuming part of the business of CITRIX or any of its AFFILIATES. Subject to this restriction, this AGREEMENT will be binding upon and inure to the benefit of the parties hereto, their successors and assigns. CITRIX may use subcontractors to provide



services to you under this AGREEMENT, but CITRIX shall remain responsible to you for the performance of the services.

14. NOTICES. All legal notices required under this Agreement shall be in writing and delivered in person or by certified or registered express mail to the address last designated on the account for you, and the CITRIX contracting entity as specified below, or such other address as either party may specify by notice to the other party as provided herein. Notice shall be deemed given (i) upon personal delivery; (ii) if delivered by air courier or email, upon confirmation of receipt; or (iii) five (5) days after deposit in the mail. A copy of all legal notices from you to CITRIX must also be sent to [contract-notice@citrix.com](mailto:contract-notice@citrix.com). Non-legal notices under Section 2.0 may be provided by you to the CITRIX email address specified on the applicable Renewal Notification and shall be deemed effective as of the date and time stamp on your email. CITRIX may provide you with non-legal notices through [www.mycitrix.com](http://www.mycitrix.com) and/or through in-product messaging or dashboards, which shall likewise be deemed effective immediately.
15. FORCE MAJEURE. CITRIX and/or any of its AFFILIATES shall not be liable for any delay or failure to perform any obligation under this AGREEMENT where the delay or failure results from any cause beyond its/their reasonable control, including without limitation: (i) acts of God; (ii) electrical power failures or surges; (iii) utilities or other telecommunications failures; (iv) storms or other elements of nature; or (v) terrorism or acts of war; but only for so long as such condition exists.
16. HOW TO CONTACT CITRIX. Should you have any questions concerning this AGREEMENT or want to contact CITRIX for any reason, write to CITRIX Customer Service at the address identified at <https://www.citrix.com/buy/licensing/citrix-providing-entities.html>.
17. TRADEMARKS. This AGREEMENT does not grant you the right to use any CITRIX trade or service mark. For information about proper permitted usage of CITRIX trademarks please see <http://www.citrix.com/about/legal/brand-guidelines.html>.

CTX\_code: EULA 02/03/2020

# CommVault Systems, Inc.

## End User License and Limited Warranty Agreement

CommVault® Simpana® Software Release 10.0.0

(including Microsoft® SQL Server™ 2008 Enterprise Edition, Microsoft® SQL Server™ 2008 R2 Enterprise Edition, Microsoft® SQL Server™ 2012 Enterprise Edition, SQL Server™ 2008 Express Edition, SQL Server™ 2008 R2 Express Edition, SQL Server™ 2012 Express Edition and Windows Pre-Installation Environment)

### End User License Agreement

**IMPORTANT- READ CAREFULLY: THIS END USER LICENSE AGREEMENT (“EULA”) IS A LEGAL AGREEMENT BETWEEN YOU (EITHER AS AN INDIVIDUAL OR ENTITY) (“YOU”) AND COMMVAULT SYSTEMS, INC. (“COMMVAULT”) FOR SERVICES PROVIDED BY COMMVAULT, AS WELL AS THE ABOVE-REFERENCED SOFTWARE PRODUCT(S), WHICH INCLUDES COMPUTER SOFTWARE AND MAY INCLUDE ASSOCIATED MEDIA, AND “ONLINE” OR ELECTRONIC DOCUMENTATION (“SOFTWARE”). BY INSTALLING, COPYING OR OTHERWISE USING THE SOFTWARE, OR RECEIVING THE SERVICES YOU AGREE TO BE BOUND BY THE TERMS OF THIS EULA. IF YOU DO NOT AGREE TO THE TERMS OF THIS EULA, DO NOT INSTALL OR USE THE SOFTWARE. YOU SHALL INFORM ALL USERS OF THE SOFTWARE OF THE TERMS AND CONDITIONS OF THIS EULA.**

This EULA, grants You, the user, a non-exclusive license to use the Software under the terms and conditions stated herein. You agree that all updates, enhancements, maintenance releases, patches, bug-fixes or other modifications to the Software provided to You, on a when and if available basis, shall be governed by the terms and conditions, including the limited warranty, exclusive remedies and limitations of liability provisions, contained in this EULA, or the then-current version of this EULA. This EULA may be amended from time to time by CommVault, in its discretion, and will be made available at [www.commvault.com](http://www.commvault.com). Except as otherwise provided herein, the license granted herein shall be perpetual provided You comply with the terms hereof. This EULA shall be in effect until terminated except as expressly otherwise provided herein. You may terminate this EULA at any time by destroying all copies of Software and corresponding documentation. This EULA will terminate immediately without notice from CommVault if You fail to comply with any provision of this EULA. Upon termination, You must destroy all copies of Software in Your possession or control.

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

You may not: (i) make a copy of any of the Software for any purpose not explicitly permitted herein; (ii) provide commercial hosting services, sell, sublicense, rent, loan or lease the Software to another party, without the prior written consent of CommVault; (iii) except to the extent that such a prohibition is expressly prohibited by law, decompile, disassemble, reverse engineer or modify, in any manner, any of the Software; (iv) transfer or assign Your rights to use the Software; (v) use the Software in violation of applicable local, federal or other laws or regulations; (vi) use the Software for any purpose other than as permitted in this EULA; or, (vii) remove, destroy, erase, alter or otherwise modify CommVault’s trademarks.

Unless this software is provided to You for beta, demonstration, test, or evaluation purposes or is labeled “Not for Resale” as further described herein, You agree to use the Software solely for Your internal data center operations and to restrict any access to the Software, documentation, or other user information accompanying the Software only to those of your employees having a demonstrable need to have such access for your internal data processing operations. You agree that you shall not permit any access to the Software, documentation, or other user information accompanying the Software to any

person engaged in product research, development, support, sales, marketing, or other functions not directly related to your internal data processing operations. You also agree not to use the Software, documentation, or user information accompanying the Software to assist, directly or indirectly, in the development or design of any computer hardware or software program including, but not limited to, a program that provides or is intended to provide or include a similar feature or functionality as the Software, or any conversion utility or aid relating to the Software intended to enable or facilitate a user's conversion from the use of the Software to an alternative program. Any software CommVault and/or its licensors may provide You as part of maintenance and support services are governed by this EULA, unless separate terms are provided. This EULA does not obligate CommVault and/or its licensors to provide any maintenance and support services or to support any Software provided as part of those services. If support services are provided, they shall be provided subject to the terms of this EULA and in accordance with CommVault's then current policies, as such may be amended from time to time. In the event You elect to purchase maintenance and support services, You must purchase such maintenance and support services for all of the licensed Software in Your entire environment. Such maintenance and support services shall begin on the date Software is shipped to You. Personal health information, personal financial information, or any other personally identifiable information is not necessary for CommVault's provision of services. You agree that You will not provide any such information to CommVault.

You agree that CommVault and/or its licensors may, for business purposes, collect, process, and use technical information gathered as part of any product maintenance and support services provided to You related to the Software and any other technical information You provide to CommVault provided that such information does not personally identify You.

All title and intellectual property rights in and to the Software, and any copies You are permitted to make herein, are owned by CommVault and/or its licensors and is protected by United States and other country patent, copyright, trade secret, and other laws and by international treaty provisions. Such licensors, in addition to any other rights or remedies available to them, are third party beneficiaries of this EULA for their respective software and may have the right to enforce such terms against You. **This Software is licensed, not sold.** The purchase of a license to the Software is final, non-returnable and non-refundable. Acceptance of the Software occurs upon shipment by CommVault or its licensors. No rights are granted to You other than a license to use the Software upon the terms expressly set forth in this EULA. The structure, sequence, organization and source code of the Software are valuable trade secrets of CommVault and/or its licensors. The export of the Software may be restricted by the export control laws of the United States of America and other countries. You agree to comply strictly with all such regulations and acknowledge that You have the responsibility to obtain licenses to export, re-export, or import Software. This EULA shall be governed by the laws of New Jersey, USA, without regard to any provisions concerning the applicability of the laws of other jurisdictions. This EULA is the complete and exclusive statement of Your agreement with CommVault with respect to the subject matter hereof and supersedes all prior agreements. This EULA supersedes all terms and conditions contained in any purchase order, order acknowledgment form, invoice or other business form submitted by You. No advertisements, catalogues or other publications or statements, whether written or oral, regarding the performance of the Software licensed under this EULA shall form part of this EULA. If any provision of this EULA is held to be invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of this EULA shall remain in full force and effect.

In the event You license the Software on a capacity basis, if you exceed the maximum capacity purchased, the Software may cease to operate normally and/or performance may be impaired; provided however that reducing Your usage to the purchased capacity level or purchasing additional capacity will return the Software to its normal operation. Any excess capacity usage above the purchased maximum shall entitle CommVault to invoice You for licensed capacity and maintenance and support amounts owed, and if You fail to pay for the excess usage, CommVault shall be entitled to any self-help or other remedies available. You shall provide CommVault with any usage reports immediately upon request (and You shall not interfere with any automated reporting features) in order to enable CommVault to verify Your capacity usage.

To ensure compliance with this EULA, You agree that upon reasonable notice, CommVault or CommVault's authorized representative shall have the right to inspect and audit Your installation and use of the Software. Any such inspection or audit shall be conducted during regular business hours at your facilities or electronically. Any information obtained during the course of such audit will be used by CommVault solely for the enforcement of CommVault's rights under this EULA and applicable law. If such audits disclose that you have installed, accessed, used, or otherwise permitted access to the Software in a manner that is not permitted by the terms of this EULA, then CommVault may terminate this EULA immediately and You shall reimburse CommVault for any unpaid license fees and all reasonable expenses related to such audit. Nothing in this section shall be deemed to limit any legal or equitable remedies available to CommVault for violation of this EULA or applicable law.

Any reports regarding Your use of the Software and any other usage information, results, comments, or suggestions provided by You to CommVault regarding the Software (collectively, the “Feedback”) shall be deemed non-confidential to You. By providing Feedback, You grant and assign to CommVault, under Your intellectual property rights and other ownership rights, a worldwide, royalty-free, irrevocable, and non-exclusive license, with the right to sublicense to CommVault licensees and customers, the rights to use and disclose the Feedback in any manner CommVault chooses, and to display, perform, copy, make, have made, use, sell, and otherwise dispose of CommVault’s products embodying the Feedback in any manner and via any media CommVault or its licensees choose, without obligation to You. You also agree that the Software may automatically provide certain reports and survey information regarding its use to CommVault, and which reporting feature You may disable at any time. Any such reports or information shall be kept confidential and used solely by CommVault for internal purposes and/or in a manner that does not identify You. To the extent that You may acquire by operation of law or equity, any right, title, or interest, including any intellectual property rights, in or to the Feedback, or any modifications, or developments related thereto, You hereby assign to CommVault Your entire right, title, and interest, including all intellectual property rights, therein and thereto, and agree to execute any necessary documents as reasonably required and requested by CommVault in connection with the foregoing. The above provisions and rights granted regarding title and intellectual property rights associated with the Software and the Feedback shall survive termination of this EULA.

You agree that any information provided to You by CommVault, including the Software and related Documentation, shall be considered confidential information. You shall not disclose such confidential information without the prior written consent of CommVault.

If the Software is provided to You electronically, You may not request, and CommVault is under no obligation to provide, physical delivery of any Software or media. You agree to be responsible for all taxes and any penalties and/or interest associated with Your purchase or use of the Software. You understand and agree that subsequent Software deliveries may not be eligible for electronic delivery, and in the event physical delivery is made, You shall be solely responsible for any taxes on that, or any prior, purchase. You represent and warrant that neither You, nor any of Your affiliates, have received any physical media from CommVault containing the Software. In the event that any taxing or governmental authority makes a claim against CommVault for taxes, interest, penalties or other payments related to the delivery and/or purchase by You of the Software, You agree to indemnify and hold CommVault harmless from and against all such claims, proceedings, actions and liabilities associated therewith.

All rights not expressly granted hereunder are expressly reserved by CommVault.

**Software Labeled “Not for Resale” or Provided for Beta, Demonstration, Test, or Evaluation Purposes**

If the Software is provided to You for beta, demonstration, test or evaluation purposes or is labeled “Not for Resale,” then, notwithstanding anything to the contrary in the EULA: (i) The licenses granted herein shall be for a term of thirty (30) days (the “Evaluation Period”) unless otherwise agreed to in writing by CommVault, and CommVault reserves the right to terminate this EULA or any licenses granted hereunder immediately upon written notice at its convenience; (ii) Your use of the Software is limited to use for demonstration, test or evaluation purposes, and You may not resell or otherwise transfer the Software; (iii) You agree to keep confidential and not to disclose or otherwise make publicly available any information related to the Software, including, but not limited to test results, characteristics, and performance of the software; (iv) You agree not to copy the Software and not to provide a copy of the Software to any other party; (v) You agree not to use the Software in a production environment or for production data processing purposes, and that any use of the Software in a production environment or for production data processing purposes is at Your sole risk to backup data and take other appropriate measures to protect Your computer programs and data; and (vi) You agree to immediately, on or before the end of the Evaluation Period, promptly remove, destroy, and erase from computer memory and storage media any installed copy of the Software, and return the Software to CommVault together with all documentation and other materials provided by CommVault. Limited duration licenses, site licenses, beta, evaluation, test or demonstration Software products are delivered “**AS IS**” without a warranty of any kind. CommVault shall have no obligation to support, maintain, or provide other assistance regarding any limited duration licenses, site licenses, beta, evaluation, test, or demonstration Software products. **IF THE SOFTWARE IS PROVIDED TO YOU FOR BETA, DEMONSTRATION, TEST, OR EVALUATION PURPOSES OR IS LABELED “NOT FOR RESALE,” IN NO EVENT WILL COMMVAULT BE LIABLE FOR ANY DAMAGES FOR ANY CAUSE OR FOR ANY CLAIM BY BORROWER OR FOR ANY THIRD PARTY CLAIM, INCLUDING BUT NOT LIMITED TO ANY DIRECT DAMAGES, ACTUAL DAMAGES, LOST PROFITS, LOST DATA OR ANY SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, EVEN IF COMMVAULT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**

**Note on JAVA Support**

THIS SOFTWARE PRODUCT MAY CONTAIN SUPPORT FOR PROGRAMS WRITTEN IN JAVA. JAVA TECHNOLOGY IS NOT FAULT TOLERANT AND IS NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USE OR RESALE AS ONLINE CONTROL EQUIPMENT IN HAZARDOUS ENVIRONMENTS REQUIRING FAIL-SAFE PERFORMANCE, SUCH AS IN THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL, DIRECT LIFE SUPPORT MACHINES, OR WEAPONS SYSTEMS, IN WHICH THE FAILURE OF JAVA TECHNOLOGY COULD LEAD DIRECTLY TO DEATH, PERSONAL INJURY OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE. Microsoft Corporation obligated CommVault to make this disclaimer.

### **Limited Warranty**

With the exception of Software provided to You for beta, demonstration, test or evaluation purposes or that is labeled "Not for Resale", CommVault warrants that the Software licensed hereunder shall be new and shall operate substantially in accordance with its user documentation for a period of ninety (90) days from the date of shipment by CommVault or its licensors (hereinafter the "Warranty Period"). If, during the Warranty Period, You believe any Software product to be defective, You must immediately notify CommVault in writing and follow CommVault's instructions regarding the return of such Software. Nothing in this EULA is intended to exclude, restrict or modify any rights that You may have under any applicable legislation, which may not be excluded, restricted or modified by agreement (hereinafter the "non-excludable statutory rights"). Except in relation to any non-excludable statutory rights which may not be restricted or modified by agreement, CommVault's sole liability to You, and Your sole remedy, shall be, at CommVault's option, (i) repair or replacement of the Software product which does not comply with this Limited Warranty, or (ii) return of the amount paid by You for the Software product which does not comply with the Limited Warranty. In the event CommVault determines that the Software product is in compliance with this Limited Warranty, You shall pay the cost of all charges associated with the inspection and shipment of such Software product by CommVault. The user documentation is the exclusive statement of performance of the Software licensed hereunder.

CommVault warrants that any services provided by CommVault shall be performed by competent personnel of CommVault's and shall be of professional quality consistent with generally accepted industry standards for the performance of such services.

The following four sentences only apply if You purchased CommVault Software in Australia and You are a 'consumer' under the Australian Consumer Law: CommVault's Software comes with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the Software repaired or replaced if the Software fails to be of acceptable quality and the failure does not amount to a major failure.

If You have an enquiry or You wish to claim under this Limited Warranty, please contact CommVault.

**Disclaimer. COMMVAULT DOES NOT WARRANT THAT THE SOFTWARE WILL OPERATE UNINTERRUPTED OR ERROR FREE. THE LIMITED WARRANTIES PROVIDED HEREIN ARE IN LIEU OF ALL OTHER WARRANTIES. COMMVAULT AND ITS LICENSORS DISCLAIM ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, AND COMMVAULT AND ITS LICENSORS EXPRESSLY EXCLUDE AND DISCLAIM ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, LACK OF VIRUSES OR NON-INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS. THE PROVISIONS SET FORTH ABOVE STATE COMMVAULT'S AND ITS LICENSORS' ENTIRE RESPONSIBILITY AND YOUR SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO ANY BREACH OF ANY WARRANTY.**

**No Consequential Damages. NEITHER COMMVAULT, NOR ANY OF ITS LICENSORS, WILL, UNDER ANY CIRCUMSTANCES, BE LIABLE TO YOU OR ANY OTHER PARTY, FOR COSTS OF PROCUREMENT OF SUBSTITUTE PRODUCTS OR SERVICES, LOST PROFITS, LOSS OF INFORMATION OR DATA OR ANY OTHER SPECIAL, INCIDENTAL, PUNITIVE, INDIRECT OR CONSEQUENTIAL DAMAGES WHATSOEVER REGARDLESS OF THE FORM OF ACTION, EVEN IF COMMVAULT HAS BEEN NOTIFIED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING ANY FAILURE OF AN ESSENTIAL PURPOSE OF THIS LIMITED WARRANTY.**

**Limit of Liability. IN THE EVENT COMMVAULT OR ITS LICENSORS ARE SUBJECT TO ANY LIABILITY IN CONNECTION WITH THE SOFTWARE PRODUCTS OR ANY SERVICES FOR ANY REASON WHATSOEVER, WHETHER ARISING FROM NEGLIGENCE, BREACH OF CONTRACT OR OTHERWISE, NEITHER COMMVAULT'S LIABILITY NOR THE LIABILITY OF ITS LICENSORS SHALL EXCEED THE SUM PAID BY YOU TO COMMVAULT FOR THE SOFTWARE PRODUCT WHICH WAS FOUND TO HAVE NOT COMPLIED WITH THE LIMITED WARRANTY. THIS LIMITATION SHALL APPLY EVEN IF COMMVAULT OR ITS LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED WARRANTY.**

These terms and conditions, warranties, limitations and remedies contain an allocation of risk between You and CommVault. Accordingly, CommVault's prices reflect such allocation of risk. Because some jurisdictions restrict the ability to exclude implied warranties, limit or exclude incidental or consequential damages or limit liability, the foregoing limitations and exclusions may not apply to You.

### **United States Government and DOD**

This article applies to all acquisitions of this Software by or for the Federal Government. By accepting delivery of this Software, You hereby agree that this software qualifies as "commercial computer software" as that term is used in the acquisition regulation(s) applicable to this procurement. The terms and conditions of this EULA shall pertain to the Government's use and disclosure of this Software, and shall supersede any conflicting contractual terms and conditions. If this EULA fails to meet the Government's minimum needs or is inconsistent in any respect with Federal procurement law, the Government agrees to return this software, unused, to CommVault.

All Software provided to the U.S. Government pursuant to solicitations issued on or after December 1, 1995 is provided with the commercial license rights and restrictions described elsewhere herein. All Software provided to the U.S. Government pursuant to solicitations issued prior to December 1, 1995 is provided with "Restricted Rights" as provided for in FAR, 48 CFR 52.227-14 (JUNE 1987) or DFAR, 48 CFR 252.227-7013 (OCT 1988), as applicable.

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

The Software may contain certain software licensed by Microsoft to CommVault. You warrant that You are not licensing Microsoft products under this EULA and that any copies of Microsoft software that You receive from CommVault as a result of licensing the Software do not entitle You to maintain on Your computer systems any more copies of Microsoft software than you may have previously licensed from Microsoft or other third parties. Microsoft is an intended third party beneficiary of this EULA with the right to enforce warranties and any other provision of the EULA and to verify Your compliance with same.

The Software may contain certain software licensed by third parties to CommVault. Such licensors are intended third party beneficiaries of this EULA with the right to enforce warranties and any other provision of the EULA and to verify Your compliance with same.

Portions copyright © 1991, 2011 Oracle and/or its affiliates. All rights reserved.

The Software may contain Data Files of IBM Lotus Domino © Copyright IBM Corporation 2007. All Rights Reserved.

DVD, MO and UDO recording software developed under license from PoINT Software & Systems GmbH-  
[www.pointsoft.de](http://www.pointsoft.de).

Portions copyright 1992-2010 FairCom Corporation.

### **Trademark Acknowledgment**

CommVault, CommVault and logo, the “CV” logo, CommVault Systems, Solving Forward, SIM, Singular Information Management, Simpana, the “Simpana” logo, CommVault Galaxy, Unified Data Management, QiNetix, Quick Recovery, QR, CommNet, GridStor, Vault Tracker, InnerVault, QuickSnap, QSnap, Recovery Director, CommServe, CommCell, ROMS, IntelliSnap and CommValue are trademarks, and may be registered trademarks, of CommVault Systems, Inc. By using any of the CommVault trademarks as authorized herein, in whole or part, You agree to be bound by the then-current CommVault Trademark Guidelines located at [www.commvault.com/trademarks](http://www.commvault.com/trademarks). All other third party brands, products, service names, trademarks, or registered service marks are the property of and used to identify the products or services of their respective owners.

### **Patent Acknowledgment**

This Software is patented: see [www.commvault.com/patents](http://www.commvault.com/patents) for information about the patents and patents pending covering this Software.

### **Copyright Acknowledgment**

© 1997-2013 CommVault Systems, Inc. All rights reserved.

## TERMS AND CONDITIONS

These **Terms and Conditions** (the “Agreement”) set forth the terms and conditions agreed to by LogRhythm, Inc. (“LogRhythm”) and the Customer identified on the Order to which this Agreement is attached and incorporated (“Customer”) under which Customer may license the software and purchase the hardware specified on the Order and other purchase orders submitted by Customer and accepted by LogRhythm. No Order shall be binding upon LogRhythm until accepted by LogRhythm in writing. In consideration of the mutual covenants and conditions set forth below, LogRhythm and Customer agree as follows:

### 1. DEFINITIONS.

**1.1 “Appliance”** means the appliance listed on an Order comprised of the Hardware and the Software installed on the Hardware.

**1.2 “Documentation”** means the user manuals provided to Customer with the Software or an Appliance in either electronic, online help files or hard copy format. All Documentation is provided in English.

**1.3 “Delivery Date”** means the date of delivery of the Appliance or the Software only, as applicable.

**1.4 “Effective Date”** means the date the Order was signed.

**1.5 “Intellectual Property Rights”** means all copyrights, trademarks, service marks, trade secrets, patents, patent applications, moral rights, contract rights and other proprietary rights.

**1.6 “Hardware”** means the hardware purchased from LogRhythm as set forth on an Order.

**1.7 “Software”** means the LogRhythm software programs identified in an Order, all Documentation for the Software, and any Updates (as defined in Exhibit A) that LogRhythm may provide to Customer in connection with Support Services.

### 2. SOFTWARE LICENSE GRANT AND OTHER RIGHTS.

**2.1 Software License Grant.** Subject to the terms and conditions of this Agreement, LogRhythm grants to Customer a perpetual, non-exclusive, non-transferable license to use the Software, solely for internal business purposes in accordance with the Documentation and the limitations set forth in this Agreement. If Customer has purchased an Appliance, then the Software may only be used on the Hardware on which the Software has been installed. If Customer licenses the Software for use in a virtual environment each virtual instance requires its own Software license. Customer may make a copy the Software as necessary for back up and disaster recovery purposes.

**2.2 Restrictions On Use.** Except as expressly permitted by this Agreement, Customer will not (a) modify, adapt, alter, translate, or create derivative works from the Software; (b) sublicense, distribute, sell or otherwise transfer the Software to any third party; (c) use the Software in any service bureau or time sharing arrangement; (d) reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code for the Software or (e) otherwise use or copy the Software except as expressly permitted in Section 2.1.

**2.3 License Keys.** Customer acknowledges that the Software uses a license key mechanism and that use of the Software on a perpetual basis (as opposed to a temporary basis for evaluation purposes) requires authorized and valid license keys (“License Keys”) that must be installed by Customer. Customer agrees not to use unauthorized license keys or otherwise circumvent LogRhythm’s license key mechanism. LogRhythm will provide the License Keys upon payment in full of all applicable Fees. If LogRhythm has not received the License Fee payment from Customer within the payment time period set

forth in Section 5.6, LogRhythm will not be obligated to provide Customer with the License Keys and the Software will cease functioning unless Customer requests and obtains an extension of the evaluation period from LogRhythm.

**2.4 System Files.** All system files, including SQL Server database files and transaction logs, used by an Appliance must reside on either the Appliance or an external storage device purchased from LogRhythm (“Supported Equipment”). Notwithstanding the foregoing, system files do not include LogRhythm archive files.

### 3. DELIVERY, INSPECTION AND INSTALLATION.

**3.1 HARDWARE PURCHASE AND DELIVERY.** If Customer is purchasing Hardware, then, subject to terms and conditions of this Agreement, Customer hereby agrees to purchase the Hardware from LogRhythm, and LogRhythm hereby agrees to sell the Hardware to Customer, pursuant to the applicable Order and the terms and conditions of the Multiple Award Schedule 70 contract.

**3.2 License of Software Only.** If Customer is licensing the Software and not purchasing Hardware, then this Section 3.2, the terms and conditions of the Multiple Award Schedule 70 contract and the task/delivery order will govern the delivery of Software. If Customer has not already obtained a copy of the Software prior to the Effective Date, LogRhythm will ship to Customer the Software and Documentation and/or provide Customer a support account from which Customer can download the Software and Documentation in accordance with LogRhythm’s reasonable instructions. Customer is responsible for configuring customer-provided hardware or virtual environment in accordance with the configuration parameters as noted in the Documentation. Improper hardware or virtual environment configuration may prevent the Software from operating properly and any such non-standard configuration may not be supported by LogRhythm.

**3.3 Software Delivery.** Without limiting the warranties in Section 6.1 below, the Software will be deemed delivered the day the License Key is provided to Customer. Unless otherwise mutually agreed to in writing, Customer is responsible for installing the Software and License Keys in accordance with the Documentation.

### 4. MAINTENANCE; DEPLOYMENT; TRAINING.

**4.1 Maintenance.** Customer may obtain technical support and Software maintenance described in Exhibit A attached to this Agreement and incorporated herein (“Support Services”) in accordance with the applicable Order and the terms and conditions of the Multiple Award Schedule 70 Contract. Upon termination of Support Services Customer may continue to use the Software without the benefits provided under the Support Services Exhibit.

**4.2 Professional Services.** Subject to the terms and conditions of this Agreement, including the payment by Customer of the professional service fees (“Professional Service Fees”) set forth in an Order, LogRhythm will provide to Customer the professional services described in Exhibit B



attached to this Agreement and incorporated herein (“Professional Services”). Customer must use any contracted Professional Services within one year of the Effective Date.

**4.3 Training.** Subject to payment of any training fees (“Training Fees”), Customer may obtain training services from LogRhythm in accordance with the applicable Order and the terms and conditions of the Multiple Award Schedule 70 contract.

## **5. FEES AND PAYMENT.**

**5.1 Fees.** Customer will pay LogRhythm the applicable Appliance price (“Appliance Fee”) or Software license fees (“License Fees” and collectively, “Fees”) as set forth in and in accordance with the applicable Order. All Fees are non-refundable unless otherwise expressly stated herein.

**5.2 Professional Service Fees.** Customer will pay the Professional Services Fees set forth in and in accordance with the applicable Order and the terms and conditions of the Multiple Award Schedule 70 contract.

**5.3 Support Services Fees.** Customer will pay the Support Services Fees as set forth in the terms and conditions of the Multiple Award Schedule 70 contract.

**5.4 Additional Orders.** Customer may order more Appliances, Software product modules and additional usage of the Software as permitted under this Agreement by executing the LogRhythm Order in addition to submitting written purchase orders to LogRhythm in accordance with the terms and conditions of the Multiple Award Schedule 70 contract.

**5.5 Records.** Customer will maintain complete and accurate records of its use of the Software and all other data reasonably necessary for verification of compliance with this Agreement.

**5.6 Audit Rights.** LogRhythm will have the right, during normal business hours, in accordance with United States Government security requirement and upon at least five (5) days prior written notice, to have an independent audit firm selected by LogRhythm audit Customer’s records relating to Customer’s activities pursuant to this Agreement in order to verify that Customer has complied with the terms of this Agreement. The audit will be conducted at LogRhythm’s expense. LogRhythm may submit a request for payment of alleged owed amounts in accordance with the terms and conditions of the Multiple Award Schedule 70 Contract. Such audits will be conducted no more than once in any period of twelve (12) consecutive months.

## **6. WARRANTY; DISCLAIMER.**

**6.1 Software Warranty.** For a period of ninety (90) days after the Effective Date (the “Software Warranty Period”), LogRhythm warrants that the Software, when used in accordance with the instructions in the Documentation, will operate as described in the Documentation in all material respects. LogRhythm does not warrant the Customer’s use of the Software will be error-free or uninterrupted. LogRhythm will, at its own expense and as its sole obligation, correct any reproducible error in the Software reported to LogRhythm by Customer in writing during the Software Warranty Period. If LogRhythm determines that it is unable to correct the error or replace the Software, LogRhythm will refund to Customer all License Fees and Support Service Fees actually paid for the defective Software, in which case this Agreement and Customer’s right to use the Software will terminate.

**6.2 Hardware and Third Party Software Warranty.** All Hardware and third party software is provided to Customer under the applicable warranty for such Hardware or third party software that is made available from the Hardware manufacturer or third party software licensor. LogRhythm provides no warranties directly to Customer for any Hardware or third party software.

**6.3 Disclaimers.** THE EXPRESS WARRANTIES IN SECTION 6.1 ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, REGARDING THE SOFTWARE, HARDWARE AND SUPPORT SERVICES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT AND ANY WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE WHICH ARE HEREBY DISCLAIMED. EXCEPT FOR THE EXPRESS WARRANTIES STATED IN SECTION 6.1, THE SOFTWARE AND HARDWARE ARE PROVIDED “AS IS” WITH ALL FAULTS.

## **7. INFRINGEMENT CLAIMS.**

**7.1 Indemnity.** LogRhythm will pay those costs and damages finally awarded against Customer in any such action, brought by a third party to the extent that the action is based upon a claim that the Software infringes any U.S. patents or any copyrights or misappropriates any trade secrets of a third party, that are specifically attributable to such claim or those costs and damages agreed to in a monetary settlement of such action. Customer shall give LogRhythm sole control of the defense of any such claim and any related settlement negotiations unless the Department of Justice (“DOJ”) jurisdictional statute (28 USC 516) vests the right to defend the Government with the DOJ, and consequently the right to exercise sole control, solely in the DOJ. In such cases, Customer and the DOJ shall consult with LogRhythm regarding any such claim and LogRhythm shall have the right to intervene in the proceedings at its own expense through counsel of its choice.

**7.2 Injunction.** If the Software becomes, or in LogRhythm’s opinion is likely to become, the subject of an infringement claim, LogRhythm may, at its option and expense, either (a) procure for Customer the right to continue using the Software, (b) replace or modify the Software so that it becomes non-infringing and remains functionally equivalent, or (c) accept return of the Software, terminate this Agreement upon written notice to Customer and refund Customer the Software Fees paid for such Software upon such termination, computed according to a thirty-six (36) month straight-line amortization schedule beginning on the Effective Date.

**7.3 Exclusions.** Notwithstanding the foregoing, LogRhythm will have no obligation under this Section 7 or otherwise with respect to any infringement claim based upon (a) any use of the Software not in accordance with this Agreement or the Documentation, (b) any use of the Software in combination with other products, hardware, equipment, software, or data not authorized by LogRhythm to be used with the Software, (c) any use of any release of the Software other than the most current release made available to Customer, or (d) any modification of the Software by any person other than LogRhythm or its authorized agents or subcontractors.

**8. LIMITATION OF LIABILITY.** IN NO EVENT WILL EITHER PARTY BE LIABLE UNDER THIS AGREEMENT FOR ANY CONSEQUENTIAL, INDIRECT, EXEMPLARY,

SPECIAL, OR INCIDENTAL DAMAGES, INCLUDING ANY LOST DATA AND LOST PROFITS, ARISING FROM OR RELATING TO THIS AGREEMENT EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. LOGRHYTHM'S TOTAL CUMULATIVE LIABILITY IN CONNECTION WITH THIS AGREEMENT, THE SOFTWARE AND ANY SERVICES, WHETHER IN CONTRACT OR TORT OR OTHERWISE, WILL NOT EXCEED THE AMOUNT OF FEES PAID TO LOGRHYTHM DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENTS GIVING RISE TO SUCH LIABILITY. IN ADDITION, LOGRHYTHM DISCLAIMS ALL LIABILITY OF ANY KIND OF LOGRHYTHM'S LICENSORS. THE FOREGOING LIMITATIONS OF LIABILITY WILL NOT APPLY TO BREACH OF SECTIONS 2 OR 9 OR ANY INDEMNITY OBLIGATIONS IN SECTION 7. THIS CLAUSE SHALL NOT IMPAIR THE U.S. GOVERNMENT'S RIGHT TO RECOVER FOR FRAUD OR CRIMES ARISING OUT OF OR RELATED TO THIS CONTRACT UNDER ANY FEDERAL FRAUD STATUTE, INCLUDING THE FALSE CLAIMS ACT, 31 U.S.C. 3729-3733. 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).

## **9. CONFIDENTIALITY.**

**9.1 Confidential Information.** “Information” means information that is disclosed by a party (“Discloser”) to the other party (“Recipient”), or which Recipient has access to in connection with this Agreement, and that should reasonably have been understood by Recipient to be proprietary and confidential to Discloser or to a third party, because of legends or other markings, the circumstances of disclosure or the nature of the information itself. Information may be disclosed in written or other tangible form (including on magnetic media) or by oral, visual or other means. Information includes, without limitation, information of or relating to the Discloser's present or future products, know-how, formulas, designs, processes, ideas, inventions and other technical, business and financial plans, processing information, pricing information, specifications, research and development information, customer lists, the identity of any customers or suppliers, forecasts and any other information relating to any work in process, future development, marketing plans, strategies, financial matters, personnel matters, investors or business operations of the Discloser.

**9.2 Protection of Information.** Recipient will not use any Information of Discloser for any purpose not expressly permitted by the Agreement, and will disclose the Information of Discloser only to the employees or contractors of Recipient who have a need to know such Information for purposes of the Agreement and who are under a duty of confidentiality no less restrictive than Recipient's duty hereunder. Recipient will protect Discloser's Information from unauthorized use, access, or disclosure in the same manner as Recipient protects its own confidential or proprietary information of a similar nature and with no less than reasonable care.

**9.3 Exceptions.** Recipient's obligations under Section 9.2 with respect to any Information of Discloser will terminate if 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 Information of Discloser to the extent that such disclosure is (i) approved in writing by Discloser, (ii) necessary for Recipient to enforce its rights under the Agreement in connection with a legal proceeding; or (iii) 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.

**9.4 Return of Information.** Except as otherwise expressly provided in this Agreement, Recipient will return to Discloser or destroy all Information of Discloser in Recipient's possession or control and permanently erase all electronic copies of such Information promptly upon the written request of Discloser upon the expiration or termination of the Agreement. Recipient will certify in writing signed by an officer of Recipient that it has fully complied with its obligations under this Section 9.4.

## **10. TERM AND TERMINATION**

**10.1 Term.** The term of the Agreement will begin on the Effective Date and will continue until terminated.

**10.2 Termination for Breach.** Termination may only be conducted in accordance with the terms and conditions of the Multiple Award Schedule 70 contract.

**10.3 Effects of Termination.** Upon termination of this Agreement, Customer must promptly discontinue all use of the Software, erase all copies of the Software from Customer's computers, and return to LogRhythm or destroy all copies of the Software, Documentation and other LogRhythm Information in Customer's possession or control. Sections 1, 2.2, 5, 6.3, 7, 8, 9, 10.3 and 11 together with any accrued payment obligations, will survive expiration or termination of the Agreement for any reason.

## **11. GENERAL**

**11.1 Proprietary Rights.** The Software and Documentation, and all worldwide Intellectual Property Rights therein, are the exclusive property of LogRhythm and its licensors. All rights in and to the Software not expressly granted to Customer in this Agreement are reserved by LogRhythm and its licensors. Customer will not remove, alter, or obscure any proprietary notices (including copyright notices) of LogRhythm or its licensors on the Software or the Documentation.

**11.2 Third Party Software.** All third party software included with an Appliance is subject to the third party license agreements and/or additional terms and conditions provided with the Appliance that are imposed by LogRhythm's applicable third party manufacturers and licensors. Customer agrees that Customer will be bound to and comply with all such applicable license agreements and terms and conditions.

**11.3 Compliance with Laws.** Each party will comply with all applicable export and import control laws and regulations in its use of the Software and Appliances and, in particular, Customer will not export or re-export Software or Appliances without all required government licenses and Customer agrees to

comply with the export laws, restrictions, national security controls and regulations of the all applicable foreign agencies or authorities.

**11.4 Assignment.** Neither party may assign or transfer, by operation of law or otherwise, this Agreement or any of its rights under the Agreement (including the license rights granted to Customer to the Software) to any third party without the other party's prior written consent, which consent will not be unreasonably withheld or delayed.

**11.5 Force Majeure.** Except for any payment obligations, neither party shall be liable hereunder by reason of any failure or delay in the performance of its obligations hereunder for any cause which is beyond the reasonable control of such party.

**11.6 U.S. Government End Users.** If Customer is a branch or agency of the United States Government, the following provision applies. The Software is comprised of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212 and are provided to the Government (a) for acquisition by or on behalf of civilian agencies, consistent with the policy set forth in 48 C.F.R. 12.212; or (b) for acquisition by or on behalf of units of the Department of Defense, consistent with the policies set forth in 48 C.F.R. 227.7202-1 and 227.7202-3.

**11.7 Notices.** All notices, consents, and approvals under this Agreement must be delivered in writing by courier, by electronic mail, facsimile (fax), or by certified mail, (postage prepaid and return receipt requested) to the other party at the address set forth on the Order, and will be effective upon receipt or when delivery is refused. Either party may change its address by giving notice of the new address to the other party.

**11.8 Governing Law and Venue.** This Agreement and all Statements of Work will be governed by and interpreted in accordance with applicable Federal laws. If it is in the best interests of the Government, any action or proceeding arising from or relating to this Agreement shall be brought in a Federal District Court in Denver, Colorado, and each party irrevocably submits to the jurisdiction and venue of any such court in any such action or proceeding.

**11.9 Waivers.** All waivers must be in writing. 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.

**11.10 Severability.** If any provision of this Agreement is unenforceable, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions will continue in full force and effect. Without limiting the generality of the foregoing, Section 8 will remain in effect notwithstanding the unenforceability of any provision in Section 6.

**11.11 Construction.** The headings of Sections of this Agreement are for convenience and are not to be used in interpreting this Agreement. As used in this Agreement, the word "including" means "including but not limited to."

**11.12 Entire Agreement.** This Agreement, the Multiple Award Schedule 70 contract and the task/delivery order constitutes the entire agreement between the parties regarding the subject hereof and supersedes all prior or contemporaneous agreements, understandings, and communication, whether written or oral. This Agreement may be amended only by a written document signed by both parties.

## Exhibit A

### Support Services

Subject to the terms and conditions of the applicable software license agreement between Customer and LogRhythm (“Agreement”), the terms and conditions of the Multiple Award Schedule 70 contract and this Support Services exhibit (including payment of the applicable fees (“Support Fees”), LogRhythm will provide the Support Services in accordance with the terms and conditions set forth below. Customer must purchase identical Support Services for all installed Software and/or Appliances within a Designated Deployment (defined below) and may not select different Support Services options to cover different installations of Software and/or Appliances across deployments within a Designated Deployment. LogRhythm will be responsible for providing Support Services only for the most current release and the immediately preceding major release of the Software. End-of-Life Support for third party optional software components are in accordance with the End-of-Life policy for each such component as announced. LogRhythm reserves the right to modify its Support Services offering at any time, by providing notice to its Customers, provided such Support Services modification will not be less than what is stated in this Support Services Exhibit and the modification is agreed to in writing and signed by an authorized Government Contracting Officer.

#### 1. DEFINITIONS.

**1.1 “Business Day”** means 7:00 a.m. to 6:00 p.m. (Mountain Time), Monday through Friday (excluding LogRhythm holidays).

**1.2 “Designated Deployment”** shall mean the deployment of the LogRhythm Software that enables complete logging and processing of Customer data.

**1.3 “Enhanced Support Services”** shall mean the optional purchase by Customer of 24/7 support subject to the payment of any required additional fees.

**1.4 “Error”** shall mean a reproducible defect in the Supported Program when operated on a Supported Environment, which causes the Supported Program not to operate substantially in accordance with the Documentation.

**1.5 “Resolution”** shall mean a modification or workaround to the Supported Program and/or Documentation and/or other information provided by LogRhythm to Customer intended to resolve an Error.

**1.6 “Support Hour”** shall mean an hour during a Business Day.

**1.7 “Supported Environment”** shall mean any hardware and operating system platform which LogRhythm supports.

**1.8 “Supported Program”** shall mean the current version of the Software used in a Supported Environment in use at the Designated Deployment, for which Customer has paid the then-current Support Fees.

**1.9 “Update”** means subsequent minor maintenance releases of the Software (e.g., 3.1 to 3.2) and patches that LogRhythm generally makes available for Software licensees at no additional license fee to Customers provided the Customers are under a current Support Services Agreement with LogRhythm. Updates shall not include any release, option or future product which LogRhythm licenses separately from Support Services for an additional fee.

**1.10 “Upgrade”** means subsequent major releases of the Software (e.g. 2.0 to 3.0) that LogRhythm generally makes available for Software licensees at no additional license fee to Customers provided the Customers are under a current Support Services Agreement with LogRhythm.

#### 2. SERVICES PROVIDED.

**2.1 First Call.** LogRhythm is the first tier of support for the Software and Hardware purchased through LogRhythm.

**2.2 Telephone Support.** LogRhythm will provide telephone support to the designated users during the Support Hours. Customer understands and acknowledges that Support

Services are provided in English. Customers purchasing Enhanced Support Services will be given instructions for receiving Support Services after the end of a Business Day. Telephone support will include the following:

- (a) Assistance in identifying and verifying the causes of suspected Errors in the Supported Program;
- (b) Advice on bypassing identified Errors in the Supported Program, if reasonably possible;
- (c) Assistance in troubleshooting and identifying Hardware-related problems;
- (d) Clarification of the Documentation; and
- (e) Guidance in updates of the Supported Program.

**2.3 E-Mail Support.** Customers may contact LogRhythm support via email 24 hours a day, 7 days a week. Support emails may be sent to support@logrhythm.com.

#### 2.4 Response Times.

(a) LogRhythm will respond to new support cases whether received via a telephone call or email within (i) four (4) Support Hours after receipt if received during a Business Day or (ii) by 12:00 p.m. Mountain Time the following Business Day if received after the end of a Business Day. LogRhythm will respond to new support cases via email or by directly contacting the applicable designated users. Response times for open support cases will vary depending on the specifics of the case and any Escalation required. If a response will require more than one business day to prepare, Customer will be notified and informed when a response can be expected.

(b) If Customer has purchased Enhanced Support Services LogRhythm will respond to new support cases received via a telephone call within four (4) hours after receipt.

**2.5 LogRhythm Support Site.** LogRhythm maintains a product support site containing product manuals and additional support related information (e.g., FAQ’s, Knowledge Base). Subject to the payment of Support Fees, Customer will be provided 24/7 access to the support site. Customer will be provided support accounts to use when accessing the support site.

**2.6 Escalation and Severity Levels.** All calls are received by Tier 1 or Tier 2 support personnel. LogRhythm’s best attempts are made to solve support issues with Tier 1 support personnel. Issues that are not able to be resolved by the Tier 1 support personnel will be escalated as outlined below:

(a) **Tiered Support Definitions:** Support requests will be answered and/or escalated based on the following generalized criteria. The Tier I support engineer will be the first contact and will determine escalation if an issue is not solved

within 1 hour. Additional escalation will be issue specific and will remain within current contractual guidelines:

Tier I – General questions and minor configuration changes
Tier II – Functionality specific questions, advanced configuration changes and initial error investigation
Tier III – Advanced functionality and configuration questions and detailed error investigation
Tier IV (Sustaining Engineering) – Advanced error investigation to determine SW configuration changes and/or failed functionality

Tier IV software support is reserved for consultation on development related issues only during business hours.

**(b) Support Ticket Escalation:**

All incoming tickets are automatically assigned to Tier I
Escalate to Tier II if issue is not resolved within one hour, with the following exceptions: <ul style="list-style-type: none"> <li>o Awaiting customer response</li> <li>o Awaiting internal response or follow up</li> </ul>
Tier II – If the issue is not resolved within two hours of escalation to Tier II, Escalate to Tier III
Tier III – If the issue is not resolved by the following business day, escalate to Tier IV

Support calls are generally not escalated if work is under way and/or a solution is being researched or created. However, severity levels are designed as means to provide escalation in cases of an inability to make systems operational as outlined below.

**(c) Ticket Severity:**

<i>Critical (Severity 1)</i> – The system has crashed or is in a “hung” state, or displays a fatal error - resulting in data loss or corruption.
<i>High (Severity 2)</i> – System is severely degraded such that a component or feature does not meet requirements or are inaccessible or inoperable.
<i>Medium (Severity 3)</i> – System is slightly degraded such that a component or feature does not meet minimum or expected requirements.
<i>Low (Severity 4)</i> – System is functional with a minor defect or customer has general question or is requesting minor configuration change information.

**2.7 Support Cases.** Each support case will be assigned a case number. Customer must provide the number when providing communications to LogRhythm regarding the support case. Support cases will be closed when Customer has verified the issue is resolved, where possible. Support cases will also be closed after three (3) Business Days of inactivity on the part of Customer and can be re-opened upon request.

**2.8 Qualified Support Cases.** Qualified support cases are limited to questions that cannot be easily answered by referring to LogRhythm product documentation or information made available on the LogRhythm support site. Qualified support cases also include reporting any abnormal functioning of LogRhythm software. Qualified support cases do not include questions

pertaining to the normal deployment, configuration, and operation of LogRhythm products as described in LogRhythm product documentation.

**2.9 Unqualified Support Cases.** Unqualified support cases include questions that could have been answered by reviewing LogRhythm Documentation or information made available via the LogRhythm support site. If Customer is submitting a high volume of Unqualified Support Cases, LogRhythm and Customer will work together to determine the areas of operation underlying the cases submitted and will jointly determine a corrective course of action as required.

**2.10 Travel and Other Expenses.** Support Services provided hereunder shall be provided at LogRhythm’s principal place of business, or at the Designated Deployment at Customer’s expense, as mutually agreed upon in writing by the parties and authorized by a Government Contracting Officer in accordance with the terms and conditions of the Multiple Award Schedule 70 contract, the Federal Acquisition Regulation and Agency Supplemental Regulations, as applicable.

**2.11 Exceptions.** LogRhythm shall have no responsibility under this Agreement to fix any Errors arising out of or related to the following causes: (a) Customer’s modification or combination of the Supported Program (in whole or in part), (b) use of the Supported Program in an environment other than a Supported Environment; or (c) problems related to non-LogRhythm provided hardware. Any corrections performed by LogRhythm for such Errors shall be made, in LogRhythm’s reasonable discretion, at LogRhythm’s then-current time and material charges.

**3. SOFTWARE SUPPORT.** Subject to the payment of the Support Services Fees or additional license fees set forth in the task/delivery order and in accordance with the terms and conditions of the Multiple Award Schedule 70 contract, LogRhythm will provide:

**3.1 Updates.** LogRhythm will provide Updates for the Supported Programs as and when developed for general release in LogRhythm’s sole discretion. Each Update will consist of a set of programs and files made available from LogRhythm’s web site and will be accompanied by Documentation adequate to inform Customer of the problems resolved and any significant operational differences resulting from such Update.

**3.2 Upgrades.** Customer will be entitled to major Software release upgrades (e.g. 2.0 to 3.0) at no additional cost while a Support Services contract is in effect. An upgrade to LogRhythm provided Hardware may be required in order to utilize any such Upgrades.

**3.3 Third-Party Software Updates.** LogRhythm approves and makes available information regarding Updates of Third Party software included in the Software to Customers via LogRhythm’s web site support.

**3.4 Knowledge Base Updates.** Customer will be entitled to knowledge base updates at no additional cost.

**4. HARDWARE SUPPORT.** Subject to the payment of the Support Services Fees or additional license fees set forth in the task/delivery order and in accordance with the terms and conditions of the Multiple Award Schedule 70 contract, LogRhythm will provide:

**4.1 Basic Hardware Services.** As part of Support Services, LogRhythm will facilitate Hardware warranty coverage with the Hardware manufacturer on servers and their components for a

period of three (3) years after delivery for Hardware purchased through LogRhythm.

(a) If Hardware is replaced in whole or in part under a warranty program Customer will be responsible for the cost of any Hardware or components not returned as may be required to comply with the warranty.

(b) Modification, alteration, or any other changes to the Hardware may violate and/or void the Hardware warranty and/or Support Services agreement. In no instances should the Customer open the external case of the Hardware without direction from LogRhythm personnel.

(c) Hardware shipped to customer will support the release of the Software installed on the Hardware at time of delivery and the next major release. If a second or subsequent major release of the Software requires an upgrade to the Hardware, Customer may choose to either (i) upgrade the Hardware at their cost and install the second or subsequent major release or (ii) receive Support Services on their current Hardware and Software through the life cycle of the second or subsequent major release.

(d) Hardware upgrades for enhancements to Software features included in Customers initial Software release will be provided by LogRhythm. Hardware upgrades to support new Software features provided to customer via a Software Upgrade or Update will not be provided by LogRhythm and Customer, at its option, may upgrade the Hardware to utilize such new Software features.

**4.2 Enhanced Hardware Services.** Hardware that is subject to an Enhanced Support Services agreement will be provided with 24/7 support with 4-hour onsite response, after troubleshooting.

**4.3 Extended Warranty.** Upon Customer's renewal of Support Services in years four (4) and five (5); LogRhythm will facilitate an extended hardware warranty service for each of those years, provided such warranty service is offered by the hardware manufacturer. Hardware warranty services beyond year five (5) will continue to be facilitated by LogRhythm provided such are offered at the discretion of the hardware manufacturer.

**4.4 Pre-Replacement of Defective Hardware.** Hardware warranty repairs will be made in accordance with the Basic Hardware Services or Enhanced Hardware Services as contracted by Customer. Replacements for defective Hardware to be provided to Customer under the warranty program will be sent on a pre-replacement basis when possible. Customer will have ten (10) business days to return to the defective Hardware to LogRhythm. If the replacement of a complete Appliance is required, the replacement Appliance will be shipped fully configured for Customer's use unless an alternative course of action is mutually agreed upon by LogRhythm and Customer.

## **5. CUSTOMER RESPONSIBILITIES.**

**5.1 Supervision and Management.** Customer is responsible for undertaking the proper supervision, control and management of its use of the Supported Programs, including, but not limited to: (a) assuring proper Supported Environment configuration, Supported Programs installation and operating methods; and (b) following industry standard procedures for the security of data, accuracy of input and output, and back-up plans, including restart and recovery in the event of hardware or software error or malfunction.

**5.2 Training.** Customer is responsible for ensuring that all appropriate personnel are trained and familiar with the operation and use of the Supported Programs and associated equipment.

**5.3 Designated Users.** Customer shall designate a reasonable number of individuals to serve as the designated users with LogRhythm for the Support Services provided hereunder. To receive notification of any new Updates available from LogRhythm Customer must subscribe to the LogRhythm user forums.

**5.4 Access to Personnel and Equipment.** Customer shall provide LogRhythm with access to Customer's personnel and, at Customer's discretion, its equipment during Support Hours. LogRhythm will, to the best of its ability, provide Support Services to Customer in accordance with Customer's internal security and/or network access policies. If Customer requests Support Services for an Error that requires remote access and Customer is unable to provide such access, then the Government Contracting Officer may elect to pay LogRhythm additional Support Fees and Expenses incurred for onsite Support Services so long as the additional Support was agreed to in writing by an authorized Government Contracting Officer prior to the services being rendered. If Customer does not wish to pay for such onsite Support Services, LogRhythm's obligation to provide any Resolution for the Error shall be excused.

**5.5 Customer Introduced Third-Party Software.** Customer may elect to install additional software on to the Hardware on the drive specified in the LogRhythm Documentation. It is recommended that Customer contact LogRhythm before installing any software on to the Hardware. In such instance, Customer acknowledges and assumes the risk that (a) LogRhythm is not responsible for the functionality of any such software; (b) LogRhythm reserves the right to require the removal of any and all such software when addressing support issues (failure to remove such software after requested by LogRhythm will void LogRhythm's Support Service obligations); (c) any such installation may negatively impact the performance, reliability and/or security of the Software and/or Hardware; (d) the Software may not perform as intended or in accordance with the LogRhythm Documentation; and (e) any such software which adversely affects the performance of the LogRhythm Appliance will void all warranties and cancel all Support Services obligations.

## Exhibit B

### LogRhythm Professional Services Attachment

Subject to the terms and conditions of the applicable software license agreement between Customer and LogRhythm to which this Exhibit B is attached and incorporated therein ("Agreement"), the terms and conditions of the Multiple Award Schedule 70 contract and this Professional Services Attachment (including payment of the applicable fees, LogRhythm will provide the Professional Services in accordance with the terms and conditions set forth below.

**1. Scope of Services.** LogRhythm will provide the Professional Services to Customer under this Professional Services Attachment ("PSA"). At the start of the deployment planning, Customer and LogRhythm will develop a mutually agreed upon deployment plan that will be detailed in one or more Statements of Work ("SOW") (the "Services"). Deployment Services include but are not limited to the process of configuring the Software and/or Appliance and deploying in Customer's environment.

#### **2. Assumptions and Responsibilities**

**2.1 Assumptions.** The following assumptions are hereby acknowledged by the parties and apply to the performance of the Services under this PSA:

(a) Changes to this PSA will be documented using a Project Change Request form in accordance with the process outlined in this PSA.

(b) Customer will ensure that data backup is performed. LogRhythm will not be responsible for the loss or corruption of any Customer data or for any system downtime. Except as may be purchased under a separate LogRhythm Services Agreement, LogRhythm will not be responsible for any application or host system access that encompasses coding, scripting, application analysis, system performance, troubleshooting, or applications logins outside of the Services described in this PSA.

**2.2 LogRhythm Responsibilities.** Performance of the Services includes, without limitation, LogRhythm's undertaking of the following responsibilities as reasonably applicable to the Services being performed under this PSA:

(a) LogRhythm will use commercially reasonable efforts to complete the Services described in this PSA in a timely manner.

(b) LogRhythm will perform all appropriate Services either onsite at the Customer facilities or remotely, via a remote desktop session. Services not requiring presence onsite may be performed at LogRhythm facilities by mutual agreement between Customer and LogRhythm.

(c) LogRhythm reserves the right to subcontract any or all portions of the Services that LogRhythm is obligated to perform under this PSA.

(d) LogRhythm will submit written or verbal status reports on the Services being performed under this PSA as necessary and mutually agreed upon by Customer and LogRhythm.

(e) LogRhythm will provide a Project Lead with the qualifications, expertise, and knowledge to fulfill LogRhythm's obligations under this PSA, as necessary and applicable to the PSA requirements of Section 1.

**2.3 Customer Responsibilities.** Completion of the Services by LogRhythm in adherence to the terms of this PSA is

contingent upon Customer fulfilling the following responsibilities:

(a) Customer will complete all necessary facilities arrangements prior to the commencement of the Services which will include but not be limited to such items as power, network connections, floor space, and cooling. Such required facility arrangements must be in place for the duration of this PSA.

(b) Customer will make knowledgeable staff available to LogRhythm promptly upon a request via pager, telephone, or cell phone to provide background information and clarification of information required to perform the Services outlined in this PSA.

(c) Documentation and information provided to LogRhythm staff by Customer must be accurate, complete and up-to-date.

(d) Customer will be responsible for any business and data application testing and all necessary data backup in preparation for and during the performance of the Services.

(e) Customer will assign system administrators and operators available by phone or pager for the duration of this PSA.

(f) For the duration of this PSA and where applicable, Customer will provide LogRhythm adequate onsite access to office space and equipment, and to telephones with outside lines and a dedicated, secure line for internet access.

(g) Should the project plan rely on electronic/network transfer of data, customer will provision and enable any network components or Services required to facilitate the data transfer.

(h) Where applicable, Customer will provide security passes to cover the duration of this PSA to allow LogRhythm access, and the ability to enter and leave Customer facilities, with laptop personal computers and any other materials related to the Services to be performed under this PSA.

(i) If required by LogRhythm, Customer will participate in testing as directed by LogRhythm.

(j) Customer will provide a Project Lead with the requisite qualifications, expertise, and knowledge who is authorized by Customer to act as a liaison between Customer and LogRhythm and assume the responsibilities detailed in Section 2.4.

**2.4 Joint Project Management Responsibilities and Tasks.** Both the LogRhythm and Customer Project Leads will ensure the following responsibilities and tasks are met as are reasonably applicable to the Services being performed:

(a) Each Project Lead will ensure that an authorized representative of its respective party will approve documents and specifications and accept Services provided in accordance with the acceptance procedures outlined in this PSA.

(b) Coordinate, schedule and monitor all resources and activities related to the Services described in this PSA.

(c) Coordinate and monitor all project change process activities related to the Services described in this PSA.

(d) Act as the focal points for communications between Customer and LogRhythm during the provision of all Services described in this PSA.

(e) Attend LogRhythm and Customer status meetings, as applicable.

(f) Upon becoming aware of a situation which may delay, or threatens to delay, the timely performance of this PSA, promptly initiate the Project Change Process as described in Section 4 of this PSA, to address the potential delay.

**3. Status Notification.** LogRhythm will notify Customer of the status of Professional Services hours consumed on a regular basis. Additionally, LogRhythm will also notify customer when Deployment Services have been completed in accordance with the agreed upon Statement(s) of Work.

**4. Project Change Process.** In accordance with the terms and conditions of the Multiple Award Schedule 70 contract, any change to a PSA will be coordinated with the LogRhythm Project Lead.

**4.1 Change Initiation.** LogRhythm or the Customer may initiate change requests. The reasons for a change may include: customer requests; regulatory changes; changes in technical scope; or other detail program issues or requirements. The Project Lead of the party initiating a change will submit each change request to the other party's Project Lead, and then both Project Leads will review such request for validation. Project changes must be submitted in a clear and concise manner in the form of a Change Request Form (Attachment A). Upon the initiation of a change request, both parties must agree within twenty-four (24) hours of the receipt of the Change Request Form by the non-initiating party whether or not to continue performance of the Services or to stop all Services being performed until a mutually agreed upon Change Request Form has been signed by both parties.

**4.2 Change Request Review.** After the submission of a Change Request Form to a Project Lead and validation of the requested change, the LogRhythm Project Lead will review the requested change to determine if it is within the scope of the SOW.

(a) **Within Services Scope.** If the LogRhythm Project Lead determines that the change requested by Customer is within the scope of the SOW, the Project Leads of both parties will execute the Change Request Form and implement the change into performance of the Services as appropriate.

(b) **Outside Services Scope.** If the LogRhythm Project Lead determines that the requested change is outside the scope of Services the SOW, the LogRhythm Project Lead will then determine whether such requested change impacts the pricing or scheduling projections for the performance of the Services.

(i) If the LogRhythm Project Lead determines that the requested change does not impact the pricing or scheduling projections of the SOW, the Project Leads will execute the Change Request Form and implement the requested change into the performance of the Services as appropriate.

(ii) If the LogRhythm Project Lead determines that the requested change does impact the pricing or scheduling projections of the SOW, the terms of Section 4.3 will apply.

This process is not intended to handle change requests which would constitute a cardinal change to the SOW. Additionally, LogRhythm reserves the right to reject change requests at its discretion.

**4.3 Cost Estimate Preparation.** Upon determination that the Change Request impacts the pricing or scheduling of the Services under the SOW, a cost estimate applicable to the performance of the requested change will be prepared by LogRhythm and provided to the Customer. The cost estimate will fully document the scope of the change, and provide a basis of estimate for the proposed adjustments in price, schedule, and/or other factors as applicable. If applicable, a schedule (separate from but integrated with the implementation plan) will be developed and maintained for each such authorized change.

**4.4 Change Implementation.** The execution of the Change Request Form by both the Multiple Award Schedule 70 Contractor, acting on behalf of LogRhythm and an authorized Government Contracting Officer, in accordance with the terms and conditions of the Multiple Award Schedule 70 contract and the Federal Acquisition Regulation and Agency Supplemental Regulations, as applicable, will cause the Change Request Form to become part of and incorporated into the SOW. Commencement of the performance of the requested change is conditioned upon the mutual execution of the Change Request, and LogRhythm's receipt of an additional P.O. authorization to cover the agreed upon price for each requested change.

## **5. Fee Description and Payment**

**5.1 Professional Services Fees.** In accordance with the terms and conditions of the Multiple Award Schedule 70 contract, Customer will pay the Professional Service Fees for the performance of the Services under this PSA.

**6. Rights to Development.** LogRhythm will retain all right, title and interest in and to development tools, know-how, methodologies, processes, technologies or algorithms used in providing the Services, which are based on trade secrets or proprietary information. No license to any patents, trade secrets, trademarks or copyrights is deemed to be granted by either party to any of its patents, trade secrets, trademarks or copyrights except as otherwise expressly provided in the Agreement. Rights associated with any joint development projects will be subject to future discussion and under a separate agreement with terms to be mutually agreed upon by both parties.

**7. Constructive changes.** LogRhythm and Customer agree that: (a) Customer has knowledge of and control over the conditions and constraints of Customer's facilities, and IT environment; and administers how the services on Customer's IT infrastructure are performed; (b) LogRhythm may undertake a course of action under this engagement which was unforeseen at the time the PSA was executed but is necessary, arises from a latent or unusual condition, is at the direction of the Customer, or results from an act of omission of the Customer and, by changing LogRhythm's manner, method, or scope of work, increases LogRhythm's cost or schedule to perform; (c) should LogRhythm's cost or schedule to perform so increase, LogRhythm will have the right to an equitable adjustment to the price, schedule, and/or terms of the PSA for such changes even if



these changes have not been submitted through the Project Change Process set forth in Section 4.

**8. Entire Agreement.** This PSA, the Multiple Award Schedule 70 contract and the task/delivery order constitute the

entire agreement between the parties regarding the delivery of professional services and supercedes all prior or contemporaneous agreements, understandings, and communication, whether written or oral. This Agreement may be amended only by a written document signed by both parties.





## **MASTER SUBSCRIPTION AGREEMENT (MSA)**

This Master Subscription Agreement (“Agreement”), effective as of the date last signed below (“Effective Date”), is made by and between immixTechnology, Inc. (“immixTechnology”) (an affiliate of Arrow Enterprise Computing Solutions, Inc., a Virginia corporation, with its principal place of business at 8444 Westpark Drive, Suite 200, McLean, VA 22102 (hereafter “Customer”) and Netreo Incorporated, a Delaware corporation, with a principal place of business at 7171 Warner Avenue, Suite B787, Huntington Beach, CA 92647 (hereafter “Netreo”). Customer and Netreo may be referred to individually as a “Party” and collectively as “Parties”.

THIS MASTER SUBSCRIPTION AGREEMENT GOVERNS CUSTOMER’S ACQUISITION AND USE OF Netreo SERVICES. CAPITALIZED TERMS HAVE THE DEFINITIONS SET FORTH HEREIN.

IF CUSTOMER REGISTERS FOR A FREE TRIAL OF NETREO SERVICES OR FOR FREE SERVICES, THE APPLICABLE PROVISIONS OF THIS AGREEMENT WILL ALSO GOVERN THAT FREE TRIAL OR THOSE FREE SERVICES.

BY ACCEPTING THIS AGREEMENT, BY

(1) CLICKING A BOX INDICATING ACCEPTANCE,  
(2) EXECUTING AN ORDER FORM THAT REFERENCES THIS AGREEMENT, OR (3) USING FREE SERVICES, CUSTOMER AGREES TO THE TERMS OF THIS AGREEMENT.

IF THE INDIVIDUAL ACCEPTING THIS AGREEMENT IS ACCEPTING ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, SUCH INDIVIDUAL REPRESENTS THAT THEY HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERM “CUSTOMER” SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF THE INDIVIDUAL ACCEPTING THIS AGREEMENT DOES NOT HAVE SUCH AUTHORITY, OR DOES NOT AGREE WITH THESE TERMS AND CONDITIONS, SUCH INDIVIDUAL MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SERVICES.

The Services can be accessed for purposes of monitoring their availability, performance or functionality, but not for any other benchmarking or competitive purposes.

Netreo’s direct competitors are prohibited from accessing the Services, except with Netreo’s prior written consent.

It is effective between Customer and Netreo as of the date of Customer’s accepting this Agreement.

## 1. DEFINITIONS

**“Affiliate”** means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. “Control,” for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

**“Agreement”** means this Master Subscription Agreement.

**“Beta Services”** means Netro services or functionality that may be made available to Customer to try at its option at no additional charge which is clearly designated as beta, pilot, limited release, developer preview, non-production, evaluation, or by a similar description.

**“Content”** means information obtained by Netro from publicly available sources or its third party content providers and made available to Customer through the Services, Beta Services or pursuant to an Order Form.

**“Customer”** means in the case of an individual accepting this Agreement on his or her own behalf, such individual, or in the case of an individual accepting this Agreement on behalf of a company or other legal entity, the company or other legal entity for which such individual is accepting this Agreement, and Affiliates of that company or entity (for so long as they remain Affiliates) which have entered into Order Forms.

**“Customer Data”** means electronic data and information submitted by or for Customer to the Services, excluding Content and Non-Netreo Applications.

**“Free Services”** means Services that Netro makes available to Customer free of charge. Free Services exclude Services offered as a free trial and Purchased Services.

**“Malicious Code”** means code, files, scripts, agents or programs intended to do harm, including, for example, viruses, worms, time bombs and Trojan horses.

**“Netreo”** means the Netro company described in the “Netreo Contracting Entity, Notices, Governing Law, and Venue” section below.

**“Non-Netreo Application”** means a Web-based, mobile, offline or other software application functionality that interoperates with a Service, that is provided by Customer or a third party and/or listed on a Marketplace including as Netro Labs or under similar designation. Non-Netreo Applications, other than those obtained or provided by Customer, will be identifiable as such.

**“Order Form”** means an ordering document or online order specifying the Services to be provided hereunder that is entered into between Customer and Netro or any of their Affiliates, including any addenda and supplements thereto. By entering into an Order Form hereunder, an Affiliate agrees to be bound by the terms of this Agreement as if it were an original party hereto.

**“Purchased Services”** means Services that Customer or Customer’s Affiliate purchases under an Order Form or online purchasing portal, as distinguished from Free Services or those provided pursuant to a free trial.

**“Services”** means the products and services that are ordered by Customer under an Order Form or online purchasing portal, or provided to Customer free of charge (as applicable) or under a free trial, and made available online by Netreo, including associated Netreo offline or mobile components.

**“Services”** exclude Content and Non-Netreo Applications.

**“User”** means, in the case of an individual accepting these terms on his or her own behalf, such individual, or, in the case of an individual accepting this Agreement on behalf of a company or other legal entity, an individual who is authorized by Customer to use a Service, for whom Customer has purchased a subscription (or in the case of any Services provided by Netreo without charge, for whom a Service has been provisioned), and to whom Customer (or, when applicable, Netreo at Customer’s request) has supplied a user identification and password (for Services utilizing authentication). Users may include, for example, employees, consultants, contractors and agents of Customer, and third parties with which Customer transacts business.

## **2. NETREO RESPONSIBILITIES**

### **2.1 Provision of Purchased Services**

Netreo will

- (a) make the Services and Content available to Customer pursuant to this Agreement, and the applicable Order Forms,
- (b) provide applicable Netreo standard support for the Purchased Services to Customer at no additional charge, and/or upgraded support if purchased,
- (c) use commercially reasonable efforts to make the online Purchased Services available 24 hours a day, 7 days a week, except for:
  - (i) planned downtime (of which Netreo shall give advance electronic notice), and
  - (ii) any unavailability caused by circumstances beyond Netreo’s reasonable control, including, for example, an act of God, act of government, flood, fire, earthquake, civil unrest, act of terror, strike or other labor problem (other than one involving Netreo employees), Internet service provider failure or delay, Non-Netreo Application, or denial of service attack, and
- (d) provide the Services in accordance with laws and government regulations applicable to Netreo’s provision of its Services to its customers generally (i.e., without regard for Customer’s particular use of the Services), and subject to Customer’s use of the Services in accordance with this Agreement, and the applicable Order Form.

### **2.2 Protection of Customer Data**

Netreo will maintain appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Customer Data. Those safeguards will include, but

will not be limited to, measures designed to prevent unauthorized access to or disclosure of Customer Data (other than by Customer or Users). Upon request by Customer made within 30 days after the effective date of termination or expiration of this Agreement, Netreo will make Customer Data available to Customer for export or download. After such a 30-day period, Netreo will have no obligation to maintain or provide any Customer Data, and will thereafter delete or destroy all copies of Customer Data in its systems or otherwise in its possession or control, unless legally prohibited.

### **2.3 Netreo Personnel**

Netreo will be responsible for the performance of its personnel (including its employees and contractors) and their compliance with Netreo's obligations under this Agreement, except as otherwise specified in this Agreement.

### **2.4 Beta Services**

From time to time, Netreo may make Beta Services available to Customer at no charge. Customer may choose to try such Beta Services or not in its sole discretion.

### **2.5 Free Trial**

If Customer registers on Netreo's or an Affiliate's website for a free trial, Netreo will make the applicable Service(s) available to Customer on a trial basis free of charge until the earlier of (a) the end of the free trial period for which Customer registered to use the applicable Service(s), or (b) the start date of any Purchased Service subscriptions ordered by Customer for such Service(s), or (c) termination by Netreo in its sole discretion. Additional trial terms and conditions may appear on the trial registration web page.

Any such additional terms and conditions are incorporated into this Agreement by reference and are legally binding.

ANY DATA CUSTOMER ENTERS INTO THE SERVICES, AND ANY CUSTOMIZATIONS MADE TO THE SERVICES BY OR FOR CUSTOMER, DURING CUSTOMER'S FREE TRIAL WILL BE PERMANENTLY LOST UNLESS CUSTOMER PURCHASES A SUBSCRIPTION TO THE SAME SERVICES AS THOSE COVERED BY THE TRIAL, PURCHASES APPLICABLE UPGRADED SERVICES, OR EXPORTS SUCH DATA, BEFORE THE END OF THE TRIAL PERIOD. CUSTOMER CANNOT TRANSFER DATA ENTERED OR CUSTOMIZATIONS MADE DURING THE FREE TRIAL TO A SERVICE THAT WOULD BE A DOWNGRADE FROM THAT COVERED BY THE TRIAL (E.G., FROM ENTERPRISE EDITION TO PROFESSIONAL EDITION); THEREFORE, IF CUSTOMER PURCHASES A SERVICE THAT WOULD BE A DOWNGRADE FROM THAT COVERED BY THE TRIAL, CUSTOMER MUST EXPORT CUSTOMER DATA BEFORE THE END OF THE TRIAL PERIOD OR CUSTOMER DATA WILL BE PERMANENTLY LOST. NOTWITHSTANDING THE "REPRESENTATIONS, WARRANTIES, EXCLUSIVE REMEDIES AND DISCLAIMERS" SECTION AND "INDEMNIFICATION BY NETREO" SECTION BELOW, DURING THE FREE TRIAL THE SERVICES ARE PROVIDED "AS-IS" WITHOUT ANY WARRANTY AND NETREO SHALL HAVE NO INDEMNIFICATION OBLIGATIONS NOR LIABILITY OF ANY

TYPE WITH RESPECT TO THE SERVICES FOR THE FREE TRIAL PERIOD UNLESS SUCH EXCLUSION OF LIABILITY IS NOT ENFORCEABLE UNDER APPLICABLE LAW IN WHICH CASE NETREO'S LIABILITY WITH RESPECT TO THE SERVICES PROVIDED DURING THE FREE TRIAL SHALL NOT EXCEED \$100.00.

WITHOUT LIMITING THE FOREGOING, NETREO AND ITS AFFILIATES AND ITS LICENSORS DO NOT REPRESENT OR WARRANT TO CUSTOMER THAT:

(A) CUSTOMER'S USE OF THE SERVICES DURING THE FREE TRIAL PERIOD WILL MEET CUSTOMER'S REQUIREMENTS,

(B) CUSTOMER'S USE OF THE SERVICES DURING THE FREE TRIAL PERIOD WILL BE UNINTERRUPTED, TIMELY, SECURE OR FREE FROM ERROR, AND

(C) USAGE DATA PROVIDED DURING THE FREE TRIAL PERIOD WILL BE ACCURATE. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE "LIMITATION OF LIABILITY" SECTION BELOW, CUSTOMER SHALL BE FULLY LIABLE UNDER THIS AGREEMENT TO NETREO AND ITS AFFILIATES FOR ANY DAMAGES ARISING OUT OF CUSTOMER'S USE OF THE SERVICES DURING THE FREE TRIAL PERIOD, ANY BREACH BY CUSTOMER OF THIS AGREEMENT AND ANY OF CUSTOMER'S INDEMNIFICATION OBLIGATIONS HEREUNDER. CUSTOMER SHALL REVIEW THE APPLICABLE SERVICE'S DOCUMENTATION DURING THE TRIAL PERIOD TO BECOME FAMILIAR WITH THE FEATURES AND FUNCTIONS OF THE SERVICES BEFORE MAKING A PURCHASE.

## **2.6 Free Services**

Netreo may make Free Services available to Customer. Use of Free Services is subject to the terms and conditions of this Agreement. In the event of a conflict between this section and any other portion of this Agreement, this section shall control. Free Services are provided to Customer without charge up to certain limits as described in the service documentation. Usage over these limits requires Customer's

purchase of additional resources or services. Customer agrees that Netreo, in its sole discretion and for any or no reason, may terminate Customer's access to the Free Services or any part thereof. Customer agrees that any termination of Customer's access to the Free Services may be without prior notice, and Customer agrees that Netreo will not be liable to Customer or any third party for such termination.

Customer is solely responsible for exporting Customer Data from the Free Services prior to termination of Customer's access to the Free Services for any reason, provided that if Netreo terminates Customer's account, except as required by law Netreo will provide Customer a reasonable opportunity to retrieve its Customer Data.

NOTWITHSTANDING THE "REPRESENTATIONS, WARRANTIES, EXCLUSIVE REMEDIES AND DISCLAIMERS" SECTION AND "INDEMNIFICATION BY NETREO" SECTION BELOW, THE FREE SERVICES ARE PROVIDED "AS-IS" WITHOUT ANY WARRANTY AND Netreo SHALL HAVE NO INDEMNIFICATION OBLIGATIONS NOR LIABILITY OF ANY TYPE WITH RESPECT TO THE FREE SERVICES UNLESS SUCH EXCLUSION OF LIABILITY IS NOT ENFORCEABLE UNDER APPLICABLE LAW IN WHICH CASE NETREO'S LIABILITY WITH RESPECT TO THE FREE SERVICES SHALL NOT EXCEED \$100.00. WITHOUT LIMITING THE FOREGOING, NETREO AND ITS AFFILIATES AND ITS LICENSORS DO NOT REPRESENT OR WARRANT

TO CUSTOMER THAT:

(A) CUSTOMER'S USE OF THE FREE SERVICES WILL MEET CUSTOMER'S REQUIREMENTS, (B) CUSTOMER'S USE OF THE FREE SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE OR FREE FROM ERROR, AND

(C) USAGE DATA PROVIDED THROUGH THE FREE SERVICES WILL BE ACCURATE. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE "LIMITATION OF LIABILITY" SECTION BELOW, CUSTOMER SHALL BE FULLY LIABLE UNDER THIS AGREEMENT TO NETREO AND ITS AFFILIATES FOR ANY DAMAGES ARISING OUT OF CUSTOMER'S USE OF THE FREE SERVICES, ANY BREACH BY CUSTOMER OF THIS AGREEMENT AND ANY OF CUSTOMER'S INDEMNIFICATION OBLIGATIONS HEREUNDER.

### **3. USE OF SERVICES AND CONTENT**

#### **3.1 Subscriptions**

Unless otherwise provided in the applicable Order Form,

- (a) Purchased Services and access to Content are purchased as subscriptions for the term stated in the applicable Order Form or in the applicable online purchasing portal,
- (b) subscriptions for Purchased Services may be added during a subscription term at the same pricing as the underlying subscription pricing, prorated for the portion of that subscription term remaining at the time the subscriptions are added, and
- (c) any added subscriptions will terminate on the same date as the underlying subscriptions.

Customer agrees that its purchases are not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by Netreo regarding future functionality or features.

#### **3.2 Usage Limits**

Services and Content are subject to usage limits specified in Order Forms. If Customer exceeds a contractual usage limit, Customer will execute an Order Form for additional quantities of the applicable Services or Content promptly upon Netreo's request, and/or pay any invoice for excess usage in accordance with the "Invoicing and Payment" section below. If Customer is unable to pay for the excess usage, Netreo may work with Customer to reduce Customer's usage so that it conforms to the contracted usage limit.

#### **3.3 Customer Responsibilities**

Customer will

- (a) be responsible for Users' compliance with this Agreement and Order Forms,
- (b) be responsible for the accuracy, quality and legality of Customer Data, the means by which Customer acquired Customer Data, Customer's use of Customer Data with the Services, and the interoperation of any Non-Netreo Applications with which Customer uses Services or Content,
- (c) use commercially reasonable efforts to prevent unauthorized access to or use of Services and Content, and notify Netreo promptly of any such unauthorized access or use,



(d) use Services and Content only in accordance with this Agreement, the Acceptable Use and External Facing Services Policy at <https://www.netreo.com/legal>, Order Forms and applicable laws and government regulations, and

(e) comply with terms of service of any Non-Netreo Applications with which Customer uses Services or Content. Any use of the Services in breach of the foregoing by Customer or Users that in Netreo's judgment threatens the security, integrity or availability of Netreo's services, may result in Netreo's immediate suspension of the Services, however Netreo will use commercially reasonable efforts under the circumstances to provide Customer with notice and an opportunity to remedy such violation or threat prior to any such suspension.

### **3.4 Usage Restrictions**

Customer will not

(a) make any Service or Content available to anyone other than Customer or Users, or use any Service or Content for the benefit of anyone other than Customer or its Affiliates, unless expressly stated otherwise in an Order Form,

(b) sell, resell, license, sublicense, distribute, make available, rent or lease any Service or Content, or include any Service or Content in a service bureau or outsourcing offering,

(c) use a Service or Non-Netreo Application to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (d) use a Service or Non-Netreo Application to store or transmit Malicious Code, (e) interfere with or disrupt the integrity or performance of any Service or third-party data contained therein,

(f) attempt to gain unauthorized access to any Service or Content or its related systems or networks,

(g) permit direct or indirect access to or use of any Services or Content in a way that circumvents a contractual usage limit, or use any Services to access or use any of Netreo intellectual property except as permitted under this Agreement, an Order Form,

(h) modify, copy, or create derivative works based on a Service or any part, feature, function or user interface thereof,

(i) copy Content except as permitted herein or in an Order Form,

(j) frame or mirror any part of any Service or Content, other than framing on Customer's own intranets or otherwise for its own internal business purposes,

(k) except to the extent permitted by applicable law, disassemble, reverse engineer, or decompile a Service or Content or access it to

(1) build a competitive product or service,

(2) build a product or service using similar ideas, features, functions or graphics of the Service, (3) copy any ideas, features, functions or graphics of the Service, or

(4) determine whether the Services are within the scope of any patent.

### **3.5 Removal of Content and Non-Netreo Applications**

If Customer receives notice that Content or a Non-Netreo Application must be removed, modified and/or disabled to avoid violating applicable law, third-party rights, or the Acceptable Use and External Facing Services Policy, Customer will promptly do so. If Customer does not take required

action in accordance with the above, or if in Netreo's judgment continued violation is likely to reoccur, Netreo may disable the applicable Content, Service and/or NonNetreo Application. If requested by Netreo, Customer shall confirm such deletion and discontinuance of use in writing and Netreo shall be authorized to provide a copy of such confirmation to any such third party claimant or governmental authority, as applicable. In addition, if Netreo is required by any third party rights holder to remove Content, or receives information that Content provided to Customer may violate applicable law or third-party rights, Netreo may discontinue Customer's access to Content through the Services.

## **4. NON-NETREO PRODUCTS AND SERVICES**

### **4.1 Non-Netreo Products and Services**

Netreo or third parties may make available (for example, through a Marketplace or otherwise) third-party products or services, including, for example, Non-Netreo Applications and implementation and other consulting services. Any acquisition by Customer of such products or services, and any exchange of data between Customer and any Non-Netreo provider, product or service is solely between Customer and the applicable Non-Netreo provider. Netreo does not warrant or support Non-Netreo Applications or other Non-Netreo products or services, whether or not they are designated by Netreo as "certified" or otherwise, unless expressly provided otherwise in an Order Form. Netreo is not responsible for any disclosure, modification or deletion of Customer Data resulting from access by such Non-Netreo Application or its provider.

### **4.2 Integration with Non-Netreo Applications**

The Services may contain features designed to interoperate with Non-Netreo Applications. Netreo cannot guarantee the continued availability of such Service features, and may cease providing them without entitling Customer to any refund, credit, or other compensation, if for example and without limitation, the provider of a Non-Netreo Application ceases to make the Non-Netreo Application available for interoperation with the corresponding Service features in a manner acceptable to Netreo.

## **5. FEES AND PAYMENT**

### **5.1 Fees**

Customer will pay all fees specified in Order Forms. Except as otherwise specified herein or in an Order Form,

(a) fees are based on Services and Content subscriptions purchased and not actual usage, (b) payment obligations are non- cancellable and fees paid are non-refundable, and (c) quantities purchased cannot be decreased during the relevant subscription term.

### **5.2 Invoicing and Payment**

Customer will provide Netreo with valid and updated credit card information, or with a valid

purchase order or alternative document reasonably acceptable to Netreo. If Customer provides credit card information to Netreo, Customer authorizes Netreo to charge such credit card for all Purchased Services listed in the Order Form for the initial subscription term and any renewal subscription term(s) as set forth in the “Term of Purchased Subscriptions” section below. Such charges shall be made in advance, either annually or in accordance with any different billing frequency stated in the applicable Order Form. If the Order Form specifies that payment will be by a method other than a credit card, Netreo will invoice Customer in advance and otherwise in accordance with the relevant Order Form. Unless otherwise stated in the Order Form, invoiced fees are due net 30 days from the invoice date. Customer is responsible for providing complete and accurate billing and contact information to Netreo and notifying Netreo of any changes to such information.

### **5.3 Overdue Charges**

If any invoiced amount is not received by Netreo by the due date, then without limiting Netreo’s rights or remedies,

(a) those charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, and/or

(b) Netreo may condition future subscription renewals and Order Forms on payment terms shorter than those specified in the “Invoicing and Payment” section above.

### **5.4 Suspension of Service and Acceleration**

If any charge owing by Customer under this or any other agreement for services is 30 days or more overdue, (or 10 or more days overdue in the case of amounts Customer has authorized Netreo to charge to Customer’s credit card), Netreo may, without limiting its other rights and remedies, accelerate Customer’s unpaid fee obligations under such agreements so that all such obligations become immediately due and payable, and suspend Services until such amounts are paid in full, provided that, other than for customers paying by credit card or direct debit whose payment has been declined, Netreo will give Customer at least 10 days’ prior notice that its account is overdue, in accordance with the “Manner of Giving Notice” section below for billing notices, before suspending services to Customer.

### **5.5 Payment Disputes**

Netreo will not exercise its rights under the “Overdue Charges” or “Suspension of Service and Acceleration” section above if Customer is disputing the applicable charges reasonably and in good faith and is cooperating diligently to resolve the dispute.

### **5.6 Taxes**

Netreo's fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction whatsoever (collectively, “Taxes”). Customer is responsible for paying all Taxes associated with its purchases hereunder. If Netreo has the legal obligation to pay or collect Taxes for

which Customer is responsible under this section, Netreo will invoice Customer and Customer will pay that amount unless Customer provides Netreo with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, Netreo is solely responsible for taxes assessable against it based on its income, property and employees.

## **6. PROPRIETARY RIGHTS AND LICENSES**

### **6.1 Reservation of Rights**

Subject to the limited rights expressly granted hereunder, Netreo, its Affiliates, its licensors and Content Providers reserve all of their right, title and interest in and to the Services and Content, including all of their related intellectual property rights. No rights are granted to Customer hereunder other than as expressly set forth herein.

### **6.2 Access to and Use of Content**

Customer has the right to access and use applicable Content subject to the terms of applicable Order Forms and this Agreement.

### **6.3 License by Customer to Netreo**

Customer grants Netreo, its Affiliates and applicable contractors a worldwide, limited-term license to host, copy, use, transmit, and display any Non-Netreo Applications and program code created by or for Customer using a Service or for use by Customer with the Services, and Customer Data, each as appropriate for Netreo to provide and ensure proper operation of the Services and associated systems in accordance with this Agreement. If Customer chooses to use a Non-Netreo Application with a Service, Customer grants Netreo permission to allow the Non-Netreo Application and its provider to access Customer Data and information about Customer's usage of the Non-Netreo Application as appropriate for the interoperation of that Non-Netreo Application with the Service. Subject to the limited licenses granted herein, Netreo acquires no right, title or interest from Customer or its licensors under this Agreement in or to any Customer Data, Non-Netreo Application or such program code.

### **6.4 License by Customer to Use Feedback**

Customer grants to Netreo and its Affiliates a worldwide, perpetual, irrevocable, royalty free license to use and incorporate into its services any suggestion, enhancement request, recommendation, correction or other feedback provided by Customer or Users relating to the operation of Netreo's or its Affiliates' services.

### **6.5 Federal Government End Use Provisions**

Netreo provides the Services, including related software and technology, for ultimate federal government end use in accordance with the following: The Services consist of "commercial items," as defined at FAR 2.101. In accordance with FAR 12.211-12.212 and DFARS 227.7102-4 and 227.7202-4, as applicable, the rights of the U.S. Government to use, modify, reproduce, release, perform, display, or

disclose commercial computer software, commercial computer software documentation, and technical data furnished in connection with the Services shall be as provided in this Agreement, except that, for U.S. Department of Defense end users, technical data customarily provided to the public is furnished in accordance with DFARS 252.227-7015. If a government agency needs additional rights, it must negotiate a mutually acceptable written addendum to this Agreement specifically granting those rights.

## **7. CONFIDENTIALITY**

### **7.1 Definition of Confidential Information**

“Confidential Information” means all information disclosed by a party (“Disclosing Party”) to the other party (“Receiving Party”), whether orally 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 Customer includes Customer Data; Confidential Information of Netreo includes the Services and Content, and the terms and conditions of this Agreement and all Order Forms (including pricing). Confidential Information of each party includes business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information does not include any information that

- i. is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party,
- ii. was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party,
- iii. is received from a third party without breach of any obligation owed to the Disclosing Party, or Netreo
- iv. was independently developed by the Receiving Party.

For the avoidance of doubt, the non-disclosure obligations set forth in this “Confidentiality” section apply to Confidential Information exchanged between the parties in connection with the evaluation of additional Netreo services.

### **7.2 Protection of Confidential Information**

As between the parties, each party retains all ownership rights in and to its Confidential Information. The Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care) to

(i) not use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement and

(ii) except as otherwise authorized by the Disclosing Party in writing, limit access to Confidential Information of the Disclosing Party to those of its and its Affiliates’ employees and contractors who need that access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections not materially less protective of the Confidential Information than those herein.

Neither party will disclose the terms of this Agreement or any Order Form to any third party other than its Affiliates, legal counsel and accountants without the other party's prior written consent, provided that a party that makes any such disclosure to its Affiliate, legal counsel or accountants will remain responsible for such Affiliate's, legal counsel's or accountant's compliance with this "Confidentiality" section. Notwithstanding the foregoing, Netreo may disclose the terms of this Agreement and any applicable Order Form to a subcontractor or Non-Netreo Application Provider to the extent necessary to perform Netreo's obligations under this Agreement, under terms of confidentiality materially as protective as set forth herein.

### **7.3 Compelled Disclosure**

The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of the 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. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to that Confidential Information.

### **7.4 Marketing and Publicity**

Each party may use the other party's Brand Features in connection with this Agreement only as permitted in the Agreement. Customer may state publicly that it is a Netreo customer and display Netreo Brand Features in accordance with the Trademark Guidelines. Netreo may (a) orally state that Customer is a Netreo customer and (b) include Customer's name or Customer Brand Features in a list of Netreo customers in Netreo's promotional materials. Any use of a party's Brand Features will inure to the benefit of the party holding Intellectual Property Rights to those Brand Features. A party may revoke the other party's right to use its Brand Features with written notice to the other party and a reasonable period to stop the use.

## **8. REPRESENTATIONS, WARRANTIES, EXCLUSIVE REMEDIES AND DISCLAIMERS**

### **8.1 Representations**

Each party represents that it has validly entered into this Agreement and has the legal power to do so.

### **8.2 Netreo Warranties**

Netreo warrants that during an applicable subscription term

(a) this Agreement and the Order Forms will accurately describe the applicable administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Customer Data,

- (b) Netreo will not materially decrease the overall security of the Services,
- (c) the Services will perform materially in accordance with this Agreement, and
- (d) subject to the “Integration with Non-Netreo Applications” section above, Netreo will not materially decrease the overall functionality of the Services.

For any breach of a warranty above, Customer’s exclusive remedies are those described in the “Termination” and “Refund or Payment upon Termination” sections below.

### **8.3 Disclaimers**

EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. CONTENT AND BETA SERVICES ARE PROVIDED “AS IS,” AND AS AVAILABLE EXCLUSIVE OF ANY WARRANTY WHATSOEVER.

## **9. MUTUAL INDEMNIFICATION**

### **9.1 Indemnification by Netreo**

Netreo will defend Customer against any claim, demand, suit or proceeding made or brought against Customer by a third party alleging that any Purchased Service infringes or misappropriates such third party’s intellectual property rights (a “Claim Against Customer”), and will indemnify Customer from any damages, attorney fees and costs finally awarded against Customer as a result of, or for amounts paid by Customer under a settlement approved by Netreo in writing of, a Claim Against Customer, provided Customer

- (a) promptly gives Netreo written notice of the Claim Against Customer,
- (b) gives Netreo sole control of the defense and settlement of the Claim Against Customer (except that Netreo may not settle any Claim Against Customer unless it unconditionally releases Customer of all liability), and
- (c) gives Netreo all reasonable assistance, at Netreo’s expense.

If Netreo receives information about an infringement or misappropriation claim related to a Service, Netreo may in its discretion and at no cost to Customer

- (i) modify the Services so that they are no longer claimed to infringe or misappropriate, without breaching Netreo’s warranties under “Netreo Warranties” above,
- (ii) obtain a license for Customer’s continued use of that Service in accordance with this Agreement, or
- (iii) terminate Customer’s subscriptions for that Service upon 30 days’ written notice and refund Customer any prepaid fees covering the remainder of the term of the terminated subscriptions.

The above defense and indemnification obligations do not apply if

- (1) the allegation does not state with specificity that the Services are the basis of the Claim Against Customer;

- (2) a Claim Against Customer arises from the use or combination of the Services or any part thereof with software, hardware, data, or processes not provided by Netreo, if the Services or use thereof would not infringe without such combination;
- (3) a Claim Against Customer arises from Services under an Order Form for which there is no charge; or (4) a Claim against Customer arises from Content, a Non-Netreo Application or Customer's breach of this Agreement or applicable Order Forms.

## **9.2 Indemnification by Customer**

Customer will defend Netreo and its Affiliates against any claim, demand, suit or proceeding made or brought against Netreo by a third party alleging

- (a) that any Customer Data or Customer's use of Customer Data with the Services,
- (b) a Non-Netreo Application provided by Customer, or
- (c) the combination of a Non-Netreo Application provided by Customer and used with the Services, infringes or misappropriates such third party's intellectual property rights, or arising from Customer's use of the Services or Content in an unlawful manner or in violation of the Agreement or Order Form (each a "Claim Against Netreo"), and will indemnify Netreo from any damages, attorney fees and costs finally awarded against Netreo as a result of, or for any amounts paid by Netreo under a settlement approved by Customer in writing of, a Claim Against Netreo, provided Netreo
- (a) promptly gives Customer written notice of the Claim Against Netreo,
- (b) gives Customer sole control of the defense and settlement of the Claim Against Netreo (except that Customer may not settle any Claim Against Netreo unless it unconditionally releases Netreo of all liability), and
- (c) gives Customer all reasonable assistance, at Customer's expense.

The above defense and indemnification obligations do not apply if a Claim Against Netreo arises from Netreo's breach of this Agreement or applicable Order Forms.

## **9.3 Exclusive Remedy**

This "Mutual Indemnification" section states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any third party claim described in this section.

## **10. LIMITATION OF LIABILITY**

### **10.1 Limitation of Liability**

IN NO EVENT SHALL THE AGGREGATE LIABILITY OF EACH PARTY TOGETHER WITH ALL OF ITS AFFILIATES ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER AND ITS AFFILIATES HEREUNDER FOR THE SERVICES GIVING RISE TO THE LIABILITY IN THE TWELVE MONTHS PRECEDING THE FIRST INCIDENT OUT OF WHICH THE LIABILITY AROSE. THE FOREGOING LIMITATION WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, BUT WILL NOT LIMIT CUSTOMER'S AND ITS AFFILIATES' PAYMENT OBLIGATIONS UNDER THE "FEES AND PAYMENT" SECTION ABOVE.



## **10.2 Exclusion of Consequential and Related Damages**

IN NO EVENT WILL EITHER PARTY OR ITS AFFILIATES HAVE ANY LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT FOR ANY LOST PROFITS, REVENUES, GOODWILL, OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER, BUSINESS INTERRUPTION OR PUNITIVE DAMAGES, WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF A PARTY OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF A PARTY'S OR ITS AFFILIATES' REMEDY OTHERWISE FAILS OF ITS ESSENTIAL PURPOSE. THE FOREGOING DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.

## **11. TERM AND TERMINATION**

### **11.1 Term of Agreement**

This Agreement commences on the date Customer first accepts it and continues until all subscriptions hereunder have expired or have been terminated.

### **11.2 Term of Purchased Subscriptions**

The term of each subscription shall be as specified in the applicable Order Form. Except as otherwise specified in an Order Form, subscriptions will automatically renew for additional periods equal to the expiring subscription term or one year (whichever is shorter), unless either party gives the other written notice (email acceptable) at least 30 days before the end of the relevant subscription term. Except as expressly provided in the applicable Order Form, renewal of promotional or one-time priced subscriptions will be at Netro's applicable list price in effect at the time of the applicable renewal. Notwithstanding anything to the contrary, any renewal in which subscription volume or subscription length for any Services has decreased from the prior term will result in re-pricing at renewal without regard to the prior term's per-unit pricing.

### **11.3 Termination**

A party may terminate this Agreement for cause

- (i) upon 30 days written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or
- (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

### **11.4 Refund or Payment upon Termination**

If this Agreement is terminated by Customer in accordance with the "Termination" section above, Netro will refund Customer any prepaid fees covering the remainder of the term of all Order Forms after the effective date of termination. If this Agreement is terminated by Netro in accordance with the "Termination" section above, Customer will pay any unpaid fees covering the remainder of the term of all Order Forms to the extent permitted by applicable law. In no event will termination relieve Customer of its obligation to pay any fees payable to Netro for the period prior to the effective date

of termination.

### **11.5 Surviving Provisions**

The sections titled “Free Services,” “Fees and Payment,” “Proprietary Rights and Licenses,” “Confidentiality,” “Disclaimers,” “Mutual Indemnification,” “Limitation of Liability,” “Refund or Payment upon Termination,” “Removal of Content and Non-Netreo Applications,” “Surviving Provisions” and “General Provisions” will survive any termination or expiration of this Agreement, and the section titled “Protection of Customer Data” will survive any termination or expiration of this Agreement for so long as Netreo retains possession of Customer Data.

## **12. GENERAL PROVISIONS**

### **12.1 Export Compliance**

The Services, Content, other Netreo technology, and derivatives thereof may be subject to export laws and regulations of the United States and other jurisdictions. Netreo and Customer each represent that it is not named on any U.S. government denied-party list. Customer will not permit any User to access or use any Service or Content in a U.S.-embargoed country or region (currently Cuba, Iran, North Korea, Sudan, Syria or Crimea) or in violation of any U.S. export law or regulation.

### **12.2 Anti-Corruption**

Neither party has received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from an employee or agent of the other party in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction.

### **12.3 Entire Agreement and Order of Precedence.**

This Agreement is the entire agreement between Netreo and Customer regarding Customer’s use of Services and Content and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. The parties agree that any term or condition stated in a Customer purchase order or in any other Customer order documentation (excluding Order Forms) is void. In the event of any conflict or inconsistency among the following documents, the order of precedence shall be:

- (1) the applicable Order Form, and
- (2) this Agreement.

Titles and headings of sections of this Agreement are for convenience only and shall not affect the construction of any provision of this Agreement.

### **12.4 Relationship of the Parties**

The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties. Each party will be solely responsible for payment of all compensation owed to its employees, as well as all

employment-related taxes.

### **12.5 Third-Party Beneficiaries**

There are no third-party beneficiaries under this Agreement.

### **12.6 Waiver**

No failure or delay by either party in exercising any right under this Agreement will constitute a waiver of that right.

### **12.7 Severability**

If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision will be deemed null and void, and the remaining provisions of this Agreement will remain in effect.

### **12.8 Assignment**

Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the other party's prior written consent (not to be unreasonably withheld); provided, however, either party may assign this Agreement in its entirety (including all Order Forms), without the other party's consent to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets. Notwithstanding the foregoing, if a party is acquired by, sells substantially all of its assets to, or undergoes a change of control in favor of, a direct competitor of the other party, then such other party may terminate this Agreement upon written notice. In the event of such a termination, Netro will refund Customer any prepaid fees covering the remainder of the term of all subscriptions for the period after the effective date of such termination. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns.

### **12.9 Netro Contracting Entity, Notices, Governing Law, and Venue.**

The Netro entity entering into this Agreement, the address to which Customer should direct notices under this Agreement, the law that will apply in any dispute or lawsuit arising out of or in connection with this Agreement, and the courts that have jurisdiction over any such dispute or lawsuit, would be to

Netreo, Inc.  
7171 Warner Avenue, Suite #B787,  
Huntington Beach, CA 92647, USA

Attention: General Counsel

Governing Law: California and controlling United States Federal Law

Courts with exclusive jurisdiction are: Los Angeles, California, USA

### **12.10 Manner of Giving Notice**

Except as otherwise specified in this Agreement, all notices related to this Agreement will be in writing and will be effective upon

- (a) personal delivery,
- (b) the second business day after mailing, or
- (c) except for notices of termination or an indemnifiable claim (“Legal Notices”), which shall clearly be identifiable as Legal Notices, the day of sending by email.

Billing-related notices to Customer will be addressed to the relevant billing contact designated by Customer. All other notices to Customer will be addressed to the relevant Services system administrator designated by Customer.

### **12.11 Agreement to Governing Law and Jurisdiction**

Each party agrees to the applicable governing law above without regard to choice or conflicts of law rules, and to the exclusive jurisdiction of the applicable courts above.

### **12.12 Local Law Requirements: France**

With respect to Customers domiciled in France, in the event of any conflict between any statutory law in France applicable to Customer, and the terms and conditions of this Agreement, the applicable statutory law shall prevail.

### **12.13 Local Law Requirements: Germany**

With respect to Customers domiciled in Germany, Section 8 “REPRESENTATIONS, WARRANTIES, EXCLUSIVE REMEDIES AND DISCLAIMERS”, Section 9.3 “Exclusive Remedy”, and Section 10 “LIMITATION OF LIABILITY” of this Agreement are replaced with the following sections respectively:

#### **8 WARRANTIES FOR CUSTOMERS DOMICILED IN GERMANY**

##### **8.1 Agreed Quality of the Services**

Netreo warrants that during an applicable subscription term

- (a) this Agreement and the Order Forms will accurately describe the applicable administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Customer Data,
- (b) Netreo will not materially decrease the overall security of the Services, (c) the Services will perform materially in accordance with this Agreement, and (d) subject to the “Integration with Non-Netreo Applications” section above, Netreo will not materially decrease the overall functionality of the Services.

## **8.2 Content.**

Netreo is not designating or adopting Content as its own and assumes no warranty or liability for Content. The parties agree that the “Reporting of Defects”, “Remedies resulting from Defects” and “Exclusions” section shall apply accordingly to Netreo’s responsibility in the event Netreo is deemed responsible for Content by a court of competent jurisdiction.

## **8.3 Reporting of Defects**

Customer shall report any deviation of the Services from the “Agreed Quality of the Services” section (“Defect”) to Netreo in writing without undue delay and shall submit a detailed description of the Defect or, if not possible, of the symptoms of the Defect. Customer shall forward to Netreo any useful information available to Customer for rectification of the Defect.

## **8.4 Remedies resulting from Defects**

Netreo shall rectify any Defect within a reasonable period of time. If such rectification fails, Customer may terminate the respective Order Form provided that Netreo had enough time for curing the Defect. The “Refund or Payment upon Termination” section, sentence and 1 and sentence 3 shall apply accordingly. If Netreo is responsible for the Defect or if Netreo is in default with the rectification, Customer may assert claims for the damage caused in the scope specified in the “Limitation of Liability” section below.

## **8.5 Defects in Title**

Defects in title of the Services shall be handled in accordance with the provisions of Clause 9 “Mutual Indemnification”.

## **8.6 Exclusions**

Customer shall have no claims under this Clause 8 “Warranty” if a Defect was caused by the Services not being used by Customer in accordance with the provisions of this Agreement and the applicable Order Forms.

## **9.3 Liability resulting from Indemnification for Customers domiciled in Germany**

The below “Limitation of Liability” section shall apply to any claims resulting from this “Mutual Indemnification” section.

## **10. LIMITATION OF LIABILITY FOR CUSTOMERS DOMICILED IN GERMANY**

### **10.1 Unlimited Liability**

The Parties shall be mutually liable without limitation

- (a) in the event of willful misconduct or gross negligence,
- (b) within the scope of a guarantee taken over by the respective party,
- (c) in the event that a defect is maliciously concealed,
- (d) in case of an injury to life, body or health,

(e) according to the German Product Liability Law.

### **10.2 Liability for Breach of Cardinal Duties**

If cardinal duties are infringed due to slight negligence and if, as a consequence, the achievement of the objective of this Agreement including any applicable Order Form is endangered, or in the case of a slightly negligent failure to comply with duties, the very discharge of which is an essential prerequisite for the proper performance of this Agreement (including any applicable Order Form), the parties' liability shall be limited to foreseeable damage typical for the contract. In all other respects, any liability for damage caused by slight negligence shall be excluded.

### **10.3 Liability Cap**

Unless the parties are liable in accordance with "Unlimited Liability" section above, in no event shall the aggregate liability of each party together with all of its Affiliates arising out of or related to this Agreement exceed the total amount paid by Customer and its Affiliates hereunder for the Services giving rise to the liability in the 12 months preceding the first incident out of which the liability arose. The foregoing limitation will not limit Customer's and its Affiliates' payment obligations under the "Fees and Payment" section above.

### **10.4 Scope**

With the exception of liability in accordance with the "Unlimited Liability" section, the above limitations of liability shall apply to all claims for damages, irrespective of the legal basis including claims for tort damages. The above limitations of liability also apply in the case of claims for a party's damages against the respective other party's employees, agents or bodies.

## **12.14 Local Law Requirements: Italy**

With respect to Customers domiciled in Italy, Section 5.2 "Invoicing and Payment", Section 5.3 "Overdue Charges", Section 5.4 "Suspension of Service and Acceleration", and Section 12.2 "Anti Corruption" of this Agreement are replaced with the following sections respectively:

### **5.2. Invoicing and Payment**

#### **5.2.1 Invoicing and Payment.**

Fees will be invoiced in advance and otherwise in accordance with the relevant Order Form. Unless otherwise stated in the Order Form, fees are due net 30 days from the invoice date. The parties acknowledge that invoices are also be submitted electronically by Netreo in accordance with the "Electronic Invoicing" section below through the Agenzia delle Entrate's Exchange System (SDI – Sistema di Interscambio) and any delay due to the SDI shall not affect the foregoing payment term. Customer shall be responsible for providing complete and accurate billing and contact information to Netreo and shall notify Netreo of

any changes to such information.

### **5.2.2 Electronic Invoicing.**

The invoice will be issued in electronic format as defined in article 1, paragraph 916, of Law no. 205 of December 27, 2017, which introduced the obligation of electronic invoicing, starting from

January 1, 2019, for the sale of goods and services performed between residents, established or identified in the territory of the Italian State. To facilitate such electronic invoicing, Customer shall provide to Netreo at least the following information in writing: Customer full registered company name, registered office address, VAT number, tax/fiscal code and any additional code and/or relevant information required under applicable law. In any event, the parties shall cooperate diligently to enable such electronic invoicing process. Any error due to the provision by Customer of incorrect or insufficient invoicing information preventing

- (a) Netreo to successfully submit the electronic invoice to the SDI or
- (b) the SDI to duly and effectively process such invoice or
- (c) which, in any event, requires Netreo to issue an invoice again, shall not result in an extension of the payment term set out in the “Invoicing and Payment” section above, and such term shall still be calculated from the date of the original invoice.

Netreo reserves the right to provide any invoice copy in electronic form via email in addition to the electronic invoicing described herein.

### **5.2.3 Split Payment.**

If subject to the “split payment” regime, Customer shall be exclusively responsible for payment of any VAT amount due, provided that Customer shall confirm to Netreo the applicability of such regime and, if applicable, Customer shall provide proof of such VAT payment to Netreo and, if applicable, Customer shall provide proof of such VAT payment to Netreo.

### **5.3 Overdue Charges.**

Subject to the “Payment Disputes” section below, if any invoiced amount is not received by Netreo by the due date, then without limiting Netreo’s rights or remedies, those charges, without the need for notice of default, may

- (a) accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law (Legislative Decree no. 231/2002), whichever is lower and/or
- (b) Netreo may condition future subscription renewals and Order Forms on payment terms shorter than those specified in the “Invoicing and Payment” section above.

### **5.4. Suspension of Service.**

Subject to the “Payment Disputes” section below, if any charge owing by Customer under this or any other agreement for services is 30 days or more overdue, (or 10 or more days overdue in

the case of amounts Customer has authorized Netreo to charge to Customer’s credit card), Netreo may, without limiting its other rights and remedies, suspend Services until such amounts are paid in full, provided that, other than for customers paying by credit card or direct debit whose payment has been declined, Netreo will give Customer at least 10 days’ prior notice that its account is overdue, in accordance with the “Manner of Giving Notice” section below for billing notices, before suspending services to Customer.

**12.2 Anti-Corruption.**

**12.2.1 Anti-Corruption.**

Neither party has received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from an employee or agent of the other party in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction.

**12.2.2 Code of Conduct and Organization, Management and Control Model.** Customer acknowledges that Netreo has adopted an Organization, Management and Control Model pursuant to Legislative Decree 231/2001 to prevent crimes provided for therein and commits to comply with the principles contained in the above Legislative Decree 231/2001. Customer also acknowledges and agrees that the violation of the principles and the provisions contained in Legislative Decree 231/2001 by Customer may entitle Netreo, based on the severity of the violation, to terminate this Agreement for cause as set out in Section 11.3(i) above.

**12.15 Local Law Requirements: Spain.**

With respect to Customers domiciled in Spain, in the event of any conflict between any statutory law in Spain applicable to Customer, and the terms and conditions of this Agreement, the applicable statutory law shall prevail.

<b>Netreo</b>	<b>Customer</b>
By: _____	By: _____
Printed Name: _Ged Caldwell	Printed Name: _
Title: _____Chief Revenue Officer (CRO)	Title: _____
Date: _____	Date: _____



## NUTANIX END USER LICENSE AGREEMENT

### IMPORTANT – READ CAREFULLY

READ THIS END USER LICENSE AGREEMENT (THE “AGREEMENT”) BEFORE DOWNLOADING, INSTALLING, COPYING, CONFIGURING, ACCESSING, DEPLOYING, USING NUTANIX SUPPORT AND/OR USING THE SOFTWARE. BY DOWNLOADING, INSTALLING, COPYING, CONFIGURING, ACCESSING, DEPLOYING, USING NUTANIX SUPPORT AND/OR OTHERWISE USING ALL OR ANY PART OF THE SOFTWARE OR BY CLICKING ON AN “ACCEPT” BUTTON, YOU AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT. YOU FURTHER AGREE THAT YOU ARE BOUND BY AND ARE A PARTY TO THIS AGREEMENT, AND, IF YOU ARE ACCEPTING THESE TERMS ON BEHALF OF ANOTHER PERSON OR A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT AND WARRANT THAT YOU HAVE FULL AUTHORITY TO BIND THAT PERSON, COMPANY, OR LEGAL ENTITY TO THESE TERMS.

YOUR USE OF THE SOFTWARE IS EXPRESSLY CONDITIONED ON YOUR ACCEPTANCE OF THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT:

- DO NOT ORDER OR PURCHASE THE SOFTWARE
- DO NOT DOWNLOAD, INSTALL, COPY, CONFIGURE, ACCESS, DEPLOY, CLICK ON AN “ACCEPT” BUTTON, USE NUTANIX SUPPORT AND/OR OTHERWISE USE THE SOFTWARE
- DELETE THE UNUSED SOFTWARE AND RETURN THE UNUSED SOFTWARE TO THE VENDOR FROM WHICH YOU ACQUIRED IT

This Agreement is between You, on behalf of the company, partnership or business entity that You represent (“You” or “Your”) and either (a) Nutanix, Inc. a Delaware corporation, with offices located at 1740 Technology Drive, Suite 150, San Jose, CA 95110, USA if the Software was purchased in the United States, Mexico or Canada; or (b) Nutanix Netherlands, B.V. incorporated and registered in The Netherlands with its registered office at Scorpius 100, 2132 LR Hoofddorp, The Netherlands, if the Software was purchased in any other country ((a) and (b) are referred to herein as “Nutanix”).

“*Software*” means any Nutanix software, library, utility, tool or other computer or program code, in object (binary) or source-code form provided, directly or indirectly to You as well as to any copies (whether complete or partial) made by or on Your behalf, including without limitation firmware. The term “*Software*” also includes any updates, upgrades or other new features, functionality or enhancements to the Software made available directly or indirectly to You. “*Documentation*” means any on-line read me, help files, or other explanatory materials related to the Software.

This Agreement applies to all Software and Documentation made available by Nutanix to You.

1. **License Grant and Entitlement.** The Software and Documentation are licensed, not sold, to You by Nutanix. This Agreement confers no title or ownership and is not a sale of any rights in the Software. Subject to the terms and conditions of this Agreement, the terms of Your entitlement which evidences Your authorization to use the Software and the authorized scope of use of the Software (“Entitlement”), and payment of the purchase price and/or all fees, You are hereby granted a personal, limited, non-assignable, non-exclusive, non-sublicensable and non-transferable right to run one copy of the object code version of the Software on one authorized Nutanix system during the period of the license and for internal business operations only (“Permitted Use”). The Entitlement shall be specified in writing on the order or equivalent document issued by Nutanix or the party from whom You have lawfully acquired the products. The Entitlement shall specify the name of the product, the number of Licensed Units and the usage level and feature set authorized. Your Permitted Use is limited to the number of Licensed Units stated in Your Entitlement. “Licensed Unit” means the unit of measure by which Your use of Software is licensed, as described in Your Entitlement. If You have multiple Licensed Units, You may install and use as many copies of the Software as You have Licensed Units, in each

case, on an authorized Nutanix system and only as permitted herein. Use of the Software outside the scope of Your Entitlement is unauthorized and shall constitute a material breach of this Agreement and void the warranty and/or support obligations of which You may otherwise be entitled. You agree to use Your best efforts to prevent and protect the contents of the Software and Documentation from unauthorized disclosure or use. Nutanix and its licensors reserve all rights, including but not limited to ownership and intellectual property rights, not expressly granted to You. Nutanix's licensors are the intended third party beneficiaries of this Agreement and have the express right to rely upon and directly enforce the terms set forth herein. There are no implied licenses granted by Nutanix under this Agreement. Except as expressly specified above, You shall have no rights to the Software.

## 2. Use.

2.1 **Limitations on Use.** You must not use the Software or Documentation except as permitted by this Agreement. You must not:

- (a) alter, decompile, disassemble, modify, unbundle or create any derivative works of the Software, the underlying source code, or the Documentation in any way, including without limitation customization, translation or localization;
- (b) port, emulate the functionality, reverse compile, reverse assemble, reverse engineer, create derivative works, or otherwise reduce to human readable form or attempt to separate any of the components of the Software or derive the source code for the Software;
- (c) copy, redistribute, encumber, sell, rent, lease, license, sublicense, or otherwise transfer rights to the Software or Documentation, use the Software for the benefit of any third party or on a hosted basis;
- (d) remove or alter any trademark, logo, copyright or other proprietary notices, legends, symbols or labels in the Software or Documentation or any product in which the Software is embedded
- (e) disclose the results of testing, benchmarking or other performance or evaluation information related to the Software or the product to any third party without the prior written consent of Nutanix;
- (f) access or use the Software or Documentation for any competitive purposes (e.g. to gain competitive intelligence; to design or build a competitive product or service, or a product providing features, functions or graphics similar to those used or provided by Nutanix; to copy any features, functions or graphics; or to monitor availability, performance or functionality for competitive purposes);
- (g) use any "locked" or key restricted feature, function or capability without first purchasing the applicable license and obtaining a valid key, even if such feature, function or capability is enabled without a key; or
- (h) distribute any copy of the Software to any third party, including as may be embedded in equipment sold in the secondhand market.

You must not cause, encourage or permit any third party to do any of the foregoing.

If You believe that any of the foregoing restrictions are prohibited by local law, You agree to provide Nutanix with at least ninety (90) days advance written notice of Your belief and provide all reasonably requested information from Nutanix to evaluate Your claim. Nutanix may, in its discretion, impose reasonable conditions, including a reasonable fee, on such use of the Software, or offer to provide alternatives to ensure that Nutanix's proprietary rights in the Software are protected and to reduce any adverse impact on Nutanix's proprietary rights.

2.2 **Third Party Software.** You acknowledge that the Software may contain copyrighted software of third parties which are obtained under a license from such parties ("Third Party Software"). All third party licensors

---

retain all right, title and interest in and to such Third Party Software and all copies thereof, including all copyright and other intellectual property rights. Your use of any Third Party Software shall be subject to, and You shall comply with, the terms and conditions of this Agreement, and the applicable restrictions and other terms and conditions set forth in any Third Party Software documentation or printed materials, including without limitation an end user license agreement.

3. **Open Source Components.** Software may use or include one or more of the open source software components listed in the Nutanix open source attribution file, which is available at [www.nutanix.com/opensource](http://www.nutanix.com/opensource). Please refer to the open source attribution file for the open source license disclosures and pertinent terms.

4. **Proprietary Rights.** You acknowledge and agree that the Software belongs to Nutanix or its licensors. You agree that You neither own nor hereby acquire any claim or right of ownership to the Software and Documentation or to any related patents, copyrights, trademarks or other intellectual property, including all modifications and derivative works of any of the foregoing. Nutanix and its licensors retain all right, title and interest both tangible and intangible in and to all copies of the Documentation and the Software at all times, regardless of the form or media in or on which the original or other copies may subsequently exist. This license is not a sale of the original or any subsequent copy. The Software and Documentation are protected by copyright and other intellectual property laws and by international treaties. Any and all other copies of the Software or Documentation made by You are in violation of this license. All content accessed through the Software is the property of the applicable content owner and may be protected by applicable copyright law. This license gives You no rights to such content. All trademarks used in connection with the Software and Documentation are owned by Nutanix, its affiliates and/or its licensors and other suppliers, and no license to use any such trademarks is provided hereunder. All suggestions or feedback provided by You to Nutanix with respect to the Software shall be Nutanix's property and deemed Confidential Information of Nutanix. You hereby assign to Nutanix all right, title and interest in and to any feedback provided to Nutanix.

5. **Support.** Nutanix's support obligations for the Software, if any, are set forth in the Support Terms and Conditions, which may be found at <http://www.nutanix.com/support/support-terms/>. Nutanix does not provide any product maintenance or support services under this Agreement. Product maintenance and support services, if any, will be provided under a separate agreement. This Agreement does not entitle You to any product updates at any time in the future.

6. **Term and Termination.** This Agreement and Your right to use the Software and Documentation may be terminated by You at any time upon written notice. This Agreement automatically terminates if (a) You or any of Your employees or consultants fail to comply with its terms and conditions; or (b) You terminate or suspend Your business, become insolvent, admit in writing Your ability to pay Your debts as they mature, make an assignment for the benefit of creditors or become subject to any bankruptcy or insolvency proceeding. Upon expiration or termination of this Agreement for any reason: (a) all licenses granted by Nutanix shall immediately terminate; (b) You shall immediately discontinue use of the applicable Software and products; (c) You shall promptly remove Your confidential data, if any, and immediately return the products and related materials to Nutanix or the party from whom the product was obtained; (d) You shall destroy all copies of the Software and Documentation in Your possession, custody or control; and (e) if requested, You shall certify to Nutanix in writing that such return or destruction has occurred. The preamble as well as Section 2, 4, 6, 7, 8, 10, 12, 14, 15 and 16 shall survive any expiration or termination of this Agreement.

7. **NO WARRANTY.** EXCEPT AS PROVIDED IN THE NUTANIX LIMITED WARRANTY, WHICH MAY BE FOUND AT [www.nutanix.com/warranty/](http://www.nutanix.com/warranty/), YOU AGREE THAT THE SOFTWARE AND DOCUMENTATION ARE PROVIDED "AS IS" AND THAT NUTANIX AND ITS LICENSORS MAKE NO OTHER WARRANTIES AS TO THE SOFTWARE OR DOCUMENTATION, INCLUDING WITHOUT LIMITATION UNINTERRUPTED USE, ACCURACY, AND DATA LOSS. NUTANIX AND ITS LICENSORS DISCLAIM ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, WRITTEN OR ORAL, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE (EVEN

IF NUTANIX KNOWS OR SHOULD HAVE KNOWN OF SUCH PURPOSE), AND ANY WARRANTIES ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING OR PERFORMANCE, OR USAGE OF TRADE, OR THAT THE SOFTWARE WILL BE COMPATIBLE OR WORK WITH ANY THIRD PARTY SOFTWARE OR HARDWARE OR ANY OTHER NUTANIX PRODUCTS. NUTANIX AND ITS LICENSORS DO NOT WARRANT THAT THE SOFTWARE OR DOCUMENTATION OR ANY RESULTS OF USE THEREOF WILL BE FREE OF DEFECTS, ERRORS OR VIRUSES, RELIABLE OR ABLE TO OPERATE ON AN UNINTERRUPTED BASIS OR IN A PARTICULAR ENVIRONMENT OR THAT ERRORS THEREIN, IF ANY, WILL BE CORRECTED. YOU FURTHER ACKNOWLEDGE THAT THE SOFTWARE IS NOT INTENDED OR SUITABLE FOR USE IN SITUATIONS OR ENVIRONMENTS WHERE THE FAILURE OR TIME DELAYS OF, OR ERRORS OR INACCURACIES IN THE CONTENT, DATA OR INFORMATION PROVIDED BY THE NUTANIX SOFTWARE COULD LEAD TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE.

8. **LIMITATION OF LIABILITY.** TO THE FULLEST EXTENT PERMITTED BY LAW, NUTANIX AND ITS LICENSORS SHALL NOT BE LIABLE FOR ANY DAMAGES, WHETHER IN CONTRACT OR TORT (INCLUDING NEGLIGENCE) OR ANY OTHER LEGAL OR EQUITABLE THEORY, ARISING FROM THIS AGREEMENT, INCLUDING WITHOUT LIMITATION ANY INDIRECT, CONSEQUENTIAL, SPECIAL, EXEMPLARY, INCIDENTAL DAMAGES, EVEN IF NUTANIX HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR FOR ANY LOST REVENUES, GOODWILL OR PROFITS, BUSINESS INTERRUPTION, PROCUREMENT OF SUBSTITUTE HARDWARE, SOFTWARE OR SERVICES, LOST DATA, WORK STOPPAGE, RE-RUN TIME, INACCURATE OUTPUT, COMPUTER FAILURE OR MALFUNCTION. YOU AGREE THAT YOU SHALL HAVE THE SOLE RESPONSIBILITY FOR PROTECTING YOUR DATA, BY PERIODIC BACKUP OR OTHERWISE. IN ANY CASE, NUTANIX'S SOLE LIABILITY AND YOUR EXCLUSIVE REMEDY UNDER ANY PROVISION OF THIS AGREEMENT SHALL BE THE REPLACEMENT OF THE SOFTWARE FOUND TO BE DEFECTIVE, WITH THE EXCEPTION OF DEATH OR PERSONAL INJURY CAUSED BY THE NEGLIGENCE OF NUTANIX TO THE EXTENT APPLICABLE LAW PROHIBITS THE LIMITATION OF DAMAGES IN SUCH CASES. NUTANIX SHALL NOT BE LIABLE FOR ANY CLAIM BROUGHT MORE THAN ONE YEAR AFTER THE CAUSE OF ACTION FOR SUCH CLAIM FIRST AROSE. BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OR LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE PRECEDING LIMITATIONS MAY NOT APPLY TO YOU IN WHICH CASE NUTANIX'S LIABILITY UNDER THIS AGREEMENT WILL NOT EXCEED THE AMOUNT OF THE LICENSE FEES YOU PAID FOR THE SOFTWARE GIVING RISE TO THE CLAIM.

9. **Infringement.** Subject to the remainder of this section, Nutanix shall defend or settle, at its own expense, any third-party action against You to the extent based upon a claim that the Software infringes any copyright or trademark or misappropriates any trade secret, and will pay such damages or costs as are finally awarded against You attributable to such claim, provided that You (i) notify Nutanix promptly in writing of any such action, (ii) give Nutanix sole control of the defense and/or settlement of such action (iii) give Nutanix all reasonable information and assistance, and (iv) are not in material breach of this Agreement. Should the Software become, or in the opinion of Nutanix be likely to become, the subject of such an infringement claim, Nutanix may replace or modify, in whole or in part, the Software to make it non-infringing. Nutanix assumes no liability hereunder for: (a) any method or process in which the Software may be used; (b) its compliance with Your specifically requested specifications; (c) use of software other than a current unaltered release of the Software or use of any older version of the Software when the use of a newer release of the Software made available to You would have avoided the infringement; (d) the combination, operation or use of the Software with non-Nutanix products or services; or (e) use of the Software in a manner or for a purpose for which it was not intended. You shall indemnify and hold harmless Nutanix and its officers, directors, employees, agents, successors and assigns against any damages, losses, and expenses (including reasonable attorneys' fees) arising from any third-party action to the extent based upon a claim that the Software infringes any copyright or trademark or misappropriates any trade secret due to any of the foregoing factors, and shall give Nutanix all reasonable information and assistance regarding such claim.

THIS SECTION SETS FORTH NUTANIX'S ENTIRE LIABILITY AND OBLIGATION AND YOUR SOLE REMEDY FOR ANY CLAIMS OR ACTIONS RELATED TO INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS.

10. **Confidentiality.** "*Confidential Information*" shall mean the Software and Documentation and all other information disclosed to You that Nutanix characterizes as confidential at the time of its disclosure either in writing or orally, except for information which You can demonstrate: (a) is previously rightfully known to You without restriction on disclosure; (b) is or becomes, from no act or failure to act on Your part, generally known in the relevant industry or public domain; (c) is disclosed to You by a third party as a matter of right and without restriction on disclosure; or (d) is independently developed by You without access to the Confidential Information. You shall use Your best efforts to preserve and protect the confidentiality of the Confidential Information at all times. You shall not disclose, disseminate or otherwise publish or communicate Confidential Information to any person, firm, corporation or other third party without the prior written consent of Nutanix. You shall not use any Confidential Information other than in the course of the activities permitted hereunder. You shall notify Nutanix in writing immediately upon discovery of any unauthorized use or disclosure of Confidential Information or any other breach of this Agreement, and will cooperate with Nutanix in every reasonable way to regain possession of Confidential Information and prevent any further unauthorized use. If You are legally compelled to disclose any of the Confidential Information, then, prior to such disclosure, You will (i) immediately notify Nutanix prior to such disclosure to allow Nutanix an opportunity to contest the disclosure, (ii) assert the privileged and confidential nature of the Confidential Information, and (iii) cooperate fully with Nutanix in protecting against any such disclosure and/or obtaining a protective order narrowing the scope of such disclosure and/or use of the Confidential Information. In the event such protection is not obtained, You shall disclose the Confidential Information only to the extent necessary to comply with the applicable legal requirements. The foregoing obligations shall survive any termination or expiration of this Agreement.

11. **Technical Information.** You agree that Nutanix may collect or process technical and related information arising from Your use of the Software which may include but may not be limited to 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.

12. **Injunctive Relief.** You acknowledge and agree that Your breach or threatened breach of this Agreement shall cause Nutanix irreparable damage for which recovery of money damages would be inadequate and that Nutanix therefore may obtain timely injunctive relief to protect its rights under this Agreement in addition to any and all other remedies available at law or in equity.

13. **Compliance with Laws; Export Control.** Each Party shall comply with all laws applicable to the actions contemplated by this Agreement. You acknowledge that the Software is of United States origin, and is subject to the U.S. Export Administration Regulations, and 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 lists of Specially Designated Nationals, Foreign Sanctions Evaders, Sectoral Sanctions Identifications, or Palestinian Legislative Council; or the U.S. Commerce Department Denied Persons List, Entity List, or Unverified List; or the U.S. State Department Nonproliferation Sanctions, or Debarred List; and (2) You will not permit the Software, directly, or indirectly, 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 DFARS Section 227.7202 and FAR Section 12.212(b), as applicable. Any use, modification, reproduction, release, performing, displaying or disclosing of Software and Documentation by or for the U.S. Government shall be governed solely by the terms and conditions of this Agreement. You agree that the Software may not be exported/re-exported to Cuba, Iran, North Korea, Sudan and Syria. Furthermore, You agree not to resell, transfer, or re-export products without prior authorization from Nutanix or the U.S. government to any military entity of: Albania, Armenia, Azerbaijan, Belarus, Cambodia, China (PRC), Georgia, Iraq, Kazakhstan, Kyrgyzstan, Laos, Macau, Moldova, Mongolian P.R., Russia, Tajikistan, Turkmenistan, Uzbekistan, Ukraine, Vietnam.

14. **Governing Law.** To the extent permitted by applicable law, this Agreement is governed by and construed in accordance with the substantive laws of either: (a) the State of California, U.S.A. if You first took delivery of the Software in the United States, Mexico or Canada and You expressly and irrevocably agrees and submits to the exclusive jurisdiction of the federal and state courts located in Santa Clara County, California, U.S.A.; or (b) England if You first took delivery of the Software outside of the United States, Mexico or Canada, and You expressly and irrevocably agrees and submits to the exclusive jurisdiction of the English courts. This Agreement will not be governed by the conflict of laws rules of any jurisdiction or the U.N. Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded.

15. **Miscellaneous.** If any part of this Agreement is held invalid or unenforceable, that part shall be construed to reflect the parties' original intent, and the remaining portions remain in full force and effect. The controlling language of this Agreement is English. If You have received a translation into another language, it has been provided for Your convenience only. A waiver by either party of any term or condition of this Agreement or any breach thereof, in any one instance, shall not waive such term or condition or any subsequent breach thereof. You may not assign, delegate any performance, or otherwise transfer by operation of law or otherwise this Agreement or any rights or obligations herein. You agree not to copy, sell, give or assign the Software or any part thereof to a third party. Nutanix may assign this Agreement to any person or entity at its sole discretion. You represent and warrant that the performance of any activities contemplated by this Agreement do not and shall not conflict with any other agreement or obligation to which You are a party or by which You are bound. This Agreement shall be binding upon and shall inure to the benefit of the Parties, their successors and permitted assigns. This Agreement constitutes the entire and sole agreement between You and Nutanix with respect to the Software and Documentation and supersedes all prior and contemporaneous agreements relating to the Software and Documentation, whether oral or written (including any inconsistent terms contained in a purchase order). If You are found to have breached Section 2 or Section 10 of this Agreement, then Nutanix shall be awarded attorney fees, costs and expenses. This Agreement may be amended only in writing signed by authorized representatives of both Parties and specifically referring to this provision. This Agreement will be interpreted without being construed for or against either Party. The words "includes" and "including" and the abbreviation "e.g." will be deemed to be followed by the words "without limitation".

16. **User Outside the U.S.** If You are using the Software or Documentation outside the U.S., then the following shall apply: (a) You confirm that this Agreement and all related documentation is and will be in the English language; (b) You are responsible for complying with any local laws in Your jurisdiction which might impact Your right to import, export or use the Software and Documentation, and You represent that You have complied with any regulations or registration procedures required by applicable law to make this license enforceable.

## EXHIBIT A - Support Terms & Conditions

1. **SUPPORT.** Customer is not entitled to support unless Customer has ordered and paid for Support as provided in the Order. Nutanix will use reasonable efforts to provide support services as described in these Support Terms and Conditions ("Support") at the level Customer has purchased (e.g., Basic, Production or Mission Critical) for the term Customer has purchased, which commences upon Product shipment. Nutanix may suspend performance of Support if Nutanix does not receive payment when due. Nutanix's Support contact information is at [www.nutanix.com/support](http://www.nutanix.com/support). Support is contacted primarily through Nutanix's web support portal (generally accessible on a 24x7x365 basis excepting periodic maintenance or network unavailability) and secondarily through telephone and email support. Nutanix's Support obligation is limited to using reasonable efforts to remedy a reported failure of the Products to substantially operate in accordance with Nutanix's official specifications (a "problem"). Support does not include Hardware or Software installation, training, consulting services or preventative maintenance.

- A. **SOFTWARE SUBSCRIPTION.** Support may include a subscription to new releases of the Software that are commercially released by Nutanix during Customer's term of Support which may include bug fixes, patches releases, and major updates ("Releases"), but does not include enhancements or upgrades licensed by Nutanix for a separate fee at Nutanix's discretion. Any Releases may only be installed as an update to the Customer's original Software on the original Hardware. All Releases will be subject to the terms and conditions set forth in the Purchase Terms and Conditions of which these Support Terms and Conditions are a part, and the EULA or Click-wrap. Customer can download Releases from <http://support.nutanix.com>. Notwithstanding the foregoing, Nutanix has no obligation to deliver Release(s) to Customer. In addition, Nutanix does not guarantee that future Releases will be compatible with the Hardware Customer has purchased.
- B. **HARDWARE SUPPORT.** If Nutanix determines that replacement parts are required for Support, and Hardware Support is included in the Support services purchased by Customer, then Nutanix will use reasonable efforts to deliver them to Customer, at no charge, by the target delivery time ("TDT"), which begins after Nutanix has diagnosed the problem. For critical parts, Nutanix's TDT is 4 hours for Platinum Plus Service, and next business day for Gold and Platinum Service if the problem is diagnosed by Nutanix before 3pm Pacific Standard Time (PST). For non-critical parts, Nutanix TDT is within a reasonable time after the problem is diagnosed by Nutanix. Nutanix actual delivery times may vary if Customer's location is remote and/or if common carriers encounter delays or require special transportation arrangements in reaching Customer's site, or if customs clearances impose delays. Platinum Plus Service is not available in all locations. Replacement parts may be new or refurbished at Nutanix's option. Defective parts must be returned following Nutanix's RMA policy set forth at [www.nutanix.com/support](http://www.nutanix.com/support). If Customer does not follow Nutanix's RMA policy, Nutanix may invoice Customer the full cost of the replacement part. If Customer has purchased Nutanix no-return-disk option, then Customer will not be invoiced for a replacement disk drive if Customer does not return a failed drive. All Products that are replaced become Nutanix property. Unless Customer requests otherwise, Nutanix or a Nutanix subcontractor will typically provide on-site installation of the replacement part with Customer's reasonable assistance.
- C. **SOFTWARE SUPPORT.** Nutanix may provide Customer with Software Support as part of the Support Services package purchased by Customer. All problem classifications shall be determined by Nutanix in its sole and absolute discretion. Nutanix classifies Software problems as either: P1—Customer's production use is stopped or so severely impacted that Customer cannot reasonably continue use of the Products; P2—important Product features are unavailable with no acceptable workaround, but Customer's production use is continuing; P3 — important Product features are unavailable but a workaround is available, or less significant Product features are unavailable with no reasonable workaround, but Customer's production use is continuing; P4 —all other problems. Customer must expeditiously provide Nutanix with notice of any problem. Once notice is received, Nutanix will use reasonable efforts to acknowledge Customer's problem report and commence Support efforts to resolve the problem(s). When it becomes necessary (and in Nutanix's sole discretion), Nutanix will provide on-site technical support in Nutanix's discretion, and if so provided in Nutanix's discretion, Nutanix will be responsible for travel and related expenses incurred in providing the on-site Support. If Nutanix determines that Customer's problem was not caused by Nutanix Products and if the on-site Support was requested by Customer, then Nutanix may charge Customer Nutanix's then-current daily time and materials rate plus reasonable travel and lodging expenses for the on-site Support.
2. **EXCLUSIONS.** Nutanix will have no Support obligations for any conditions attributable to: (i) negligence or misuse or abuse of the Products; (ii) use of the Products other than in accordance with Nutanix's official specifications; (iii) modifications, alterations or repairs to the Products made by a party other than Nutanix or a party authorized by Nutanix; (iv) any failure by Customer or a third party to comply with environmental and storage requirements for the Products specified by Nutanix, including, without limitation, temperature or humidity ranges; or (v) use of the Product

with any non-Nutanix apparatus, data or programs outside the typical, recommended or reasonably anticipated use of the Products within their specifications.

3. **CONDITIONS TO NUTANIX'S SUPPORT OBLIGATIONS.** Customer needs to do the following as a condition to Nutanix's provision of Support: (i) pay all applicable fees; (ii) designate from time to time a reasonable number of authorized persons trained by Nutanix who can contact Nutanix for Support, which persons are Customer's only personnel entitled to contact Nutanix for Support; (iii) register all Products with Nutanix, and provide notice to Nutanix of all sites and site moves; (iv) provide Nutanix access to Customer's site and/or network and personnel as Nutanix reasonably requests to assist Nutanix in performing the Support; (v) enable Nutanix's automated alert system on the Products which sends regular system status reports and alerts to Nutanix when certain critical system events occur in the Product at Customer's site; (vi) use the Products in a supported configuration and maintain the Software within the then-current prior two Releases; (vii) install recommended replacement parts in the Products as reasonably directed by Nutanix; (viii) refrain from arbitrarily changing Product settings or configurations reasonably recommended by Nutanix; (ix) ensure that proper licenses have been obtained for all Software and adhere to all licensing terms and conditions; and (x) make available to Nutanix any of Customer's systems data, information and other materials reasonably required by Nutanix for the Support ("Customer Materials"), the accuracy of which is Customer's responsibility. Subject to Customer's rights in the Customer Materials, Nutanix will exclusively own all rights, title and interest in and to any software programs or tools, utilities, technology, processes, inventions, devices, methodologies, specifications, documentation, techniques and materials of any kind used or developed by Nutanix or Nutanix's personnel in connection with performing Support ("Nutanix Materials"), including all worldwide patent rights (including patent applications and disclosures), copyright rights, moral rights, trade secret rights, know-how and any other intellectual property rights therein. Customer will have no rights in the Nutanix Materials except as expressly agreed to in writing by Nutanix and Customer. Nothing in these Purchase Terms and Conditions will be deemed to restrict or limit Nutanix's right to perform similar services for any other party or to assign any employees or subcontractors to perform similar services for any other party. Customer agrees that it may be necessary for Nutanix to collect, process and use Customer's data in order to perform Nutanix obligations to provide Support. Customer consents to these activities and to the transfer of the data to Nutanix affiliated companies and service providers located throughout the world who are subject to confidentiality agreements with Nutanix. Nutanix will not be responsible for Customer's or any third party's software, firmware, information, or memory data contained in, stored on, or integrated with any Products returned to Nutanix for repair.
4. **REINSTATEMENT OF SUPPORT.** If Customer has not continuously purchased and complied with the terms and conditions of Support, Customer may request that Nutanix perform an inspection of the Products and any professional services Nutanix reasonably determines are required for the Products to be certified as substantially operating within their official Product specifications. After Nutanix's certification, Customer may reinstate Support if Nutanix then offers it in general commercial availability and upon payment to Nutanix of: (i) for any Products that have been off Support for more than ninety (90) days, twenty percent (20%) of the annual rate of Support for recertification services; (ii) the pro rata Support fees that would have been payable at Nutanix's then applicable annual rate of Support for the period the Products were not covered by Support; and (iii) the Support fees for the annual period commencing upon the reinstatement of Support.
5. **NON-TRANSFERABILITY.** If Customer sells or otherwise transfers any Hardware to any third party, Customer will either de-install and remove the Software from such Hardware prior to sale or transfer, or provide Nutanix with reasonable notice and an opportunity to remove or disable such Software prior to any sale or transfer of the Hardware. Subject to availability of resources, Nutanix will provide de-installation services to Customer at Nutanix's then current time and materials rates provided Customer has complied with these Purchase Terms and Conditions and entered into a separate agreement with Nutanix to receive such de-installation services. Subject to availability of resources, Nutanix will provide re-installation and re-certification services to a third party purchaser or transferee of Nutanix Hardware, in



- each case at Nutanix's then current time and materials rates provided the purchaser or transferee has: (i) met Nutanix credit requirements; (ii) obtained a Software license from Nutanix; (iii) entered into a separate agreement with Nutanix to receive re-installation and re-certification services; (iv) obtained re-certification of the Products as installed; and (v) paid any Support reinstatement fees and purchased at least a one (1) year term of annual Support from Nutanix commencing upon the date of Product transfer. Customer's remaining outstanding term of Support is not transferable. Notwithstanding the foregoing, Nutanix reserves the right to refuse to grant a Software license or provide Services to a proposed purchaser or transferee as determined in Nutanix's sole and absolute discretion.
6. **RELATIONSHIP OF THE PARTIES.** Nutanix is performing Support as an independent contractor, and not as an employee, agent, joint venturer or partner of Customer, and neither of the parties has the authority to bind the other by contract or otherwise. Nutanix acknowledges and agrees that Nutanix personnel are not eligible for or entitled to receive any compensation, benefits or other incidents of employment that Customer makes available to its employees. Nutanix is solely responsible for all taxes, expenses, withholdings, and other similar statutory obligations arising out of the relationship between Nutanix and Nutanix personnel and the performance of Support by Nutanix personnel.
  7. **ENGLISH.** All Support will be provided in the English language unless agreed otherwise. The parties confirm that they have requested that the Purchase Terms and Conditions of which these Support Terms and Conditions are a part and all related documents be drafted in English at the express wishes of the parties. Les parties ont exigé que le présent contrat et to Nutanix les documents connexes soient rédigés en anglais selon la volonté expresse des parties.
  8. **CAPITALIZED TERMS.** Capitalized terms not defined herein shall have the meaning set forth in the Purchase Terms and Conditions of which these Support Terms and Conditions are a part, which may be found at [www.nutanix.com/support](http://www.nutanix.com/support).

## EXHIBIT B – LIMITED WARRANTY

1. **EQUIPMENT.** Nutanix warrants solely to Customer that the Hardware will be substantially free from material defects in material and workmanship for the one (1) year period from the date of shipment of the Products (the "Hardware Warranty Period"). Nutanix's entire liability, and Customer's sole and exclusive remedy, under this warranty will be for Nutanix, at Nutanix's option: (i) to use reasonable efforts to repair the defective Hardware within a reasonable period of time; (ii) to replace the defective Hardware; or (iii) if, after reasonable efforts Nutanix is not able to correct the deficiencies, to accept return of the Product for a refund of the amount paid for the Product and the pre-paid and unused portion of any remaining term of Support for the Product. Defective parts must be returned under Nutanix RMA policy at [www.nutanix.com/support](http://www.nutanix.com/support), and if the defective part is not returned Nutanix may invoice Customer for the replacement part. If Customer has purchased Nutanix's no-return-disk option, then Customer will not be invoiced for a replacement disk drive if Customer does not return a failed drive. All Products that are replaced become Nutanix's property. Nutanix will not be responsible for Customer's or any third party's software, firmware, information, or memory data contained in, stored on, or integrated with any Product returned to Nutanix for repair, whether under warranty or not. This Limited Warranty applies only to Nutanix-branded products. Third party products resold by Nutanix may have separate warranty terms, which can be found at [www.nutanix.com/support](http://www.nutanix.com/support).

2. **REPLACEMENT PARTS.** All replacement parts carry a warranty on the terms and conditions set forth immediately above of the following duration: (i) if the replacement part is installed with more than ninety (90) days remaining on the Hardware Warranty Period, then the warranty on the replacement part shall be until the expiration of the Hardware Warranty Period; (ii) if the replacement part is installed during the Hardware Warranty Period but with fewer than ninety (90) days remaining on the Hardware Warranty Period, then the warranty on the replacement part shall be ninety (90) days from the date of installation of the replacement part; and (iii) if the replacement part is installed after the expiration of the Hardware Warranty Period under the terms and conditions of Support, then the

warranty on the replacement part shall be the earlier of ninety (90) days from the date of installation of the replacement part and the last day of Support. Replacement parts may be new or refurbished.

3. SOFTWARE. Nutanix warrants to Customer that the Software will substantially perform in accordance with Nutanix's official Product specifications for the ninety (90) day period from the date of shipment of the Products. Nutanix does not warrant that the operation of the Software will be uninterrupted or error free, or that all defects can be corrected. Nutanix's entire liability, and Customer's exclusive remedy, under this warranty will be for Nutanix, at Nutanix's option: (i) to use reasonable efforts to remedy the defective Software within a reasonable period of time so as to cause it to operate as warranted; (ii) to replace the affected Software; or (iii) if, after reasonable efforts Nutanix is not able to correct the deficiencies, to accept return of the affected Software for a refund of the amount paid by Customer for the affected Software and the pre-paid and unused portion of any remaining term of Support for the affected Software.

4. SERVICES. Nutanix will use reasonable efforts to provide Services in a workmanlike manner. Customer must notify Nutanix of any failure to so perform within ten (10) days after the date on which such failure first occurs. Nutanix's entire obligation, and Customer's exclusive remedy, under this warranty will be for Nutanix, at Nutanix option: (i) to use reasonable efforts to re-perform the deficient Services within a reasonable period of time; or (ii) if, after reasonable efforts Nutanix is not able to correct the deficiencies, refund the portion of any Services fee that corresponds to the failure to perform.

5. EXCLUSIONS. Nutanix will have no obligation under these Limited Warranties to the extent that any problem with a Product results from or is otherwise attributable to: (i) negligence or misuse or abuse of the Product; (ii) use of the Product other than in accordance with Nutanix's official specifications; (iii) modifications, alterations or repairs to the Product made by a party other than Nutanix or a party authorized by Nutanix; (iv) any failure by Customer or a third party to comply with environmental and storage requirements for the Product specified by Nutanix, including, without limitation, temperature or humidity ranges; or (v) use of the Product in combination with any non-Nutanix apparatus, data or programs outside Nutanix's typical, recommended or reasonably anticipated use of the Products within their official Product specifications. Customer shall be solely liable for all freight, storage, and repair costs associated with any return that, in Nutanix's sole discretion, is not eligible for return hereunder, and Nutanix may invoice Customer for any of the foregoing costs.

6. WARRANTY DISCLAIMER. EXCEPT PURSUANT TO THE LIMITED WARRANTIES EXPRESSLY DESCRIBED ABOVE, NUTANIX DOES NOT MAKE, AND HEREBY EXPRESSLY DISCLAIMS ANY WARRANTY OR REPRESENTATION WITH RESPECT TO THE PRODUCTS OR SERVICES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF Limited Warranties Page 2 MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, PERFORMANCE, ACCURACY, RELIABILITY, AND NON-INFRINGEMENT. SOME JURISDICTIONS DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS SO THE FOREGOING LIMITATIONS MAY NOT APPLY TO CUSTOMER. NUTANIX DOES NOT WARRANT THAT THE OPERATION OF THE PRODUCTS WILL BE UNINTERRUPTED OR ERROR FREE.

7. HAZARDOUS USE RESTRICTION. THE PRODUCTS ARE NOT DESIGNED FOR USE IN HAZARDOUS ENVIRONMENTS REQUIRING FAILSAFE PERFORMANCE, INCLUDING 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. 8. CAPITALIZED TERMS. Capitalized terms not defined herein shall have the meaning set forth in the Purchase Terms and Conditions of which these Limited Warranties are a part, which may be found at [www.nutanix.com/support](http://www.nutanix.com/support).

This End User License Agreement (“EULA”) is between the OpenText entity specified in the signature block below (“OT”) and the licensee specified in the signature block below (“Licensee”) and is effective on the last signature date (“Effective Date”).

OT and Licensee agree as follows:

### **1.0 Definitions**

“**Affiliate**” means any entity controlled by, controlling, or under common control with a party to this EULA. Control exists through ownership, directly or indirectly, of a majority of the outstanding equity capital and of the voting interests of the subject entity. If an entity ceases to meet these criteria, it will cease to be an Affiliate under this EULA;

“**Claim**” means claims, suits, actions or proceedings brought against Licensee in a court of competent jurisdiction in a Covered Country by a third party which allege an infringement of the third party’s patent, copyright, or trade secret rights existing under the laws of the Covered Country;

“**Confidential Information**” means information, whether or not in physical form, all oral communications, documents and other information, disclosed by a party to the other which: (a) is by its nature or circumstances surrounding its disclosure is, or could reasonably be expected to be regarded as, confidential to the disclosing Party; (b) is marked or otherwise designated “confidential” by the disclosing Party; or (c) the disclosing Party informs the receiving Party is confidential or a trade secret;

“**Covered Countries**” means each contracting party to The Patent Cooperation Treaty (currently published at <http://www.wipo.int/pct/en/>) and “**Covered Country**” means one of them;

“**Documentation**” means user guides, operating manuals, and release notes in effect as of the date of delivery of the applicable Software, made generally available by OT;

“**Fees**” means Licensee Fees and/or Maintenance Fees, as applicable;

“**License Documents**” means this EULA including any addenda, the License Model Schedule, all Transaction Documents (including pricing information), Documentation, the document entitled Third Party Notifications (as applicable) available at [www.opentext.com/agreements](http://www.opentext.com/agreements), and any other documents provided by OT setting out permitted uses of the Software;

“**License Fees**” means all non-refundable fees payable by Licensee to OT with respect to the granting of Software Licenses;

“**License Model**” means the description of the conditions, limitations and restrictions associated with the Software License which govern the use of the Software, as set out in the applicable License Model Schedule;

“**License Model Schedule**” for each individual Software License means the version of the document(s) entitled “License Model Schedule” applicable to the licensed Software posted at <http://www.opentext.com/agreements> in effect on the date of the applicable Transaction Document;

“**Physical Media**” means the physical media or hardware containing or enabling Software;

“**Reseller**” means an authorized OT reseller;

“**Software**” means the software products, Documentation, and Support Software licensed to Licensee under this EULA, including all copies made by Licensee and may, where the meaning so implies, refer to all of the Software or portions thereof;

“**Software License**” means a license for the Software granted under this EULA to the Licensee;

“**Maintenance Fees**” means the non-refundable fees payable annually by Licensee to OT for Support Services;

“**Support Handbook**” means the then current version of the software maintenance program handbook published at [www.opentext.com/agreements](http://www.opentext.com/agreements);

“**Support Services**” means the software maintenance and support services described in the Support Handbook;

“**Support Services Term**” means each twelve (12) month period beginning on the date the Software is delivered by OT to Licensee (which may be accomplished by making the Software available by electronic download) or the anniversary thereof.

“**Support Software**” means all maintenance and support software, updates, upgrades, patches, fixes, modifications, ported versions, or new versions of the Software provided to Licensee as part of Support Services, together with all related Documentation provided to Licensee pursuant to such program;

“**Taxes**” means the sales, use, consumption, goods and services, and value-added taxes imposed by the appropriate governments arising out of granting of licenses and delivery of Software or the delivery of Support Services, under this EULA, except taxes imposed on OT’s income;

“**Third Party Software**” means software products owned and licensed directly by third parties to the Licensee;

“**Transaction Document**” includes: a) a written order schedule signed by both parties which references this EULA, b) a quotation issued by OT and signed by the Licensee, c) an invoice issued by OT, d) a renewal notice issued by OT or an Affiliate for Support Services, or e) any other document that references this EULA and is agreed to by OT in writing. If and to the extent of any inconsistency between two or more Transaction Documents, the priority of the Transaction Documents will be interpreted in the order listed above. All Transaction Documents are governed by this EULA.

### **2.0 Ownership of the Software**

**2.1 Ownership.** None of the Software is being sold. All ownership, intellectual property, and other rights and interests in the Software remain solely with Open Text Corporation, its Affiliates or its licensors. The source code of the Software is a trade secret of Open Text Corporation, its Affiliates or its licensors, and is their confidential information.

### **3.0 License Grant**

**3.1 Grant of License.** Except as otherwise stated in the License Documents and subject to Licensee’s payment of the License Fees and Taxes in full, OT grants to Licensee a non-transferable (except as provided herein), worldwide, nonexclusive, perpetual (unless stated to be a time limited term), internal business use license (unless otherwise stated in the License Model Schedule) to

download, install and execute the Software identified in the applicable Transaction Document in object code only, subject to the License Models, restrictions, quantities, conditions, and limitations stated in the License Documents. OT reserves all rights not expressly granted to Licensee in a written document signed by both parties.

**3.2 Applicable License Models.** The License Model and any restrictions for the Software will be stated in the Transaction Document. If no License Model or restrictions are specified in the Transaction Document, the License Model (and any capacities) for which OT has been paid License Fees will apply.

**3.3 Allocation of Licenses to Affiliates.** Unless prohibited under the applicable License Document, the Licensee may allocate Software Licenses to its Affiliates, provided: (a) the Licensee remains responsible for the Affiliate's compliance with the License Documents; and (b) the Licensee is liable for any breach of the License Documents by an Affiliate.

#### **4.0 Authorized Copies**

**4.1 Software and Documentation.** Licensee may make as many copies of the Software necessary for it to use the Software as licensed. Each copy of the Software made by Licensee must contain the same copyright and other notices that appear on the original copy. Licensee will not modify the Documentation. Documentation may: (a) only be used to support Licensee's use of the Software; (b) not be republished or redistributed to any unauthorized third party; and (c) not be distributed or used to conduct training for which Licensee, or any other party, receives a fee. Licensee will not copy any system schema reference document related to the Software.

#### **5.0 Restrictions**

**5.1 General Restrictions.** Except as provided in the License Documents, Licensee will not and will not permit any other party to: (a) assign, transfer, give, distribute, reproduce, transmit, sell, lease, license, sublicense, publicly display or perform, redistribute or encumber the Software by any means to any party; (b) rent, loan or use the Software for service bureau or time-sharing purposes, 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 in any other way allow third parties to access, use, and/or exploit the Software; (c) use the Software, in whole or in part, to create a competitive offering; (d) charge a fee to any party for access to or use of the Software; (e) use the Software in a manner inconsistent with the License Documents.

**5.2 Further Restrictions.** Licensee will not disclose results of any benchmark or other performance, evaluation, or test run on or related to the Software. Licensee acknowledges that the Software is not fault-tolerant and not designed, manufactured, or intended for use or resale as online control equipment in hazardous environments requiring fail-safe performance and consequently will not use the Software for (a) the on-line control of aircraft, air traffic, aircraft navigation, or aircraft communications; (b) in the design, construction, operation or maintenance of any nuclear facility; (c) medical or surgical applications; or (d) any other application in which failure could cause personal injury or death. Except as expressly permitted under applicable law, Licensee will not modify, adapt, translate, reverse engineer, decompile, disassemble, decrypt, port, emulate the functionality, reverse compile, reverse assemble, or otherwise reduce or attempt to discover any source code or underlying structures, ideas, or algorithms of the Software or any confidential information or trade secret.

**5.3 Derivative Works / Improvements.** Licensee is prohibited from using the Software to create any change, translation, adaptation, arrangement, addition, modification, extension, upgrade, update, improvement, (including patentable improvements), new version, or other derivative work of or to the Software. Notwithstanding the foregoing, if any of the Software is provided to the Licensee in source code format (or any other format that can be modified), the Licensee may modify such portion of the Software for the sole purpose of using the Software in accordance with this EULA and OT will solely own all modified portions and Licensee will irrevocably assign to OT in perpetuity all worldwide intellectual property and any other proprietary rights in and to any modifications of the Software.

**5.4 Interfacing and Interactive Software.** Licensee may not permit any software products not licensed by OT to interface or interact with the Software, unless accomplished through the use of application program interfaces provided by OT.

#### **6.0 Ordering Software Licenses**

**6.1 Direct Orders.** If Licensee orders Software directly from OT, the Software must be identified on a Transaction Document acceptable to OT.

**6.2 Orders through an OT Reseller.** Software Licenses ordered through a Reseller are governed by the license grant set out in this EULA and the License Model description set out in the License Model Schedule. The License Model will be stated in an order document between Licensee and Reseller. If Reseller does not notify Licensee of the correct License Model, then the License Model for which OT has been paid License Fees will apply.

**6.3 Risk of Loss and Shipping Terms.** The Software is deemed delivered on the earlier of (a) when it is made available by OT for electronic download, or (b) when OT delivers the Software on Physical Media. Title to the Physical Media and all risk of loss for the Physical Media will pass to Licensee when delivered by OT to the shipping dock of the OT shipping facility.

**6.4 Invoicing and Payment.** OT may invoice Licensee for Fees and Taxes upon delivery of Software and annually in advance for the applicable Support Services Term. All Fees and Taxes due to OT by Licensee are due and payable upon Licensee's receipt of an invoice from OT. Fees do not include Taxes which are the responsibility of Licensee. If OT is obligated to pay Taxes on behalf of Licensee, Licensee will reimburse OT in full promptly following receipt of OT's invoice. All Fees and Taxes due to OT under this EULA are payable in the currency specified in the Transaction Document. All Fees and Taxes due to OT which are not paid in full within 30 days following its due date will bear interest at a rate of 1.5% per month (18% per annum) or the maximum amount allowed by law, if less, on the unpaid portion until fully paid. This subsection does not apply if Software is purchased through an OT Reseller.

**6.5 Over Usage.** OT may invoice Licensee for Fees and Taxes payable by Licensee due to use of or authorization to access the Software in excess of the number or type of Software Licenses granted by OT.

**6.6 Licensee Affiliate Orders.** Licensee's Affiliates that order Software Licenses are bound by the terms and conditions of this EULA as if it were the Licensee. Licensee and its Affiliates are jointly and severally liable to OT for any breach of this EULA.

**6.7 OT Affiliate Orders.** OT Affiliates may fulfill orders pursuant to a Transaction Document in which case the OT Affiliate is bound by all of the terms and conditions of this EULA as if it were OT.

## **7.0 OT Support and Maintenance.**

**7.1 OT Support and Maintenance Program.** All Support Software and Support Services provided to Licensee are governed by this EULA and the then-current version of the applicable Support Handbook.

**7.2 Support Services Exclusions.** OT shall have no responsibility to provide Support Services to Licensee with respect to any problem with the Software caused by: (a) any software, device, or other product not supplied by OT; (b) neglect, misuse, alteration, or modification, to the Software other than by OT; (c) use of the Software for a purpose other than the purpose for which it was designed; (d) use of the Software on a computer platform other than the platform authorized by OT (which may be specified in the Documentation accompanying the Software); or (e) failure of Licensee to install any Support Software provided by OT.

## **8.0 Audits and Noncompliance.**

**8.1 Audit.** During the term of this EULA and for 24 months after, Licensee will maintain electronic and other records sufficient for OT to confirm that Licensee has complied with this EULA. Licensee will promptly and accurately complete and return (within 30 days of OT request) any self-audit questionnaires, along with a certification by an authorized representative of Licensee confirming that Licensee's responses to the questionnaire accurately and fully reflect Licensee's usage of the Software. Furthermore, OT may once per year audit Licensee's records and computer systems (including servers, databases, and all other applicable software and hardware) to ensure Licensee has complied with this EULA. Licensee shall cooperate with OT's audit team and promptly and accurately respond to, database queries, location information, system reports, and other reports requested by OT and provide a certification by an authorized representative of Licensee confirming that information provided by Licensee accurately reflects Licensee's usage of the Software

**8.2 Conduct.** Audits will be conducted during regular business hours and will not interfere unreasonably with Licensee's business. OT will provide Licensee prior notice of each audit. Such audit shall be scheduled as soon as reasonably possible but in no event more than 7 days subsequent to the notice. Licensee will allow OT to make copies of relevant Licensee records. OT will comply with all applicable data protection regulations.

**8.3 Noncompliance.** If Licensee is not in compliance with the Software Licenses, Licensee will be deemed to have acquired additional Software Licenses at OT's then-current list price to bring Licensee into compliance, and Licensee must immediately pay (a) the applicable License Fees and Taxes, and (b) Maintenance Fees for: (i) the period Licensee was not in compliance with the Software License; and (ii) the first year Maintenance Fees on any additional Software Licenses. If Licensee has failed to comply with the License Documents, Licensee will reimburse all reasonable costs incurred by OT in performing the audit. Compliance with the License Documents is the sole responsibility of Licensee.

## **9.0 Limited Warranties**

**9.1 Limited Warranty.** OT warrants to Licensee that: (a) Software will be free of all known viruses at the time of first delivery; and (b) Software will perform substantially in accordance with its accompanying Documentation for 60 days from the date of first delivery; and (c) Support Services will be delivered with reasonable skill and care. OT's entire liability, and Licensee's sole remedy, for each breach by OT of the warranty in: (i) clause (a) is limited to requiring OT to deliver a replacement copy of the Software to Licensee free of known viruses; and (ii) clause (b) is limited to requiring OT to correct or work around the portion of the Software giving rise to such breach within a commercially reasonable time, failing which, in the case of the initially-delivered Software, OT will refund all License Fees attributable to the portion of the Software giving rise to the breach; and (iii) clause (c) is for OT to re-perform the applicable Support Services.

**9.2 Warranty Exclusions.** The warranties do not apply to any breach caused by: (a) any change to the Software, except where the changes were made by OT through Support Software; (b) Licensee's failure to provide a suitable installation or operating environment for the Software; (c) use of the Software on or caused by software, firmware, computer systems, data, technology or a hardware platform not approved by OT in writing; (d) any telecommunications medium used by Licensee; (e) failure of Licensee or user to comply with the Documentation; or (f) failure of Licensee to report a warranty claim within the warranty period. OT does not warrant that the Software is error-free or will operate without interruption.

**9.3 WARRANTY DISCLAIMER. EXCEPT FOR THE EXPRESS LIMITED WARRANTIES PROVIDED IN THIS SECTION, OT AND OT'S LICENSORS MAKE NO REPRESENTATIONS AND DISCLAIM ANY AND ALL EXPRESS, IMPLIED, OR STATUTORY WARRANTIES AND CONDITIONS, WRITTEN OR ORAL, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR THE ADEQUACY OF THE SOFTWARE TO PRODUCE A PARTICULAR RESULT.**

**9.4 Inability to Exclude Warranties.** If a jurisdiction applicable to this EULA restricts the exclusion of certain implied warranties, limitations on how long an implied warranty may last, or the exclusion or limitation of incidental, consequential, or special damages: (a) each warranty which cannot be excluded is limited in time to 60 days from the date of first delivery of the Software; and (b) OT's total liability to Licensee for breach of all such warranties are limited to the amount stated in the Limitation of Liability section.

## **10.0 OT Infringement Indemnity**

**10.1 Infringement Claims.** OT will defend Licensee from any Claim, to the extent the Claim arises solely as a result of Licensee's use of the Software in accordance with the License Documents. This defense will not apply to a Claim to the extent caused by: (a) Licensee's failure to incorporate a Software update or upgrade that would have avoided the alleged infringement; (b) the modification of the Software by any party other than OT; (c) the combination or use of the Software with software, hardware, firmware, data, or technology not licensed to Licensee by OT or approved by OT in writing; or (d) unlicensed activities of the Licensee. As to any such cause, OT assumes no liability for infringement and Licensee will hold OT harmless against any infringement claims arising therefrom.

**10.2 Exclusions.** OT's obligations in this section are conditioned upon: (a) Licensee notifying OT in writing within 10 days of Licensee becoming aware of a Claim; (b) Licensee not making an admission against OT's interests unless made pursuant to a judicial request or order; (c) Licensee not agreeing to any settlement of any Claim without the prior written consent of OT; and (d) Licensee, at the request of OT, providing all reasonable assistance to OT in connection with the defense, litigation, and settlement by OT of the Claim; and (e) OT having sole control over the selection and retainer of legal counsel, and over the litigation or the settlement of each Claim. OT will indemnify Licensee from any judgment finally awarded or any final settlement in connection with any Claims, provided all the conditions of this section are satisfied.

**10.3 Licensee's Continued Use.** If the Software becomes the subject of a Claim, OT will, in its absolute discretion, either (a) obtain a license for Licensee to continue using the Software, (b) replace or modify the Software without unreasonable degradation in functionality or (c) terminate the Software License to the infringing portion of the Software and refund the unamortized portion of the License Fees received by OT and attributable to the infringing portion of the Software, based on a 3 year straight line amortization. OT's entire liability and Licensee's sole and exclusive remedy with respect to any Claims are limited to the remedies set out in the OT Infringement Indemnity section.

### **11.0 Limitation of Liability**

**11.1 EXCLUSION OF DAMAGES. NOTWITHSTANDING ANY BREACH BY OT (INCLUDING FUNDAMENTAL BREACH) OR TERMINATION OF THIS EULA, OT IS NOT LIABLE TO LICENSEE OR TO ANY OTHER PARTY FOR: (A) ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, AGGRAVATED, EXEMPLARY, OR PUNITIVE DAMAGES; OR (B) ANY LOST SALES, LOST REVENUE, LOST PROFITS, LOST OR CORRUPTED DATA, OR REPROCUREMENT AMOUNT.**

**11.2 LIMITATION OF LIABILITY. OT'S AGGREGATE LIABILITY TO LICENSEE WILL NOT EXCEED THE TOTAL AMOUNT OF FEES PAID TO OT UNDER THE RELEVANT TRANSACTION DOCUMENT. THE PARTIES WOULD NOT HAVE ENTERED INTO THIS EULA WITHOUT THIS SECTION.**

**11.3 DISCLAIMER. THE LIMITATIONS IN THIS SECTION APPLY: (A) TO LIABILITY FOR NEGLIGENCE; (B) REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, EQUITY, AT LAW, STRICT PRODUCT LIABILITY, OR OTHERWISE; (C) EVEN IF OT IS ADVISED IN ADVANCE OF THE POSSIBILITY OF THE DAMAGES IN QUESTION AND EVEN IF SUCH DAMAGES WERE FORESEEABLE; AND (D) EVEN IF LICENSEE'S REMEDIES FAIL IN THEIR ESSENTIAL PURPOSE. IF THE APPLICATION OF THIS SECTION IS LIMITED BY LAW, OT'S LIABILITY WILL BE LIMITED TO THE EXTENT PERMITTED BY LAW.**

### **12.0 Termination**

**12.1 Termination for Default.** Either party may terminate this EULA if the other party: (a) becomes insolvent; or (b) has a receiver or receiver manager appointed with respect to it or any of its assets. Without prejudice to each right or remedy of a non-breaching party, either party may terminate this EULA for material breach by written notice, effective 10 days after notice unless the other party first cures the breach.

**12.2 Effect of Termination or Expiration.** Upon any termination of this EULA, or license granted pursuant to this EULA, or upon expiration of a term license: (a) all Software Licenses will immediately terminate; (b) Licensee will immediately cease all use of the Software; and (c) Licensee must either deliver to OT or destroy all copies of Software, Documentation, and OT confidential information in Licensee's possession or control. Within 15 days after termination, an authorized representative of Licensee must certify in writing that all copies have been delivered to OT or destroyed. Any terms in this EULA which by their nature extend beyond termination or expiration of this EULA will remain in effect until fulfilled.

**12.3 Termination or suspension of Support Services.** Without limiting OT's rights under clause 12.1, OT may, in its sole discretion, terminate or suspend Support Services if Licensee fails to remedy a material breach within thirty (30) days of notice by OT, including failure to pay an invoice.

### **13.0 Miscellaneous**

**13.1 Confidentiality.** Each party (a "Disclosing Party") may disclose to the other party (a "Receiving Party") any Confidential Information. Each party agrees, for the period of this EULA and for three (3) years after such period, to hold the other party's Confidential Information in strict confidence, not to disclose such Confidential Information to third parties (other than to Affiliates and to professional advisers who are bound by appropriate obligations of confidentiality) unless authorized to do so by the Disclosing Party, and not to use such Confidential Information for any purpose except as expressly permitted hereunder. Each party agrees to take reasonable steps to protect the other party's Confidential Information to ensure that such Confidential Information is not disclosed, distributed or used in violation of the provisions of this section. The foregoing prohibition on disclosure of Confidential Information shall not apply to any information that: (a) is or becomes a part of the public domain through no act or omission of the Receiving Party; (b) was in the Receiving Party's lawful possession without confidentiality obligation prior to the disclosure and had not been obtained by the Receiving Party either directly or indirectly from the Disclosing Party; or (c) is lawfully disclosed to the Receiving Party by a third party without restriction on disclosure; or (d) is independently developed by the Receiving Party by employees or agents without access to the Disclosing Party's Confidential Information (e) is required to be disclosed by the Receiving Party as a matter of law or by order of a court or by a regulatory body, provided that the Receiving Party promptly notifies the Disclosing Party (where lawfully permitted to do so) so that Disclosing Party may intervene to contest such disclosure requirement and/or seek an appropriate protective order or waive compliance with this section. .

**13.2 Automated Verification.** The Software may contain or require a license key to prevent unauthorized installation or to enforce limits of the Software License, and may contain devices or functionality to monitor Licensee's compliance with this EULA.

**13.3 Developer Tools.** OT is not responsible or liable for Licensee's development or use of additional software code or software products ("Licensee Software") using software developer tools licensed by OT and Licensee will defend and indemnify OT against any claims, damages, costs, losses or expenses related to the development or use of the Licensee Software.

**13.4 Independent Contractors.** OT and Licensee are independent contractors. Neither party has any authority to bind the other in any manner.

**13.5 Waiver, Amendment, Assignment.** Any amendment of this EULA must be in writing and signed by both parties. Licensee may not assign, transfer, or sublicense any portion of its interests, rights, or obligations under this EULA by written agreement, merger, consolidation, change of control, operation of law, or otherwise, without the prior written consent of OT. Neither party will be deemed to have waived any of its rights under this EULA by lapse of time or by any statement or representation other than by a written waiver by a duly authorized representative. No waiver of a breach of this EULA will constitute a waiver of any prior or subsequent breach of this EULA. An assignment in contravention of this subsection will be null and void. Except to the extent identified in this subsection, this EULA will be binding upon and inure to the benefit of the respective successors and assigns of the parties.

**13.6 Governing Law.** This EULA is governed by the laws of the State of Delaware, excluding (a) its conflicts or choice of law rules, and (b) the United Nations Convention on Contracts for the International Sale of Goods. Except for a request by OT for injunctive or other equitable relief, any dispute arising out of this EULA will be subject to the exclusive jurisdiction of the courts located in the State of Delaware. The prevailing party in any litigation related to this EULA will be entitled to its reasonable attorneys' fees and court costs.

**13.7 Force Majeure.** Except for payment and confidentiality obligations, or protection of intellectual property, neither party is responsible for any delay or failure in performance of this EULA to the extent due to causes beyond its reasonable control.

**13.8 Severability.** If any provision of this EULA is deemed contrary to applicable law or unenforceable by a court of competent jurisdiction, the provision will be severed from this EULA and all remaining provisions will continue in full force.

**13.9 Export Laws.** The Software, including Documentation, is subject to U.S. export control laws, including the U.S. Export Administration Act and its associated regulations, and may be subject to export or import regulations in other countries. Licensee will comply strictly with all regulations and has the responsibility to obtain any licenses required to export, re-export, or import Software or Documentation.

**13.10 Press Release.** With Licensee's prior approval, OT may refer to Licensee's relationship with OT in a public press release or marketing materials.

**13.11 Attribution Notices.** Licensee will not remove, modify, obscure, resize, or relocate any ownership, attribution, or branding notices from the Software.

**13.12 Resale of Third Party Software.** The use of any Third Party Software resold by OT to the Licensee will be governed by a license agreement between the Third Party Software owner and the Licensee. OT does not provide any warranties related to the Third Party Software. OT has no liability or obligation to the Licensee related to the Third Party Software.

**13.13 US Government End Users-Restricted Rights Legend.** If the Software is being licensed directly or indirectly on behalf of the United States government, the following applies. For civilian agencies and departments: the Software was developed at private expense and is "restricted computer software" submitted with restricted rights in accordance with subparagraphs (a) through (d) of the Commercial Computer Software-Restricted Rights clause of FAR 52.227-19 and its successors, and it is unpublished and all rights are reserved under the copyright laws of the United States. For units of the Department of Defense, the Software is "commercial computer software" and "commercial computer software documentation" under the Rights in Computer Software and Computer Software Documentation clause of DFAR 227.7202-3 (a) and its successors, and all use, duplication or disclosure is subject to the license and restrictions set forth in this EULA.

**13.14 Entire License Agreement.** The License Documents set forth the entire agreement between the parties with respect to this subject matter, and supersede all other related oral and written agreements and communications between the parties. Neither party has relied upon such other agreements or communications. Any purchase order terms which purport to amend or modify terms of the License Documents, or which conflict with the License Documents are void and shall have no legal effect notwithstanding the fact the purchase order terms being later in time or OT issuing an invoice to Licensee after receiving such purchase order from Licensee.

**13.15 Transaction Documents and Order of Priority.** OT and Licensee may agree in a Transaction Document to special provisions which amend or vary a party's rights or obligations under this EULA (including any addenda), the License Model Schedule, Documentation, the document entitled Third Party Notifications available at [www.opentext.com/agreements](http://www.opentext.com/agreements) or any other documents provided by OT setting out permitted uses of the Software. In the event of an inconsistency between: (i) special provisions agreed in a Transaction Document, (ii) this EULA (including any addenda), (iii) the License Model Schedule, Documentation, the document entitled Third Party Notifications available at [www.opentext.com/agreements](http://www.opentext.com/agreements) or any other documents provided by OT setting out permitted uses of the Software, the documents shall be interpreted in that order to the extent of the inconsistency.

**13.16 Third Party Rights.** This EULA does not confer a benefit on, and is not enforceable by, any person or entity who is not a party to this EULA.

**13.17 Legal Review and Interpretation.** Both parties have had an opportunity for legal review of the License Documents. The parties agree that the License Documents result from negotiation between the parties. The License Documents will not be construed in favor of or against either party by reason of authorship. The headings used in this EULA are for convenience only. The term section refers to all subsections below a section heading (i.e. 3.0) and the term subsection refers to sequentially numbered subsections following a section (i.e. 3.1).

**13.18 Notices.** Any notice under this EULA that must be given by a party in writing is deemed effective when sent either: (a) via certified or registered mail, postage prepaid, or (b) via express mail or nationally recognized courier service to the other party's address specified in this EULA or on the most recent Transaction Document. Notices to OT will also be sent to OT's general counsel at 2950 South Delaware Street, San Mateo, California 94403 USA.

**13.19 Hardware.** IF HARDWARE IS IDENTIFIED ON A TRANSACTION DOCUMENT, THE SALE AND USE OF THE HARDWARE WILL BE GOVERNED BY TERMS OTHER THAN THIS EULA. OT DISCLAIMS ALL WARRANTIES AND LIABILITY WITH RESPECT TO THE HARDWARE.

**Open Text Inc.**

Name:

Title:

Date:

Address:

**Licensee:** \_\_\_\_\_

Name:

Title:

Date:

Address:



All references to Palo Alto Networks in these Terms and Conditions should be read as “Contractor (EC America, Inc.), acting by and through its supplier, Palo Alto Networks.”

## END USER LICENSE AGREEMENT (“EULA”)

### PLEASE READ CAREFULLY

THIS EULA IS A LEGAL AGREEMENT BETWEEN YOU, EITHER AS AN INDIVIDUAL, COMPANY OR OTHER LEGAL ENTITY (IN ANY CAPACITY REFERRED TO HEREIN AS “END USER”, “YOU” or “YOUR”) AND (I) PALO ALTO NETWORKS, INC., A DELAWARE CORPORATION WITH OFFICES AT 4401 GREAT AMERICA PARKWAY, SANTA CLARA, CALIFORNIA 95054 UNITED STATES, (II) PALO ALTO NETWORKS (NETHERLANDS) B.V., A COMPANY FORMED UNDER THE LAWS OF THE NETHERLANDS, WITH OFFICES AT OVAL TOWER, DE ENTRÉE 99-197, 5<sup>TH</sup> FLOOR, 1101 HE AMSTERDAM-ZUIDOOST, OR (III) ANY OTHER PALO ALTO NETWORKS AFFILIATE (COLLECTIVELY, “PALO ALTO NETWORKS”).

THIS EULA GOVERNS YOUR USE OF THE PALO ALTO NETWORKS HARDWARE (“HARDWARE”), ANY SOFTWARE THAT IS INCLUDED IN THE HARDWARE AND ANY STANDALONE SOFTWARE THAT IS PROVIDED WITHOUT HARDWARE FOR USE ON YOUR HARDWARE INCLUDING VIRTUAL MACHINE (“VM”) SOFTWARE OR ENDPOINT SOLUTIONS (“ENDPOINT”) (COLLECTIVELY, “SOFTWARE”), ANY SOFTWARE-AS-A-SERVICE (SaaS), SUBSCRIPTION-BASED SERVICES INCLUDING, BUT NOT LIMITED TO, WILDFIRE, GLOBALPROTECT, URL FILTERING, AND THREAT PREVENTION (“SUBSCRIPTION SERVICES”), OR A COMBINATION OF THE

FOREGOING, ALL COLLECTIVELY REFERRED TO HEREIN AS “PRODUCTS”, UNLESS YOU AND PALO ALTO NETWORKS HAVE EXECUTED A SEPARATE EULA IN WRITING, SIGNED BY BOTH PALO ALTO NETWORKS AND YOU WHICH EXPRESSLY SUPERSEDES THIS EULA.

BY OPERATING, DOWNLOADING, INSTALLING, REGISTERING OR OTHERWISE USING THE PRODUCTS, YOU ARE EXPRESSLY AND EXPLICITLY ACKNOWLEDGING AND AGREEING THAT THIS IS A BINDING EULA AND YOU HEREBY AGREE TO THE TERMS OF THIS EULA.

IF YOU DO NOT ACCEPT ALL THE TERMS AND CONDITIONS SET FORTH HEREIN, DO NOT OPERATE, DOWNLOAD, INSTALL, REGISTER OR OTHERWISE USE THIS PRODUCT.

PALO ALTO NETWORKS MAINTENANCE AND SUPPORT SERVICES ARE NOT GOVERNED BY THIS EULA, AND ARE GOVERNED BY A SEPARATE GLOBAL SUPPORT SERVICES TERMS AND CONDITIONS (“EUSA”) FOUND AT

[https://www.paloaltonetworks.com/content/dam/paloaltonetworks-com/en\\_US/assets/pdf/datasheets/support/global-customer-support-services-terms-conditions.pdf](https://www.paloaltonetworks.com/content/dam/paloaltonetworks-com/en_US/assets/pdf/datasheets/support/global-customer-support-services-terms-conditions.pdf)

### 1. LICENSE GRANT AND RESTRICTIONS.

1.1 **Software License Grant.** Subject to the terms and conditions of this EULA, Palo Alto Networks grants to End User a non-exclusive license to: (i) use the Software solely as part of the Hardware with which the Software is delivered, or (ii) in accordance with the published specifications. The Software is solely for End User’s internal business purposes unless otherwise agreed to with Palo Alto Networks in a separate written agreement. All other rights in the Software are expressly reserved by Palo Alto Networks.

1.2 **Subscription Services Limited Right to Use.** Palo Alto Networks grants to End User the limited right to use the Subscription Services solely in connection with the Hardware and/or Software and solely for End User’s internal business purposes.

1.3 **License Restrictions.** End User shall maintain the Products in strict confidence and shall not: (a) except in accordance with Palo Alto Networks license transfer procedure attached hereto as Secondary Market Policy (<https://www.paloaltonetworks.com/support/support-policies/secondary-market-policy.html>), sell, resell, distribute, transfer, publish, disclose, rent, lend, lease or sublicense the Products, or make the functionality of the Products available to any other party (excluding contractors or other third party providing IT services to Customer) through any means (unless otherwise permitted in writing by Palo Alto Networks as expressly agreed to in a separate Managed Security Services Provider agreement), including, without, limitation, by uploading the Software or Subscription Services to a network or file-

sharing service or through any hosting, application services provider, service bureau or other type of services; (b) modify, translate or create derivative works based on the Software or Subscription Services, in whole or in part, or permit or authorize a third party to do so; (c) disassemble, decompile, reverse compile, reverse engineer or otherwise attempt to derive the source code of the Software, in whole or in part, or permit or authorize a third party to do so, except to the extent such activities are expressly permitted by applicable law in the jurisdiction of use notwithstanding this prohibition; (d) disclose, publish or otherwise make publicly available any benchmark, performance or comparison **tests** that End User runs (or has run on its behalf by a third party) on the Products; (e) duplicate the Software except for making a reasonable number of archival or backup copies, provided that End User reproduces on or in such copies the copyright, trademark and other proprietary notices or markings that appear on the original copy of the Software (if any) as delivered to End User.

**1.4 Affiliates.** If End User purchases the Product for use by any End User Affiliate (defined below), End User shall: (a) provide each such End User Affiliate with a copy of this EULA; (b) ensure that each such End User Affiliate complies with the terms and conditions therein; and (c) be responsible for any breach of these terms and conditions by any such End User Affiliate. For purposes of this EULA, "Affiliate" means any entity that Controls, is Controlled by, or is under common Control with End User or Palo Alto Networks, as applicable, where "Control" means ownership, directly or indirectly, of 50% or more of the voting interest of End User or Palo Alto Networks, as applicable.

## **2. OWNERSHIP.**

The Software and Subscription Services are licensed, not sold. Palo Alto Networks and its suppliers, as applicable, retain all right, title, interest and ownership of the Software and Subscription Services, including copyrights, patents, trade secret rights, trademarks and any other intellectual property rights therein. End User shall not delete or in any manner alter the copyright, trademark, or other proprietary rights notices or markings that appear on the Software and Subscription Services or related documentation as delivered to End User. To the extent you provide any suggestions or comments related to the Products to Palo Alto Networks or its authorized third party agent, Palo Alto Networks shall have the right to retain and use any such suggestions or comments in current or future products or services, without your approval or further compensation to you.

## **3. TERM; TERMINATION; AND EFFECT OF TERMINATION.**

This EULA is effective until terminated. End User's rights under this EULA will terminate immediately without notice from Palo Alto Networks if End User fails to comply with or breaches any provision of this EULA. End User may terminate this EULA upon written notice to Palo Alto Networks. Upon termination, End User shall destroy all copies of Software and documentation and cease to use any Subscription Services and/or Hardware.

## **4. WARRANTY, EXCLUSIONS AND DISCLAIMERS.**

**4.1 Warranty.** Palo Alto Networks warrants that, under normal authorized use (a) the Hardware shall be free from defects in material and workmanship for one (1) year from the date of shipment; and (b) the Software will substantially conform to Palo Alto Networks' published specifications for three (3) months from the date of shipment. As End User's sole and exclusive remedy and Palo Alto Networks' and its suppliers' sole and exclusive liability for breach of warranty, Palo Alto Networks shall, at its option and expense, repair or replace the Hardware or correct the Software, as applicable. All warranty claims must be made on or before the expiration of the warranty period specified herein. Replacement Products may consist of new or remanufactured parts that are equivalent to new. All Products that are returned to Palo Alto Networks and replaced become the property of Palo Alto Networks. Palo Alto Networks shall not be responsible for End User's or any third party's software, firmware, information, or memory data contained in, stored on, or integrated with any Product returned to Palo Alto Networks for repair or upon termination, whether under warranty or not. End User will pay the shipping costs for return of Products to Palo Alto Networks. Palo Alto Networks will pay the shipping costs for shipment of repaired or replacement Products back to End User.

**4.2 Exclusions.** The warranty set forth above shall not apply if the failure of the Product results from or is otherwise attributable to: (i) repair, maintenance or modification of the Product by persons other than Palo Alto Networks-authorized third party; (ii) accident, negligence, abuse or misuse of a Product; (iii) use of the Product other than in accordance with Palo Alto Networks' specifications; (iv) improper installation or site preparation or any failure by End User to comply with

environmental and storage requirements for the Product specified by Palo Alto Networks, including, without limitation, temperature or humidity ranges; or (v) causes external to the Product such as, but not limited to, failure of electrical systems, fire or water damage.

**4.3 Disclaimers.** EXCEPT FOR THE WARRANTIES EXPRESSLY STATED AND AS OTHERWISE PROHIBITED BY APPLICABLE LAW, THE HARDWARE, SOFTWARE AND SUBSCRIPTION SERVICES ARE PROVIDED “AS IS”. PALO ALTO NETWORKS AND ITS SUPPLIERS MAKE NO OTHER WARRANTIES AND EXPRESSLY DISCLAIM ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE. PALO ALTO NETWORKS DOES NOT WARRANT THAT (I) THE PRODUCT WILL MEET END USER’S REQUIREMENTS, (II) USE THEREOF SHALL BE UNINTERRUPTED OR ERROR-FREE, OR (III) THE HARDWARE, SOFTWARE OR SUBSCRIPTION SERVICES WILL PROTECT AGAINST ALL POSSIBLE THREATS WHETHER KNOWN OR UNKNOWN.

## 5. LIMITATION OF LIABILITY.

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, (A) IN NO EVENT SHALL PALO ALTO NETWORKS OR ITS SUPPLIERS BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING BUT NOT LIMITED TO LOSS OF USE, DATA, BUSINESS OR PROFITS, OR FOR THE COST OF PROCURING SUBSTITUTE PRODUCTS, SERVICES OR OTHER GOODS), ARISING OUT OF OR RELATING TO THIS EULA, REGARDLESS OF THE THEORY OF LIABILITY AND WHETHER OR NOT PALO ALTO NETWORKS WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGE OR LOSS; AND (B) IN NO EVENT SHALL PALO ALTO NETWORKS’ TOTAL LIABILITY ARISING OUT OF OR RELATING TO THIS EULA, FROM ALL CLAIMS OR CAUSES OF ACTION AND UNDER ALL THEORIES OF LIABILITY, EXCEED THE TOTAL PAYMENTS ACTUALLY MADE TO PALO ALTO NETWORKS FOR THE PRODUCTS DURING THE TWELVE (12) MONTH PERIOD PRIOR TO ANY SUCH CLAIM OR CAUSE OF ACTION. THE FOREGOING LIMITATIONS SHALL NOT APPLY TO LIABILITY ARISING FROM DEATH OR BODILY INJURY. End User agrees that the foregoing limitations of liability constitute a material inducement for Palo Alto Networks to enter into this EULA and that the purchase price and fees charged to End User would be substantially higher without such limitations.

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.

## 6. INDEMNIFICATION.

**6.1 Indemnification and Procedure.** Palo Alto Networks will, to the extent permitted by applicable law, defend, at its expense, any third-party action or suit brought against End User alleging that any Palo Alto Networks Product provided to End User hereunder infringes or misappropriates the third party’s patent, copyright, trademark, or trade secret (a “**Claim**”), and Palo Alto Networks will pay any damages awarded in final judgment against End User or agreed to in settlement by Palo Alto Networks that are attributable to any such Claim; provided that End User: (i) promptly notifies Palo Alto Networks in writing of the Claim; (ii) gives Palo Alto Networks sole control of the defense and settlement of the Claim; and (iii) gives Palo Alto Networks, at Palo Alto Networks’ expense, all information and assistance reasonably requested for the defense and settlement of the Claim. Palo Alto Networks will not be bound by any settlement or compromise that End User enters into without Palo Alto Networks’ prior written consent.

**6.2 Remedy.** If the Product becomes, or in Palo Alto Networks’ opinion is likely to become, the subject of a Claim, then Palo Alto Networks may, at its sole option and expense: (i) procure for End User the right to continue using the Product; (ii) replace or modify the Product to avoid the Claim; or (iii) if options (i) and (ii) cannot be accomplished despite Palo Alto Networks’ reasonable efforts, then Palo Alto Networks may accept return of the Product from End User and grant End User credit for the price of the Product as depreciated on a straight-line five (5) year basis, commencing on the date of receipt by End User of such Product.

**6.3 Exceptions.** Palo Alto Networks’ obligations under this section shall not apply to the extent any Claim results from or is based on (a) modifications to the Product made by a party other than Palo Alto Networks or its designee; (b) the combination,

operation, or use of the Product with hardware or software not supplied by Palo Alto Networks, if a Claim would not have occurred but for such combination, operation or use; (c) failure to use the most recent version or release of the Product; (d) Palo Alto Networks' compliance with End User's explicit or written designs, specifications or instructions; or (e) use of the Product that is not in accordance with Palo Alto Networks' published specifications.

THE FOREGOING TERMS STATE PALO ALTO NETWORKS' SOLE AND EXCLUSIVE LIABILITY AND END USER'S SOLE AND EXCLUSIVE REMEDY FOR ANY CLAIMS OF INTELLECTUAL PROPERTY INFRINGEMENT OR MISAPPROPRIATION.

## 7. END USER DATA.

Palo Alto Networks utilizes industry standard practices and policies to maintain administrative, physical and technical safeguards for the protection and security of End User Data (defined below). End User is hereby notified and acknowledges that Palo Alto Networks Products may include interaction and communication with facilities hosted outside of the country where End User purchased or utilizes the Products. End User is further notified and acknowledges that some Subscription Services may allow End User, in its sole discretion, to send data to Palo Alto Networks, where such data may contain personally-identifiable, sensitive, and/or confidential data and information (collectively, "End User Data"). End User represents and warrants that End User's use of the Subscription Services and related submission of End User Data complies with all applicable laws, including those related to data privacy, data security, international communication and the exportation of technical, personal or sensitive data. Palo Alto Networks is not a data processor or data collector, and the inclusion of such personally identifying or sensitive data in End User Data is solely incidental to the provision of the Subscription Services. Submission of End User Data to Palo Alto Networks shall be at End User's sole discretion and at its own risk, and Palo Alto Networks assumes no responsibility or liability for receipt of such End User Data. End User Data sent to Palo Alto Networks may be stored by Palo Alto Networks. End User further acknowledges that Palo Alto Networks may anonymize such End User Data to use for statistical purposes and share samples of such anonymized End User Data with other third party security-related researchers, vendors and customers.

## 8. GENERAL.

**8.1 Governing Law.** Where Palo Alto Networks, Inc., is the contracting entity, this EULA is governed by and construed in accordance with the laws of the State of California, excluding its conflict of laws principles. Where Palo Alto Network (Netherlands) B.V., is the contracting party, this EULA is governed by and construed in accordance with the laws of the Netherlands, excluding its conflict of laws principles. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this EULA.

**8.2 Compliance with Laws; Export Control.** End User shall be solely responsible for its compliance with, and agrees to comply with, all applicable laws in connection with its use of the Product. End User further agrees that it will not engage in any illegal activity in any relevant jurisdiction, and acknowledges that Palo Alto Networks reserves the right to notify its customers or appropriate law enforcement in the event of such illegal activity. End User agrees to comply fully with the U.S. Export Administration Regulations, and any other export laws, restrictions, and regulations to ensure that the Product and any technical data related thereto is not exported or re-exported directly or indirectly in violation of, or used for any purposes prohibited by such laws and regulations.

**8.3 Cumulative Remedies.** Except as expressly set forth in this EULA, the exercise by either party of any of its remedies will be without prejudice to any other remedies under this EULA or otherwise.

**8.4 Notices.** All notices shall be in writing and delivered by overnight delivery service or by certified mail sent to the address published on the respective parties' websites or the address specified on the relevant order document (attention: Legal Department), and in each instance will be deemed given upon receipt.

**8.5 Waiver and Severability.** The failure by either party to enforce any provision of this EULA will not constitute a waiver of future enforcement of that or any other provision. Any waiver, modification or amendment of any provision of this EULA will be effective only if in writing and signed by authorized representatives of both parties. If any provision of this EULA is held to

be unenforceable or invalid, that provision will be enforced to the maximum extent possible and the other provisions will remain in full force and effect.

**8.6 Entire Agreement.** This EULA constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes all prior written or oral agreements, understandings and communications between the parties with respect to the subject matter hereof. Any terms or conditions contained in End User's purchase order or other ordering document that are inconsistent with or in addition to the terms and conditions of this EULA are hereby rejected by Palo Alto Networks and will be deemed null.

**8.7 U.S. Government End Users.** This section applies to United States Government End Users only and does not apply to any other End Users. The Software and its documentation are "commercial computer software" and "commercial computer software documentation," respectively; as such terms are used in FAR 12.212 and DFARS 227.7202. If the Software and its documentation are being acquired by or on behalf of the U.S. Government, then, as provided in FAR 12.212 and DFARS 227.7202-1 through 227.7202-4, as applicable, the U.S. Government's rights in the Software and its documentation shall be as specified in this EULA.

**If any term or condition set forth in this EULA, (a) allows for the automatic termination of the Government's license rights or maintenance of services; (b) allows for the automatic renewal of services and/or fees; (c) allows for the Government to pay audit costs; and/or (d) requires the governing law to be anything other than Federal law, then such term and condition shall not apply to the United States Government, but shall continue to apply to prime contractors and subcontractors of the Government. Furthermore, nothing contained in this EULA is meant to diminish the rights of the United States Department of Justice as identified in 28 U.S.C. Section 516. Finally, to the extent any term and condition set forth in this EULA is contrary to United States Federal procurement law, then such term and condition shall not apply to the United States Government, but shall continue to apply to prime contractors and subcontractors of the Government.**

**8.8 Open Source Software.** The Products may contain or be provided with components subject to the terms and conditions of open source software licenses ("Open Source Software"). A list of Open Source Software can be found at <https://www.paloaltonetworks.com/company/third-party-software.html>.

**8.9 End User Records.** End User grants to Palo Alto Networks and its independent advisors the right to examine End User's books, records, and accounts during End User's normal business hours to verify compliance with this EULA. In the event such audit discloses non-compliance with this EULA, End User shall promptly pay the appropriate license fees to the relevant party, plus reasonable audit costs.

**8.10 Authorization Codes, Grace Periods and Registration.** Your Product may require an authorization code for activation for support of Your Product or to access Subscription Services. The authorization codes will be issued at the time of order fulfillment and sent to You via email. The service period will commence in accordance with the grace period policy at <https://www.paloaltonetworks.com/support/support-policies/grace-period.html>. You are hereby notified that, upon applicable grace period expiration, if any, Palo Alto Networks reserves the right to register Your Product and activate support services (if purchased) on Your behalf without further notification to You.

**8.11 WildFire Related Microsoft Licenses.** End User acknowledges that certain WildFire offerings require licenses for certain Microsoft software, including Windows and Office, as described further in the relevant Wildfire documentation. Where Microsoft software is provided with certain WildFire offerings, Palo Alto Networks has procured or otherwise provided the necessary Microsoft licenses for the WildFire offering. Customer is hereby notified and acknowledges that Microsoft updates and upgrades (software assurance) are not provided with the WildFire product and must be obtained by Customer directly from Microsoft in order for Customer to utilize later versions of Microsoft products beyond the versions initially provided with the WildFire offerings.

**8.12 Survival.** Sections regarding license restrictions, ownership, term and termination, U.S. Government End Users, limitations of liability, and this General section shall survive termination of this EULA.



EC America, Inc.  
a subsidiary of  immixGroup

## GLOBAL CUSTOMER SUPPORT SERVICES TERMS AND CONDITIONS

THESE TERMS AND CONDITIONS FORM A LEGAL AGREEMENT BETWEEN YOU, EITHER AS AN INDIVIDUAL, COMPANY OR OTHER LEGAL ENTITY (IN ANY CAPACITY REFERRED TO HEREIN AS “END USER”, “CUSTOMER”, “YOU” or “YOUR”) AND (I) PALO ALTO NETWORKS, INC., A DELWARE CORPORATION WITH OFFICES AT 4401 GREAT AMERICA PARKWAY, SANTA CLARA, CALIFORNIA 95054 UNITED STATES, IF YOU ARE LOCATED IN THE AMERICAS; OR (II) PALO ALTO NETWORKS (NETHERLANDS) B.V., A COMPANY FORMED UNDER THE LAWS OF THE NETHERLANDS, WITH OFFICES AT OVAL TOWER, DE ENTRÉE 99-197, 5<sup>TH</sup> FLOOR, 1101 HE AMSTERDAM, IF YOU ARE LOCATED IN ANY COUNTRY OUTSIDE THE AMERICAS.

This Agreement sets forth the terms and conditions under which Palo Alto Networks will provide technical support services to you under the Palo Alto Networks Support Plan purchased for the Palo Alto Networks products sold and/or licensed pursuant to the Palo Alto Networks End User License Agreement (“EULA”). Palo Alto Networks is willing to provide technical support services to you only if you accept these terms. By checking the box labeled “I accept”, you are indicating that you understand and accept all of these terms and conditions. The date on which you check the box labeled “I accept” is the Effective Date. If you are entering into this Agreement on behalf of a company or other legal entity, you represent that you have the authority to bind such entity to this Agreement, in which case the terms “you” or “your” shall refer to such company or other legal entity.

### 1. SUPPORT PLANS AND SERVICES OFFERED

Support Offerings	Premium Plus Support	Premium Support	Standard Support
Business Hours Availability	Mon – Fri, 7am to 6pm PT		
After Hours Availability	Yes - 24x7x365	Yes - 24x7x365	No
Designated Technical Support Engineer	Yes	No	No
Technical Account Manager	Yes	No	No
<b>Hardware Support</b>			
4 Hour Replacement Service (available only for products located within a specified range of a Palo Alto Networks service location)	Yes, Optional Add-on	Yes, Optional Add-on	No
Advance Replacement Service: Next Business Day Service	Yes	Yes	No
Return and Repair	N/A	N/A	Yes
<b>Call Response Times</b>			
<b>Severity 1 – Critical</b> Product is down, critically affects Customer production environment. No workaround available yet.	< 1 hour	< 1 hour	< 1 Business Hour
<b>Severity 2 – High</b> Product is impaired, Customer production up, but impacted. No workaround available yet.	2 Hours	2 Hours	2 Business Hours
<b>Severity 3 – Medium</b> A Product function has failed, Customer production not affected. Support is aware of the issue and a workaround is available.	4 Hours	4 Hours	4 Business Hours
<b>Severity 4 -- Low</b> Non-critical issue. Does not impact Customer business. Feature, information, documentation, how-to and enhancement requests from Customer.	8 Business Hours	8 Business Hours	8 Business Hours
<b>Contact Support:</b>	Website: support.paloaltonetworks.com Toll Free US – 1.866.898.9087 Outside the US +1.408.738.7799		



EC America, Inc.  
a subsidiary of  immixGroup



## 2. DEFINITIONS

**“Affiliate”** means any entity that Controls, is Controlled by, or is under common Control with End User or Palo Alto Networks, as applicable, where “Control” means ownership, directly or indirectly, of 50% or more of the voting interest of End User or Palo Alto Networks, as applicable.

**“Business Hours”** means Mondays through Fridays, 7:00 am – 6:00 pm PT, excluding US and California holidays.

**“Hardware”** means the hardware products listed on Palo Alto Networks then-current published product price list.

**“Maintenance Releases”** means bug fixes to the Software that: (i) are designated by a change in the 3<sup>rd</sup> set of digits of the version release number (e.g., v5.00.01 to v5.00.02); and (ii) are generally made available by Palo Alto Networks to its customers under valid support contracts, at no additional cost.

**“Major Releases”** means significant modifications or improvements to the Software that: (i) are designated by a change in the 1<sup>st</sup> digit of the version release number (e.g., v5.0 to v6.0); and (ii) are generally made available by Palo Alto Networks to its customers under valid support contracts, at no additional cost.

**“Minor Releases”** means minor modifications or improvements to the Software, cumulative bug fixes from Maintenance Releases since the last Minor Release and new bug fixes, as applicable, that: (i) are designated by a change in the 2<sup>nd</sup> set of digits of the version release number (e.g., v5.00 to v5.01); and (ii) are generally made available by Palo Alto Networks to its customers under valid support contracts, at no additional cost.

**“Products”** means, collectively, Hardware, Software and Subscription Services, or a combination thereof.

**“Software”** means any Palo Alto Networks software that is included in the Hardware; and any standalone software that is provided without Hardware, including virtual machine (“VM”) software or endpoint solutions software listed on Palo Alto Networks’ then-current published product price list.

**“Standard Support,” “Premium Support,” and “Premium Plus Support”** and **“Support Plans”** refer to the various support programs offered by Palo Alto Networks, as further detailed in Section 3 below.

**“Subscription Services”** means software-as-a-service (SaaS), subscription-based services including, but not limited to WildFire, GlobalProtect, URL Filtering, and Threat Prevention.

**“Support Website”** means the website currently located at <https://support.paloaltonetworks.com>, or any successor site thereto, as specified by Palo Alto Networks.

**“Technical Account Manager”** is a designated resource who will act as your advocate, will have a comprehensive understanding of your environment at the operations level, and will assist you with business objectives, deployment plans, and coordination of all aspects of your Palo Alto Networks support interaction.

**“Designated Technical Support Engineer (DE)”** is a designated engineer who will work with you on all your support cases, build deep knowledge of your deployment in order to speed support incident resolution. Your DE will be accessible during Business Hours at one of Palo Alto Networks’ global support centers.

## 3. DESCRIPTION OF SUPPORT PLANS

You must register each Product for which you have purchased support on the Support Website in order to access the features and benefits available to such Product. In consideration of your purchase of a Support Plan, Palo Alto Networks shall provide the services as set forth in the table entitled “Support Plans and Services Offered” above, including:

### a) Remote Technical Support

- i. Telephone support available during the times specified for the Support Plan purchased.
- ii. Support cases created via the web will be classified as non-critical and will have a response time based on the severity classification as set forth in the table entitled “Support Plans and Services Offered” above.

### b) Secure Web Access

- i. Access to the Support Website to acquire the latest software versions, fixes, feature releases, software release notes, signature updates, FAQs, case management and technical documentation.

- ii. Palo Alto Networks will use commercially reasonable efforts to ensure that the Support Website is available 24x7.

Palo Alto Networks reserves the right to modify the Support Plans offered so long as such modification does not result in degradation of service. Please refer to the Support Website for the most current support plan descriptions.

#### 4. SUPPORT OPTIONS

You shall choose from three support plans: (i) Standard Support, (ii) Premium Support, or (iii) Premium Plus Support. Based upon your selection and payment of applicable fees, Palo Alto Networks must:

##### a) Standard Support

- i. Maintain and support the list of releases defined as the currently-supported releases on the Support Website.
- ii. Make available all supported Maintenance Releases, Minor Releases and Major Releases.
- iii. Verify defects in the Software identified and submitted by customers.
- iv. Correct material defects in the Software for the currently-supported Maintenance Releases.
- v. Provide access to Palo Alto Networks online support through the Support Website including, but not limited to, knowledge base/FAQ, case management and software downloads.
- vi. Provide technical telephone support during Business Hours.
- vii. Provide a return and repair service for Hardware defects.

##### b) Premium Support

Includes all of the benefits of Standard Support plus the following:

- i. After hours technical telephone support on a 7x24 basis.
- ii. Provide a same business day shipment of advance replacement for defective Hardware. Please refer to section 5 (RMA Policy and Process) below for additional details.

##### c) Premium Plus Support

Premium Plus Support requires purchase of, at a minimum, Premium Support on all covered devices. Premium Plus Support includes all of the benefits of Premium Support plus the following:

- i. Appointment of a Designated Technical Support Engineer to help facilitate access to support services.
- ii. Appointment of a Technical Account Manager who will act as your advocate.
- iii. Annual onsite health-check to review key aspects of your deployment to identify areas of optimization and improvement.

##### d) Optional Add-On: 4-Hour Replacement Service

This support option is available only for Hardware located within a specified range of a Palo Alto Networks service location. It includes all of the benefits of Premium or Premium Plus Support (as applicable) plus commercially reasonable efforts by Palo Alto Networks to deliver replacement Hardware to you within four hours from the issuance of an RMA.

#### 5. RMA POLICY AND PROCESS

In situations when it is necessary for you to return a Product to Palo Alto Networks, you must ask Palo Alto Networks to issue a Return Material Authorization (RMA) number prior to shipment. Each RMA number will be uniquely identified to track the processing of the returned Product, pursuant to the RMA Process and Policy found at [https://www.paloaltonetworks.com/content/dam/pan/en\\_US/assets/pdf/datasheets/support/rma-process-policy.pdf](https://www.paloaltonetworks.com/content/dam/pan/en_US/assets/pdf/datasheets/support/rma-process-policy.pdf)

- a) **Return and Repair:** You shall obtain an RMA number for the Product that you wish to return to Palo Alto Networks by contacting Support via telephone or email or via the Support Website. Support will work with you to confirm the Hardware problem and issue a RMA number to be used to ship the Product back to Palo Alto Networks. You shall repackage the Product in the original packaging (shipping damage that occurs as a result of insufficient

packaging is not covered under this Agreement), note the RMA number on the shipping label and ship the Product to the specified Palo Alto Networks location. You will be responsible for all shipping costs incurred in returning the defective Product to Palo Alto Networks. Products will be repaired or replaced within 10 business days from receipt of the defective Product by Palo Alto Networks. Palo Alto Networks will pay all shipping costs that it incurs in connection with shipping the repaired or replacement Product to you, except that if you are located outside the United States, you will be responsible for any taxes, duties, fees or other charges assessed in connection with importing the repaired or replaced Product into your country of destination.

- b) **Advance Replacement:** You shall obtain an RMA number for the Product that you wish to return to Palo Alto Networks by contacting Support via telephone or via the Support Website. Support will work with you to confirm the Hardware problem and issue an RMA number to be used in connection with shipping the Product back to Palo Alto Networks. Palo Alto Networks will use commercially reasonable efforts to have a replacement Product delivered to you by the next business day. Palo Alto Networks will pay all shipping costs incurred in shipping the replacement Product to you. Upon receipt of a replacement Product, you shall return the defective Product to Palo Alto Networks in the replacement Product's packaging (shipping damage that occurs as a result of insufficient packaging is not covered under this Agreement), using the prepaid return airbill affixed to the exterior of the shipping carton, and arranging for the designated courier service for pickup. If Palo Alto Networks does not receive the returned Product within 10 business days after the delivered date of the replacement Product, you will be charged current list price of the replacement Product.
- c) **4 Hour RMA Replacement:** You shall obtain an RMA number for the Product that you wish to return to Palo Alto Networks by contacting Support. Support will work with you to confirm the Hardware problem and issue an RMA number. Palo Alto Networks will use commercially reasonable efforts to have a replacement Product delivered to you within four hours after issuance of the RMA number. You must have an authorized representative available to accept delivery of the replacement Product. If Palo Alto Networks (or its subcontractor) is unable to complete delivery because you did not have an authorized representative available, Palo Alto Networks reserves the right to charge you for costs incurred in making a subsequent delivery.

## 6. YOUR OBLIGATIONS

During the term of this Agreement, you must:

- a) Operate at the then-supported Maintenance Release;
- b) Use reasonable efforts to isolate, collect all error and log files to enable Palo Alto Networks to fulfill its obligations herein;
- c) Notify Palo Alto Networks if you physically relocates device(s) covered by 4 Hour RMA Replacement service to new location(s).

## 7. LIMITATIONS

The following services are expressly excluded from the Support Plans:

- a) Repair or replacement of Product required as a result of causes other than normal use, including without limitation: (i) repair, maintenance or modification of the Product by persons other than Palo Alto Networks-authorized personnel; (ii) accident or negligence of your fault; (iii) user error or misuse of the Product; or (iv) causes external to the Product such as, but not limited to, failure of electrical systems or fire or water damage or hardware failure, operation system software failure or any other damage and failure not caused by Palo Alto Networks.
- b) Maintenance or technical services for any third party software or hardware, where such third party software or hardware was not provided by Palo Alto Networks.

## 8. TERM AND TERMINATION

This Agreement will begin on the Effective Date and, unless terminated earlier in accordance with its terms, will remain in effect for the one, two or other multi-year support contract purchased. Palo Alto Networks will send you renewal reminders in advance of the expiration date(s). At the end of such term (and each renewal term thereafter, if any), this Agreement will automatically expire unless you renew by paying Palo Alto Networks the applicable fee and by following the renewal

procedure specified on the Support Website. Either party may terminate this Agreement at any time in the event that the other party breaches any material term of this Agreement and fails to cure such breach within thirty (30) days following notice thereof from the non-breaching party.

## 9. CONFIDENTIALITY

“**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**”). Notwithstanding the foregoing, Confidential Information is exclusive of information or data that Recipient can prove by credible evidence: (i) was in the public domain at the time it was communicated to Recipient; (ii) entered the public domain subsequent to the time it was communicated to Recipient through no fault of Recipient; (iii) was in Recipient’s possession not in violation of any obligation of confidentiality at the time it was communicated to Recipient; (iv) was disclosed to Recipient not in any violation of any obligation of confidentiality; or (v) was developed by employees or agents of Recipient without use of or reference to the Confidential Information of Discloser. Each party will not use the other party’s Confidential Information, except as necessary for the performance of this Agreement, and will not disclose such Confidential Information to any third party, except to those of its employees and subcontractors that need to know such Confidential Information for the performance of this Agreement, provided that each such employee and subcontractor is subject to a written Agreement that includes binding use and disclosure restrictions that are at least as protective as those set forth herein. Each party will use all reasonable efforts to maintain the confidentiality of all of the other party’s Confidential Information in its possession or control, but in no event use less effort than it ordinarily uses with respect to its own confidential information of similar nature and importance. The foregoing obligations will not restrict either party from disclosing the other party’s Confidential Information or the terms and conditions of this Agreement: (vi) pursuant to the order or requirement of a court, administrative agency, or other governmental body, provided that the party required to make such a disclosure gives reasonable notice to the other party to enable it to contest such order or requirement; (vii) on a confidential basis to its legal or professional financial advisors; or (viii) as required under applicable securities regulations. The foregoing obligations of each Party shall continue for the period terminating three (3) years from (ix) the date on which the Confidential Information is last disclosed, or (x) the date of termination of this Agreement, whichever is later.

## 10. GENERAL

**10.1 No Warranty.** Nothing in this Agreement shall be construed as expanding or adding to the warranty set forth in the EULA. PALO ALTO NETWORKS MAKES, AND YOU RECEIVE, NO WARRANTIES OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, ARISING IN ANY WAY OUT OF, RELATED TO, OR UNDER THIS AGREEMENT OR THE PROVISION OF MATERIALS OR SERVICES THEREUNDER, AND PALO ALTO NETWORKS SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE.

**10.2 Indemnification and Procedure.** Palo Alto Networks will, to the extent permitted by applicable law, defend, at its expense, any third-party action or suit brought against End User alleging that any Palo Alto Networks Product provided to End User hereunder infringes or misappropriates the third party’s patent, copyright, trademark, or trade secret (a “**Claim**”), and Palo Alto Networks will pay any damages awarded in final judgment against End User or agreed to in settlement by Palo Alto Networks that are attributable to any such Claim; provided that End User: (i) promptly notifies Palo Alto Networks in writing of the Claim; (ii) gives Palo Alto Networks sole control of the defense and settlement of the Claim; and (iii) gives Palo Alto Networks, at Palo Alto Networks’ expense, all information and assistance reasonably requested for the defense and settlement of the Claim. Palo Alto Networks will not be bound by any settlement or compromise that End User enters into without Palo Alto Networks’ prior written consent. If the Product becomes, or in Palo Alto Networks’ opinion is likely to become, the subject of a Claim, then Palo Alto Networks may, at its sole option and expense: (i) procure for End User the right to continue using the Product; (ii) replace or modify the Product to avoid the Claim; or (iii) if options (i) and (ii) cannot be accomplished despite Palo Alto Networks’ reasonable efforts, then Palo Alto Networks may accept return of the Product from End User and grant End User credit for the price of the Product as depreciated on a straight-line five (5) year basis, commencing on the date of receipt by End User of such Product. Palo Alto Networks’ obligations under this section shall not apply to the extent any Claim results from or is based on (a) modifications to the Product made by a party other than Palo Alto Networks or its designee; (b) the combination, operation, or use of the Product with hardware or software not supplied by Palo Alto Networks, if a Claim would not have occurred but for such

combination, operation or use; (c) failure to use the most recent version or release of the Product; (d) Palo Alto Networks' compliance with End User's explicit or written designs, specifications or instructions; or (e) use of the Product that is not in accordance with Palo Alto Networks' published specifications. THE FOREGOING TERMS STATE PALO ALTO NETWORKS' SOLE AND EXCLUSIVE LIABILITY AND END USER'S SOLE AND EXCLUSIVE REMEDY FOR ANY CLAIMS OF INTELLECTUAL PROPERTY INFRINGEMENT OR MISAPPROPRIATION.

**10.3 LIMITATION OF LIABILITY.** TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW (A) IN NO EVENT SHALL PALO ALTO NETWORKS OR ITS SUPPLIERS BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING BUT NOT LIMITED TO LOSS OF USE, DATA, BUSINESS OR PROFITS, OR FOR THE COST OF PROCURING SUBSTITUTE PRODUCTS, SERVICES OR OTHER GOODS), ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE THEORY OF LIABILITY AND WHETHER OR NOT PALO ALTO NETWORKS WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGE OR LOSS; AND (B) IN NO EVENT SHALL PALO ALTO NETWORKS' TOTAL LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT, FROM ALL CLAIMS OR CAUSES OF ACTION AND UNDER ALL THEORIES OF LIABILITY, EXCEED THE TOTAL PAYMENTS RECEIVED BY PALO ALTO NETWORKS (DIRECTLY FROM END USER OR INDIRECTLY FROM A RESELLER) FOR THE SERVICES DURING THE TWELVE (12) MONTH PERIOD PRIOR TO ANY SUCH CLAIM OR CAUSE OF ACTION. THE FOREGOING LIMITATIONS SHALL NOT APPLY TO LIABILITY ARISING FROM DEATH OR BODILY INJURY. You agree that the foregoing limitations of liability constitute a material inducement for Palo Alto Networks to enter into this Agreement and that the purchase price and fees charged to you would be substantially higher without such limitations.

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.

**10.4 Governing Law.** Where Palo Alto Networks, Inc., is the contracting entity, this Agreement is governed by and construed in accordance with the laws of the State of California, excluding its conflict of laws principles. Any legal action or proceeding arising under this Agreement will be brought exclusively in the state or federal courts located in Santa Clara, California, or the Northern District of California, as applicable. Where Palo Alto Network (Netherlands) B.V., is the contracting party, this Agreement is governed by and construed in accordance with the laws of the Netherlands, excluding its conflict of laws principles. Any legal action or proceeding arising under this Agreement will be brought exclusively in the courts located in Amsterdam, Netherlands. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

**10.5 Cumulative Remedies.** Except as expressly set forth in this Agreement, the exercise by either party of any of its remedies will be without prejudice to any other remedies under this Agreement or otherwise.

**10.6 Notices.** All notices shall be in writing and delivered by overnight delivery service or by certified mail sent to the address published on the respective parties' websites or the address specified on the relevant order document (attention: Legal Department), and in each instance will be deemed given upon receipt.

**10.7 Waiver and Severability.** The failure by either party to enforce any provision of this Agreement will not constitute a waiver of future enforcement of that or any other provision. Any waiver, modification or amendment of any provision of this Agreement will be effective only if in writing and signed by authorized representatives of both parties. If any provision of this Agreement is held to be unenforceable or invalid, that provision will be enforced to the maximum extent possible and the other provisions will remain in full force and effect.

**10.8 Entire Agreement.** This Agreement constitutes the entire Agreement between the parties with respect to

the subject matter hereof, and supersedes all prior written or oral Agreements, understandings and communications between the parties with respect to the subject matter hereof. Therefore, the parties agree that this Agreement shall be interpreted on the basis of its text only. Further, any terms or conditions contained in your purchase order or other ordering document that are inconsistent with or in addition to the terms and conditions of this Agreement are hereby rejected and will be deemed null.

**10.9 Force Majeure.** Palo Alto Networks shall not be responsible for any cessation, interruption or delay in the performance of its obligations hereunder due to earthquake, flood, fire, storm, natural disaster, act of God, war, terrorism, armed conflict, labor strike, lockout, boycott or other similar events beyond its reasonable control.

## SECONDARY MARKET POLICY

The secondary market policy for previously owned Palo Alto Networks devices provides you with the necessary steps required to ensure that the secondary market device can be supported and used. If you are considering the purchase of previously owned Palo Alto Networks equipment on the secondary market, please review the requirements below prior to the secondary market purchase to determine if it will meet the requirements in this policy. If you have additional questions on the secondary market policy, please contact your local sales representative.

### Policy Requirements

Any licenses or subscriptions that come with the device are not transferrable to you and are considered expired by Palo Alto Networks. Palo Alto Networks will have no obligation to provide any support or services under any previous licenses or subscriptions that come with the purchased device.

Before hardware devices that are purchased on the secondary market may be licensed for use, including the activation of support and subscriptions, the following requirements must be met:

- Devices may not be lost or stolen. If the device is determined to be lost or stolen, then it will NOT be re-certified and will be requested to be returned to Palo Alto Networks. Palo Alto Networks may pay for shipment of the device, but will not pay for the device itself.
- Devices that are currently end-of-sale cannot be re-certified. For our current end-of-life policy and listing of products, please see our support web site.
- Upon receipt of a purchased device on the secondary market, you must place two orders through a Palo Alto Networks authorized local reseller. The first order must be for a non-refundable certification fee and the second for a one time activation fee and the purchase of a one year support subscription (you may purchase a longer support subscription if desired but the purchase it at minimum a one year subscription). The purchase of other subscriptions or services are optional.
- After the two orders have been placed, Palo Alto Networks will send instructions on the verification process that will be used to determine if the device is in good working condition. The verification process will involve verification tests to validate hardware is in good operating condition, the generation and uploading of a technical support file to our support portal, and may require an internet connection to allow a Palo Alto Networks engineer to test the device remotely.
- If the device is determined to NOT be in good working condition, the re-certification fee will not be refunded, and the second order will be cancelled.

Once all of the above steps are met, the remainder of your order will be processed and your Palo Alto Networks device will be ready to use.

## Palo Alto Networks Grace Periods

### Summary

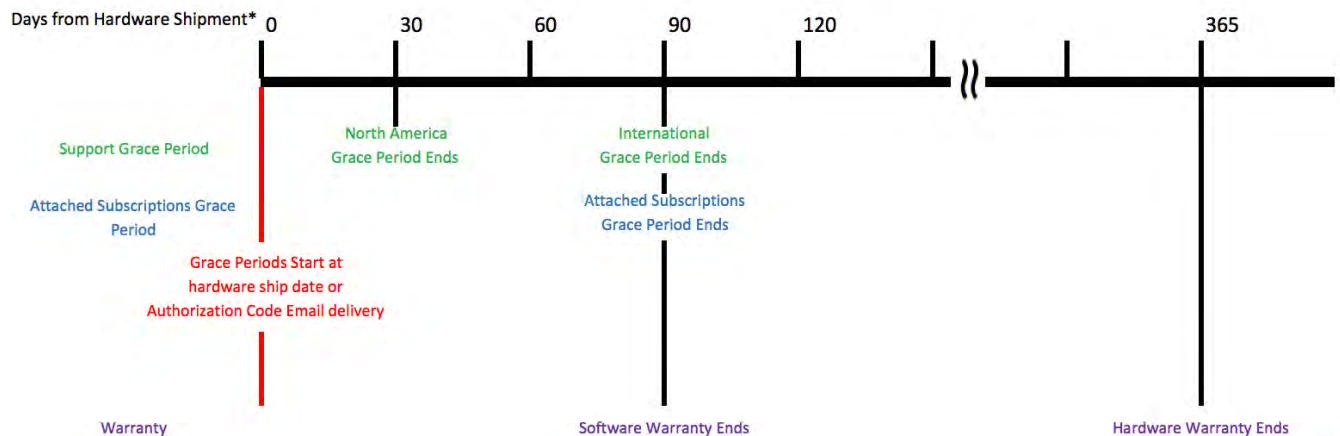
This document defines Palo Alto Networks® *grace periods* for activation and entitlement of warranties, support contracts, and subscriptions. Grace periods exist to avoid penalizing our customers during the time it takes for hardware to ship, to clear customs if applicable, and to be received and processed at the destination. Grace periods do not apply to support contract renewals; support renewals always start at the end of the previous support contract regardless of any gap between the expiration date of the previous contract and the date on which the customer renews the support contract.

The policy defined in this document applies to all sales except *stocking order* sales to Palo Alto Networks authorized channels, for which the grace period begins on the day the distributor sells the product to a reseller as documented in the distributor’s point-of-sale (POS) reports. Additionally, products sold as part of a stocking order cannot receive warranty or support service and cannot have any subscriptions attached to them until the distributor provides the necessary POS data to Palo Alto Networks.

When an applicable grace period expires, Palo Alto Networks reserves the right to register the product (hardware or software) as well as activate support and any purchased attached subscriptions on behalf of the product owner without notification.

For the purposes of this policy, *attached subscriptions* are subscriptions attached to a Palo Alto Networks hardware or software appliance and include GlobalProtect™ network security for endpoints, WildFire® cloud-based threat analysis service, Threat Prevention, and URL Filtering. Term-based license offerings are not considered to be attached subscriptions.

### Policy Requirements:



\* Shipment from Palo Alto Networks or a Palo Alto Networks authorized dealer.



Figure 1: Summary of the grace period policy, where North America covers the U.S. and Canada.

## Overview

- Support contracts start either (i) at the time hardware is registered or (ii) 30 days after hardware is shipped when shipped to North America and 90 days after hardware is shipped when it is shipped outside North America, whichever is earlier.  
Japan only: support contracts start either (i) at the time the authorization code is activated or (ii) 90 days after hardware is shipped, whichever is earlier.
- Attached subscriptions start when subscriptions are activated or 90 days after the delivery of the authorization code, whichever is earlier.
- Lab subscription and support bundles for end users as well as not-for-resale (NFR) subscription and support bundles for partners follow the support policy defined herein, which means support contracts and applicable attached subscriptions start on the same day.

## Warranty

The warranty start date for hardware is the same as the ship date. For software, the warranty start date is the same as the email delivery date of the authorization code. For additional information, refer to the Palo Alto Networks Product Warranty document located at <https://www.paloaltonetworks.com/services/support/product-warranty>.

## Support Contracts

The support contract start date is determined by the timing of the applicable hardware or software shipment but we provide a grace period—30 days in North America and 90 days outside North America—to allow for in-transit shipment time and end-user setup time. Support is similar to *insurance* in that, when active, it is in place to help if something goes wrong and, thus, it is important that support contracts start on the hardware or software shipment date. For details about support options, refer to the Global Customer Support Services Terms and Conditions at [https://www.paloaltonetworks.com/content/dam/pan/en\\_US/assets/pdf/datasheets/support/global-customer-support-services-terms-conditions.pdf](https://www.paloaltonetworks.com/content/dam/pan/en_US/assets/pdf/datasheets/support/global-customer-support-services-terms-conditions.pdf).

**Important:** The grace period for support contracts is based on the hardware ship date, not the delivery date of the support authorization code. For example, if a hardware appliance was shipped on January 1, 2011, and a support contract was purchased and applied to this appliance on May 1, 2011, the start date for support would be January 31, 2011 (30 days after the ship date). The start date would be earlier if the appliance was activated prior to January 31, 2011.

## Attached Subscriptions

Attached subscriptions start either (i) at the time they are activated or (ii) 90 days after delivery of the authorization code, whichever is earlier, and they expire at the end of their subscription term even if you never activate the subscription. For example, a one-year attached subscription purchased on January 1, 2012, but never activated would still expire on March 31, 2013 (at the end of the 90-day grace period plus one year).

Additionally, attached subscription grace periods are determined by the delivery date of the authorization code(s)—not by the hardware ship date—and are 90 days long because attached subscriptions are product services that provide functionality only after they are activated. For example, if an appliance was shipped on January 1, 2018, and a Threat Prevention subscription was purchased on May 1, 2018, and activated on June 15, 2018, then the start date for the attached Threat Prevention subscription would be June 15, 2018 (because it is within the 90-day grace period that started on May 1, 2018, for the attached subscription).

### **Bundles—Excluding VM-Series Firewall**

The support contract start date for support and subscription bundles, including lab and NFR bundles, follows the support contracts grace period model defined above, which means that support starts either (i) at the time the hardware or software appliance is registered or (ii) either 30 days after the hardware or software appliances is shipped within North America or 90 days after the hardware or software appliance is shipped outside North America, whichever is earlier.

### **Term-Based Licensed Offerings**

Term-based licensed offerings (such as Traps™ advanced endpoint protection, AutoFocus™, Logging Service, GlobalProtect cloud service, and Aperture™ SaaS security service) do not have grace periods. Terms for term-based licenses start on the email delivery date of authorization codes.

### **VM-Series Firewall Perpetual Bundles**

All VM-Series firewall perpetual bundles do not have a grace period: support contracts and applicable attached subscriptions start on the email delivery date of authorization codes. This policy applies to VM-50, VM-100, VM-300, VM-1000-HV, VM-500, and VM-700 firewall perpetual bundles. Each bundle includes a VM-Series firewall perpetual capacity license, support contract, and zero or more attached subscriptions. All renewals of VM-Series firewall bundles start at the end of the previous bundle term regardless of any gap between the end of that previous term and the date that the bundle is renewed.

### **Enterprise Agreements**

Enterprise Agreements do not have a grace period. Enterprise Agreements start (i) on the email delivery date of authorization codes or (ii) on the start date requested by the customer, whichever is later.



## QLIK® CUSTOMER AGREEMENT

**IMPORTANT: BY CHECKING THE ACCEPTANCE BOX, DOWNLOADING, INSTALLING, ACCESSING OR USING QLIK PRODUCTS, YOU ACCEPT AND AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU ACCEPT THESE TERMS ON BEHALF OF ANY EMPLOYER OR BUSINESS ENTITY, SUCH ENTITY IS DEEMED THE CUSTOMER HEREUNDER AND YOU REPRESENT AND WARRANT THAT YOU ARE AUTHORIZED TO LEGALLY BIND SUCH ENTITY TO THIS AGREEMENT.**

### I. GENERAL TERMS

**1. Agreement.** This Agreement is between Customer and the Qlik entity identified on an Order Form or in Table 1 to this Agreement (“Qlik”) and governs the use of all Qlik Products and Services accessed or used by Customer.

#### 2. Definitions

Unless defined elsewhere in this Agreement, the capitalized terms utilized in this Agreement are defined below.

**2.1. “Agreement”** means this Qlik Customer Agreement, each addendum attached hereto (which is incorporated by reference), and any Order Form(s) between Qlik and Customer for the provision of Qlik Products or Services.

**2.2. “Authorized Third Party”** means any third party authorized by Customer to access and use Qlik Products designated for External Use.

**2.3. “Authorized Reseller”** means a reseller, distributor or other third party authorized by Qlik to sell Qlik Products or Services.

**2.4. “Authorized User”** means (a) in the case of an individual accepting this Agreement on such individual’s own behalf, such individual; or (b) an employee or Authorized Third Party of Customer, who has been authorized by Customer to use the Qlik Products in accordance with the terms and conditions of this Agreement and has been allocated a license or user credentials.

**2.5. “Confidential Information”** means non-public information that is disclosed by or on behalf of a Party under or in relation to this Agreement that is identified as confidential at the time of disclosure or should be reasonably understood to be confidential or proprietary due to the nature of the information and/or the circumstances surrounding its disclosure. Confidential Information does not include information which, and solely to the extent it: (i) is generally available to the public other than as a result of a disclosure by the receiving Party or any of its representatives; (ii) was known or becomes known to the receiving Party from a source other than disclosing Party or its representatives without having violated any confidentiality agreement of the disclosing Party; (iii) is independently developed by the receiving Party without the use or benefit of any of the disclosing Party’s Confidential Information; or (iv) was disclosed by the disclosing Party to a third party without an obligation of confidence. In any dispute concerning the applicability of these exclusions, the burden of proof will be on the receiving Party and such proof will be by clear and convincing evidence.

**2.6. “Consulting Services”** means any consulting services performed by Qlik under the terms of this Agreement and any applicable Order Form.

**2.7. “Content”** means information, data, media or other

content provided by Customer or any Authorized User for use with Qlik Cloud.

**2.8. “Customer”** means an individual or company that has entered into this Agreement by electronically accepting the terms or by accessing or using the Qlik Products; or where an Order Form has been executed, then Customer means the entity identified on the Order Form.

**2.9. “Delivery Date”** means the date on which access to the Qlik Products is initially made available (via download or otherwise) to Customer or to the Authorized Reseller as applicable, which date may be specified in an Order Form.

**2.10. “Documentation”** means the then-current user documentation for the Qlik Products, including the product metrics available at [www.qlik.com/product-terms](http://www.qlik.com/product-terms).

**2.11. “Education Services”** means any training or education services performed by Qlik under the terms of this Agreement and any applicable Order Form.

**2.12. “Export Control Laws”** means export control laws and regulations of the U.S., E.U., and other governments, as well as regulations declared by the U.S. Department of the Treasury Office of Foreign Assets Control, the U.S. Department of Commerce, the Council of the E.U. and their counterparts under applicable law, including all end user, end-use and destination restrictions .

**2.13. “External Use”** means an Authorized Third Party’s use of any Qlik Products, which are designated for external use in the Documentation, provided such use is solely in connection with Customer’s business relationship with the Authorized Third Party.

**2.14. “IP Claim”** means a claim brought by a third party alleging that the Qlik Products, as delivered by Qlik and used as authorized under this Agreement, infringes upon any third-party copyright, trademark or a patent.

**2.15. “Order Form”** means an order form, statement of work or written document pursuant to which Customer orders Qlik Products or Services to be performed by Qlik and executed by the Parties or by Customer and an Authorized Reseller.

**2.16. “Party”** or **“Parties”** means Qlik and Customer, individually and collectively, as the case may be.

**2.17. “Qlik Acceptable Use Policy”** means Qlik’s then-current Qlik Cloud Acceptable Use Policy located at [www.qlik.com/product-terms](http://www.qlik.com/product-terms).

**2.18. “Qlik Cloud”** means a subscription-based, SaaS solution provided and managed by Qlik under this Agreement.

**2.19. “Qlik Marks”** means Qlik’s trademarks, service marks, trade names, logos, and designs, relating to Qlik Products,

whether or not specifically recognized, registered or perfected, including without limitation, those listed on Qlik's website.

**2.20. "Qlik Products"** means Software and Qlik Cloud products provided by Qlik. Qlik Products do not include Services or early release, beta versions or technical previews of product offerings.

**2.21. "Services"** means Support, Consulting Services or Education Services performed by Qlik under the terms of this Agreement and any applicable Order Form. Services does not include Qlik Cloud.

**2.22. "Software"** means the generally available release of the Qlik software, in object code form, initially provided or made available to Customer as well as updates thereto that Qlik elects to make available at no additional charge to all of its customers that subscribe to Support for the Software.

**2.23. "Support"** means end user support and access to updates for the Qlik Products, which are provided by Qlik as part of a subscription or pursuant to a support contract.

### 3. Customer Rights and Responsibilities

**3.1. Use of Qlik Products.** Subject to the terms of this Agreement, Qlik grants to Customer a world-wide, non-exclusive, non-transferable and non-sublicensable right for its Authorized Users to access or use Qlik Products for Customer's internal business operations and for External Use, provided any use of Qlik Products shall be: (i) in accordance with the Documentation and this Agreement; and (ii) for the authorized scope and quantities which may be specified in an Order Form.

**3.2. Services.** Support for Software will be provided by Qlik in accordance with Qlik's Support Policy, and for Qlik Cloud in accordance with Qlik's Service Level Agreement (both available at [www.qlik.com/product-terms](http://www.qlik.com/product-terms)) for Customer's subscription period. Qlik may provide Consulting or Education Services to Customer pursuant to this Agreement, any applicable product descriptions (available at [www.qlik.com/product-terms](http://www.qlik.com/product-terms)) and any applicable Order Form.

**3.3. Consulting and Education Warranty.** Qlik warrants that Consulting Services and Education Services will be performed using reasonable care and skill consistent with generally accepted industry standards. For any claimed breach of this warranty, Customer must notify Qlik of the warranty claim within thirty (30) days of Customer's receipt of the applicable Consulting Services or Education Services. Customer's exclusive remedy and Qlik's sole liability with regard to any breach of this warranty will be, at Qlik's option and expense, to either: (i) re-perform the non-conforming Consulting Services or Education Services; or (ii) refund to Customer the fees paid for the non-conforming Consulting Services or Education Services. Customer shall provide reasonable assistance to Qlik in support of its efforts to furnish a remedy for any breach of this warranty.

**3.4. Use Restrictions.** Except as expressly permitted by this Agreement, Customer will not, nor permit or authorize anyone to:

**3.4.1.** distribute, convey, lend, lease, share, sell, transfer, sublicense, rent, or time share any of the Qlik Products, or any of its components or product keys, or permit third parties to download or install any Software;

**3.4.2.** copy, decompile, disassemble or reverse engineer or otherwise attempt to extract or derive the source code or any

methods, algorithms or procedures from the Qlik Products, except as otherwise expressly permitted by applicable law, or modify, adapt, translate or create derivative works based upon the Qlik Products;

**3.4.3.** alter or circumvent any product, key or license restrictions, or transfer or reassign a named user license or entitlement, in such a manner that enables Customer to exceed purchased quantities, defeat any use restrictions, or allows multiple users to share such entitlement to exceed purchased quantities;

**3.4.4.** use, offer, embed, or otherwise exploit the Qlik Products, whether or not for a fee, in any managed service provider (MSP) offering; platform as a service or integration platform as a service (PaaS or iPaaS) offering; service bureau; or other similar product or offering, including offering standalone Qlik Products as a hosted service;

**3.4.5.** use the Qlik Products if Customer is a competitor, or use the Qlik Products in any manner that competes with Qlik, including but not limited to, benchmarking, collecting and publishing data or analysis relating to the performance of the Qlik Products, or developing or marketing a product that is competitive with any Qlik Product or service;

**3.4.6.** use the Qlik Products in any manner or for any purpose that infringes, misappropriates or otherwise violates any intellectual property right or other right of any third party or that violates any applicable law; or

**3.4.7.** interfere with or disrupt the integrity, operation, or performance of the Qlik Products or interfere with the use or enjoyment of it by others.

**3.5. Qlik Marks.** For so long as Customer has the right to access and use Qlik Products, Qlik grants to Customer a non-exclusive, non-transferable and limited right to use Qlik Marks for the sole purpose of promoting any permitted use of Qlik Products. Any use of Qlik Marks must be in compliance with the Qlik Logo and Trademark Policy available at [www.qlik.com](http://www.qlik.com). Customer may not remove or obscure any copyright, trademark or other proprietary notice displayed or included in the Qlik Products.

**3.6. Access.** Qlik will make the Qlik Products and Services available to Customer in accordance with laws and government regulations applicable to Qlik's provision of its Products and Services to customers generally. Customer may only use Qlik Products activated with a product key or other credentials provided by Qlik or via an Authorized Reseller. Customer is solely and directly responsible (a) for maintaining the security of all keys, user IDs, passwords and other credentials, (b) for all acts and omissions taken by its Authorized Users or under any of its keys or credentials; (c) for Customer's and Authorized Users' compliance with this Agreement and applicable laws, including Export Control Laws; and (d) to promptly notify Qlik of any unauthorized use or access and take all steps necessary to terminate such unauthorized use or access. Customer will provide Qlik with such cooperation and assistance related to any unauthorized use or access as Qlik may reasonably request.

**3.7. Payment.** Customer shall pay any fees due in accordance with the payment terms set forth in the Order Form. Payments are non-cancelable, non-refundable and non-creditable with no right of offset or suspension, except as otherwise expressly provided in this Agreement. Notwithstanding anything to the contrary in the Order Form, all subscription fees are due and owing for the full subscription period when purchased, and any arrangement permitting installment payments is provided to Customer solely as a

courtesy that shall be deemed revoked by Qlik upon termination pursuant to Section 7.2, or, absent termination, may be revoked by Qlik upon a material breach of this Agreement by Customer at Qlik's discretion. Unpaid fees may be subject to a late fee as set forth in an Order Form on any outstanding balance, or the maximum rate permitted by law, whichever is lower. Fees for Consulting Services or Education Services are exclusive of travel costs and expenses. If Customer fails to make any payment when due, Qlik may, without limiting its other rights and remedies, temporarily suspend Customer's account or access to Qlik Products. Customer will remain responsible for all fees incurred before and during any suspension. In the event Customer's use of Qlik Products exceeds purchased quantities ("Overage"), without limiting Qlik's other rights and remedies at law or in equity, Customer will be invoiced and shall pay for such Overage as specified in an Order Form.

**3.8. Taxes.** Fees do not include sales, use, withholding, value-added or other taxes or duties. Customer agrees to pay all applicable taxes, public fees, duties, deductions or withholdings for which Qlik is required to pay or account, exclusive of any tax on Qlik's income. Customer shall directly pay any such taxes or duties assessed against it, unless Customer provides Qlik in a timely manner with a valid certificate of exemption or other evidence that items are not taxable.

**3.9. Billing Information.** Customer agrees to provide Qlik with accurate, timely and complete payment and invoicing information, including current contact information and tax identification numbers.

#### **4. Intellectual Property Rights and Indemnification**

**4.1. Ownership.** Customer retains all right, title and interest in and to all Content. Qlik retains all right, title and interest in and to the Qlik Products and if applicable, all deliverables resulting from performance of Consulting Services, including all know-how, methodologies, designs and improvements to the Qlik Products, but excluding any Content incorporated into any such deliverable. Qlik hereby grants Customer a non-exclusive license to use any deliverables or work product that are the result of any Consulting Services in connection with Customer's authorized use of the Qlik Products.

**4.2. Retention of Rights.** No title or ownership of any proprietary or other rights related to Qlik Products is transferred or sold to Customer or any Authorized User pursuant to this Agreement. All intellectual property rights not explicitly granted to Customer are reserved and Qlik, its affiliates, and their respective suppliers or licensors, where applicable, retain all right, title and interest in and to the Qlik Products, including all intellectual property rights embodied therein, as well as to all Qlik Marks. Customer is not obligated to provide Qlik with any suggestions or feedback about the Qlik Products, but if Customer elects to do so, Qlik may use and modify this feedback for any purpose, including developing and improving the Qlik Products, without any liability, time limitation, restriction, or payment to Customer.

**4.3. Indemnification.** Qlik shall defend, indemnify and hold Customer and its directors, officers, employees, agents, and permitted successors and assigns harmless from any damages and costs awarded against Customer and its directors, officers, employees, agents, successors and assigns as a result of an IP Claim. Customer shall defend, indemnify and hold Qlik and its directors, managers, officers, employees, agents, resellers, licensors, affiliates, successors and assigns harmless from any damages and costs awarded against Qlik as a result of a third-party claim alleging: (i)

Customer's External Use of the Qlik Products or use of Content with Qlik Products infringes upon any third party rights, including any copyright, trademark or patent, or (ii) Customer's failure to comply with any Export Control Laws.

**4.4. Procedures.** Each party's indemnification obligation is subject to: (i) prompt notification of a claim in writing to the indemnifying party; (ii) consent to allow the indemnifying party to have sole control of the defense and any related settlement negotiations; and (iii) provision of information, authority and assistance as necessary for the defense and settlement of an indemnified claim. The indemnifying Party shall not consent to entry into judgment or enter into any settlement that admits liability of the indemnified Party or provides for injunctive or other non-monetary relief affecting the indemnified Party, without the prior consent of the indemnified Party, which consent shall not be unreasonably withheld.

**4.5. Exceptions.** Qlik will not be liable for any IP Claim arising from or based upon: (i) any unauthorized use, reproduction or distribution of the Qlik Products; (ii) any modification or alteration of the Qlik Products without the prior written approval of Qlik; (iii) use of the Qlik Products in combination with any other software, hardware, third-party data or other materials not provided by Qlik or expressly authorized in the applicable Documentation; (iv) use of a prior version of the Qlik Product, if use of a newer version of the Qlik Product would have avoided such claim; or (v) any Third-Party Materials not used in accordance with the Documentation.

**4.6. Remedies.** If the Qlik Product becomes, or, in Qlik's opinion, is likely to become, the subject of an IP Claim, Qlik may, at its option and expense, either: (i) obtain the right for Customer to continue using the Qlik Product in accordance with this Agreement; (ii) replace or modify the Qlik Product so that it becomes non-infringing while retaining substantially similar functionality; or (iii) if neither of the foregoing remedies can be reasonably provided by Qlik, terminate all rights to use the Qlik Products (without need for a ruling by a court or arbitrator) and refund as applicable a pro rata portion of unused, prepaid fees.

**4.7. SOLE AND EXCLUSIVE REMEDY.** THIS SECTION 4 STATES QLIK'S SOLE AND ENTIRE OBLIGATION AND LIABILITY, AND CUSTOMER'S AND ITS AFFILIATES' SOLE AND EXCLUSIVE RIGHT AND REMEDY, FOR ANY CLAIM OF INFRINGEMENT OR ALLEGED VIOLATION OF INTELLECTUAL PROPERTY RIGHTS.

#### **5. Limitation of Liability**

**5.1. Limitation of Liability.** Except for: (i) each Party's indemnification obligations under this Agreement, (ii) death or bodily injury caused by a Party's negligence; (iii) Customer's payment obligations; and (iv) Customer's violation of Qlik's intellectual property rights, each Party's maximum, cumulative liability for any claims, losses, costs (including attorney's fees) and other damages arising under or related to this Agreement, regardless of the form of action, whether in contract, tort (including negligence or strict liability) or otherwise, will be limited to actual damages incurred, and will in no event exceed the greater of the amount of fees paid or payable by Customer for the twelve (12) month period preceding the loss or damages giving rise to the claim and attributable to the specific products or services giving rise to such damages, or one thousand U.S. dollars (USD \$1,000).

**5.2. Exclusion of Damages.** IN NO EVENT WILL QLIK, ITS AFFILIATES, OR THEIR RESPECTIVE DIRECTORS, EMPLOYEES, AGENTS, SUCCESSORS, ASSIGNS SUPPLIERS OR LICENSORS, BE LIABLE FOR ANY LOSS

OF SAVINGS, PROFITS OR REVENUES, LOSS OR CORRUPTION OF DATA, GOODWILL, OR REPUTATION, INACCURACY OF ANY DATA, THE COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR SOFTWARE, OR FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, HOWSOEVER ARISING AND REGARDLESS OF THE THEORY OF LIABILITY (INCLUDING NEGLIGENCE OR STRICT LIABILITY), EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGE OR LOSS. QLIK PRODUCTS ARE NOT INTENDED FOR USE WITH OR FOR HIGH-RISK ACTIVITIES AND QLIK WILL NOT BE LIABLE FOR ANY CLAIMS OR DAMAGES ARISING FROM INHERENTLY DANGEROUS USE OF THE QLIK PRODUCTS.

**5.3. THE LIMITATIONS, EXCLUSIONS AND DISCLAIMERS CONTAINED IN THIS AGREEMENT ARE INDEPENDENT OF ANY AGREED REMEDY SPECIFIED IN THIS AGREEMENT AND WILL APPLY TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EVEN IF ANY AGREED REMEDY IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. TO THE EXTENT THAT QLIK MAY NOT, AS A MATTER OF LAW, DISCLAIM ANY WARRANTY OR LIMIT ITS LIABILITIES, THE SCOPE OR DURATION OF SUCH WARRANTY AND THE EXTENT OF QLIK'S LIABILITY WILL BE THE MINIMUM PERMITTED UNDER SUCH LAW. IF A WAIVER, RIGHT, OR REMEDY IS EXERCISED PURSUANT TO MANDATORY LAW, IT SHALL BE EXERCISED SOLELY FOR THE PURPOSE PROVIDED AND IN CONFORMANCE WITH THE PROCEDURES AND LIMITATIONS EXPRESSLY PROVIDED FOR BY SUCH LAW.**

**5.4. No Third-Party Beneficiaries.** The warranties and other obligations of Qlik under this Agreement run only to, and for the sole benefit of Customer, notwithstanding any rights of Authorized Third Parties to access or use the Qlik Products. Except as otherwise mandated by applicable law, no person or entity will be considered a third-party beneficiary of this Agreement or otherwise entitled to receive or enforce any rights or remedies in relation to this Agreement.

**5.5. Warranty Disclaimer.** EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, QLIK MAKES NO OTHER WARRANTIES AND HEREBY DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE (EVEN IF QLIK HAS BEEN INFORMED OF SUCH PURPOSE). QLIK DOES NOT WARRANT THAT THE QLIK PRODUCTS AND SERVICES WILL BE ERROR-FREE, COMPLETELY SECURE OR MEET CUSTOMER'S REQUIREMENTS.

## **6. Confidentiality**

Each Party shall protect the other Party's Confidential Information using the same degree of care used to protect its own confidential information, but in no event less than a reasonable degree of care. The receiving Party shall not: (i) use Confidential Information for any purpose outside the scope of this Agreement, or (ii) voluntarily disclose Confidential Information except to employees, contractors and agents as required to perform its obligations under the Agreement. Notwithstanding the foregoing, a Party may disclose the other Party's Confidential Information to the extent that it is required to be disclosed in accordance with an order or requirement of a court, administrative agency or other governmental body, provided that such Party, to the extent permitted by law, provides the other Party with prompt notice

of such order or requirement in order that it may seek a protective order. Each Party's confidentiality obligations hereunder will continue for a period of three (3) years following any termination of this Agreement, provided, however, that each Party's obligations will survive and continue in effect thereafter with respect to, and for so long as, any Confidential Information continues to be a trade secret under applicable law. The Parties acknowledge and agree that the Qlik Products and all pricing information shall be the Confidential Information of Qlik.

## **7. Term and Termination**

**7.1. Term.** This Agreement is effective upon the earlier of the effective date of the first Order Form referencing this Agreement or the date Customer is first provided with access to or use of the Qlik Products and shall remain in effect until expiration or termination of all rights to use any Qlik Products, which may be specified in any applicable Order Form. Unless otherwise indicated on an Order Form, Qlik Product subscriptions shall begin upon the Delivery Date and automatically renew for successive terms equal to the initial subscription period, unless either Party provides prior written notice of non-renewal to the other Party at least forty-five (45) days prior to the end of the then-current subscription period. Subscriptions may not be cancelled in whole or in part during any subscription period. Subscription fees are subject to increase based upon prevailing rates at the time of renewal.

**7.2. Termination for Breach or Insolvency.** Either Party may terminate this Agreement or any applicable Order Form, license or, subscription (without resort to court or other legal action) if the other Party fails to cure a material breach within thirty (30) days after written notice of such breach, provided that Qlik may terminate this Agreement immediately upon any breach of Section 1.4. Either Party may terminate this Agreement if the other Party terminates or suspends its business without a successor or becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors. If Qlik Products or Services are purchased through an Authorized Reseller, Qlik may terminate any right to use the Qlik Products or Services pursuant to this Section in the event Qlik fails to receive payment for such Qlik Products or Services.

**7.3. Effect of Termination.** Unless earlier terminated, Customer's rights with respect to Qlik Products and Services, will end upon termination of this Agreement or expiration of any applicable subscription or term. If required by Export Control Laws, Qlik may suspend or terminate Customer's access to Qlik Products and/or Services. Upon termination of this Agreement or the right to use any Qlik Products or Services, Customer shall immediately cease using the applicable Qlik Products and Services and if applicable, uninstall, delete and destroy all copies of the applicable Software. Termination of Qlik Cloud subscriptions may result in the deletion of Customer's Content therein. Termination of this Agreement or any licenses or subscriptions shall not prevent either Party from pursuing all available legal remedies, nor shall such termination relieve Customer's obligation to pay all fees that are owed. All provisions of this Agreement relating to Qlik's ownership of the Qlik Products, limitations of liability, disclaimers of warranties, confidentiality, waiver, audit and governing law and jurisdiction, will survive the termination of this Agreement.

## **8. General Provisions**

**8.1. Recordkeeping, Verification and Audit.** While this Agreement is in effect and for one (1) year after the effective date of its termination, upon request by Qlik but not more than

once per calendar year, Customer shall conduct a self-audit of its use of the Qlik Products and, within ten (10) business days after receipt of such request, submit a written statement to Qlik verifying that it is in compliance with the terms and conditions of this Agreement. Qlik shall have the right, on its own or through its designated agent or third-party accounting firm, to conduct an audit of Customer's use and deployment of the Qlik Products and monitor use of Qlik Cloud, in order to verify compliance with this Agreement. Qlik's written request for audit will be submitted to Customer at least fifteen (15) days prior to the specified audit date, and such audit shall be conducted during regular business hours and with the goal of minimizing the disruption to Customer's business. If such audit discloses that Customer is not in material compliance with the terms of this Agreement, then Customer shall be responsible for the reasonable costs of the audit, in addition to any other fees or damages to which Qlik may be entitled under this Agreement and applicable law.

**8.2. Third-Party Materials.** Qlik Products may incorporate or otherwise access certain open source or other third-party software, data, services, or other materials for the hosting and delivery of the Qlik Products, which are identified in the Documentation (the "Third-Party Materials"). Qlik represents that if the Qlik Products are used in accordance with this Agreement, such use shall not violate any license terms for the Third-Party Materials. Qlik makes no other representation, warranty, or other commitment regarding the Third-Party Materials, and hereby disclaims any and all liability relating to Customer's use thereof.

**8.3. Connectivity to Third-Party Applications.** Use of Qlik Products to connect or interoperate with or access third-party web-based applications or services may be governed by terms and conditions established by such third party. Third-party application programming interfaces and other third-party applications or services ("Third-Party Applications") are not managed by Qlik, and Qlik shall have no liability for connectivity if any Third-Party Applications are changed or discontinued by the respective third parties. Qlik does not support, license, control, endorse or otherwise make any representations or warranties regarding any Third-Party Applications. Use of Qlik published APIs are subject to the Qlik API Policy located at [www.qlik.dev](http://www.qlik.dev).

**8.4. Evaluation.** If Customer is provided Qlik Products for evaluation purposes ("Evaluation Products"), use of the Evaluation Products is only authorized in a non-production environment and for the period limited by the corresponding license key or credentials. If Customer is provided access to an evaluation of Qlik Cloud, Qlik will make the applicable Qlik Cloud Service available to Customer for its internal business operations on an evaluation basis free of charge until the earlier of: (a) the end of the evaluation period; (b) the start date of any purchased Qlik Cloud Service subscription ordered by Customer; or (c) termination by Qlik in its sole discretion. ANY CONTENT IN QLIK CLOUD, AND ANY CONFIGURATION CHANGES MADE TO THE QLIK CLOUD BY OR FOR CUSTOMER, DURING AN EVALUATION MAY BE PERMANENTLY LOST UNLESS: (A) CUSTOMER PURCHASES A SUBSCRIPTION FOR QLIK CLOUD OR (B) CUSTOMER EXPORTS SUCH CONTENT BEFORE THE END OF THE EVALUATION PERIOD. Notwithstanding any other provision in this Agreement, the right to use the Evaluation Products is provided "AS IS" without indemnification, Support, service level credits, or warranty of any kind, expressed or implied. In no event will Qlik's maximum cumulative liability for Evaluation Products exceed one thousand U.S. dollars (\$1,000).

**8.5. Early Release Products.** Qlik may, in its discretion, periodically provide certain Customers with an opportunity to

test additional early release features or functionality in connection with Qlik Products. Customer may decline to participate in the testing of such additional features or functionality at any time. Customer acknowledges that such features or functionality are not considered part of the Qlik Products under this Agreement, are not supported, are provided "as is" with no warranties of any kind and may be subject to additional terms. Qlik reserves the right at any time, in its sole discretion, to discontinue provision of, or to modify, any such features or functionality provided for testing purposes.

**8.6. Assignment.** Customer will not assign or transfer this Agreement or its rights and obligations hereunder to any third party without the prior written consent of Qlik. For purposes of this Section, any change of control of Customer, whether by merger, sale of equity interests or otherwise, will constitute an assignment requiring the prior written consent of Qlik. Any attempt by Customer to assign this Agreement or its rights and obligations hereunder in violation of this Section will be null and void. Qlik is free to assign or transfer any or all of its rights or obligations under this Agreement at its discretion. All terms of this Agreement will be binding upon, inure to the benefit of, and be enforceable by and against the respective successors and permitted assigns of Qlik and Customer.

**8.7. Privacy.** Qlik's privacy notices and further information regarding Qlik's privacy measures, including Qlik's Product Privacy Notice, may be found at [www.qlik.com](http://www.qlik.com).

**8.8. Governing Law and Jurisdiction.** This Agreement was made in, and this Agreement is governed by the law of, the jurisdiction set out in Table 1 corresponding to the Qlik entity identified as the contracting party, but excluding any conflict of law rules or the United Nations Convention on Contracts for the International Sale of Goods, the application of which is hereby expressly excluded. Any suit, action or proceeding arising out of or relating to this Agreement or the business relationship between the parties, whether based in tort, contract or statutory violation, shall be brought before, and only before, the courts or arbitration boards set out in Table 1 corresponding to the contracting Qlik entity, and shall be conducted in the English language. The Parties hereby expressly and irrevocably submit to the exclusive jurisdiction of such courts or arbitral bodies for the purpose of any such suit, action or proceeding. Qlik may be irreparably harmed by a breach of the terms of this Agreement and that damages, alone, may not be an adequate remedy. Customer agrees that, in addition to any other rights or remedies permitted under applicable law, Qlik will have the right to enforce this Agreement by injunctive or other equitable relief without the need to post a bond or to prove damages or irreparable harm. TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, CUSTOMER EXPRESSLY WAIVES ANY RIGHT TO A JURY TRIAL REGARDING DISPUTES RELATED TO THIS AGREEMENT.

**8.9. Force Majeure.** Neither Party shall be liable to the other for any delay or failure to perform any obligation under this Agreement (except for a failure to pay fees) if the delay or failure is due to unforeseen events, which occur after the effective date of this Agreement and which are beyond the reasonable control of the Parties, such as strikes, blockade, war, acts of civil or military authority, terrorism, riots, natural disasters, refusal of license or other acts by any government or other governmental agencies (including the passage of laws, regulations or sanctions which impact the delivery of Qlik Products or Services), pandemics, failure or diminishment of power, telecommunications or data networks or services, malicious attacks or materials shortage in so far as such an event prevents or delays the affected Party from fulfilling its obligations and such Party is not able to prevent or

remove the force majeure at reasonable cost.

**8.10. U.S. Government End Users.** The Software and Documentation provided in Qlik Products are deemed to be "commercial computer software" and "commercial computer software documentation," respectively, pursuant to DFAR Section 227.7202 and FAR Section 12.212(b), as applicable. Any use, modification, reproduction, release, performing, displaying or disclosing of the Qlik Products and Documentation by the U.S. Government shall be governed solely by the terms and conditions of this Agreement.

**8.11. Notices.** All notices by Customer to Qlik must be in writing and delivered to Qlik: (a) by certified or registered mail or by an internationally recognized express courier addressed to Qlik at 211 S. Gulph Rd., Suite 500, King of Prussia, PA 19406 USA, Attention: Legal Department, or (b) by email to CustomerNotices@qlik.com. Unless otherwise specified in writing by Customer, all notices to Customer shall be sent to the address provided to Qlik.

**8.12. Relationship between the Parties.** The Parties are independent contractors. Nothing in this Agreement will be construed to create an agency, joint venture, partnership, fiduciary relationship, joint venture or similar relationship between the Parties.

**8.13. No Waiver.** No term of this Agreement will be deemed waived and no breach excused unless such waiver or excuse shall be in writing and signed by the Party issuing the same. Neither this Agreement nor any Order Form shall be dependent on Customer issuing a purchase order. Customer acknowledges that any purchase order is for its administrative convenience only and that Qlik has the right to issue an invoice and collect payment without a corresponding purchase order. Any additional or conflicting terms or conditions in any purchase order shall have no legal force or effect.

**8.14. Limitation.** Subject to applicable law, no action, regardless of form, arising out of this Agreement may be brought by Customer more than two (2) years after the cause of action arose.

**8.15. Entire Agreement; Severability; Language.** This Agreement, any attachments hereto or documents referenced in the Agreement are the complete statement of the mutual understanding of the Parties and supersedes and cancels all previous written and oral agreements and communications pertaining to the subject matter of this Agreement. This Agreement may not be modified except in writing and signed by both Parties. If any provision of this Agreement is found by a court of competent jurisdiction to be invalid or unenforceable, that provision will be limited to the minimum extent necessary so that this Agreement will otherwise remain in force and effect. In the event of any conflicts or inconsistencies, the following order of precedence shall apply, but only with respect to the specific subject matter of each: (i) the addendum; then (ii) this Agreement; then (iii) the Order Form. (For the avoidance of doubt, where an Order Form includes additional and more specific terms and conditions with respect to a concept addressed generally in this Agreement or does not address a concept addressed herein, no conflict shall be deemed to exist). The English language version of this Agreement shall be the governing version used when interpreting or construing this Agreement.

**8.16. Construction.** For purposes of this Agreement: (i) the words "include," "includes" and "including" are deemed to be followed by the words "without limitation"; (ii) the word "or" is not exclusive; and (iii) words denoting the singular have a comparable meaning when used in the plural, and vice-versa.

A Party's role in drafting this Agreement shall not be a basis for construing this Agreement in any manner against such Party. Any Qlik Order Form and the schedules and exhibits attached thereto are an integral part of this Agreement to the same extent as if they were set forth verbatim herein.

**8.17. Publicity.** Customer hereby grants Qlik the right to list Customer as a customer of Qlik along with other customers in marketing materials such as the Qlik website, customer-facing presentations and press releases.

**8.18. Local Law Requirements.** If Customer obtains Qlik Products from: (i) QlikTech GmbH and designates an address in Austria or Germany in an Order Form, (ii) QlikTech Australia Pty Ltd and designates an address in Australia in an Order Form, or (iii) Qlik Netherlands B.V. and designates an address in the Russian Federation, then the terms of Addendum 1 shall be applicable and shall supersede any conflicting terms in the Agreement.

## II. QLIK SOFTWARE TERMS

The terms in this Section II apply exclusively to Software licensed by Customer under this Agreement.

### 9. Warranties

**9.1. Software Warranty.** Qlik warrants that the Software will, for a period of ninety (90) days from its Delivery Date ("Warranty Period"), operate substantially in conformity with the applicable Documentation. Customer must assert any claim for breach of this warranty within the Warranty Period. Customer's exclusive remedy and Qlik's sole liability with regard to any breach of this warranty will be, at Qlik's option and expense, to either: (i) repair or replace the non-conforming Software; or (ii) if the Software was obtained by purchase, refund to Customer the fees paid by Customer for the non-conforming Software. If Qlik elects to refund the applicable fee paid for the non-conforming Software, then: (i) Customer shall promptly return or demonstrate to Qlik's reasonable satisfaction that it has destroyed the non-conforming Software and any other related materials provided by Qlik; and (ii) the right to access or use such non-conforming Software will automatically terminate.

**9.2. Exclusions.** Qlik will have no liability for any warranty claim, or any obligation to correct any defect or problem with the Software, to the extent that it arises out of: (i) any use of the Software not in accordance with the Documentation; (ii) any unauthorized modification or alteration of the Software; or (iii) any use of the Software in combination with any third-party software or hardware not specified in the Documentation.

## III. QLIK CLOUD TERMS

The terms in this Section III apply exclusively to the access and use of Qlik Cloud by Customer.

### 10. Customer Responsibilities

**10.1. Content.** Customer acknowledges and agrees that it has sole responsibility: (i) to administer user access to Qlik Cloud and the Content, (ii) for the input and administration of Content in Qlik Cloud, including deletion of Content, (iii) to ensure it has all rights necessary to use, transmit and display Content and for Qlik to host, store, adapt or integrate such Content as required to provide Qlik Cloud, (iv) for maintaining Content on the systems from which they are sourced and making backup copies of Content. Customer hereby represents and warrants on behalf of itself and its Authorized



Users that it has all of the rights in the Content necessary for the use, display, publishing, sharing and distribution of the Content and that such use of the Content under this Agreement does not violate any third-party rights, laws or this Agreement. Qlik is not responsible for the accuracy, completeness, appropriateness, copyright compliance or legality of any Content.

**10.2. Authorized Third Parties.** If Customer chooses to have an Authorized Third Party access Qlik Cloud on its behalf, including Qlik employees accessing Qlik Cloud at Customer's request, Customer acknowledges that Customer, and not Qlik, is solely responsible and liable for (i) the acts and omissions of such Authorized Third Party in connection with Qlik Cloud; (ii) any Content that Customer requests or instructs the Authorized Third Party to include in Qlik Cloud; and (iii) the issuance, removal and/or deactivation of the credentials issued for such Authorized Third Party.

## 11. Security and Privacy

**11.1. Security.** Qlik will use commercially reasonable, industry standard security measures in providing Qlik Cloud and will comply with such data security regulations applicable to Qlik Cloud. Qlik has implemented appropriate technical and procedural safeguards to protect and secure Content in accordance with the Information Security Addendum available at [www.qlik.com/product-terms](http://www.qlik.com/product-terms). Qlik Cloud is hosted and delivered from a data center operated by a third-party provider, which is solely responsible for the underlying infrastructure and hosting of Qlik Cloud. Qlik reserves the right to remove or update its third-party provider. Customer is solely responsible for any breach or loss resulting from: (i) Customer's failure to control user access; (ii) failure to secure Content which Customer transmits to and from Qlik Cloud; and (iii) failure to implement security configurations and encryption technology to protect Content.

**11.2. Data Privacy.** The terms of the Data Processing Addendum at [www.qlik.com/license-terms](http://www.qlik.com/license-terms) ("DPA") are incorporated by reference when executed by Customer as set forth in the DPA and received by Qlik, and shall apply to the extent Content includes "Customer Personal Data" as defined in the DPA. All Content used by or within Qlik Cloud may be stored on servers located in various regions, including the EU, and Customer may select (where available) the region in which its Content resides. Customer and Authorized Users are not permitted to store, maintain, or process within Qlik Cloud payment card information or related financial information subject to Payment Card Industry Data Security Standards, or Content regulated by an industry specific privacy law specific to Customer's industry, such as Protected Health Information (as defined under the Health Insurance Portability and Accountability Act of 1996 (HIPAA)).

## 12. Qlik Cloud Warranty

**12.1. Warranty.** Qlik warrants that Qlik Cloud will perform substantially in accordance with the applicable Documentation when used as authorized under this Agreement. This warranty will not apply: (i) unless Customer notifies Qlik of a claim under this warranty within 30 days of the date on which the condition giving rise to the claim first appears, or (ii) the event giving rise to the warranty claim was caused by misuse, unauthorized modifications, or third-party hardware, software or services. Customer's exclusive remedy and Qlik's sole liability with regard to any breach of this warranty will be, at Qlik's option and expense, to either: (i) repair or replace the non-conforming Qlik Cloud or (ii) terminate the affected Qlik Cloud and refund Customer, on a pro rata basis, any unused, prepaid fees as of the termination effective date, but in no event less than one thousand U.S. dollars (USD \$1,000).

**12.2. Warranty Disclaimer.** EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, QLIK CLOUD ARE PROVIDED WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES IMPLIED BY ANY COURSE OF PERFORMANCE OR USAGE OF TRADE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED. QLIK AND ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SUPPLIERS, PARTNERS, SERVICE PROVIDERS AND LICENSORS DO NOT WARRANT THAT: (I) QLIK CLOUD WILL BE UNINTERRUPTED OR ERROR FREE, (II) QLIK CLOUD ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS; OR (IV) THE RESULTS OF USING QLIK CLOUD WILL MEET CUSTOMER'S OR AUTHORIZED USERS' REQUIREMENTS.

## 13. Suspension of Service

Qlik may, without limiting its other rights and remedies, suspend Customer's access to Qlik Cloud at any time if: (i) required by applicable law, including Export Control Laws, (ii) Customer or any Authorized User is in violation of the terms of this Agreement or the Qlik Acceptable Use Policy, or (iii) Customer's use disrupts the integrity or operation of Qlik Cloud or interferes with the use by others. Qlik will use reasonable efforts to notify Customer prior to any suspension, unless prohibited by applicable law or court order.



**QLIK CUSTOMER AGREEMENT - Table 1  
Governing Law and Venue**

If the Customer's location is not specified below, then the contracting entity shall be QlikTech International Markets AB, with the applicable Governing Law and Arbitration as stated below.

Customer Location <sup>1</sup>	Qlik Contracting Entity	Governing Law
Any countries not specifically identified in this Table 1	QlikTech International Markets AB	(i) the Governing Law shall be the laws of Sweden; and (ii) any suit, action or proceeding arising out of or relating to this Agreement (including any non-contractual dispute or claim) will be settled by arbitration at the Arbitration Institute of the Stockholm Chamber of Commerce† in Stockholm.
Australia, American Samoa, Cook Islands, Fiji, Guam, Kiribati, Marshall Islands, Federal State of Micronesia, Nauru, Niue, Norfolk Island, Palau, Papua New Guinea, Saint Helena, Samoa, Solomon Islands, Tonga, Tuvalu or Vanuatu	QlikTech Australia Pty Ltd.	(i) the Governing Law shall be the laws of New South Wales Australia; and (ii) any suit, action or proceeding arising out of or relating to this Agreement (including any non-contractual dispute or claim) will be brought before the Courts of New South Wales, Australia and any courts competent to hear appeals therefrom.
Brazil	QlikTech Brasil Comercialização de Software Ltda.	(i) the Governing Law shall be the laws of Brazil; and (ii) any suit, action or proceeding arising out of or relating to this Agreement (including any non-contractual dispute or claim) will be settled by arbitration at the Arbitration Institute of the Stockholm Chamber of Commerce† in Stockholm.
Canada	QlikTech Corporation	(i) the Governing Law shall be the laws of the Province of Ontario, Canada; and (ii) any suit, action or proceeding arising out of or relating to this Agreement (including any non-contractual dispute or claim) will be brought before the Courts of Ontario.
Denmark or Iceland	QlikTech Denmark A/S	(i) the Governing Law shall be the laws of Sweden; and (ii) any suit, action or proceeding arising out of or relating to this Agreement (including any non-contractual dispute or claim) will be settled by arbitration at the Arbitration Institute of the Stockholm Chamber of Commerce† in Stockholm.
Finland, Estonia, Latvia or Lithuania	QlikTech Finland Oy	(i) the Governing Law shall be the laws of Sweden; and (ii) any suit, action or proceeding arising out of or relating to this Agreement (including any non-contractual dispute or claim) will be settled by arbitration at the Arbitration Institute of the Stockholm Chamber of Commerce† in Stockholm.
France, Monaco, or Reunion Island	QlikTech France SARL	(i) the Governing Law shall be the laws of France; and (ii) any suit, action or proceeding arising out of or relating to this Agreement (including any non-contractual dispute or claim) will be settled by the Courts of Paris, France.
Germany, Austria, Switzerland, or Liechtenstein	QlikTech GmbH	(i) the Governing Law shall be the laws of Germany; and (ii) any suit, action or proceeding arising out of or relating to this Agreement (including any non-contractual dispute or claim) will be settled by the Courts of Düsseldorf, Germany.
Hong Kong and Macau	QlikTech Hong Kong Limited	(i) the Governing Law shall be the laws of Hong Kong SAR; (ii) any suit, action or proceeding arising out of or relating to this Agreement (including any non-contractual dispute or claim) will be settled by arbitration in the Hong Kong SAR in accordance with the laws of the Hong Kong SAR†† and the arbitrators shall have the power to order, among other things, specific performance and injunctive relief.

<sup>1</sup>Customer Location refers to Customer's billing address country

Customer Location <sup>1</sup>	Qlik Contracting Entity	Governing Law
India	QlikTech India Pvt. Ltd.	(i) the Governing Law shall be the laws of India; and (ii) any suit, action or proceeding arising out of or relating to this Agreement (including any non-contractual dispute or claim) will be finally resolved by arbitration conducted in accordance with the Arbitration and Conciliation Act, 1996 and any amendments thereto. †††
Israel	Qlik Analytics (ISR) Ltd	(i) the Governing Law shall be the laws of Israel and (ii) any suit, action or proceeding arising out of or relating to this Agreement (including any non-contractual dispute or claim) will be brought before the Courts of Israel and any courts competent to hear appeals therefrom.
Italy	QlikTech Italy Srl,	(i) the Governing Law shall be the laws of Italy; and (ii) any suit, action or proceeding arising out of or relating to this Agreement (including any non-contractual dispute or claim) will be adjudicated exclusively by the Court of Milan.
Japan	QlikTech Japan K.K.	(i) the Governing Law shall be the laws of Japan; and (ii) any suit, action or proceeding arising out of or relating to this Agreement (including any non-contractual dispute or claim) will be settled by the Tokyo District Court.
Mexico	QlikTech Mexico, S. de R.L. de C.V.	(i) the Governing Law shall be the laws of Mexico; and (ii) any suit, action or proceeding arising out of or relating to this Agreement (including any non-contractual dispute or claim) will be settled by arbitration at the Arbitration Institute of the Stockholm Chamber of Commerce† in Stockholm.
Albania, Armenia, Azerbaijan, Belarus, Belgium, Bosnia, Herzegovina, Bulgaria, Croatia/Hrvatska, Czech Republic, Georgia, Hungary, Kazakhstan, Kosovo, Luxembourg, Macedonia, Republic of Moldova, Montenegro, Netherlands, Romania, Russian Federation, Serbia, Slovak Republic, Slovenia, Turkey, Ukraine or Uzbekistan	QlikTech Netherlands B.V.	(i) the Governing Law shall be the laws of the Netherlands; and (ii) any suit, action or proceeding arising out of or relating to this Agreement (including any non-contractual dispute or claim) will be settled by arbitration at the SGOA (the Dutch Foundation of the Settlement of Automation Disputes) in The Hague.
New Zealand	QlikTech New Zealand Limited	(i) the Governing Law shall be the laws of New Zealand; and (ii) any suit, action or proceeding arising out of or relating to this Agreement (including any non-contractual dispute or claim) will be brought before the Courts of New Zealand and any courts competent to hear appeals therefrom.
People's Republic of China ("PRC")	Qlik Technology (Beijing) Limited Liability Company	(i) the Governing Law shall be the laws of China; and (ii) any suit, action or proceeding arising out of or relating to this Agreement (including any non-contractual dispute or claim) will be settled by arbitration at the China International Economic and Trade Arbitration Commission (CIETAC). ††††
Brunei, Darussalam, Cambodia, East Timor, Indonesia, Lao People's Democratic Republic, Mongolia, Myanmar (Burma), Philippines, Singapore, Thailand, Vietnam	QlikTech Singapore Pte. Ltd.	(i) the Governing Law shall be the laws of Singapore; and (ii) any suit, action or proceeding arising out of or relating to this Agreement (including any non-contractual dispute or claim) shall be determined by arbitration in Singapore in accordance with the UNCITRAL Arbitration Guide in force from time to time, and the law governing the agreement contained in this Section (ii), the arbitration, and the conduct and procedure of the arbitration, shall be the laws of Singapore. ††††
South Korea	QlikTech Hong Kong Limited	(i) the Governing Law shall be the laws of South Korea; and (ii) any suit, action or proceeding arising out of or relating to this Agreement (including any non-contractual dispute or claim) will be brought before the Courts of the Seoul District Court and any courts competent to hear appeals therefrom.
Spain, Portugal or Andorra	QlikTech Ibérica S.L.	(i) the Governing Law shall be the laws of Spain; and (ii) any suit, action or proceeding arising out of or relating to this Agreement (including any non-contractual dispute or claim) will be settled exclusively by the Courts of the city of Madrid, Spain.

Customer Location <sup>1</sup>	Qlik Contracting Entity	Governing Law
Argentina, Aruba, Belize, Bermuda, Bolivia, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Nicaragua, Panama, Peru, Uruguay, Venezuela	QlikTech LATAM AB	(i) the Governing Law shall be the laws of Sweden; and (ii) any suit, action or proceeding arising out of or relating to this Agreement (including any non-contractual dispute or claim) will be settled by arbitration at the Arbitration Institute of the Stockholm Chamber of Commerce† in Stockholm.
Sweden	QlikTech Nordic AB	(i) the Governing Law shall be the laws of Sweden; and (ii) any suit, action or proceeding arising out of or relating to this Agreement (including any non-contractual dispute or claim) will be settled by arbitration at the Arbitration Institute of the Stockholm Chamber of Commerce† in Stockholm.
United Kingdom, Ireland or Gibraltar	QlikTech UK Limited	(i) the Governing Law shall be the laws of England & Wales; and (ii) any suit, action or proceeding arising out of or relating to this Agreement (including any non-contractual dispute or claim) will be adjudicated by the courts of England and Wales.
United States, Puerto Rico, Jamaica, Virgin Islands (US) or Haiti	QlikTech Inc.	(i) the Governing Law shall be the laws of the Commonwealth of Pennsylvania, USA; and (ii) any suit, action or proceeding arising out of or relating to this Agreement (including any non-contractual dispute or claim) shall be settled by, and only by, the Court of Common Pleas of Montgomery, Pennsylvania or the United States District Court for the Eastern District of Pennsylvania.

† Where the amount in dispute clearly does not exceed EUR 300,000, the Stockholm Chamber of Commerce (SCC) Institute's Guide for Expedited Arbitration shall apply and the arbitral tribunal shall be composed of a sole arbitrator. Where the amount in dispute clearly exceeds the amount set forth above, the Guide of the SCC Institute shall apply and the arbitral tribunal shall be composed of three arbitrators. The arbitration proceedings shall be conducted in English. The parties shall bear their own costs and expenses, including attorneys' fees, but the arbitrator may, in the award, allocate all of the administrative costs of the arbitration, including the fees of the arbitrators, against the Party that did not prevail. The decision of the arbitrator shall be final and binding upon both Parties and shall be enforceable in any court of law.

†† The arbitration shall be administered by the Hong Kong International Arbitration Centre ("HKIAC") pursuant to its rules and procedures. There shall be three (3) arbitrators. One arbitrator shall be appointed by Qlik. One arbitrator shall be appointed by Customer. The third arbitrator shall be agreed between the Parties, and failing agreement, or if the arbitrator selected is unable or is unwilling to act, the appointing authority shall be the HKIAC. The arbitration proceedings shall be conducted in English. The parties shall bear their own costs and expenses, including attorneys' fees, but the arbitrators may, in the award, allocate all of the administrative costs of the arbitration, including the fees of the arbitrators, against the Party that did not prevail. The decision of the arbitrators shall be final and binding upon both Parties and shall be enforceable in any court of law.

††† The arbitration shall be conducted before a panel of three arbitrators, selected as follows: one arbitrator shall be nominated by Customer; one arbitrator shall be nominated by Qlik; and the third arbitrator shall be jointly nominated by the two arbitrators so nominated. The place of arbitration shall be Mumbai. The arbitration proceedings shall be conducted in English. The arbitrator's award shall be substantiated in writing. The Parties shall bear their own costs and expenses including attorney's fees, but the court of arbitration may decide to allocate all of the administrative costs of the arbitration, including the fees of the arbitrator, against the Party that did not prevail. The decision of the arbitrator shall be final and binding upon both Parties and shall be enforceable in any court of law.

†††† The arbitration shall be administered by the Singapore International Arbitration Centre ("SIAC"). There shall be one arbitrator. The arbitrator shall be agreed between the Parties. Failing agreement, or if the arbitrator selected is unable or is unwilling to act, the appointing authority shall be the SIAC. The arbitration proceedings shall be conducted in English. The Parties shall bear their own costs and expenses, including attorneys' fees, but the arbitrator may, in the award, allocate all of the administrative costs of the arbitration, including the fees of the arbitrator, against the Party that did not prevail. The arbitrator shall have the power to order, among other things, specific performance and injunctive relief. The decision of the arbitrator shall be final and binding upon both Parties and shall be enforceable in any court of law.

††††† The arbitration shall be administered by the China International Economic and Trade Arbitration Commission (CIETAC) pursuant to its rules and procedures. There shall be three (3) arbitrators. Each Party will appoint one arbitrator each. The third arbitrator shall be agreed between the Parties, and failing agreement, or if the arbitrator selected is unable or unwilling to act, the appointing authority shall be the CIETAC. The arbitration proceedings shall be conducted in English. The Parties shall bear their own costs and expenses, including attorneys' fees, but the arbitrators may, in the award, allocate all of the administrative costs of the arbitration, including the fees of the arbitrators, against the Party who did not prevail. The decision of the arbitrators shall be final and binding upon both Parties and shall be enforceable in any court of law. Notwithstanding anything to the contrary in this Agreement, either Party may at any time seek injunctive or interlocutory relief in a court of competent jurisdiction in order to protect any urgent interest of such Party.



## QLIK CUSTOMER AGREEMENT - ADDENDUM 1

### (FOR CUSTOMERS IN GERMANY, AUSTRIA, AUSTRALIA AND RUSSIAN FEDERATION)

This Addendum to the Qlik User License Agreement ("Agreement") shall apply to Customers who purchase or subscribe to Qlik Products and have a contract address in Germany, Austria, Australia and the Russian Federation and supersedes any conflicting terms in the Agreement.

#### 1. Customers in Germany or Austria

The terms in this Section 1 are applicable to any Customer who obtains its license key(s) from QlikTech GmbH, or is subject to the governing laws of Germany as set forth in Table 1 of this Agreement; and designates an address on an Order Form in Germany or Austria.

**1.1. Limited Warranty.** With regard to perpetual Software licenses issued under this Agreement, the first three sentences of Section II, 9.1 of the Agreement shall not apply. Instead, the following limited warranty shall apply: Qlik warrants that the initial version of the Software delivered hereunder (but excluding any updates thereto provided as a result of Support) provides the functionalities set forth in the Documentation (the "agreed upon functionalities") for the limited warranty period following the Delivery Date when used on the recommended hardware configuration. As used in this Section, "limited warranty period" means one (1) year. Non-substantial variation from the agreed upon functionalities shall not be considered and does not establish any warranty rights. To make a warranty claim, Customer must notify Qlik in writing during the limited warranty period. If the functionalities of the Software vary substantially from the agreed upon functionalities, Qlik shall be entitled, by way of re-performance and at its own discretion, to repair or replace the Software. If this fails, Customer is entitled to cancel the purchase agreement (rescission).

**1.2. Limited Subscription Warranty.** With regard to subscriptions issued under this Agreement, the following limited warranty shall apply:

**1.2.1** The Parties agree and acknowledge that the Qlik Products are provided "without warranty of any kind, express or implied, including but not limited to, the implied warranties of merchantability, satisfactory quality, and fitness for a particular purpose, whereas Qlik shall remedy any defects in kind as part of its ongoing support obligations which are included and fully compensated by the support fee. Further, Qlik and its vendors disclaim any warranty that Customer's use of the Qlik Products will be uninterrupted or error free. Qlik does not warrant or guarantee that it will correct any errors or inaccuracies in GeoAnalytics or Geocoding data. Customer's use of the Qlik Products is solely at its own risk.

**1.2.2** The Parties agree and acknowledge that the following modifications of Customer's statutory warranty rights shall apply:

(a) Qlik shall have no liability for initial material defects of the Software (Sachmängel) regardless of whether they have been caused by Qlik's fault (verschuldensunabhängig);

(b) Customer's: (i) right of reduction (Minderung), (ii) set-off and (iii) retention shall be excluded unless, as regards to (ii) and (iii), Customer asserts such rights on the basis of claims that have been asserted by a final court judgment;

(c) Any warranty claims of Customer against Qlik shall become time-barred 12 months after the start of the statutory warranty period; and

(d) For the avoidance of doubt, the Parties agree and acknowledge no further warranty period shall apply in regard to updates or upgrades to the Software that Qlik provides

during the initial or any renewal term of the subscription licenses. Any damage claim Customer has under an applicable warranty shall be limited by the limitation of liability provision set forth under Section 5 of this Agreement.

**1.3.** Any damage claim Customer has under an applicable warranty shall be limited by the limitation of liability provision set forth under Section 5 of this Agreement.

THE LIMITED WARRANTIES IN SECTIONS 1.1 AND 1.2 OF THIS ADDENDUM DO NOT APPLY TO SOFTWARE OR SERVICES PROVIDED TO CUSTOMER FREE OF CHARGE, OR SOFTWARE THAT HAS BEEN ALTERED BY CUSTOMER, OR TO UPDATES PROVIDED UNDER SUPPORT, TO THE EXTENT SUCH ALTERATIONS CAUSED A DEFECT.

**1.4. Third Party Intellectual Property Infringement Indemnification in Germany or Austria.** Section 4 is supplemented by the following additional sentence: CUSTOMER'S STATUTORY CLAIMS FOR DAMAGES SHALL REMAIN UNAFFECTED, PROVIDED, HOWEVER; THAT ANY SUCH CLAIMS SHALL BE LIMITED BY THE LIMITATION OF LIABILITY AS SET FORTH HEREUNDER. SECTION 1 OF THIS ADDENDUM AND SECTION 5 OF THE AGREEMENT STATE QLIK'S SOLE AND ENTIRE OBLIGATION AND LIABILITY, AND CUSTOMER'S SOLE AND EXCLUSIVE RIGHT AND REMEDY, FOR INFRINGEMENT OR VIOLATION OF INTELLECTUAL PROPERTY RIGHTS.

**1.5. Limitation of Liability.** Sections 5.1 to 5.3 of the Agreement are not applicable. Instead, subject to the provisions below, Qlik's statutory liability for damages shall be limited as follows:

**1.5.1.** Qlik shall be liable only up to the amount of damages as typically foreseeable at the time of entering into the purchase agreement in respect of damages caused by a slightly negligent breach of a material contractual obligation (i.e. a contractual obligation the fulfilment of which is essential for the proper execution of this Agreement, the breach of which endangers the purpose of this Agreement and on the fulfilment of which Customer regularly relies).

**1.5.2.** Qlik shall not be liable for damages caused by a slightly negligent breach of a non-material contractual obligation. The aforesaid limitation of liability shall not apply to any mandatory statutory liability, in particular to liability under the German Product Liability Act, liability for assuming a specific guarantee, liability for damages caused by willful misconduct or gross negligence, or any kind of willfully or negligently caused personal injuries, death or damages to health.

**1.5.3.** Customer shall take all reasonable measures to avoid and reduce damages, in particular, to make back-up copies of data on a regular basis and to carry out security checks for the purpose of defending or detecting viruses and other disruptive programs within Customer's IT system.

**1.5.4.** Regardless of the grounds giving rise to liability, Qlik shall not be liable for indirect and/or consequential damages, including loss of profits or interest, unless such damage has

been caused by Qlik's willful misconduct or gross negligence.

**1.5.5.** To the extent Qlik's liability is limited or excluded, the same shall apply in respect of any personal liability of Qlik's legal representatives, employees, suppliers, resellers and vicarious agents.

**1.5.6.** Section 8.1 of the Agreement shall be amended as follows: For customers with perpetual licenses, only the right to receive Support will end upon termination of the Agreement. The Parties also agree to exclude the applicability of Section 580a German Civil Code for Qlik Products. Furthermore, the Parties agree that unless otherwise agreed between the Parties, subscriptions shall automatically renew for successive terms equal to the initial subscription period, however not for longer periods than 24 months. For clarity, Customers with multi-year subscriptions, which are auto renewed, may terminate such renewal only after 24 months, unless otherwise agreed by the Parties in writing.

**1.6.** If a Customer subscribes to Qlik Cloud, Qlik's Service Level Agreement shall be amended to include the following sentence: IN ADDITION, STATUTORY DAMAGES SHALL REMAIN UNAFFECTED, PROVIDED, HOWEVER, THAT ANY SUCH CLAIMS SHALL BE LIMITED BY THE LIMITATION OF LIABILITY AS SET FORTH IN THE AGREEMENT (LESS THE VALUE OF ANY SERVICE CREDITS PAID BY QLIK IN RESPECT OF THE RELEVANT QUARTER).

**1.7. Qlik Cloud Warranty.** Section 12.1 of the Agreement shall be amended to include the following additional sentence: IN ADDITION, STATUTORY DAMAGES SHALL REMAIN UNAFFECTED, PROVIDED, HOWEVER; THAT ANY SUCH CLAIMS SHALL BE LIMITED BY THE LIMITATION OF LIABILITY AS SET FORTH IN THE AGREEMENT (LESS THE VALUE OF ANY SERVICE CREDITS PAID BY QLIK IN RESPECT OF THE RELEVANT QUARTER).

## **2. Customers in Australia**

The terms in this Section 2 are applicable to any Customer who obtains its license key(s) from QlikTech Australia Pty Ltd or is subject to the governing law of Australia as set forth in Table 1 of this Agreement; and designates an address on an Order Form in Australia.

**2.1. Warranties Limitations and Disclaimers for Customers in Australia.** If Customer is a "consumer" under the Competition and Consumer Act 2010 (Cth), then: (a) Customer's rights under Section 3 or 9 of the Agreement are separate and additional to any warranties or consumer guarantees that cannot be excluded under Australian law (including, without limitation, consumer guarantees as to title and acceptable quality under the Competition And Consumer Act) ("Non-Excludable Rights"); the limitations, exclusions and disclaimers contained in this Agreement shall not be apply to the extent that they purport to exclude any Non Excludable Rights; and (b) with respect to claims relating to breach of any Non Excludable Rights, the liability of Qlik is limited (where Qlik is authorized by law to do so) at Qlik's option to any one of resupplying, replacing or repairing, or paying the cost of resupplying, replacing or repairing the goods in respect of which the breach occurred, or resupplying or paying the cost of resupplying, the services in respect of which the breach occurred.

## **3. Customers in Russian Federation**

The terms in this Section 3 are applicable to any Customer who obtains its license key(s) from QlikTech Netherlands B.V., or is subject to the governing laws of the Netherlands as set forth in Table 1 of this Agreement; and designates an address on an Order Form in the Russian Federation.

**3.1 Right to Terminate for Customers in Russia.** Where Customer has a statutory right to terminate a contract for Qlik Cloud or Services without cause, the Parties hereby agree that such termination rights are exercisable, subject to the following: (i) a minimum of 90 days prior notice of termination by Customer to Qlik; (ii) prior payment by Customer of all applicable fees due through the termination effective date; (iii) where fees for the Qlik Cloud have been paid in advance, Customer is entitled to a pro-rated refund of prepaid fees from the termination effective date; and (iv) payment of a termination fee equal to the fees which would have been payable from the termination effective date through the remainder of the subscription period.

# SmartBear Hosted Services Terms of Use

This SmartBear Hosted Services Terms of Use is a legal agreement between You and SmartBear (as defined in Section 2 below) that governs your access to, and use of, our Hosted Services, whether purchased directly from SmartBear or a Reseller (“EULA” or “Agreement”).

BY ACCEPTING THIS AGREEMENT, EITHER BY (1) CLICKING A BOX INDICATING YOUR ACCEPTANCE OR (2) EXECUTING A QUOTE OR ORDER THAT REFERENCES THIS AGREEMENT, YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THIS AGREEMENT.

You may not access the Services if You are a direct competitor of SmartBear, except with Our prior written consent.

## 1. Definitions.

"Affiliate" means any entity which directly or indirectly controls, is controlled by, or is under common control with the subject entity; for purposes hereof, "control" means possession, directly or indirectly of the power to direct or cause the direction of the activities, management or policies of an entity, whether through the ownership of voting securities, by contract or otherwise. Without limiting the foregoing, control will be presumed to exist when an entity (a) owns or directly or indirectly controls fifty percent (50%) or more of the outstanding voting stock or other ownership interest of the applicable entity or (b) possesses, directly or indirectly, the power to elect or appoint fifty percent (50%) or more of the members of the applicable entity's governing body.

“Data” means (i) content You post or otherwise submit to the Services and (ii) SmartBear's license and/or product usage data transmitted to SmartBear, at the time of registration, use or update, in order to activate your access rights and provide You with update notifications, protect You and SmartBear against unlicensed or illegal use of the Services, and improve customer service and the Services.

“Documentation” means the published and generally available on-line user and administrator materials SmartBear delivers or makes available with the Services, including on-line help, as updated from time to time.

“Hosted Services” means the services provided by SmartBear through which it makes the Software available to you as a service (SaaS) and hosted by SmartBear or its authorized third party provider(s).

“Maintenance and Support” mean those technical support and related services provided by SmartBear as set forth at [https://support.smartbear.com/support/media/pdf/SB\\_PS\\_SLA.pdf](https://support.smartbear.com/support/media/pdf/SB_PS_SLA.pdf).

"Order" means SmartBear's online purchase order, quote or other document for placing orders entered into between You and SmartBear, which identifies the Services (including the applicable SmartBear product(s), license type, license model (duration or usage-based), quantity/term) ordered by You and any required access information. Any Order that has been accepted by SmartBear shall be deemed incorporated herein by reference.

"Reseller" means an authorized reseller or distributor who may sell the Services to You.

"Software" means the SmartBear software provided as part of the Services pursuant to the applicable Order, and all Updates, in each case, access to which is provided by SmartBear.

"Services" means the Hosted Services, together with Maintenance and Support, as provided to you during the Subscription Term based on the applicable Order.

"Subscription" means Our grant of the right to access and use the Software through the Services for the period of time or usage-based limit set forth in the Order (the "Subscription Term").

"Update" means any subsequent release of the Software that SmartBear generally makes available to its SaaS customers as part of the Services; Updates do not include any Software that is marketed and priced separately by SmartBear as part of the Services.

"User" means an individual who is authorized by You to use the Services in accordance with this Agreement and the applicable license type set forth herein, and who has been supplied usage credentials. A User may include, but is not limited to, your employee, consultant, contractor and any agent with which You transact business.

"You" means the company or other legal entity for which you are accepting this Agreement and Affiliates of that company or entity.

## **2. Who We Are.**

If You acquire access to, and use, the Services from in the United States or Canada, "We", "Us", "Our" or "SmartBear" means SmartBear Software Inc., a Delaware corporation with its principal place of business at 450 Artisan Way, Somerville, MA 02145, and its licensors.

If You acquire access to, and use, the Services from outside of the United States or Canada, "We", "Us", "Our" or "SmartBear" means SmartBear (Ireland) Limited with its principal place of business at 3<sup>rd</sup> Floor Dockgate, Unit 19, Merchants Rd., Galway, Ireland, together with its licensors.

## **3. Free Trial Version.**

If You register for a free Subscription trial, SmartBear will make the applicable Services available to You on a temporary basis (the "Trial Version") free of charge until the end of the free trial period for which You registered or ordered the applicable Services. The Trial Version may be used only to review evaluate and demonstrate, for Your internal purposes; the Services



and may have limited features. The Trial Version may cease operating after the applicable time period or number of uses based on an internal metering mechanism within the Trial Version itself. Regardless of any such metering, You must stop use of the Services at the end of such period or number of uses.

You shall not (a) access or use the Trial Version of the Services under more than one username, (b) disclose the results of performance benchmarks obtained using the Trial Version to any third party without SmartBear's prior written consent, (c) use the Trial Version for any commercial training or any application deployment or ultimate production purpose, or (d) use the Trial Version other than for the sole purpose of determining whether to purchase a license to access and use the Services.

ANY DATA YOU ENTER INTO A TRIAL VERSION, AND ANY CONFIGURATIONS MADE TO THE TRIAL VERSION BY OR FOR YOU DURING ANY FREE TRIAL MAY BE PERMANENTLY LOST UNLESS YOU PURCHASE A LICENSE TO THE SAME SERVICES AS THOSE COVERED BY THE TRIAL OR EXPORT SUCH DATA, BEFORE THE END OF THE TRIAL PERIOD.

NOTWITHSTANDING SECTION 16 (LIMITED WARRANTY; REMEDIES), DURING A FREE TRIAL, THE TRIAL VERSION AND ANY APPLICABLE SERVICES ARE PROVIDED "AS-IS" WITHOUT WARRANTY AND SMARTBEAR HAS NO RESPONSIBILITY FOR DATA RETENTION OR RESULTS FROM TRIALS.

#### **4. Services Grants.**

Subject to the terms of this Agreement and during the Subscription Term, SmartBear grants You a non-exclusive, non-transferable, non-sublicensable, limited license to access and use the Services, Documentation, and, if any, associated media and materials, and, if applicable, third party software programs supplied by SmartBear solely (i) to access and use the Services as listed in the applicable Order and (ii) for Your internal business purposes. You may access and use the Services as permitted by the license type purchased, which license type is (i) specified in the applicable Order and (ii) subject to the further terms below applicable to the relevant product.

#### **5. License Types.**

The license granted in Section 4 are subject to all terms and conditions set forth in this Agreement, including the following applicable terms (as specified in the applicable Order):

**Single (Named) Licensee:** all Services licensed under these terms are single licensee, meaning it can be activated by only one User, with a unique username and password. Access to the Services may not be reassigned other than for the permanent transfer of the access license to the Services to another User if the eligible User is no longer employed by You. An eligible User may access the Services with a unique username and password on one device at a time.

**Floating (Concurrent) License:** all Software licensed under these terms can be activated for different users and machine combinations, but only one at a time and has a floating license key.

The number of running instances of the Software or the number of individuals simultaneously having access to the Software may not exceed at any one time the number of floating seats licensed. One computer or computing device shall be designated as the “license server”, where the license is installed, and all other devices will require access to the license server to run the Software.

**Usage-Based License:** access to the Services licensed under these terms is (i) licensed on a time-based or unit-based basis during the Subscription Term as set forth in an Order and (ii) restricted to a computer or computing device, which is applicable to the Alertsite and VirtServer products.

**Freeware or Free Version License:** all Services licensed under these terms are licensed to an individual User who is specifically named in the Services registration and may only be used on one computer or computing device at a time. These licenses are not eligible for Maintenance and Support other than the materials and discussion groups that may be accessed generally via the SmartBear online community at <https://community.smartbear.com>.

## **6. License Restrictions.**

Your use of the Services is limited to the number of units, duration and such other usage restrictions as are set forth on an Order and herein. SmartBear and its licensors and suppliers reserve any and all rights, implied or otherwise, which are not expressly granted to You hereunder, and retain all rights, title and interest in and to the Services. You shall not (i) modify, adapt, distribute, resell, rent, lease or loan the Services or create or prepare derivative works based upon the Services or any part thereof; (ii) use the Services in a service bureau, or application service provider environment, or in any commercial timeshare arrangement; (iii) attempt to decompile, disassemble or otherwise reverse engineer the Services or any part thereof; (iv) use the Services in contravention of any applicable laws or government regulations; (v) access the Services in order to build a competitive product or service; (vi) copy any features, functions or graphics of the Services; (vii) create duplicate accounts or make the Services available to anyone other than Users, or (viii) use the Services to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights. To the extent the Services are used to monitor web sites or devices You do not own, then You shall not publish or otherwise disclose data acquired about such web sites or devices unless express consent is given to You by the web site or device owner; further you shall not (1) interfere with or disrupt the integrity or performance of the Services or third-party data contained therein, or (2) attempt to gain unauthorized access to the Services or their related systems or networks.

If the restriction set forth in clause (iii) above is prohibited by applicable law, You shall provide SmartBear with a detailed prior written notice of any such intention to reverse engineer the Services and shall provide SmartBear with a right of first refusal to perform such work at rates equal to those proposed by a recognized third-party software services provider for such work. You shall take all reasonable precautions to prevent unauthorized or improper use or disclosure of the Services.

**Export.** You may not provide to SmartBear or any other person (whether through the Service or any other means), or export or re-export, or allow the export or re-export of the Service, any data or information, or any Software or anything related thereto or any direct product thereof (collectively “Controlled Subject Matter”), in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign agency or authority. Without limiting the foregoing, You acknowledge and agree that the Controlled Subject Matter will not be used or transferred or otherwise exported or re-exported to countries as to which the United States maintains an embargo (collectively, “Embargoed Countries”), or to or by a national or resident thereof, or any person or entity on the U.S. Department of Treasury’s List of Specially Designated Nationals or the U.S. Department of Commerce’s Table of Denial Orders (collectively, “Designated Nationals”). The lists of Embargoed Countries and Designated Nationals are subject to change without notice. Use of the Service is representation and warranty that the user is not located in, under the control of, or a national or resident of an Embargoed Country or Designated National. The Controlled Subject Matter may use or include encryption technology that is subject to licensing requirements under the U.S. Export Administration Regulations.

## **7. Term.**

The Term of this Agreement shall be determined based on the License Model and License Type as described herein

The Subscription Term begins on the date that SmartBear grants You access to the Services and continues for twelve (12) months thereafter, unless either (i) the Subscription is usage-based (see below) or (ii) a multi-year, or other, agreement is otherwise agreed upon in an Order (“Initial Term”). Except with respect to usage-based Subscriptions, the Agreement shall automatically renew (each a “Renewal Term”) upon the end of the Initial Term and each Renewal Term for the same period of time as the prior Term, unless either party delivers written notice of non-renewal to the other party at least forty-five (45) days prior to the end of the then-current Initial or Renewal Term, or as otherwise agreed. In the event that the Subscription is usage-based, the term of this Agreement is based upon the designated units of consumption as set forth in an Order.

## **8. Termination.**

Notwithstanding anything contained herein to the contrary, this Agreement, an Order or an individual license granted hereunder may be terminated (a) by mutual agreement of SmartBear and You, (b) by either party if the other party is adjudicated as bankrupt, or if a petition in bankruptcy is filed against the other party and such petition is not discharged within sixty (60) days of such filing, (c) for all breaches that are remediable, by either party if the other party materially breaches this Agreement and fails to cure such breach to such party’s reasonable satisfaction within thirty (30) days following receipt of written notice thereof; or (d) for all breaches that are not remediable, immediately by delivery of written notice thereof to the other party. Without limiting its other rights or remedies, SmartBear may terminate this Agreement, an Order or an individual license granted hereunder with immediate effect by giving written notice to You if You fail to pay any amount due on the due date for payment. Upon any termination of

this Agreement, an Order or a license granted hereunder, all applicable licenses are revoked and You shall immediately cease use of the Services. Termination of this Agreement, an Order or a license granted hereunder shall not limit either party from pursuing any remedies available to it, including injunctive relief, or relieve You of your obligation to pay all fees that have accrued or become payable hereunder.

## **9. Your Responsibilities; Login Credentials.**

You shall (i) be responsible for each User's compliance with this Agreement, (ii) be responsible for the accuracy, quality and legality of your Data and of the means by which You acquired Your Data, (iii) use commercially reasonable efforts to prevent unauthorized access to or use of the Services, and notify Us promptly of any such unauthorized access or use, (iv) use the Services in accordance with the Documentation and applicable laws and government regulations, (v) be responsible for obtaining and maintaining all telephone, computer hardware, Internet access services and other equipment or services needed to access and use the Services and all costs and fees associated therewith.

**Data Responsibility.** You are solely responsible for (a) Your Data, (b) the accuracy, quality, and legality of Your Data, (c) the means by which You acquired Your Data, including ensuring that Your Data does not infringe upon or violate the rights of any person or entity, (d) third party claims relating to Your Data, and (e) responding to any person claiming Your Data violates such persons rights, including notices pursuant to the Digital Millennium Copyright Act.

**Login Credentials.** SmartBear will provide You with credentials to assign usernames and passwords to each User ("Login Credentials") in order to access and use the Services. In connection with the foregoing, You agree to (i) maintain as confidential all Login Credentials and not distribute or disclose any such Login Credentials and (ii) use the administrator account to assign the authorized number of Login Credentials to each User. Further, You shall be responsible for the Login Credentials, which shall be maintained confidentially and not be distributed or disclosed. You shall immediately terminate Login Credentials upon knowledge or belief that any User is or may be subject to a breach of this Agreement and, at your own expense, provide all equipment, operating systems, web browser and internet access, etc. needed to access and use the Services in accordance with the Documentation.

## **10. Non-Human Devices.**

Non-human devices that access or use the Services, whether or not without interaction, are counted as Users. Each such device that accesses or uses the Services must be properly licensed to use the Services pursuant to one of the license types described herein. Examples of non-human devices include, but are not limited to, virtual PCs, build servers, unattended PCs for batch jobs, or similar devices.

## **11. Usage Verification.**

At SmartBear's written request and expense, and no more than once every twelve (12) months, You will permit SmartBear to review your deployment and use of the Services in order to verify your compliance with the terms and conditions of this Agreement. Any such review shall be scheduled at least ten (10) days in advance, conducted during normal business hours at your facilities, and shall not unreasonably interfere with your business activities. Within ten (10) days of completion of any review that finds your use of the Services to be greater than that which was licensed, You will provide SmartBear an Order for the applicable number of additional licenses and pay all applicable fees in accordance herewith.

## **12. Maintenance and Support.**

Your Subscription to the Services includes Maintenance and Support during the Subscription Term. Any Maintenance and Support purchased through a Reseller shall be subject to this Agreement. During the Subscription Term, SmartBear will provide you with Maintenance and Support, including Updates, all in accordance with SmartBear's Product Support Manual as it exists from time to time; the current version of the SmartBear Product Support Manual is located at [https://support.smartbear.com/support/media/pdf/SB\\_PS\\_SLA.pdf](https://support.smartbear.com/support/media/pdf/SB_PS_SLA.pdf), or as otherwise may be made available. In addition, as part of Maintenance and Support, SmartBear may make available bug lists, planned feature lists, and other supplemental materials. SmartBear makes no representations or warranties of any kind for these materials.

## **13. Fees and Payments.**

**Fees.** You shall pay all fees specified in an Order. Fees are based on the Services purchased and, in the case of usage-based licenses only, actual usage; all payment obligations are non-cancelable and fees paid are non-refundable and You will not, except as expressly provided herein, be entitled to a refund of amounts paid for the license to use the Services, or any other amounts for any reason. The number of units or time period purchased cannot be decreased during the relevant Subscription Term. Unless otherwise stated in an applicable Order, payment is due thirty (30) days from the date of invoice. You shall provide a purchase order or notice that a purchase order is not required for purchase or payment prior to the date on which SmartBear provides you access to the Services. If You provide credit card information to Us, You authorize Us to charge such credit card for all Services (including Maintenance and Support services) listed in the Order; such authorization shall include for the initial Subscription Term and any renewal Subscription Term(s)and, in the case of usage-based licenses, for any excess units. Such

charges shall be paid in advance, either annually or in accordance with any different billing frequency stated in the applicable Order.

**Overdue Charges.** If any payment is not received from You by the due date, then at Our discretion, (a) such charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid, and/or (b) for Subscriptions, We may condition future subscription renewals and Orders on payment terms shorter than those specified herein.

**Suspension of Service and Acceleration.** If any amount owing by You under this or any other agreement for the Services is 15 or more days overdue or if Your credit card is not valid, in the event You are paying by credit card, You shall be considered in default of this Agreement and We may, without limiting Our other rights and remedies, accelerate Your unpaid fee obligations under such agreements so that all such obligations become immediately due and payable, and suspend access to the Services until such amounts are paid in full.

**Taxes.** You shall be responsible for taxes levied on any transaction under this Agreement, including all federal, state, and local taxes, levies and assessments, duties or similar governmental assessments of any nature, including but not limited to value-added, sales, use or withholding taxes, assessable by any local, state, provincial, federal or foreign jurisdiction (collectively, "Taxes"), excluding any tax based on SmartBear's income. Unless otherwise stated, Our fees do not include any Taxes. If We have the legal obligation to pay or collect Taxes for which You are responsible under this paragraph, the appropriate amount shall be invoiced to and paid by You, unless You provide Us with a valid tax exemption certificate authorized by the appropriate taxing authority. We are solely responsible for taxes assessable against Us based on Our income, property and employees.

#### **14. Confidentiality and Data Privacy.**

**Confidential Information.** Each party will regard any information provided to it by the other party and designated in writing as proprietary or confidential to be confidential ("Confidential Information"). Confidential Information shall also include information which, to a reasonable person familiar with the disclosing party's business and the industry in which it operates, is of a confidential or proprietary nature. A party will not disclose the other party's Confidential Information to any third party without the prior written consent of the other party, nor make use of any of the other party's Confidential Information except in its performance under this Agreement. Each party accepts responsibility for the actions of its agents or employees (including, in Your case, all Users) and shall protect the other party's Confidential Information in the same manner as it protects its own valuable confidential information, but in no event shall less than reasonable care be used. The parties expressly agree that the Services and the terms and pricing of this Agreement are the Confidential Information of SmartBear. You will not remove or destroy any proprietary markings or restrictive legends placed upon or contained in the Services. A receiving party shall promptly notify the disclosing party upon becoming aware of a breach or threatened breach hereunder, and shall cooperate with any reasonable request of the disclosing party in enforcing its rights.

Exclusions. Information will not be deemed Confidential Information hereunder if such information: (i) is known prior to receipt from the disclosing party, without any obligation of confidentiality; (ii) becomes known to the receiving party directly or indirectly from a source other than one having a known obligation of confidentiality to the disclosing party; (iii) becomes publicly known or otherwise publicly available, except through a breach of this Agreement; or (iv) is independently developed by the receiving party without use of or access to the Confidential Information. The receiving party may disclose Confidential Information pursuant to the requirements of applicable law, legal process or government regulation, provided that it (to the extent permitted) gives the disclosing party reasonable prior written notice to permit the disclosing party to contest such disclosure, and such disclosure is otherwise limited to the required disclosure.

**Data Privacy:** The terms and conditions of SmartBear's Privacy Policy is set forth at <http://www.smartbear.com/privacy> and are incorporated by reference into this Agreement. By your acceptance of the terms of this Agreement or access or use of the Services, You authorize the collection, use and disclosure of information collected by SmartBear for the purposes provided for in this Agreement in accordance with the Privacy Policy as revised from time to time. International users understand and consent to the processing of personal information in the United States for the purposes described herein in accordance with the Privacy Policy. You are responsible for your personally identifiable information, You shall only supply data that You have the right to and are authorized to provide and we are not responsible for any such data.

In addition to any other information transmitted as specified in the Privacy Policy, the Services may transmit license and/or product usage data at the time of registration, use or update in order to activate your access rights and provide You with update notifications, protect You and SmartBear against unlicensed or illegal use of the Services, and improve customer service and the Services. By accessing the Services, You authorize SmartBear to create aggregated anonymous data based on activities and use of all Users. Upon creation, We will be deemed to be the owner of such aggregated anonymous data and may use and copy such data, in our discretion, for any lawful purpose. The Services do not collect or communicate any proprietary application data. SmartBear may elect to provide the User with the ability to disable the collection of certain license and/or product usage data through the settings menu in the Services.

**Feedback.** You may provide feedback (which may be oral or written) to Us including on the functions, operation, and utility of the Services and are encouraged to provide prompt reports of any issues, bugs or service errors, feature suggestions and corrections to problems in the Services and/or Documentation (collectively "Feedback"). You agree that Feedback provided by You becomes the property of, and upon creation, shall be deemed to be assigned to, Us and that We may use or exploit the same without any accounting or payment to You. You will not include in Feedback any third party proprietary or confidential information.

## **15. Ownership.**

Except as expressly provided in this Agreement, SmartBear and its licensors, where applicable, retain all right, title and interest, including all copyright and intellectual property rights, in and to, the Services, as an independent work and as an underlying work serving as a basis for any

improvements, modifications, derivative works, and applications You may develop, and all copies thereof. All rights not specifically granted in this Agreement, including U.S. and international copyrights, are reserved by SmartBear and its suppliers.

SmartBear and other trademarks contained in the Services are trademarks or registered trademarks of SmartBear Software Inc. in the United States or other countries. You may not remove or alter any trademark, trade names, product names, logo, copyright or other proprietary notices, legends, symbols or labels in the Services.

Subject to the limited rights granted by You hereunder, We acquire no right, title or interest from You or Your licensors hereunder in or to Your data, including any intellectual property rights therein.

The Software may contain or otherwise make use of software, code or related materials from third parties, including, without limitation, “open source” or “freeware” software (“Third Party Components”). Third Party Components may be licensed under additional or other license terms that accompany such Third Party Components, and you acknowledge and agree that these accompanying license terms govern their use. Nothing in this Terms of Service limits your rights under, or grants you rights that supersede, the license terms that accompany any Third Party Components. For your convenience, we provide you with a list of the Third party Components that may be contained in the Software on our website at <http://support.smartbear.com/support/thirdparty.aspx> If required by any license for a particular Third Party Component, SmartBear makes the source code of such Third Party Component, and any of SmartBear’s modifications to such Third Party Component as required, available by written request to SmartBear at the following address: [support@smartbear.com](mailto:support@smartbear.com).

## **16. Limited Warranty; Remedies.**

SmartBear warrants that (a) it has the necessary corporate power and authority and has taken required corporate action on its part necessary to permit it to execute and deliver You this Agreement; (b) it has taken commercially reasonable steps to provide the Services free from any virus at the time of initial access; (c) for a period of thirty (30) days following the initial grant of access to You to the Services (the “Warranty Period”), the Services will perform in substantial conformity with the Documentation; and (d) the Services will be provided with reasonable skill and care conforming to generally accepted software industry standards and in accordance with any specifications set forth in the Order in all material respects. Your exclusive remedy and SmartBear’s sole obligation for SmartBear’s breach of 16(c), is that SmartBear will, at its option, and at no cost, to (a) provide remedial services necessary to enable the Services to conform to the warranty, or (b) replace any defective Services to enable the Services to conform to the warranty without loss of any material functionality, or in the event that SmartBear determines that neither of the foregoing are reasonably practicable, (c) terminate this Agreement and refund amounts paid in respect of the defective Services for the balance of the then-current Subscription Term. SmartBear’s warranty obligations will only extend (i) to material errors that can be demonstrated to exist in an unmodified version of the Services except where the modifications were carried out by SmartBear or with its written approval and (ii) in respect of alleged breaches for which SmartBear has received written notice within the Warranty Period, if applicable. You



will provide SmartBear with a reasonable opportunity to remedy any breach and reasonable assistance in remedying any defects. If the Services are not performed as warranted in this Section 16(d) then, upon your written request, SmartBear shall promptly re-perform, or cause to be re-performed, such Services, at no additional charge to You, provided that this warranty shall only survive for ninety (90) days following the completion of the Services. We provide no warranty or remedy for a Trial Version, Freeware or Free Version of the Software.

EXCEPT AS SET FORTH IN THE FOREGOING LIMITED WARRANTY, SMARTBEAR AND ITS SUPPLIERS AND LICENSORS DISCLAIM ALL OTHER WARRANTIES AND REPRESENTATIONS, WHETHER EXPRESS, IMPLIED, OR OTHERWISE, INCLUDING THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND TITLE OR QUIET ENJOYMENT. SMARTBEAR DOES NOT WARRANT THAT THE SERVICES ARE ERROR-FREE OR WILL OPERATE WITHOUT INTERRUPTION. IN ADDITION, ALL THIRD PARTY COMPONENTS ARE PROVIDED "AS IS," "WHERE IS," "AS AVAILABLE," "WITH ALL FAULTS" AND, TO THE FULLEST EXTENT PERMITTED BY LAW, WITHOUT WARRANTY OF ANY KIND. SMARTBEAR AND ITS LICENSORS DISCLAIM ALL WARRANTIES WITH RESPECT TO THE THIRD PARTY COMPONENTS, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, AND TITLE, AND ANY WARRANTIES REGARDING THE SECURITY, QUIET ENJOYMENT, RELIABILITY, TIMELINESS, AND PERFORMANCE OF THE SERVICES. NO RIGHTS OR REMEDIES REFERRED TO IN ARTICLE 2A OF THE UCC WILL BE CONFERRED ON YOU UNLESS EXPRESSLY GRANTED HEREIN. THE SERVICES ARE NOT DESIGNED, INTENDED OR LICENSED FOR USE IN HAZARDOUS ENVIRONMENTS REQUIRING FAIL-SAFE CONTROLS, INCLUDING WITHOUT LIMITATION, THE DESIGN, CONSTRUCTION, MAINTENANCE OR OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL, AND LIFE SUPPORT OR WEAPONS SYSTEMS. SMARTBEAR SPECIFICALLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS FOR SUCH PURPOSES.

No oral or written information or advice given by SmartBear, its Resellers, dealers, distributors, agents, representatives or employees shall create any warranty or in any way increase any warranty provided herein.

If applicable law requires any warranties other than the foregoing, all such warranties are limited in duration to thirty (30) days from the date of grant of initial access to the Services to You. Some jurisdictions do not allow the exclusion of implied warranties, so the above exclusion may not apply to You. The warranties provided herein give You specific legal rights and You may also have other legal rights that vary from jurisdiction to jurisdiction. The limitations or exclusions of warranties, remedies or liability contained in this EULA shall apply to You only to the extent such limitations or exclusions are permitted under the laws of the jurisdiction where You are located.

## **17. Indemnification.**

SmartBear will (a) defend indemnify and hold You harmless from and against all any claims and causes of action brought against You by a third party arising out of an allegation that the Services as provided to You by SmartBear infringes any third party's intellectual property rights enforceable under United States law or international copyright treaty and (b) pay any accrued costs and damages against You or the amount stated in a written settlement signed by SmartBear, provided You: (a) promptly notify SmartBear after learning of the suit or claim (provided, however, that SmartBear's obligations under this Section 17 shall only be mitigated to the extent that it is prejudiced by a delay in receipt of such notification); (b) give SmartBear the authority to defend or settle the suit or claim (provided that SmartBear does not agree to any settlement that requires You to pay money or make any admissions); and (c) give SmartBear all available non-privileged information and assistance reasonably requested by SmartBear, at SmartBear's expense, concerning the suit or claim.

## **18. Remediation.**

If the Services are held or is reasonably believed by SmartBear to be held to infringe any third party rights described in Section 17 above, SmartBear may, at its expense, modify or replace the applicable Services to be non-infringing with similar functionality, or obtain permission for You to continue using the Services as permitted under the Agreement, or if neither option is commercially feasible, then to terminate this Agreement and refund that portion of the fees paid in respect of the applicable Services, which portion is equal to the amount of pre-paid fees for the balance of the then-current Subscription Term.

## **19. Limitations of Liability.**

NEITHER SMARTBEAR NOR ITS SUPPLIERS OR LICENSORS SHALL BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, COVER OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR THE INABILITY TO USE EQUIPMENT OR ACCESS DATA, LOSS OF BUSINESS, LOSS OF PROFITS, BUSINESS INTERRUPTION OR THE LIKE), ARISING OUT OF THE USE OF, OR INABILITY TO USE, THE SERVICES AND BASED ON ANY THEORY OF LIABILITY INCLUDING BREACH OF CONTRACT, BREACH OF WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE, EVEN IF SMARTBEAR OR ITS REPRESENTATIVES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF A REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. SMARTBEAR'S, SUPPLIERS', AND LICENSORS' TOTAL AGGREGATE LIABILITY TO YOU FOR ACTUAL DAMAGES FOR ANY CAUSE WHATSOEVER WILL BE LIMITED TO THE AMOUNT PAID BY YOU OR RESELLER, IF ORDERED THROUGH A RESELLER, FOR THE SERVICES THAT CAUSED SUCH DAMAGE IN THE TWELVE MONTH PERIOD IMMEDIATELY PRECEDING THE DATE OF THE APPLICABLE CLAIM.

## **20. Government Matters**

This Section applies to all acquisitions of the Services by or for the United States Federal government, including by any prime contractor or subcontractor (at any tier) under any contract, grant, cooperative agreement or other activity with the Federal government. The Software was developed at private expense and is Commercial Computer Software, as defined in Section 12.212 of the Federal Acquisition Regulation (48 CFR 12.212 (October 1995)) and Sections 227.7202-1 and 227.7202-3 of the Defense Federal Acquisition Regulation Supplement (48 CFR 227.7202-1, 227.7202-3 (June 1995)). Accordingly, any use, duplication or disclosure by the Federal Government or any of its authorized users is subject to restrictions as set forth in this standard license agreement for the Services. If for any reason, Sections 12.212, 227.7202-1 or 227.7202-3 are deemed not applicable, then the Federal Government's rights to use, duplicate or disclose the Services are limited to "Restricted Rights" as defined in 48 CFR Section 52.227-19(c)(1) and (2) (June 1987), or DFARS 252.227-7014(a)(14) (June 1995), as applicable. If this Agreement fails to meet the Federal Government's needs or is inconsistent in any respect with Federal law, the Federal Government agrees to terminate its access to the Services. Manufacturer is SmartBear Software Inc., 450 Artisan Way, Somerville, MA 02145.

**Federal Government End Use Provisions.** We provide the Services, including related software and technology, for ultimate federal government end use solely in accordance with the following: Government technical data and software rights related to the Services include only those rights customarily provided to the public as defined in this Agreement. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data – Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If a government agency has a need for rights not conveyed under these terms, it must negotiate with Us 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.

## **21. General.**

**Headings.** The headings to the clauses in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

**Governing Law and Venue.** If the access to the Services was acquired in the United States or Canada, this Agreement shall be governed by the internal law of the Commonwealth of Massachusetts, U.S.A., without giving effect to principles of conflict of laws. You hereby consent to the exclusive jurisdiction and venue of the state courts sitting in the Commonwealth of Massachusetts or the federal courts in the Commonwealth of Massachusetts to resolve any disputes arising under this EULA. In each case this EULA shall be construed and enforced without regard to the United Nations Convention on the International Sale of Goods.

If You acquire access to, and use, the Services from outside the United States or Canada, this Agreement shall be governed by and construed in accordance with the laws of Ireland, without giving effect to principles of conflict of laws. You hereby consent to the exclusive jurisdiction

and venue of the Irish courts to resolve any disputes or issues arising directly or indirectly under this Agreement. Nothing in this Agreement shall operate to prevent SmartBear from seeking interim, protective or provisional relief in the courts of another State or to enforce an Irish order or collect or enforce a debt in the courts of another State.

**Notice.** Except as otherwise specified in this EULA, all notices, permissions and approvals hereunder shall be in writing and shall be deemed to have been given upon: (i) personal delivery, (ii) five (5) business days after being sent by certified mail return receipt requested, or (iii) the first business day after sending by a generally recognized national or international guaranteed overnight delivery service. Billing-related notices to You shall be addressed to the relevant billing contact designated by You. All other notices to You shall be addressed to the relevant system administrator designated by You. You shall send all notices, demands, requests or other communications which may be or are required to be given hereunder to SmartBear at the address set forth above. SmartBear shall send all notices, demands, requests or other communications which may be or are required to be given hereunder to You at in the address set forth in the applicable Order, as You may update such information from time to time.

If You acquire access to and use the Services from in the United States or Canada, You shall address all such notices, permissions and approvals to the Legal Department, 450 Artisan Way, Somerville, MA 02145.

If You acquire access to and use the Services from outside the United States or Canada, You shall address all such notices, permissions and approvals to the Legal Department, 3rd floor Dockgate, Unit 19, Merchants Road, Galway, Ireland.

**Publicity.** You agree to be identified as a customer of SmartBear and agree that SmartBear may refer to You by name, trade name and trademark, if applicable, and may briefly describe your business in SmartBear's marketing materials and web site. You hereby grant SmartBear a license to use your name and any of your trade names and trademarks solely in connection with the rights granted to SmartBear pursuant to this marketing section. You grant us the right to add your name and company logo to our customer list and website.

**Assignment.** Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld). Notwithstanding the foregoing, either party may assign this Agreement in its entirety (including all Orders, without consent of the other party, to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets). Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

**Severability.** If any provision of this Agreement shall be held by a court of competent jurisdiction to be contrary to law that provision will be enforced to the maximum extent permissible and the remaining provisions of this Agreement will remain in full force and effect.

**Waiver.** The failure or delay of SmartBear to exercise any of its rights under this EULA or upon any breach of this EULA shall not be deemed a waiver of those rights or of the breach. A waiver

by either party of any term or condition of this EULA or any breach thereof, in any one instance, shall not waive such term or condition or any subsequent breach thereof.

**Force Majeure.** Except for failure to make payments when due, neither party shall be liable to the other by reason of any failure in performance of this Agreement by either party if the failure arises out of any cause beyond the reasonable control of that party, including, but not limited to, the unavailability or faulty performance of communication networks or energy sources, any act of God, any act or omission of governmental or other competent authority, fires, strikes, industrial dispute, riots, war, inability to obtain materials, embargo, refusal of license, theft, destruction, denial of service attacks, unauthorized access to computer systems or records, programs, equipment, data, or services.

**Anti-Bribery.** You have not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from any of SmartBear's employees or agents in connection with this EULA. If You learn of any violation of the above restriction, You will use reasonable efforts to promptly notify SmartBear's Legal Department.

**Independent Contractors.** The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties. There are no third-party beneficiaries to this EULA.

**Entire Agreement.** This Agreement, together with all applicable Orders and the Maintenance and Support terms contain the complete agreement between the parties with respect to the subject matter hereof, and supersedes all prior or contemporaneous agreements or understandings, whether oral or written. You agree that any varying or additional terms contained in any purchase order or other written notification or document issued by You in relation to the Services licensed hereunder shall be of no effect. No Reseller is authorized to make any amendment to this EULA.

**Survival.** All provisions of this Agreement which by their nature are intended to survive the expiration or termination of this Agreement (including, without limitation, the following Sections: Termination, Usage Verification, Fees and Payment, Confidentiality and Data Privacy, Ownership, Intellectual Property, Limited Warranty; Remedies, Indemnification, Disclaimers, Limitations of Liability and General)

Last Updated: February 2, 2017

Attachment \_\_\_\_

## SOFTWARE LICENSE RIDER - U.S. GOVERNMENT

This Software License Rider (“Rider”) modifies the commercial computer software End User License Agreement (“EULA”) which is included as “click-wrap” within the commercial computer software and/or included as an attachment to contract/purchase order/agreement number \_\_\_\_\_ (“Agreement”). This Rider brings the EULA into compliance with the “Notice of Class Deviation to Commercial Supplier Agreement Terms Inconsistent with Federal Law,” 80 Fed. Reg. 15011 (March 20, 2015), and GSA Acquisition Letter MV-15-03, “Memorandum for the Acquisition Workforce: Class Deviation Addressing Commercial Supplier Agreement Terms that Conflict or Are Incompatible with Federal Law” (July 31, 2015). FAR 12.212(a) and DFARS 227.7202-3 require the Government procure commercial computer software under the licenses customarily provided to the public except to the extent that those licenses are inconsistent with Federal law. The EULA is modified as follows:

1. **Click-wrap.** No Government nor any Government authorized end user shall be deemed to have agreed to any clause by virtue of it appearing in the EULA, rather the EULA and this Software Rider are accepted by inclusion in the Agreement by an authorized official. If the EULA or any other third-party EULA is invoked through an “I agree” click box or other comparable mechanism (e.g., “click-wrap” or “browse-wrap” agreements), execution does not bind the Government or any Government authorized end user to such clause; such indemnity clause is deemed to be stricken from the EULA.
2. **Applicability.** The EULA and this Software License Rider is a part of the Agreement between Tanium and the U.S. Government for the acquisition of the supply or service that necessitates a license, except to the extent inconsistent with Federal law.
3. **End user.** This Software License Rider and the EULA shall bind the ordering activity as end user but shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity.
4. **Law and disputes.** This Software License Rider and the EULA are governed by Federal law.
  - (a) Any language purporting to subject the U.S. Government to the laws of a U.S. state, U.S. territory, district, or municipality, or a foreign nation, except where Federal law expressly provides for the application of such laws, is hereby deleted.
  - (b) Any language requiring dispute resolution in a specific forum or venue that is different from that prescribed by applicable Federal law is hereby deleted.
  - (c) Any language prescribing a different time period for bringing an action than that prescribed by applicable Federal law in relation to a dispute is hereby deleted.
  - (d) Other disputes will be resolved through the Disputes Clause in the Agreement.

5. **Continued performance.** If the supplier or licensor believes the ordering activity to be in breach of the Agreement, it shall continue performance while pursuing rights under the Disputes Clause in the Agreement.

6. **Arbitration; equitable or injunctive relief.** In the event of a claim or dispute arising under or relating to the Agreement, (a) binding arbitration shall not be used unless specifically authorized by agency guidance, and (b) equitable or injunctive relief, including the award of attorney fees, costs or interest, may be awarded against the U.S. Government only when explicitly provided by statute (e.g., Prompt Payment Act or Equal Access to Justice Act).

7. **Additional terms.**

(a) This Software License Rider may unilaterally incorporate additional terms by reference. Terms may be included by reference using electronic means (e.g., via web links, click and accept, etc). Such terms shall be enforceable only to the extent that:

(i) When included by reference using electronic means, the terms are readily available at referenced locations; and

(ii) Terms do not materially change government obligations; and

(iii) Terms do not increase government prices; and

(iv) Terms do not decrease overall level of service; and

(v) Terms do not limit any other Government rights addressed elsewhere in this contract.

(b) The order of precedence clause of this contract notwithstanding, any software license terms unilaterally revised subsequent to award are not enforceable against the government.

8. **No automatic renewals.** If any license or service tied to periodic payment is provided under the EULA (e.g., annual software maintenance or annual lease term), such license or service shall not renew automatically upon expiration of its current term without prior express Government approval.

9. **Indemnification & Liability.** Any clause of the EULA requiring the commercial supplier or licensor to defend or indemnify the end user is hereby amended to provide that the U.S. Department of Justice has the sole right to represent the United States in any such action, in accordance with 28 U.S.C. § 516. The Government shall not indemnify any entity. The Government agrees to pay for any loss, liability or expense, which arises out of or relates to the Government's acts or omissions with respect to its obligations hereunder, where a final determination of liability on the part of the Government is established by a court of law or where settlement has been agreed to by the Government agency with, where appropriate, coordination of the Department of Justice. This provision shall not be construed to limit the Government's rights, claims or defenses which arise as a matter of law or pursuant to any other provision of the Agreement.

10. **Audits.** Any clause of the Agreement permitting the commercial supplier or licensor to audit the end user's compliance with the Agreement is hereby amended as follows: (a) Discrepancies found in an audit may result in a charge by the commercial supplier or licensor to the ordering activity. Any resulting invoice must comply with the proper invoicing requirements specified in the underlying Government contract or order. (b) This charge, if disputed by the ordering activity, will be resolved through the Disputes clause at

FAR 52.233-1; no payment obligation shall arise on the part of the ordering activity until the conclusion of the dispute process; (c) Any audit requested by the Contractor will be performed at the Contractor's expense, without reimbursement by the Government.

11. **Taxes or surcharges.** Any taxes or surcharges which the commercial supplier or licensor seeks to pass along to the Government as end user will be governed by the terms of the underlying Government contract or order and, in any event, must be submitted to the Contracting Officer for a determination of applicability prior to invoicing unless specifically agreed to otherwise in the Government contract.

12. **Non-assignment.** The Agreement may not be assigned, nor may any rights or obligations thereunder be delegated, without the Government's prior approval.

13. **Use of Government logos.** Notwithstanding any contrary provision contained in the Agreement, the vendor shall not be permitted to use U.S. Government logos for advertising or endorsement purposes, without obtaining the separate written consent of the government.

14. **Right of entry.** No provision in the Agreement shall provide any Party the right of entry to any Government facility.

15. **Termination.** Termination, including termination for convenience of the government, may occur in accordance with the procedures described in Paragraph 4 of the AGREEMENT.





# 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 7.0.

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. A Transaction may take place by any lawful means, electronically or in writing, and may be confirmed by a) purchase orders, credit orders, commitment letters, license keys, amendments to this EULA or other similar materials, signed or unsigned, (each a "Transaction Document(s)"), or b) by the conduct of the affected parties. A Transaction may be initiated and implemented by any entity that is directly or indirectly a party to it, including End User, Veeam, or authorized third party distributors, dealers, and/or other resellers of the Software. A Transaction Document may contain usage, business, legal and other terms and conditions agreed to by the parties. The foregoing notwithstanding, each Transaction will require that: i) this EULA be accepted by End User and ii) End User obtains actual or constructive possession of the Software. In the event of a conflict or inconsistency between the terms and conditions of this EULA and those set forth in a Transaction Document, the terms and conditions of the Transaction Document will govern and control.

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). Veeam Software License is perpetual, unless the Software is delivered to End User as part of a Transaction on a non-perpetual basis for a defined period, in such case, the End User's right to use such Software will cease on the end date of the defined period.

The data processing restriction set forth in the preceding paragraph will not apply to End User if End User a) has been accepted by Veeam, under "Veeam Cloud Provider Program" at <http://www.veeam.com/veeam-cloud-providers.html> and b) has accessed and is utilizing the Software with a stock-keeping unit number that designates End User as a "Cloud Provider" or similar description, thus authorizing End User to utilize the Software to perform systems management services for its customers.

## 3.0 Additional Terms

Nothing contained in this EULA is intended to prohibit or restrict the parties from mutually agreeing to enter into separate terms and conditions that i) modify or supplement the terms and conditions (including business and/or financial terms) of this i) EULA or the License granted to End User pursuant to this EULA; or ii) create or modify the terms a particular Transaction.

## 4.0 Evaluation License

A License designated as an "Evaluation" License in a Transaction Document authorizes End User to use one (1) copy of the Software for a 30 day period for non-production evaluation or demonstration purposes only.

## 5.0 Not for Resale License

A License designated as a "Not for Resale" License in a Transaction Document authorizes End User to use one (1) copy of the Software with full functionality for evaluation or demonstration purposes only, and for a defined period of time.

## 6.0 Limited Term License

A license designated as a "Limited Term" License in a Transaction Document authorizes End User to use one (1) copy of the Software in production environment at End User's site for a defined period of time. The defined period for a "Limited Term" License commences immediately upon generation of the license key.

## 7.0 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/support.html>.

## 8.0 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.

## 9.0 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.

## 10.0 Limited Warranty and Limitation of Liability

Veeam warrants that it has the right and authority to grant the License under this EULA. Veeam 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 then standard 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 Veeam, 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.

## 11.0 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.

## 12.0 U.S. Government End Users

Use, duplication, or disclosure of the Software to or by the U. S. Government is subject to the provisions and restrictions as set forth in FAR 52.227-14 and FAR 52.227-19, or equivalent restrictions and provisions as set forth in DFAR 252.227-7013 and DFAR 252.227-7014.

## 13.0 General

This Agreement sets 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. 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.

## 14.0 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.



---

## ISO 9001:2015 CERTIFICATE OF REGISTRATION

---

This is to certify that

**immixGroup, Inc.**

Including and limited to the following subsidiaries:

**immixTechnology, Inc.**

**EC America, Inc.**

**8444 Westpark Drive, Suite 200  
McLean, VA 22102 USA**

**has successfully been assessed and found  
to conform with the ISO 9001:2015  
quality management system standard.**

**The scope of this registration includes:**

**Provide commercial off-the-shelf (COTS) technology products  
and related services both directly or indirectly  
to partners and the public sector**

Date of Registration: September 1, 2020

Date of Expiration: August 31, 2023

Date issued/revised: September 8, 2020

(Registered Since: October 29, 2008)

Certificate No. A-926

Steve Barfoot, President  
Advantage International Registrar, Inc.





## Citrix Partner Authorization Letter

### Americas

September 22, 2022

immixGroup (an Arrow Company)  
8444 Westpark Dr  
Ste 200  
McLean, VA 22102-5112  
USA

To Whom It May Concern,

This letter certifies that immixGroup (an Arrow Company) together with its subsidiaries, EC America, Inc. and immixTechnology, Inc., Org ID 51396686, of McLean, VA is an authorized distributor of Manufacturer's products and services and is in good standing with the Manufacturer since February 3 2020.

Regards,

A handwritten signature in black ink, appearing to read "DM", written over a white background.

Denise Mendez  
Director, Americas Channel Operations  
Citrix Systems, Inc.



7 October, 2022

Subject: Manufacturers Authorization Letter - Oklahoma Office of Management & Enterprise Services

To Whom It May Concern:

We, Commvault Systems, Inc. ("Commvault")  
1 CommVault Way, Tinton Falls, NJ 07724

Who are established and reputed "manufacturers/developers" of Commvault software (the "Software") certify that EC America, Inc. ("Distributor") is authorized to distribute Commvault software and services under the Oklahoma Office of Management and Enterprise Services. As of the date of this letter, Distributor is authorized to act as a distributor of the full line of Commvault products within: United States.

Yours faithfully,

A handwritten signature in black ink, appearing to read "Jacob Bishop". The signature is fluid and cursive.

Jacob Bishop  
Director, Deal Strategy & Business Operations



September 15, 2022

**Subject: Letter of Authorization**

To Whom It May Concern:

**LogRhythm, Inc.**, (“LogRhythm”) certifies that immixGroup, Inc., together with its subsidiaries, EC America, Inc. and immixTechnology, Inc., (“immix”) is an authorized distributor of Manufacturer’s products and services and is in good standing with the LogRhythm.


All LogRhythm Software is subject to LogRhythm User License Agreement (EULA) and all LogRhythm Support and Services are subject to the respective LogRhythm standard terms.

For the avoidance of doubt, immix is an independent entity that acts in its own name and account and is not entitled to make any kind of commitments or statements on LogRhythm behalf.

If you have any questions or require additional information regarding our partnership, please contact Rosie Alvae at 586-295-4850 email at [rosie.alvae@logrhythm.com](mailto:rosie.alvae@logrhythm.com).

Sincerely,

**LogRhythm, Inc.**

DocuSigned by:  
  
6443B20F3C8C41C...  
Faith Novotny White  
Director, Contracts





Effective Date: September 13th, 2022

Subject: Letter of Authorization

To Whom It May Concern:

Netreo certifies that immixGroup, Inc., together with its subsidiaries, EC America, Inc. and immixTechnology, Inc., is an authorized distributor of Manufacturer's products and services and is in good standing with the Manufacturer.

If you have any questions or require additional information regarding our partnership, please contact Jasmin Young at (949)769-5701 or via email at [jas@netreo.com](mailto:jas@netreo.com).

Sincerely,

A handwritten signature in black ink, appearing to read "Jasmin Young". The signature is written in a cursive, flowing style.

Netreo Inc.  
Jasmin Young  
CEO  
[jas@netreo.com](mailto:jas@netreo.com)  
949-769-5701





**Effective Date:** January 13, 2021


**Subject: Letter of Authorization**

To Whom It May Concern:

**Nutanix, Inc.** (“Manufacturer”) certifies that immixGroup, Inc., together with its subsidiaries, EC America, Inc. and immixTechnology, Inc., is an authorized distributor of Manufacturer’s products and services and is in good standing with the Manufacturer.

If you have any questions or require additional information regarding our partnership, please contact **Brian Cohen** at +1 (720) 2996191 or via email at **brian.cohen@nutanix.com**.

Sincerely,

DocuSigned by:  
  
6F045654FB0C4EB...

---

Name: **Aaron Boynton**  
Title: **Chief Accounting Officer**

**Effective Date:** September 20, 2022

**Subject: Letter of Authorization**

To Whom It May Concern:

**Open Text Inc.** (“Manufacturer”) certifies that immixGroup, Inc., together with its subsidiaries, EC America, Inc. and immixTechnology, Inc., is an authorized distributor of Manufacturer’s products and services and is in good standing with the Manufacturer.

If you have any questions or require additional information regarding our partnership, please contact Erich Ohngemach at (571) 246-6545 or via email at [eohngemach@opentext.com](mailto:eohngemach@opentext.com).

Sincerely,

EGOhngemach

---

Name: **Erich Ohngemach**  
Title: **U.S. Public Sector Partner Alliance Manager**



September 28, 2022

To Whom It May Concern:

On behalf of the Global NextWave Partner Programs team at Palo Alto Networks, this is to inform you of the partnership between Palo Alto Networks, Inc. and:

**EC America (Immix)**  
**McLean, VA**  
**USA**

At the time of this communication, **EC America (Immix)** are classified as a Distributor partner in the Palo Alto Networks NextWave Partner Program in good standing.

Thank you,

A handwritten signature in black ink, appearing to read "Karl Soderlund".

Karl Soderlund  
SVP, Worldwide Channels  
Palo Alto Networks



October 10, 2022

Re: Letter of Authorization

To Whom It May Concern:

The purpose of this letter is to confirm that the company listed below is an authorized to reseller for Qlik software:

Immix Group, Inc, together with its subsidiary, EC America, Inc  
8444 Westpark Drive  
Suite 200  
McLean, VA 22102

Please feel free to contact me, directly, if additional information is necessary.

Sincerely,

*Vic Walker*

Vic Walker  
Partner Account Manager  
Public Sector SLED



450 Artisan Way, 4<sup>th</sup> Floor  
Somerville, MA 02145

smartbear.com  
Tel.: +1 (617)-684-2600

September 13, 2022

immixGroup, Inc.  
8444 Westpark Drive  
Suite 200  
McLean, VA 22102

Subject: Letter of Authorization

To Whom It May Concern:

SmartBear Software Inc. ("SmartBear"), certifies that immixGroup, Inc., together with its subsidiaries, EC America, Inc. and immixTechnology, Inc., is an authorized distributor of SmartBear's products and services and is in good standing with the Manufacturer.

If you have any questions or require additional information regarding our partnership, please contact me at 617.684.2310 or via email at [Debbie.Decoulos@SmartBear.com](mailto:Debbie.Decoulos@SmartBear.com).

Effective Date: September 13, 2022  
Expiration Date: December 31, 2023

Sincerely,

*Debra E. Decoulos*

Debra E. Decoulos  
Debra.Decoulos@SmartBear.com  
Director, North America Channel  
617.684.2310

SmartBear Software, Inc  
450 Artisan Way – 4th Floor  
Somerville, MA 02145

**Effective Date:** March 10, 2022

**Subject: Letter of Authorization**

To Whom It May Concern:

**Tanium** (“Manufacturer”) certifies that immixGroup, Inc., together with its subsidiaries, EC America, Inc. and immixTechnology, Inc., is an authorized distributor of Manufacturer’s products and services and is in good standing with the Manufacturer.

If you have any questions or require additional information regarding our partnership, please contact **Charlie Pruett** at **571-234-2697** or via email at **Charles.Pruett@Tanium.com**.

Sincerely,

DocuSigned by:  
*Charles Pruett*  
D13735DC301243B  
**Charlie Pruett**  
Senior Director Public Contracts



**Ultimate Kronos Group**  
900 Chelmsford Street  
Lowell, MA 01851  
T: 978-250-9800  
ukg.com

## Letter of Authorization

09/27/022

To Whom This May Concern:

Kronos Incorporated, a UKG company (Kronos) hereby confirms that immixGroup, Inc., together with its subsidiaries, EC America, Inc. and immixTechnology, Inc. is a Kronos authorized distribution partner in good standing and is authorized to resell and/or distribute Kronos products and services to state agencies and educational institutions in the U.S.

Please note that only Kronos authorized partners may resell and/or distribute Kronos products and services.

If you have any questions or require additional information regarding our partnership, please contact me directly at the contact information below.

Sincerely,

*Brian A. Coopman*

Brian Coopman  
Director of Contracts and Procurement - Public Sector  
563-370-5356  
Brian.coopman@ukg.com

**Effective Date:** September 13, 2022

**Subject: Letter of Authorization**

To Whom It May Concern:

**Veeam Software Corporation** (“Manufacturer”) certifies that immixGroup, Inc., together with its subsidiaries, EC America, Inc. and immixTechnology, Inc., is an authorized distributor of Manufacturer’s products and services and is in good standing with the Manufacturer.

If you have any questions or require additional information regarding our partnership, please contact **Sheila Guillen** at **720.496.8137** or via email at **Sheila.Guillen@veeam.com**.

Sincerely,

DocuSigned by:  
  
AA708164C8DD4AC...

Name: **Jeremy Manly**

Title: **Vice President of Finance and Operations**



# Who We Are and How We Are Set Up



Arrow Electronics was founded in 1935 and acquired immixGroup in 2015



**immixGroup**  
An Arrow Company

immixGroup, Inc. was formed in 1997 and is a wholly owned subsidiary of Arrow Electronics. We do not transact business under the name of immixGroup

**EC America, Inc.**  
a subsidiary of  **immixGroup**

EC America, Inc., formerly known as Selbre was acquired as a subsidiary of immixGroup, Inc., in 2008. All business transactions are done under the EC America, Inc.

# Jennifer Forte

## MARKETING PROFESSIONAL



727-421-5383



Jennifer\_forte@ymail.com



Linkedin.com/in/jenforte



Clearwater, FL

## PROFESSIONAL PROFILE

**Marketing, demand generation and data driven marketing leader** with 20 years of Channel Marketing experience for IT Manufacturers and Resellers of all sizes and focus.

### Expertise includes:

- ✓ B2B/B2C Demand and Lead Generation Strategies
- ✓ Customer Enablement and Marketing Consultation
- ✓ Data-Driven, Multi-Channel & Multi-Touch Marketing Campaigns
- ✓ Digital Advertising and Social Media Campaigns
- ✓ Content Marketing, Email Marketing and A/B Testing

## WORK EXPERIENCE

### DIRECTOR, NORTH AMERICA SUPPLIER MARKETING – ARROW ECS

*Arrow Electronics - May 2022 to Current*

*Acted as NA Marketing Strategy Leader from December 2022-May 2022*

- Leading the ECS NA Marketing organization for Arrow's ECS division. Ensuring accurate and consistent outcome driven marketing by utilizing integrated marketing approaches to support our overall supplier goals and objectives.
- Educating the strategy and campaign management teams on new forms of go to market strategies and data driven approaches to uncovering marketing opportunities for both Arrow suppliers and partners.
- Create and design annual marketing plans that align Arrow and supplier needs to generate demand, enable partners and internal teams with content, programs, and data they need to foster growth.
- Partnering with internal supplier management, sales, and external stakeholders to understand marketing needs and growth opportunities to drive new processes and align resources to meet demand.
- Management of supplier marketing budgets, headcount funding, and pass-through funding to provide marketing forecasts and meet all MDF requirements.
- Review and approve all marketing budgets/plans to ensure activities support internal/external business needs.
- Acts as a point of contact for all suppliers and internal stakeholders to drive partnership and open communication to understand marketing needs and business growth initiatives.

### SR. MANAGER, MARKETING STRATEGY AND INSIGHTS

*TD SYNnex – Fortune 60, IT Distributor*

*August 2021 to December 2021*

- Lead the organization's marketing strategy and data insights teams, ensuring accurate and consistent data driven marketing, utilizing all avenues of marketing to support overall brand goals and objectives.
- Works to engage stakeholders in both the development and launch of marketing plans based upon data planning and industry insights.
- Transformed marketing programs to become consultative, strategic discussions that result in higher close rates and increased partner relationships.
  - Annual program revenues range from \$20k to \$2 million annually per vendor (depending on chosen program options and custom add on options).
- Develop and implement strategies to optimize marketing performance across all phases of the demand generation funnel, from identifying prospects to building new relationships resulting in better ROI and KPI tracking for our customers.
- Formally trained team members on go to market strategies, account-based marketing, and partner enablement programs supported by industry trends and marketing changes.

## SKILLS

- ✓ Leadership
- ✓ Marketing and Brand Positioning
- ✓ Customer Profiling
- ✓ Competitive Analysis
- ✓ Branding and Positioning
- ✓ Research and Analysis
- ✓ Creative Thinking
- ✓ Team Building
- ✓ Problem Solving

## ATTRIBUTES

- ✓ Highly motivated
- ✓ Strong Organization
- ✓ Hard Working
- ✓ Positive Attitude
- ✓ Team Focused
- ✓ Reliable & Flexible

## TOOLS

- ✓ Salesforce
- ✓ Zoom Info
- ✓ Workfront
- ✓ Marketo
- ✓ Zift
- ✓ Five9
- ✓ Smartsheet
- ✓ Structured Web

## WORK EXPERIENCE

### SR MANAGER, MARKETING STRATEGY AND INSIGHTS CONT'D

- Work to establish and grow strategic partnerships with our vendor partners: VMware, Cisco, IBM, HP, Intel, NetApp, Ruckus, Veeam, Microsoft and many more (300+ total vendors). Support IT focused strategies that include Data Center, Cloud IoT, End Point Devices, and many more.
  - Custom campaign revenues range from \$10k to \$500k quarterly/annually per vendor.
- Support the targeting (through data and insights) and onboarding of new reseller partners into the organization by creating marketing plans and enablement programs to support growth goals in partnership with sales and marketing liaisons.
  - Customer Targets include Enterprise, VAR, and SMB reseller partners

### MANAGER, DEMAND GENERATION & PARTNER MARKETING

*Tech Data Corporation – Fortune 88, IT Distributor  
November 2019 to August 2021*

- Lead a team of marketing professionals responsible for channel marketing, partner enablement programs, events/webinars, ad buying, and brand management.
- Managed the development and execution of strategic marketing programs in collaboration with internal and external stakeholders.
- Built and trained marketing teams focused on demand/lead generation services, multi-channel marketing campaigns focused on B2B and B2C markets across multiple verticals and product segments.
- Initiated, negotiated, and established strategic partnerships with vendor and reseller organizations throughout the channel by driving strategic planning, growth initiatives, branding, positioning, and go-to market plans.
  - Custom campaign revenues range from \$10k to \$250k quarterly/annually per vendor.
- Supported all areas of the business such as: Advanced Solutions, IoT, Cloud, Shared Services, End Point, Mobility and more; across all verticals and customer segments (Enterprise, VAR, and SMB).

### MANAGER, LEAD GENERATION AND OUTBOUND MARKETING

*Marketing Services, February 2016 to December 2019  
Managed the team as a Supervisor from June 2013 to February 2016*

- Development and implementation of outbound & inbound marketing, lead generation and account management tactics for strategic vendor partners and resellers (B2B/B2C).
- Supported all areas of the business including Advanced Solutions, End Point, Cloud, IoT, Shared Services and more across all verticals and segments.
- Increased demand by 65% and grew the team to 28-members that consisted of supervisors, project specialists and marketing associates in both the U.S. and in C.R.
- Researched and adapted a new CRM/Campaign management tool for the team, creating new revenue streams and department capabilities that result in higher ROI for our customers.
- Managed team analytics, project scheduling, revenue, and payables.
- Created and implemented multi-touch marketing tactics that included lead generation, social media, event recruitment, and account management services.

### SR. MARKETING PLANNER, ADVANCED SOLUTIONS AND CORP. EVENTS

*Marketing Services, May 2012 to June 2013  
Served as a Marketing Planner from February 2010 to May 2012*

- Developed and launched multi-faceted Advanced Solutions marketing campaigns (single and multi-vendor), managed multi-million budgets, and executed associated marketing tactics that focused on awareness, lead generation and demand generation.
  - Vendors included: APC, Brocade (Ruckus), Cisco, IBM, VMware, NetApp, Microsoft and more (150+ vendors).
- Managed and developed large multi-vendor events with targeted messaging and industry direction. Collaborated with internal marketing divisions, executives, clients, and interdepartmental personnel to ensure program goals are met.
- Responsible for creating event agendas, contracting speakers, establishing funding, managing event logistics and budgets.
- **Program/Project Manager – Technical Services Division**  
*October 2007 – February 2010*
- **Sales Administrator - Technical Services Division**  
*January 2005 – October 2007*
- **Marketing Associate - Technical Services Division**  
*October 2003 – January 2005*

## EDUCATION

### A.A. BUSINESS MANAGEMENT

*St. Petersburg College  
Florida, 2006*

### B.A.S. INTERNATIONAL BUSINESS

*St. Petersburg College  
Florida, 2009*

### MASTER'S IN BUSINESS ADMINISTRATION

*Florida International University  
Florida, 2018  
Specialization in International Business.*

### ACCOUNT BASED MARKETING CERTIFICATIONS

*DemandBase, 2020  
Foundations and Advanced Certified*

# Lisa Kilgore

Bids and Contracts/Proposals Coordinator

Denver, CO 80246 • (720) 238-2166  
[lkilgore.97@gmail.com](mailto:lkilgore.97@gmail.com)

## Areas of Interest

- Market Research & Reports
- Proposal Writing
- Project Management
- Regulatory Compliance
- Bids & Contracts
- Federal & State Guidelines
- Database Management
- Records & Documentation

## Education

### Bachelor of Arts

International Affairs, minors in Spanish and Geography  
University of Colorado  
Boulder, CO (2020, 3.46 GPA)

### Study Abroad Program

France and Argentina

### Foundations of Project Management

Professional and Continuing Education of University of Washington

### Foundations of Proposal Development (APMP)

Shipleigh Associates

## Technical Skills

Notary Public and Remote Notary Public; Colorado

Microsoft Office Suite

Popular Social Media (Twitter, Instagram, Facebook)

AP Style Writing

Canva, Mail Chimp

Google Suite

Asana, Trello, Kissflow

## Languages

English (Fluent)  
Spanish (Fluent)

## Summary

Proven success developing and reviewing proposal strategies and themes. Reputable track record collaborating with cross-functional teams. Adept in managing proposal response schedule and engaging in proposal knowledge management processes. Skilled at writing and editing various types of content, conduct market research, and monitor and report on content updates and campaigns. Consistently communicates with clients and leadership to reach or exceed timely milestones.

## Professional Experience

**CAMBIUM LEARNING GROUP**, Longmont, CO  
**Bids and Contracts/Proposals Coordinator**

**2021 - Present**

Perform contract and proposal administration work across multiple business units and in coordination with other departments; process around 10-20 high value contracts each week. Manage and execute documents related to contracting laws, regulations, principles, and policies to assess and execute work for government contracts throughout acquisition lifecycle.

- Liaised with stakeholders in customer service, sales, legal, engineering, accounting, and HR to provide services for staff and clients.
- Initiated use of new task and project management tools, such as Asana and Trello and identified areas of improvement with current project management platforms and operating procedures.
- Handled 10-15 various complex documents in connection to contracts per week, such as business clearance memoranda, solicitations, selection decision documents, price negotiation forms, and contract terms and conditions.
- Exceed expectations while regularly providing quality work in fast-paced high stress environment.

**PROGRESSIVE TURNOUT PAC**, Boulder, CO

**2020**

### Field Representative

Optimized participation and engagement by facilitating communication across phone, text, and print correspondence while incorporating key brand messaging. Successfully secured a notable volume of commitments from the public and assisted in creating plans to vote. Achieved a 50% conversion rate for cold calls.

- Expanded reach by integrating popular social media platforms.
- Consistently outpaced expectations, resulting in the honor of Top Performer in the Region; led self-assessments to identify improvement opportunities.

**WORLD AFFAIRS CHALLENGE**, Denver, CO

**2020**

### Social Media Intern

Spread awareness regarding the UN Sustainable Development Goals and all corresponding aspects. Utilized major social media platforms, making global sustainability news and events understandable for middle school and high school students.

- Increased traffic by 20% on Facebook and 30% on Instagram.
- Elevated engagement by creating posting schedules for social media; integrated compelling language to promote consumer interaction.

# MEGHAN COHEN

7687 Fredericks Hall Road, Mineral, VA 23117 · 703-789-6151

[Meghan.L.Cohen@gmail.com](mailto:Meghan.L.Cohen@gmail.com) · [Meghan Cohen | LinkedIn](#)

---

Career-oriented individual eager to take the next step in leadership. With a history of success in building key relationships with decision-makers as well as working as part of and leading a success-driven team.

## **EXPERIENCE**

**SEPTEMBER 2021 – CURRENT**

### **SALES MANAGER, IMMIXGROUP**

Responsible for directly managing a team of 5 Supplier Managers to actively engage suppliers, drive strategy and deliver value by leveraging capabilities across our marketing intelligence, channel, and program teams. Expected to achieve growth and hit sales quotas of over \$500M per year. Manage employee performance by coaching and providing feedback as well as identifying and developing future sales leaders.

**DECEMBER 2018 – SEPTEMBER 2021**

### **SUPPLIER MANAGER, IMMIXGROUP**

Responsible for collaborating to create and implement sales strategies for +5 accounts, to include marketing, lead generation, market intelligence and contracts for Public Sector. Expected to achieve growth and hit sales quotas of over \$100M per year. Built relationships with key decision makers to grow market share as a trusted advisor. Guided and developed a team to build relationships with suppliers and assist in navigating the public sector landscape.

**APRIL 2016 – NOVEMBER 2018**

### **INSIDE SALES REPRESENTATIVE, IMMIXGROUP**

Maintain accurate and timely records of business opportunities and ongoing account activities within CRM database which includes pipeline reporting, new customer data, and revenue data for current customers. Maintain and grow business relationships with client representatives and government customers. Create quotes, manage agreements/credit terms, and process purchase orders for government customers as needed.

**AUGUST 2015 – APRIL 2016**

### **RECEPTIONIST, IMMIXGROUP**

Greet guests and clients as they come to the office. Maintain conference room scheduling through outlook. Update daily sales reports for senior management and monitor multiple email accounts responding and forwarding as appropriate.

**FEBRUARY 2015 – APRIL 2015**

### **TAX PREPARER, ABL TAX SERVICE**

Prepare client tax returns. Responsibilities included researching changes in tax laws and presenting findings on specific topics to the entire company at weekly meetings. I became the in-house Affordable Care Act subject matter expert on the tax implications for individuals and businesses, this included providing tax advice for future years.

**MAY 2013 – FEBRUARY 2013**

### **SERVER, BARTENDER, KEY MANAGER, LOGAN'S ROADHOUSE**

I worked in a variety of positions within the restaurant to provide excellent customer service to all guests through knowledge of all menu items and service techniques. Responsibilities included

handling customer service issues, taking weekly inventory of liquor, and interacting with employees at all levels to provide a great customer experience.

## **EDUCATION**

**DECEMBER 2014**

**BACHELOR OF ARTS (B.A), ECONOMICS; MINOR IN BUSINESS, GEORGE MASON UNIVERSITY**

Relevant Coursework: Managing in a Global Economy, Economics of Developing Areas, Money and Banking, Managing Financial Resources, Managing People and Organizations.

## **SKILLS**

- Team Leadership
- Time Management
- Customer Service
- Microsoft Office
- Team Building
- Organization

## **VOLUNTEER EXPERIENCE**

### **FAMILY READINESS GROUP LEADER**

31ST COMBAT SUPPORT HOSPITAL, U.S. ARMY

MAR 2010 – MAR 2012

Supported the rear detachment commander's family readiness goals and responded to inquiries from the rear detachment commander both orally and in writing. I acted as a liaison between 300+ Soldiers' families and Command to communicate needs and concerns of family members and junior enlisted Soldiers. Organized and participated in fund-raisers to provide support to families and troops during the deployment cycle. Attended and conducted monthly meetings with the rear detachment command during deployment. Organized monthly family activities during deployment which were used to foster goodwill as well as provide regular updates from the unit command. Oversaw and participated in the publication and distribution of a monthly newsletter and activities calendar. Developed and maintained working relationships with organizations on and off-post to provide information and referrals for available installation and community resources to family members and Soldiers in need.

### **INFORMATION, REFERRAL AND OUTREACH**

ARMY COMMUNITY SERVICE

MAR 2011 – MAR 2012

Volunteered answering phones and greeting incoming clients to do an initial assessment of their needs, determines the complexity of the level of service needed and provide information to the client to meet their needs. This work required knowing a comprehensive and up-to-date listing of appropriate and available resources, specifically knowledge of ACS mobilization and deployment programs, to assist Soldiers and their families when needed. My experience also included participating in improving procedures for tracking and an upgrade of entire client system.

# SUDHIR VERMA

240-910-0442 [SUDHIRVERMA1@GMAIL.COM](mailto:SUDHIRVERMA1@GMAIL.COM)

*US Citizen, Active Secret Clearance*

---

---

## SENIOR INFORMATION TECHNOLOGY EXECUTIVE & BUSINESS INNOVATOR

Highly motivated and experienced Information Technology Executive with over 15 years of sales, services, partner alliance/channels, marketing and P&L management experience in enterprise and Federal/Public Sector. Business leader passionate about solving customer challenges with technology and driving growth focused change. Excellent record of leading and building high performing teams. Federal and enterprise sales and business development experience along with federal contracting and SI landscape. Well versed in the partner eco system – VARs, Distribution and SIs.

Consulting and Transformation • Strategic Business Planning • Sales • Business Development

Vendor Relations • Profit & Loss Management • Client Relations • Value Creation

• Solution Selling • Team Leadership & Development • Marketing

Cloud • SaaS • Cyber Security • Azure • Amazon Web Services (AWS)

---

### PROFESSIONAL EXPERIENCE

#### IMMIXGROUP (AN ARROW COMPANY)

2021 – PRESENT

##### Director, Federal Sales (Emerging Technologies)

- Responsible for recruiting, onboarding, and growing emerging technologies in Public Sector.
- Developed channel and marketing strategy focused on accelerating growth of ISVs/OEMs in public sector.
- Managed relationship with channel and ISVs/OEM executive leadership to build a synergistic growth focused mutually beneficial partnership.

#### APPLIED INSIGHT

2020 – 2021

##### Director, Federal Sales (Cloud PaaS sales)

- Built and launched sales framework for Applied Insight's SHIFT and Altitude (PaaS) products in Federal
- Developed and implemented sales/partners/GTM strategy to grow product sales
- Established distribution channel for the products
- Grew net new customer revenue by 20% YOY

#### ALL COVERED, KONICA MINOLTA COMPANY

2018 – 2020

##### Area Sales Manager, Managed Services, Cloud, Cyber Security – Mid Atlantic States

- Led a team of Sales Consultants to grow Managed Services, Cyber Security, App Dev, and Cloud offerings
- Realigned the territory with focus across all verticals to achieve revenue and expense objectives.
- Developed team members to build pipeline and grow new business utilizing Butler Street sales methodology.
- Grew net new customer revenue by 25% YOY. Attained over 100% of quota in FY 2018 and FY 2019

#### CLOUDSHAPE

2017 – 2018

##### Sr Vice President, Sales & Business Development – Federal

- Built a reseller/VAR business for a hub-zone company focused on Federal Civilian – Dept of Interior (FWS), USAID, NASA (Goddard). Responsible for building sales team and sales process from ground up.
- Leveraged existing relationships to expand CloudShape's footprint for their Desktop as a Service (DaaS) offering and to establish a Value-Added Reseller business
- Led Cloud Migration project (COLO to AWS) for a Federal Agency (Sub to a SI)

- Met the FY17 goals.

## **ACCELERA SOLUTIONS**

**2014 – 2017**

### **Vice President – Cloud & Virtualization – Federal and Enterprise**

---

- A **key executive contributor** towards the top line annual revenue growth from \$40 Mill in 2014 to \$52 Mill 2016, along with substantial growth in overall company profitability.
- Built and led a team of Sales reps, architects, consultants and support engineers and project managers to sell and deliver virtualization (Citrix, VMware), Cyber Security and Cloud solutions (O365, Azure, AWS, SaaS).
- Provided subject matter expertise and thought leadership for Cloud and Virtualization initiatives to support of business development efforts. Led various marketing lead gen activities such as seminars, webinars, and panel discussion.
- Led business development activities including pursuit of new opportunities partnerships with SIs and other solution providers, win strategy discussions and customer relationship management.
- Spearheaded effort to successfully add reoccurring revenue stream from cloud and managed services offerings in addition to the transaction-based revenue (consulting and product sales).

## **FORCE 3, INC**

**2009 – 2014**

### **Vice President – Networking, Cyber Security & Data Center - Federal and Enterprise**

---

- Achieved extraordinary results in company sales growth, above market multiples and the over competition. Grew company profitability 12% - 15% YOY annually.
- Developed and operated division's \$12 million budget accounting for capital expenditures, revenue goals, salary scale, and operational expenses.
- Built and lead 70-person team of leading-edge "trusted advisor" directors, highly technical solution architects technical consultants, consultative sales engineers, and project managers.
- Built an industry best-in-class services organization from the ground up with innovative, standardized offerings including Networking, Collaboration, Security, and Data Center Consolidation.

## **EMC CORPORATION**

**2008 – 2009**

### **Client Solutions Director - Federal Sales**

---

- Achieved 100% of quota in a new territory.
- Sales executive responsible for identification, growth, and pursuit of EMC consulting services offerings for the Federal (Civilian Agencies) practice nationwide.
- Developed key relationships with VMware Federal and EMC VARs to drive EMC consulting services offerings in Federal.

## **HEWLETT-PACKARD COMPANY**

**1999 – 2008**

### **Practice Principal – Data Center Consolidation and Virtualization Consulting**

---

- Led a high-performance team of IT Consultants, Solution Architects and Program Managers to deliver complex Infrastructure Transformation, Data Center Optimization, IT Consolidation, Virtualization, Platform Migration, and IT Shared Services solutions for Fortune 500 clients.
- Key role in consulting engagements (both pursuit and delivery) as the executive sponsor for regional clients.

---

## **EDUCATION & TRAINING**

**Bachelor of Arts – Accounting - METROPOLITAN STATE UNIVERSITY, St. Paul, MN**

**Project Management Professional (PMP)**

**Value Selling Sales Methodology** <https://www.valueselling.com/>

**Butler Street Sales Methodology** <https://www.butlerstreetllc.com/home-4>



## Technology Products for the Public Sector

Government agencies at the federal, state, and local levels trust immixGroup and its 1,200+ channel partners to provide them with leading technology products through their preferred contract vehicles. immixGroup has developed a reputation as a reliable, trusted distributor based upon its proven track record of success, ISO 9001:2015-certified business processes, and extensive knowledge of the government procurement process.

Explore immixGroup's network of more than 300 large and emerging technology manufacturers and more than 30 contract vehicles available to help government agencies meet their missions.



**PRIVATE CLOUD**

**HYBRID/MULTI-CLOUD**

**AT THE EDGE**



immixGroup is your premier source for IT products and solutions with access to more than 1,200 channel partners and 300 suppliers including the companies below.

