

MASTER AGREEMENT
BETWEEN
MIDWESTERN HIGHER EDUCATION COMMISSION
AND
EC America, Inc.

THIS AGREEMENT, and amendments and supplements thereto, is made between the Midwestern Higher Education Commission (hereinafter MHEC) located at 105 Fifth Avenue South, Suite 450 Minneapolis, MN 55401, for the benefit of the Eligible Organizations located in the MHEC member states, and EC America, Inc., (hereinafter IMMIX or Supplier) located at 8444 Westpark Drive, Suite 200, McLean, VA 22102. For purposes of this Master Agreement MHEC and IMMIX are referred to collectively as the “Parties” or individually as “Party”.

Whereas, the Midwestern Higher Education Compact (Compact) is an interstate compact of twelve Midwestern states, such states being Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota and Wisconsin (Member States); and MHEC, a nonprofit 501(c) (3), is a statutorily created governing body of the Compact established for the purposes, in part, of determining, negotiating and providing quality and affordable services for the Member States, the entities in those Member States, and the citizens residing in those Member States; and

Whereas, MHEC has established a Technology Initiative for the purpose of which is to determine, negotiate and make available quality and affordable technology products and services to the not-for-profit and public education related entities in the MHEC Member States; and

Whereas, MHEC has entered into separate agreements with the New England Board of Higher Education (NEBHE) and the Southern Regional Education Board (SREB) and the Western Interstate Commission for Higher Education (WICHE) respectively to allow entities in the NEBHE Member States, SREB Member States, and the WICHE Member States access MHEC’s Technology Initiative contracts, including this Master Agreement; and

Whereas, NEBHE Member States refers to any state that is a member, or affiliate member of NEBHE. Current NEBHE Member States are: Connecticut, New Hampshire, Maine, Massachusetts, Rhode Island, and Vermont.

Whereas, SREB Member States refers to any state that is a member or an affiliate member of SREB. Current SREB Member States are: Alabama, Arkansas, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, and West Virginia; and

Whereas, WICHE Member States refers to any state that is a member or an affiliate member of WICHE. Current WICHE Member States are: Alaska, Arizona, California, Colorado, Hawai'i, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, Wyoming and U.S. Pacific Territories and Freely Associated States; and

Whereas, IMMIX offers certain quality technology related products and services; and

Whereas, MHEC conducted a competitive sourcing event for IT Security Services MHEC-RFP-14OCT2020 dated October 14, 2020 and upon completion of the competitive process IMMIX received an award; and

Therefore, in consideration of mutual covenants, conditions, and promises contained herein, MHEC and IMMIX agree as follows:

1. Definitions

Resellers: refers to marketing agents, agents or order fulfillers authorized by IMMIX to provide Products and Services under this Master Agreement. IMMIX will list Resellers on an internet site accessible to MHEC, its Member States and Eligible Organizations. IMMIX will provide to MHEC the general criteria used to authorize agents. IMMIX shall notify MHEC when there are additions and/or deletions made to the list of Resellers. At any time during the term of this Master Agreement should MHEC protest the inclusion of a firm on this list pursuant to commercially justifiable cause, IMMIX may require that firm to undergo re-approval.

Documentation: refers to the any documentation made available by IMMIX to Procuring Eligible Organization relating to any Equipment or Software purchased as well as any manuals relating to the Equipment or Software.

Deliverables: refers to the tangible materials, including reports, studies, base cases, drawings, findings, software, manuals, procedures, and recommendations that IMMIX delivers to Procuring Eligible Organization.

Eligible Organizations: This Master Agreement shall be the framework under which Eligible Organizations can acquire solution offerings as defined herein from IMMIX. Eligible Organizations shall include:

1. All not-for-profit private and public institutions and/or systems of higher education (colleges, universities, community colleges, technical institutions and equivalent institutions);
2. All K-12 schools and school districts;
3. All city, county, and other local governments; and
4. All state governments and their departments.

Eligible Organizations shall also include all not-for-profit private and public institutions and/or systems of higher education; K-12 schools and districts; city, county, and other local governments; and state governments and their departments located within the following other education Compacts in the country; the New England Board of Higher Education (NEBHE), the Southern Regional Education Board (SREB), and the Western Interstate Commission for Higher Education (WICHE).

Equipment: refers to manufacturer's full line or "family" of product, which include devices that have a primary function related to the collection, transfer, storage, or processing of data that IMMIX delivers to Procuring Eligible Organization.

Large Order Negotiated Pricing: refers to the prices or additional discounts that may be offered to specific Eligible Organizations under defined additional terms and conditions. Selection and pricing of large order negotiated pricing shall be by mutual agreement of the Eligible Organization and Supplier. Large Order Negotiated Pricing shall apply only to those items that meet the applicable additional terms and conditions negotiated by Supplier and the Eligible Organization.

Manufacturer: Manufacturer means any person who designs, manufactures, fabricates, assembles, or processes a finished device. For this agreement, the manufacturers are Elasticsearch Inc., Fortinet, Inc., LogRhythm, Inc., and Tanium as well as any other manufacturers that may be added through the term of the agreement.

Promotional Prices: refers to special prices that may be offered nationally or regionally under this Master Agreement to a specific category of customers intended to include similarly situated public entity and institutional Eligible Organizations for defined time periods and in similar quantities under defined terms and conditions.

Order: refers to an Eligible Organization's purchase order or other ordering document evidencing its intent to procure Products or Services from Supplier under the terms and conditions of this Master Agreement.

Procuring Eligible Organization: refers to an Eligible Organization which desires to purchase under this Master Agreement and has executed an Order.

Products: refers to the full line of market offerings for attention, acquisition, use or consumption to satisfy the Eligible Organization's need or want that IMMIX makes available under this Master Agreement. IMMIX may incorporate changes to their product offering; however, any changes must be within the scope of the IT Security Services MHEC-RFP-14OCT2020 award.

Retail Price List: refers to the IMMIX's retail price list and is a complete list of Products and Services with the corresponding retail prices for those Products and Services made available for purchase by Eligible Organizations under this Master Agreement. The Retail Price List typically contains an item number, item description and the retail price for each Product.

Services: refers to the Services offered by IMMIX under this Master Agreement that deliver value to Eligible Organizations by facilitating outcomes Eligible Organizations want to achieve without taking on the ownership of specific costs and risks. IMMIX may incorporate changes to their service offering; however, any changes must be within the scope of the IT Security Services MHEC-RFP-14OCT2020 award. Some Services may require additional contract terms and conditions that Eligible Organizations shall negotiate with the Supplier as applicable, such as service level agreements and/or statements of work.

Software: Software shall mean software, library, utility, tool, or other computer or program code, each in object (binary) code form, as well as the related media, printed materials, online and electronic documentation and any copies thereof. Software shall include updates, upgrades, maintenance releases, revisions, and enhancements to the licensed software. Software may include Software accessed by Eligible Organization through the Internet or other remote means (such as websites, portals, "hosted" and "cloud-based" solutions). IMMIX may incorporate changes to their Software offering; however, any changes must be within the scope of the IT Security Services MHEC-RFP-14OCT2020 award.

System Software: means Software that provides basic hardware functionality and provides a platform for applications to run (e.g., firmware and BIOS software), and any Software specifically designated by IMMIX as System Software the purpose of which is to operate and manage the Products in which it is embedded.

Application Software: means computer programs that are designed to perform specialized data processing tasks for the user and any Software specifically designated by IMMIX as Application Software.

Supplier: refers to IMMIX or a Reseller.

2. Scope of Work

Procuring Eligible Organizations shall purchase from Supplier, and Supplier shall distribute to Procuring Eligible Organizations Products and Services in accordance with the terms of this Master Agreement. All Eligible Organizations are qualified to purchase under this Master Agreement, including those Eligible Organizations currently under a separate agreement with Supplier. Accordingly, Supplier shall provide Products or Services only upon the issuance and acceptance by Supplier of a valid Order. Orders may be issued to purchase any Products or any Services listed on the Retail Price List. A Procuring Eligible Organization may purchase any quantity of Products or Services listed in IMMIX's Retail Price List at the prices stated herein. For Large Order Negotiated Pricing, Supplier and Eligible Organization may negotiate quantity discounts below the Products and Services Pricing for a given purchase order. As it sees fit, Supplier may offer under this Master Agreement discounts that result in prices below those listed in the

Product and Services Price List. IMMIX is solely responsible for fulfillment of the responsibilities under the terms and conditions of this Master Agreement. Notwithstanding anything to the contrary contained in this Master Agreement or Order under the Master Agreement, MHEC shall not be liable for any Eligible Organization that executes an Order under this Master Agreement. An Eligible Organization shall not be responsible for any other Eligible Organization that executes its own Order under this Master Agreement.

This Master Agreement covers that products and solutions as described in for IT Security Services MHEC-RFP-14OCT2020 dated October 14, 2020. The categories awarded under this Master Agreement are:

A. Security Threat Intelligence Products and Services

"Threat intelligence" (TI) is evidence-based knowledge — including context, mechanisms, indicators, implications and actionable advice — about an existing or emerging menace or hazard to IT or information assets. It can be used to inform decisions regarding the subject's response to that menace or hazard.

B. Security Information and Event Management (SIEM)

Security and information event management (SIEM) is defined by the customer's need to analyze event data in real time for early detection of targeted attacks and data breaches, and to collect, store, investigate and report on log data for incident response, forensics and regulatory compliance. SIEM technology aggregates event data produced by security devices, network infrastructure, systems and applications. The primary data source is log data, but SIEM technology can also process other forms of data, such as network telemetry. Event data is combined with contextual information about users, assets, threats and vulnerabilities. The data may be normalized, so that events, data and contextual information from disparate sources can be analyzed for specific purposes, such as network security event monitoring, user activity monitoring and compliance reporting. The technology provides real-time analysis of events for security monitoring, query and long-range analytics for historical analysis.

3. IMMIX Responsibilities

The parties understand and agree that IMMIX acts as a reseller of all Products and Services offered under this Master Agreement. With regards to Products, IMMIX represents that it has the requisite right and authority under its reseller agreements with the Manufacturers to offer the Products and grant the rights specified in this Master Agreement, and Manufactures shall have no privity of contract with an Order hereunder. With regard to Services, while some or all of the Services ordered hereunder may be physically performed by Manufacturer or other third party personnel (as is specified under the applicable SOW or other ordering document) acting under a subcontract or similar arrangement with IMMIX, and while the scope and price of such Services are defined by the applicable provider's policies (such as maintenance service policies), IMMIX remains solely responsible to the Order for all such performance.

4. Purchasing Under Master Agreement

A. Products: Procuring Eligible Organization shall purchase from Supplier the Products listed on the Retail Price List under the terms and conditions of this Master Agreement by delivering to Supplier an Order. The Order should include: (i) Procuring Eligible Organization by name and address; (ii) the quantity, and description of the Product that Procuring Eligible Organization desires to purchase or license; (iii) the price of the Product in accordance with this Master Agreement; (iv) the "bill-to" address; (v) the "ship-to" address; (vi) the requested delivery dates and shipping instructions; (vii) a contact name and telephone number; and (viii) reference to this Master Agreement. Supplier must notify Procuring Eligible Organization if it intends to substitute any item(s) that has been ordered by the Procuring Eligible Organization using this contract; the Procuring Eligible Organization will then have the option to cancel the order if such substitute item is not acceptable.

- B. **Services:** Procuring Eligible Organization shall purchase Services from Supplier under the terms and conditions of this Master Agreement by delivering to Supplier an Order. The Order should include: (i) Procuring Eligible Organization by name and address; (ii) the description of the Service (s) that Procuring Eligible Organization desires Supplier to perform; (iii) the price of the Service in accordance with this Master Agreement; (iv) the “bill-to” address; (v) the requested performance dates; (vi) a contact name and telephone number; and (vii) reference to this Master Agreement. Eligible Organizations purchasing on-site Support, on-site Training, Professional, or IT as a Service shall negotiate the terms and conditions of such purchase with the Supplier, including, as applicable, service level agreements and/or statements of work.
- C. Each Order that is accepted by Supplier will become a part of the Agreement as to the Products and/or Services listed on the Order only; no additional terms or conditions will be added to this Agreement as a result of the acceptance of the Order, nor will such terms affect any purchase. An Order from an Eligible Organization accepted by Supplier is binding.
- D. Procuring Eligible Organization may request in writing a change to an Order (“Change Request”) that Supplier has previously accepted. In response to a Change Request, Supplier will provide written quotations to the Procuring Eligible Organization, including any changes to discounts, license fees, shipment or completion dates. A Change Request is a separate Order subject to Supplier’s change order process.
- E. Supplier will accept a purchasing card for order placement in addition to accepting a purchase order.
- F. When Equipment purchased under this Master Agreement requires installation, the Supplier must provide the cost of installation as a separate line item on their quotation unless installation is included in the price. The installation cost must include all packing, freight, insurance, set-up, instruction, and operation manual charges. Equipment must be set in place in an area designated by Procuring Eligible Organization personnel, demonstrated to be in operating condition, and approved by Procuring Eligible Organization personnel. Upon request, IMMIX will provide a Services quote with a Statement of Work to remove any and all debris from the Procuring Eligible Organization’s site. Upon installation, all operating instructions will be provided either physically or electronically to Procuring Eligible Organization’s personnel identified on the purchase order.

5. Due Diligence

Notwithstanding MHEC’s role in entering into this Agreement and any additional efforts by MHEC, Eligible Organization acknowledges and agrees that:

- a) Eligible Organization is solely responsible for its own due diligence regarding the Agreement;
- b) MHEC is not responsible for, and makes no representation or warranty, regarding the appropriateness of the Agreement for the Eligible Organization specifically; MHEC has not made any legally binding representations regarding Supplier or any manufacturers, licensors or service providers, and that MHEC does not guarantee or warrant the products or services IMMIX; and
- c) MHEC is not responsible for the actions or omissions of Supplier.

Issues of interpretation and eligibility for participation are solely within the authority of the procurement and statutory rules and regulations applicable to the Eligible Organization. The Eligible Organization is responsible for assuring it has the authority to place Orders under this Agreement.

6. Quantity Guarantee

This Master Agreement is not a purchase order, nor does it guarantee any purchases to be made by any Eligible Organization. This Master Agreement is not an exclusive agreement. MHEC and Eligible

Organizations may obtain information technology products and services from other sources during the term of the Master Agreement.

7. Master Agreement Term

This Agreement will become effective from the date it has been executed by all parties and shall remain in effect until December 31, 2024 (Term Ending Date) unless otherwise terminated pursuant to the terms of the Agreement. The Agreement may be mutually renewed for four (4) additional years, unless one party terminates in writing ninety (90) days prior to the Term Ending Date anniversary. Eligible Organizations may procure products and services from Supplier under the terms of the MHEC Master Agreement at any time during the duration of the Agreement or any renewal thereof.

8. Order of Precedence

Where the terms and conditions of this Master Agreement are in conflict with an Eligible Organization's state and/or institutional laws or regulations, the Eligible Organization and IMMIX may enter into an addendum to amend the terms and conditions of the Master Agreement to conform to the Eligible Organization's state and/or institutional laws or regulations. Likewise, a Procuring Eligible Organization and IMMIX may enter into an addendum to supplement or modify this Agreement for specific Products or Services. The terms and conditions of the addendum shall only be applicable between the Eligible Organization that entered into the addendum and IMMIX.

In the event of any conflict among these documents, the following order of precedence shall apply:

- A. Mutually agreed upon Statement of Work ("SOW") or Service Level Agreement ("SLA")
- B. Executed addendum, not to include Purchase Orders, between Eligible Organization and IMMIX
- C. The terms and conditions of this Master Agreement, and any accompanying addendum or rider, or any MHEC- IMMIX addenda to this Master Agreement and its Exhibits
- D. License terms applicable to the software license or software service purchased hereunder
- E. The list of Products and Services contained in the Order

9. Payment Provisions

- A. **Acceptance.** Supplier can only, and shall only tender for acceptance those items that substantially conform to the manufacturer's published specifications. Therefore, items delivered shall be considered accepted upon delivery. The Procuring Eligible Organization reserves the right to inspect or test any Products or Services that have been delivered. The Procuring Eligible Organization may require repair or replacement of nonconforming Products or re-performance of nonconforming Services at no increase in contract price. If repair/replacement or re-performance will not correct the defects or is not possible, the Procuring Eligible Organization may seek an equitable price reduction or adequate consideration for acceptance of nonconforming Products or Services. The Procuring Eligible Organization must exercise its post-acceptance rights- (1) within the warranty period; and (2) before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.
- B. **Prepayment:** Eligible Organization will not be required to make any advance payments to Supplier for any task deliverable or time-and-materials based orders under this Master Agreement. This clause does not apply to subscriptions for which payment is commonly

expected prior to activation of coverage, such as periodical subscriptions, memberships, or annual maintenance agreements.

- C. **Return Policy.** Subject to Section 9A. of this Master Agreement, all Products will be deemed to be accepted upon delivery. Procuring Eligible Organization may only return Products to IMMIX that are permitted to be returned pursuant to the manufacturer's return policy in the applicable EULA.
- D. **Payment of Invoice.** Payments shall be delivered to Supplier at the address shown on the invoice. Payments shall be made within thirty (30) days from the date of invoice. In the event that Supplier is required to pursue the collection of past due amounts not subject to a good faith dispute between Supplier and the Procuring Eligible Organization, Supplier will be entitled to recover interest accrued at the lesser of 1.5% per month or in accordance with the applicable state laws of the Procuring Eligible Organization.
- E. **Dispute Notice.** Procuring Eligible Organization shall make a good faith effort to notify Supplier of any billing discrepancies or disputes about an invoice within **fifteen (15)** business days after receiving it, specifying with particularity the basis of any such dispute ("Dispute Notice") or in accordance with the applicable state laws of the Procuring Eligible Organization. Tender of a Dispute Notice does not relieve Procuring Eligible Organization of its obligations to pay the undisputed portion of any invoice subject to a Dispute Notice. Any amounts that were the subject of a Dispute Notice and are subsequently resolved in favor of Supplier will be subject to interest charges accruing from the original due date.
- F. **Partial Shipment.** In the event an order is shipped incomplete (partial), the Procuring Eligible Organization must pay for each shipment as invoiced by Supplier unless the Procuring Eligible Organization has clearly specified "No Partial Shipment" on each purchase order.
- G. **Payment of Taxes.** The prices listed under this Master Agreement do not include, and Procuring Eligible Organization shall reimburse Supplier for, any and all taxes and/or duties assessed against or payable by Supplier in connection with the sale of Equipment, licensing of Software or Documentation, or performance of Services except for taxes imposed upon Supplier's net income. Unless the Procuring Eligible Organization provides a proof of tax exemption, taxes will be additive to the contracted price.

10. Shipping

IMMIX shall ship the Products F.O.B. destination. Title to Products shall pass to Procuring Eligible Organization upon delivery to Procuring Eligible Organization's destination point. Risk of loss or damage to the Products shall pass to Procuring Eligible Organization upon delivery to the Procuring Eligible Organization. IMMIX shall bear the risk of loss with respect to returned Products except for loss or damage directly attributable to the negligence of the Eligible Organization.

11. Product Delivery

- A. Unless otherwise agreed to by Procuring Eligible Organization and Supplier, Supplier agrees to deliver Products to Procuring Eligible Organization within thirty (30) days after receipt of a valid Order. If delivery cannot be made within thirty (30) calendar days, Supplier will notify Procuring Eligible Organization as soon as it becomes aware that delivery in the agreed upon time is not feasible, and Procuring Eligible Organization, as its exclusive remedy, can cancel the order by written, electronic, or facsimile notification. Suppliers acknowledge that all locations of any particular Eligible Organization may not be within the MHEC region.

- B. If deliveries prove to be unsatisfactory, or other problems arise, MHEC reserves the right to delete Product or Services from the Master Agreement and/or cancel Master Agreement. Similarly, if deliveries prove to be unsatisfactory or other problems arise under the agreement for a Procuring Eligible Organization, the Procuring Eligible Organization retains all of its remedies for a default. Failure of MHEC or the Procuring Eligible Organization to exercise its rights of termination for cause or other remedies for default due to a Supplier's failure to perform as required in any instance shall not constitute a waiver of termination rights or other default remedies in any other instance.
- C. Suppliers may choose to deliver products electronically where practicable. This option must be under the independent control of each Procuring Eligible Organization.

12. Purchase of Open Market Items

Open Market items are incidental items, non-contract items, and items not on the price schedule. These items must be clearly identified on any sales quote or sales order referencing this Master Agreement as being open market items.

13. Price Guarantees

The Procuring Eligible Organization shall pay the lower of the prices contained in the Master Agreement, or Large Order Negotiated Pricing at the time of Order (provided that, with respect to the applicability of Large Order Negotiated Pricing, such Procuring Eligible Organization is a party to the Large Order Negotiated Pricing negotiations and the purchase is part of the project for which the Large Order Negotiated Pricing was negotiated). When Eligible Organizations purchase under this Master Agreement, IMMIX shall not sell Products or Services to Eligible Organizations at prices higher than those awarded via this Master Agreement and in instances where this provision is applied, this Master Agreement contract number shall be referenced in the Supplier's quote.

14. Product Pricing

IMMIX agrees to maintain Product Pricing in accordance with the following provisions:

- A. Retail Price List for all Equipment, Software and Documentation will be set forth at MHEC landing page on Immix's public website, www.immixgroup.com. Changes to retail prices generally take effect immediately, and IMMIX reserves the right to change retail prices at any time.
- B. Discount Percentage Pricing: The prices for Products are the Retail Price List less applicable discount as specified in Exhibit A. Except as set forth in Section 13 "Price Guarantees" or Section 45 "Administrative Reporting and Fees," the discount percentages set forth in Exhibit A shall remain firm during the term of this Master Agreement. IMMIX shall add new Product(s) to Retail Price List as new Product(s) become available for sale. The pricing for all new Products shall, to the extent possible, be at the price discount levels provided herein, or as agreed to by the Parties.
- C. IMMIX may revise or discontinue Product offerings at any time without prior notice to MHEC. A change in a Product may occur between the time that Procuring Eligible Organization orders a Product and the time that IMMIX ships the Product. As a result, Products shipped may display minor differences from the Products Procuring Eligible Organization ordered, but they will meet or exceed all material specifications of the Products Procuring Eligible Organization ordered.
- D. Products purchased shall be new, current models manufactured with 100% new OEM parts. All Products should be offered in current production as of the date of the award. For purpose of this contract, "current production" shall mean that the equipment model is being manufactured as new equipment for the United States market. IMMIX will delete obsolete and discontinued Products from the Retail Price List on a timely basis.

- E. Prices will be F.O.B. destination (interior/ground floor or inside dock), and freight pre-paid and allowed, to any and all locations of the Procuring Eligible Organization. Prices must include all packing, freight, insurance charges and installation/operation manuals.

15. Services Pricing

IMMIX agrees to maintain the Service Pricing in accordance with the following provisions:

- A. For any standard Services, in which the Services and corresponding SKU are on Retail Price List, the pricing will be as described in the Products Section for Discount Percentage Pricing, and the applicable discount percentage as noted in Exhibit A will apply. Except as set forth in Section 13, "Price Guarantees" or Section 45 "Administrative Reporting and Fees," the discount percentage set forth in Exhibit A shall remain firm for the term of the Master Agreement.
- B. For any custom Services that are not included on the Retail Price List, the prices for such Services purchased under this Master Agreement will be as mutually agreed upon by both Supplier and Procuring Eligible Organization and as set forth in a Supplier quote or an applicable SOW or negotiated agreement.
- C. Specific geographic restrictions on the availability of Services must be conveyed to the Procuring Eligible Organization.
- D. Any purchase by Procuring Eligible Organizations of IT-as-a-Service is pursuant to the terms of the Services Description accompanying the Services and the Services Acceptable Use Policy, which will be made available for review at MHEC landing page on Immix's public website, www.immixgroup.com or any other negotiated agreement between Eligible Organization and IMMIX.

16. Data Ownership

Eligible Organization's data shall remain the exclusive property of Eligible Organization and Eligible Organization shall retain all rights, including intellectual property rights in and to such data. Supplier will use Eligible Organization's data only for the purpose of fulfilling its duties under the Master Agreement or an Order under the Master Agreement, and for Eligible Organization's sole benefit, and will not share such data with or disclose it to any third party without the prior written consent of Eligible Organization or as otherwise required by law.

17. License and Proprietary Rights

The terms applicable to any software are in its license agreement, included with the Software media packaging, or presented to Procuring Eligible Organization during the installation or use of the Software. Unless different terms have been agreed between the parties, the terms posted on MHEC landing page on Immix's public website, www.immixgroup.com. (the "EULA") shall apply to Eligible Organization's use of the Products. IMMIX will provide a hard copy of the applicable terms upon request. Unless expressly otherwise agreed, microcode, firmware or operating system software required to enable the Equipment with which it is shipped to perform its basic or enhanced functions, is licensed for use solely on such Equipment. If a separate license agreement exists between Procuring Eligible Organization and the

manufacturer or the owner of the Software, that license agreement will control and will apply according to its terms and conditions.

See Exhibit B, MHEC Manufacturer Agreements, for sample EULAs and other agreements relevant to the products and services being provided under this contract.

18. Proprietary Rights

All right, title, and interest in and to the intellectual property (including all copyrights, patents, trademarks, trade secrets, and trade dress) embodied in the Software, Products, Deliverables and all content and other items included with or as part of the Products, Services, Software, or Deliverables, such as text, graphics, logos, button icons, images, audio clips, information, data, feedback, photographs, graphs, videos, typefaces, music, sounds, and software, as well as the methods by which any Services are performed and the processes that make up the Services, shall belong solely and exclusively to Supplier or its suppliers or licensors, and Procuring Eligible Organization shall have no rights whatsoever in any of the above, except as expressly granted in the applicable EULA or SOW.

19. Warranties

- A. IMMIX warrants that (1) it is an Authorized Reseller of the Products and Services made available under this Agreement; and (2) it has the right to provide the Products and Services to the Procuring Eligible Organization under the terms and conditions of this agreement and any addendum or rider to this agreement. The Products are warranted as set forth in the applicable EULA.
- B. EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT OR IN THE APPLICABLE PRODUCT OR SERVICE DOCUMENTATION, IMMIX (INCLUDING ITS AFFILIATES, CONTRACTORS, AND AGENTS, AND EACH OF THEIR RESPECTIVE EMPLOYEES, DIRECTORS, AND OFFICERS), ON BEHALF OF ITSELF AND ITS SUPPLIERS AND LICENSORS (COLLECTIVELY, THE "IMMIX PARTIES") MAKES NO EXPRESS OR IMPLIED WARRANTY WITH RESPECT TO ANY OF THE PRODUCTS, SOFTWARE, DELIVERABLES OR SERVICES, INCLUDING BUT NOT LIMITED TO ANY WARRANTY (A) OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, PERFORMANCE, SUITABILITY, OR NON-INFRINGEMENT; OR (B) RELATING TO THE RESULTS OR PERFORMANCE OF THE SOLUTION, INCLUDING THAT THE SOLUTION WILL BE PROVIDED WITHOUT INTERRUPTION OR ERROR.
- C. WARRANTIES DO NOT COVER DAMAGE DUE TO EXTERNAL CAUSES, SUCH AS ACCIDENT, ABUSE, PROBLEMS WITH ELECTRICAL POWER, SERVICE NOT PERFORMED OR AUTHORIZED BY IMMIX (INCLUDING INSTALLATION OR DE-INSTALLATION), USAGE NOT IN ACCORDANCE WITH THE DOCUMENTATION, NORMAL WEAR AND TEAR, OR USE OF PARTS AND COMPONENTS NOT SUPPLIED OR INTENDED FOR USE WITH THE SOLUTION.
- D. **HIGH-RISK DISCLAIMER:** IMMIX SHALL NOT BE LIABLE TO THE PROCURING ELIGIBLE ORGANIZATION FOR USE OF THE SOLUTION IN HAZARDOUS OR HIGH-RISK ENVIRONMENTS REQUIRING FAIL-SAFE PERFORMANCE, IN WHICH THE FAILURE OR MALFUNCTION OF THE SOLUTION COULD LEAD DIRECTLY TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR PROPERTY DAMAGE. SUCH USE IS AT PROCURING ELIGIBLE ORGANIZATION'S OWN RISK, EVEN IF IMMIX KNOWS OF SUCH USE, AND IMMIX EXPRESSLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS FOR SUCH HIGH-RISK ACTIVITIES.
- E. **Services:** IMMIX represents and warrants that the Services provided under this Master Agreement will be performed in a skillful, competent, timely, professional and workmanlike manner, and that the IMMIX employees, agents and contractors assigned to perform Services under this Master Agreement have the proper skill, training and background so as to be able to perform in a skillful,

competent, timely, professional and workmanlike manner. Any additional warranty for Services will be decided on a case by case basis and be mutually agreed upon in a SOW.

20. Termination

- A. At any time MHEC may terminate this Master Agreement, in whole or in part, by giving IMMIX ninety (90) days written notice; provided however, neither MHEC nor Eligible Organization has the right to terminate a specific Order for convenience after it has been accepted by Supplier. At any time, IMMIX may terminate this Master Agreement, in whole or in part, by giving MHEC ninety (90) days written notice. Such termination shall not relieve IMMIX of any warranty or other service obligations incurred under the terms of this Master Agreement.
- B. Either Party may terminate this Master Agreement for cause based upon material breach of the Master Agreement by the other Party, provided that the non-breaching Party shall give the breaching Party written notice specifying the breach and shall afford the breaching Party a reasonable opportunity to correct the breach. If within thirty (30) days after receipt of a written notice the breaching Party has not corrected the breach or, in the case of a breach that cannot be corrected in thirty (30) days, begun and proceeded in good faith to correct the breach, the non-breaching Party may declare the breaching Party in default and terminate the agreement effective immediately. The non-breaching party shall retain any and all remedies available to it under the law.
- C. In the event that either Party be adjudged insolvent or bankrupt by a court of competent jurisdiction, or upon the institution of any proceedings by or against it seeking relief, reorganization or arrangement under any laws relating to insolvency, or upon any assignment for the benefit of creditors, or upon the appointment of a receiver or trustee of any of its property or assets, or upon the liquidation, dissolution or winding up of its business, then and in any such event this Master Agreement may immediately be terminated or cancelled by the other Party hereto.
- D. In the event this Master Agreement expires or is terminated for any reason, a Procuring Eligible Organization shall retain its rights in all Product and Services accepted prior to the effective termination date or ordered before the effective termination date and ultimately accepted.
- E. Procuring Eligible Organization or IMMIX may terminate an Order under this Master Agreement for cause based upon material breach of the Order or Master Agreement by the other, provided that the non-breaching party shall give the breaching party written notice specifying the breach and shall afford the breaching party a reasonable opportunity to correct the breach. If within 30 days after receipt of a written notice the breaching party has not corrected the breach, or in the case of a breach that cannot be corrected in 30 days, begun and proceeded in good faith to correct the breach, the non-breaching party may terminate the Order effective immediately. The non-breaching party shall retain any and all remedies available to it under the law. A breach and any resulting termination of an Order under this Section 20 E shall have no effect on any other Order made by any other Eligible Organization.

21. Non-Appropriation

This provision applies only to publicly funded Eligible Organizations. The terms of this Master Agreement and any Order issued for multiple years under this Master Agreement is contingent upon sufficient appropriations being made by the legislature or other appropriate governing entity. Notwithstanding any language to the contrary in this Master Agreement or in any purchase order or other document, Procuring Eligible Organization may terminate its obligations under this Master Agreement if sufficient appropriations are not made by the governing entity to pay amounts due for multiple year agreements. The Procuring Eligible Organization's decision as to whether sufficient appropriations are available shall

be accepted by IMMIX and shall be final and binding. A Procuring Eligible Organization shall provide sixty (60) days' notice, if possible, of its intent to terminate this contract for non-appropriation. The Procuring Eligible Organization shall send to IMMIX a notice of its Governing Body's decision not to appropriate funds for the installment sale payments for the subsequent fiscal year. Such termination shall relieve the Procuring Eligible Organization, its officers and employees from any responsibility or liability for the payment of any future Orders. However, all outstanding invoices from IMMIX will be paid by the Procuring Eligible Organization.

22. Records and Audit

IMMIX agrees to maintain records directly related to the Invoices and Purchase Orders under this Master Agreement for a period of three (3) years or such term as required by applicable law from the date of receipt of final payment after termination of the Master Agreement. These records shall be subject to inspection, which maybe initiated no more than twice annually, at an agreed upon time and location, with reasonable advance notice, by Procuring Eligible Organization and appropriate governmental authorities within Procuring Eligible Organization's state. The Procuring Eligible Organization shall have the right to request copies of invoices either before or after payment. Payment under this Master Agreement shall not foreclose the right of the Procuring Eligible Organization to recover excessive or illegal payments.

23. Background Checks. Supplier will perform background investigations within the scope of the Supplier's current standard policies and practices for any Supplier employees or subcontractors entering upon a Procuring Eligible Organizations premises, where legally acceptable and culturally permissible.

24. Insurance

Immix shall, at its own expense, obtain, keep in force, and maintain the following insurance with the minimum limits set forth below, unless MHEC specifies otherwise. Eligible Organizations may have additional requirements. Eligible Organization will be responsible for managing compliance with the requirements of this section and/or their institutional requirements.

- A. Commercial Form General Liability Insurance (contractual liability included) with limits as follows: a. Each Occurrence \$ 1,000,000 b. Products/Completed Operations Aggregate \$ 2,000,000 c. Personal and Advertising Injury \$ 1,000,000 d. General Aggregate \$ 2,000,000
- B. Business Automobile Liability Insurance for owned, scheduled, non-owned, or hired automobiles with minimum liability limits of \$250,000 per person and a combined single limit of not less than one million dollars (\$1,000,000) per occurrence. Required only if Supplier drives on Eligible Organization's premises or transports Eligible Organization's employees, officers, invitees, or agents in the course of supplying the Goods and/or Services to Eligible Organization.
- C. If applicable, Professional Liability Insurance with a limit of two million dollars (\$2,000,000) per occurrence or claim with an aggregate of not less than two million dollars (\$2,000,000). If this insurance is written on a claims-made form, it will continue for three years following termination of the Agreement. The insurance will have a retroactive date of placement prior to or coinciding with the effective date of the Agreement.
- D. If applicable, Professional Errors and Omissions insurance with limits of one million dollars (\$1,000,000) per occurrence.
- E. Workers' Compensation as required by applicable Eligible Organization's state law and Employer's Liability Workers' Compensation as required by applicable Eligible Organization's state law and Employer's Liability with limits of one million dollars (\$1,000,000) per occurrence.
- F. Employer's liability or "stop gap" insurance of not less than \$1,000,000 as an endorsement on the workers compensation or commercial general liability insurance.

The insurance coverages listed above must meet the following additional requirements:

- G. Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the Immix.
- H. This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and must be placed with insurers rated "A-" or better by A.M. Best Company, Inc., provided any excess policy follows form for coverage. Less than an "A-" rating must be approved by the Eligible Organization. The policies shall be in form and terms approved by the Eligible Organization.
- I. The duty to defend, indemnify, and hold harmless the Eligible Organization under this agreement shall not be limited by the insurance required in this agreement.
- J. The Eligible Organization and its agencies, officers, and employees shall be endorsed on the commercial general liability policy, including any excess policies (to the extent applicable), as additional insured.
- K. A Waiver of Subrogation" waiving any right to recovery the insurance company may have against the Eligible Organization.
- L. Immix shall furnish a certificate of insurance to the Eligible Organization representative prior to commencement of work under this agreement. All endorsements shall be provided as soon as practicable. Failure to provide insurance as required in this agreement is a material breach of contract entitling Eligible Organization to terminate agreement immediately.
- M. Immix shall provide at least 30-day notice of any cancellation or material adverse change impacting the required coverages under this Section 24 to MHEC and any active Eligible Organizations. Immix shall provide on an ongoing basis, current certificates of insurance during the term of the contract. A renewal certificate will be provided 10 days prior to coverage expiration.

25. Independent Contractor

IMMIX, its agents, and employees are independent contractors and are not employees of MHEC or any Eligible Organization. IMMIX has no authorization, express or implied to bind MHEC or any Eligible Organization to any agreements, settlements, liability or understanding whatsoever, and agrees not to perform any acts as agent of MHEC or any Eligible Organization, except as expressly set forth herein. Nothing in this Master Agreement is intended, or shall be deemed, or construed to constitute a partnership or a joint venture between the Parties.

26. Debarment & Suspension

IMMIX represents that it is not debarred or suspended from doing business with the federal government or any MHEC member states. Furthermore, IMMIX shall provide notice to MHEC if the IMMIX becomes debarred or suspended at any point during the duration of the Master Agreement.

27. Patent, Copyright, Trademark and Trade Secret Indemnification

If a third party makes a claim against Eligible Organization that the Products or Services directly infringes any patent, copyright, or trademark or misappropriate any trade secret ("IP Claim"); IMMIX will (i) assist in defending Eligible Organization against the IP Claim at IMMIX's cost and expense, (ii) reimburse Eligible Organization for all costs and expenses incurred by Eligible Organization in defending the IP Claim, and (iii) pay all costs, damages and expenses (including reasonable legal fees) finally awarded against Eligible Organization by a court of competent jurisdiction or agreed to in a written settlement agreement signed by IMMIX arising out of such IP Claim; provided that: (i) Eligible Organization promptly notifies IMMIX in writing no later than sixty (60) days after Eligible Organization's receipt of notification of a potential claim

and (ii) to the extent permitted by applicable law, Eligible Organization provides IMMIX, at IMMIX's request and expense, with the assistance, information and authority necessary to perform IMMIX's obligations under this Section. Notwithstanding the foregoing, IMMIX shall have no liability for any claim of infringement based on (a) the use of a superseded or altered release of the Product if the infringement would have been avoided by the use of a current unaltered release of the Product, (b) the modification of the Product, (c) the use of the Products or Services other than in accordance with the Documentation or this contract, or (d) any materials or information provided to IMMIX by Eligible Organization, for which Eligible Organization shall be solely responsible.

If the Products or Services is held to infringe or are believed by IMMIX to infringe, IMMIX shall have the option, at its expense, to (a) replace or modify the Products or Services to be non-infringing, or (b) obtain for Eligible Organization a license to continue using the Products or Services. If it is not commercially reasonable to perform either of the foregoing options, then Contractor may, in the case of a product, terminate any applicable license for the infringing Product and refund the fees paid for the Product upon return of the Product by Eligible Organization. This section states IMMIX's entire liability and Eligible Organization's exclusive remedy for any claim of infringement.

28. Indemnification

IMMIX will indemnify, protect, save and hold harmless MHEC and Eligible Organizations, as well as the representatives, agents and employees of MHEC and Eligible Organizations, from any and all third party claims alleging personal injury or damage to tangible property, including all reasonable attorneys' fees incurred by MHEC and/or Eligible Organizations, directly arising from intentionally wrongful actions or omissions or the negligent performance of the Master Agreement by IMMIX, IMMIX's agents, employees, or subcontractors, or manufacturer's agents, employees, or subcontractors. MHEC and/or Eligible Organization shall give IMMIX written notice, by registered mail, promptly after it becomes aware of any claim to be indemnified hereunder. For state entities, IMMIX will coordinate with state's attorney general as required by state law. IMMIX will control the defense of any such claim or action at IMMIX's own expense. MHEC and/or Eligible Organization agree that IMMIX may employ attorneys of its own choice to appear and defend the claim or action and that MHEC and/or Eligible Organization shall do nothing to compromise the defense of such claim or action or any settlement thereof and shall provide IMMIX with all reasonable assistance that IMMIX may require.

29. Limitation of Liability

IMMIX shall not be liable to MHEC or any individual Eligible Organization for any direct damages in excess of the amounts paid for the Product(s) or Service(s) subject to the claim. The foregoing limitation does not apply to any indemnification obligations under this Master Agreement or to damages resulting from personal injury or tangible property damage caused by IMMIX's negligence or willful misconduct. NEITHER IMMIX, MHEC NOR ANY ELIGIBLE ORGANIZATION SHALL BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES ARISING OUT OF OR RELATING TO THIS MASTER AGREEMENT, WHETHER THE CLAIM ALLEGES TORTUOUS CONDUCT (INCLUDING NEGLIGENCE) OR ANY OTHER LEGAL THEORY. IMMIX IS NOT RESPONSIBLE FOR LOSS OF OR RECOVERY OF DATA, PROGRAMS, OR LOSS OF USE OF SYSTEM(S) OR NETWORK OR EXCEPT AS SET FORTH IN THIS AGREEMENT, THE PROCUREMENT OF SUBSTITUTE PRODUCTS, SOFTWARE OR SERVICES.

THESE LIMITATIONS, EXCLUSIONS, AND DISCLAIMERS SHALL APPLY TO ALL CLAIMS FOR DAMAGES, WHETHER BASED IN CONTRACT, WARRANTY, STRICT LIABILITY, NEGLIGENCE, TORT, OR OTHERWISE, TO THE EXTENT PERMITTED BY APPLICABLE LAW. INsofar AS APPLICABLE LAW PROHIBITS ANY LIMITATION ON LIABILITY HEREIN, THE PARTIES AGREE THAT SUCH LIMITATION WILL BE AUTOMATICALLY MODIFIED, BUT ONLY TO THE EXTENT SO AS TO MAKE THE LIMITATION COMPLIANT WITH APPLICABLE LAW. THE

PARTIES AGREE THAT THESE LIMITATIONS OF LIABILITY ARE AGREED ALLOCATIONS OF RISK CONSTITUTING IN PART THE CONSIDERATION FOR IMMIX PROVIDING PRODUCTS, SOFTWARE, OR SERVICES TO PROCURING ELIGIBLE ORGANIZATION, AND SUCH LIMITATIONS WILL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY AND EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LIABILITIES OR FAILURES.

30. Spoliation

IMMIX shall promptly notify MHEC and/or Eligible Organization of all potential claims that arise or result from this Master Agreement. IMMIX shall also take all reasonable steps to preserve all physical evidence and information that may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and grants to MHEC and/or Eligible Organization the opportunity to review and inspect the evidence, including the scene of an accident.

31. Confidentiality

- A. While IMMIX is providing Services hereunder, Eligible Organization or IMMIX may disclose to the other certain business information identified as confidential (“Confidential Information”). All such information shall be marked or otherwise designated as “Confidential” or “Proprietary”. In order for such information to be considered Confidential Information pursuant to this Section 31 of the Master Agreement, it must conform to the data practices laws or similar type laws of the State in which the Eligible Organization is located or was founded. Information of a proprietary nature which is disclosed orally to the other party shall not be treated as Confidential Information unless it is stated at the time of such oral disclosure that such information is Confidential Information and such information is reduced to writing and confirmed as Confidential Information to the recipient. Both Eligible Organization and IMMIX agree that, with respect to Confidential Information it receives (as “Recipient”) from the other (as a “Discloser”) in connection with this Master Agreement or an Order pursuant to this Master Agreement, that it (i) will use such Confidential Information solely for the purposes contemplated by the Master Agreement or an Order placed under this Master Agreement, (ii) shall not use any such Confidential Information for any other purpose and in particular shall not so use such Confidential Information in any manner either to the detriment of the Discloser or for the benefit of the Recipient or any third party, and (iii) shall receive and hold such Confidential Information in trust and confidence for the benefit of the Discloser.
- B. Each Party will make reasonable efforts not to disclose the other Party’s Confidential Information to any third party, except as may be required by law or court order, unless such Confidential Information: (i) was in the public domain prior to, at the time of, or subsequent to the date of disclosure through no fault of the non-disclosing party; (ii) was rightfully in the non-disclosing party’s possession or the possession of any third party free of any obligation of confidentiality; or (iii) was developed by the non-disclosing party’s employees or agents independently of and without reference to any of the other party’s Confidential Information. Confidential Information shall remain the property of and be returned to the Discloser (along with all copies or other embodiments thereof) within fifteen (15) days of (a) a written request from the Discloser, or (b) the earlier receipt by the Recipient from the Discloser of a written demand following a breach by Eligible Organization or IMMIX of this Master Agreement or an Order under this Master Agreement directing that Confidential Information described generally or specifically in such demand be returned to the Discloser.
- C. In such cases where Confidential Information is required to be disclosed to a third party, including manufacturer, for purposes of providing Services, all disclosure of Confidential Information will be in accordance with the separate non-disclosure agreement between IMMIX and the third party.

- D. If a separate, written nondisclosure agreement exists between Eligible Organization and IMMIX, that agreement will control and will apply according to its terms and conditions to all Confidential Information the parties exchange with each other.
- E. Notwithstanding anything to the contrary in this Agreement or amendment to this Master Agreement, both Eligible Organization and IMMIX agree to comply with the data practices or similar type laws of the State in which Eligible Organization is located or founded, to the extent applicable to the scope of services performed by Supplier.

32. FERPA (and Other Privacy Laws)

Where applicable to the scope of services IMMIX is providing, and only to the extent directly applicable to IMMIX and its Services, IMMIX agrees to comply with the Family Education Rights and Privacy Act (FERPA), the Health Insurance Portability and Accountability Act (HIPAA), the Gramm-Leach Bliley Act (GLBA) and all other applicable state and federal privacy laws. To the extent an Eligible Organization discloses any information to IMMIX subject to aforementioned privacy laws, Eligible Organization agrees to advise IMMIX of the disclosure of such information; and Eligible Organization represents and warrants to IMMIX that it has obtained any required consents to disclose such information. In addition, to the extent that IMMIX is or becomes a Business Associate as defined in HIPAA, both Parties acknowledge that a separate mutually agreeable Business Associate Agreement may be required and will govern according to its terms.

With regard to FERPA, for purposes of this Agreement, IMMIX is a contractor or outside service provider with whom the Procuring Eligible Organization has outsourced institutional services or functions that it would otherwise use employees to perform. For purposes of FERPA, the Procuring Eligible Organization has determined that Supplier, and its employees acting in the course of their employment under this Agreement, is a school official with a legitimate educational interest in obtaining access to education records and will only provide IMMIX with access to those particular education records in which IMMIX has a legitimate educational interest. Further, the Procuring Eligible Organization represents and warrants that it has obtained any required consents to disclose such records to Supplier and the Procuring Eligible Organization represents and warrants that it has or will make all required notifications required to disclose such records to Supplier. Supplier shall be under the direct control of the Procuring Eligible Organization with respect to its maintenance and use of personally identifiable information from education records provided under this Agreement. Supplier shall not further disclose any personally identifiable information from education records to any third party unless that third party likewise has a legitimate educational interest in obtaining access to education records and unless authorized to so further disclose by the Procuring Eligible Organization. For purposes of this Agreement, the Procuring Eligible Organization has determined that those Supplier contractors performing institutional services or functions that the Procuring Eligible Organization would otherwise use employees to perform shall have such legitimate educational interest in instances where contractor requires access to education records in order to fulfill its responsibilities under this Agreement. Such access shall be limited to the specific educational records necessary for the performance of services and in such instances contractor shall have the same obligations pursuant to this section as Supplier and Supplier shall inform said contractors of its obligations. Supplier agrees to hold non-public information that is subject to FERPA requirements, which may include personally identifiable information, in strict confidence and agrees to implement and maintain safeguards to protect the security, confidentiality and integrity of any such non-public personal information it receives from Procuring Eligible Organizations. Suppliers shall not disclose such non-public personal information received from or on behalf of Procuring Eligible Organization except as permitted or required by this Agreement or addendum, as required by law, or otherwise authorized in writing by Procuring Eligible Organization.

33. Accessibility. Supplier agrees to comply with all applicable requirements of the Rehabilitation Act of 1973, as amended, 29 USC 794, including Sections 504 and 508, which prohibits discrimination on the basis of disabilities, and with the Americans with Disabilities Act of 1990 ("ADA"), as amended, 42 USC 12101 et seq., which requires the provision of accessible facilities and services. Goods and services provided by provider shall be accessible to individuals with disabilities to the greatest extent practical, but in no event less than the standards set forth by the state in which the Eligible Organization resides and federal accessibility laws. For web-based environments, services and content must conform to the Web Content Accessibility Guidelines ("WCAG") 2.0 AA (available at <http://www.w3.org/WAI/intro/wcag.php>).

34. Amendments

Except as provided for in Section 8 "Order of Preference"; Section 14 "Product Pricing"; and Section 15 "Service Pricing"; this Master Agreement shall only be amended by written instrument executed by the Parties.

35. Scope of Agreement

This Master Agreement incorporates all of the agreements of the Parties concerning the subject matter of this Agreement, and all prior agreements have been merged into this Master Agreement. No prior agreements, verbal or otherwise, of the Parties or their agents shall be valid or enforceable unless embodied in this Master Agreement.

36. Invalid Term or Condition

If any term or condition of this Master Agreement shall be held invalid or unenforceable, the remainder of this Master Agreement shall not be affected and shall be valid and enforceable.

37. Enforcement of Agreement

A Party's failure to require strict performance of any provision of this Master Agreement shall not waive or diminish that Party's right thereafter to demand strict compliance with that or any other provision. No waiver by a Party of any of its rights under this Master Agreement shall be effective unless express and in writing, and no effective waiver by a Party of any of its rights shall be effective to waive any other rights.

38. Equal Opportunity Compliance

IMMIX agrees to abide by all applicable Federal and state laws, regulations, and executive orders pertaining to equal employment opportunity. In accordance with such laws, regulations, and executive orders, IMMIX agrees that it does not discriminate, on the grounds of race, color, religion, national origin, sex, age, veteran status or handicap. If IMMIX is found to be not in compliance with applicable Federal or state requirements during the life of this Master Agreement, IMMIX agrees to take appropriate steps to correct these deficiencies.

39. Compliance with Law

IMMIX shall comply with all applicable laws and governmental regulations, which by their terms, apply to IMMIX's performance under an Order pursuant to this Master Agreement. Eligible Organization agrees to comply with all applicable laws and governmental regulations in connection with this Master Agreement. MHEC agrees to comply with all applicable laws and governmental regulations in connection with this Master Agreement.

40. Applicable Law

A. As between Eligible Organization and IMMIX, this Master Agreement will be construed in accordance with, and its performance governed by the laws of the state in which the Eligible Organization resides. Venue for all legal proceedings arising out of this Master Agreement, or breach thereof, shall be in a

state or federal court with competent jurisdiction located in the state in which the Eligible Organization resides.

- B. As between MHEC and IMMIX this Master Agreement will be construed in accordance with, and its performance governed by, the laws of the state of Minnesota. Venue for all legal proceedings arising out of this Master Agreement, or breach thereof, shall be in a state or federal court with competent jurisdiction located in the State of Minnesota.
- C. As between Eligible Organization, MHEC, and IMMIX this Master Agreement will be construed in accordance with and its performance governed by the laws of the state in which the Eligible Organization resides. Venue for all legal proceedings arising out of this Master Agreement, or breach thereof, shall be in a state or federal court with competent jurisdiction located in the state in which the Eligible Organization resides.

41. Conflict of Interest

IMMIX warrants to the best of its knowledge and belief that it presently has no interest direct or indirect, which would give rise to organizational conflicts of interest. IMMIX agrees that if an organizational conflict of interest is discovered during the term of this Master Agreement, it will provide disclosure to MHEC that shall include a description of the action IMMIX has taken or proposes to take to avoid or mitigate such conflicts. If an organizational conflict of interest is determined to exist and is not timely resolved by IMMIX MHEC may, at its sole discretion, cancel this Master Agreement.

42. Assignment

Neither Party shall sell, transfer, assign or otherwise dispose of the Master Agreement or any portion thereof or of any right, title, or interest herein without the prior written consent of the other Party. This consent requirement includes reassignment of this Master Agreement due to change in ownership, merger, or acquisition of a Party or its subsidiary or affiliated corporations. Nothing in this Section shall preclude IMMIX from employing a subcontractor in carrying out its obligations under this Master Agreement. IMMIX's use of such subcontractors will not release IMMIX from its obligations under this Master Agreement.

43. Survival

Certain paragraphs of this Master Agreement including but not limited to Indemnification; and Limitation of Liability shall survive the expiration of this Master Agreement. Software licenses, warranty and service agreements, and non-disclosure agreements that were entered into under terms and conditions of this Master Agreement shall survive this Master Agreement.

44. Notification

- A. **Between the Parties:** Whenever under the terms of this Master Agreement any notice is required or permitted to be given by one Party to the other, such notice shall be given in writing and shall be deemed to have been sufficiently given for all purposes hereof if given by facsimile or mail, postage prepaid, to the Parties at the addresses set forth below, or at such other address as the Parties may direct in writing from time to time:

To MHEC:	To IMMIX:
MHEC	Immix (www.immixgroup.com)
105 Fifth Avenue South	8444 Westpark Drive

Suite 450	Suite 200
Minneapolis, Minnesota 55401	McLean, VA 22102
Attn: Rob Trembath, Chief Operating Officer and General Counsel Cc: Deb Kidwell, Director of Technology Initiatives	Chauncey Kehoe, Contracts Manager – State, Local, and Education
Facsimile: 612-767-3353	
Email: robt@mhec.org ; debk@mhec.org	Email: chauncey_kehoe@immixgroup.com

Changes in the above information will be given to the other Party in a timely fashion.

- B. **To Eligible Organization:** Notices shall be sent to Eligible Organization’s business address. The term “business address” shall mean the “Bill to” address set forth in an invoice submitted to Eligible Organization.

45. Administrative Reporting and Fees

On a calendar-quarterly basis (where quarter one is January 1 – March 31 and the quarter one report is due by April 30), IMMIX will, in a timely manner, make available to MHEC utilization reports and information generated by this Master Agreement, reflecting net Product and Service sales to Eligible Organizations. The information and reports shall be accompanied with a check payable to the Midwestern Higher Education Commission for an amount equal to one and a half percent (1.50%) of the net Product and Service sales for that quarter period (the “Fee”). The Parties will mutually agree to any change to the percentage of the Fee. Any change in the Fee may also require a change in the Product or Service pricing.

46. MHEC Not Liable For Eligible Organizations

MHEC is not liable to IMMIX for the failure of any Eligible Organization to make any payment or to otherwise fully perform pursuant to the terms and conditions of an Order and/or the Master Agreement. IMMIX, in its sole discretion, may discontinue selling Products or Services to any Eligible Organization who fails to make payments or otherwise fully perform pursuant to the terms and conditions of the Master Agreement.

47. Announcements and Publicity

Any announcements and publicity given to MHEC (or an Eligible Organization) resulting from this Master Agreement must receive the prior approval of MHEC (or Eligible Organization). Such approval shall not be unreasonably withheld. IMMIX will not make any representations of MHEC’s (or an Eligible Organization’s) opinion or position as to the quality of effectiveness of the Products, supplies and/or Services that are the subject of this Master Agreement without the prior written consent of MHEC (or Eligible Organization), which shall not be unreasonably withheld.

48. Marketing

IMMIX will assist MHEC in the development and implementation of appropriate marketing strategies. Strategies may include, but are not limited to, webinars, printed material, email materials or presentations. Mutual review and evaluation of the marketing plans will be done during annual reviews, and at other times upon request. Contractor shall not appropriate or make use of names or other

identifying marks or property in its advertising or marketing without the prior written consent of MHEC or Eligible Organization.

49. Oversight Committee

An Oversight Committee comprised of representatives of Eligible Organizations shall be appointed by MHEC to assist and support MHEC and IMMIX in developing and refining the implementation of this Master Agreement. This shall include, but not be limited to, assistance with marketing strategies, representing the interests of Eligible Organizations in assuring quality and timely products and services, web presence; and to advise IMMIX on the effectiveness of its implementation progression. At the very least there will be an annual meeting between IMMIX and MHEC (and perhaps members of the Oversight Committee) to perform a contract health check; including items such as those above.

50. Force Majeure.

Neither IMMIX nor MHEC nor Procuring Eligible Organization shall be liable to each other during any period in which its performance is delayed or prevented, in whole or in part, by a circumstance beyond its reasonable control, which circumstances include, but are not limited to, the following: act of God (e.g., flood, earthquake, wind); fire; war; act of a public enemy or terrorist; act of sabotage; pandemic; epidemic; strike or other labor dispute; riot; piracy or other misadventure of the sea; embargo; inability to secure materials and / or transportation; or, a restriction imposed by legislation, an order or a rule or regulation of a governmental entity. If such a circumstance occurs, the Party unable to perform shall undertake reasonable action to notify the other Parties of the same.

51. Sovereign Immunity.

Notwithstanding anything to the contrary in this Master Agreement or Order under this Master Agreement, this Master Agreement shall not be construed to deprive a Eligible Organization of its applicable sovereign immunity, or of any legal requirements, prohibitions, protections, exclusions or limitations of liability applying to this Master Agreement or afforded by Eligible Organization's State law applicable to the Eligible Organization. Nothing herein will be construed to prevent any breach of contract claim under this Master Agreement.

52. Compliance with Laws and Export.

A. **Compliance with Laws. Procuring Eligible Organization** and IMMIX agree to comply with all laws and regulations applicable to such party in the course of performance of its obligations under this Agreement. Procuring **Eligible Organization** acknowledges that the Products, Software and Services provided under this Agreement, which may include technology, authentication and encryption, are subject to the customs and export control laws and regulations of the United States ("U.S."); may be rendered or performed either in the U.S., in countries outside the U.S., or outside of the borders of the country in which Procuring Eligible Organization or its systems are located; and may also be subject to the customs and export laws and regulations of the country in which the Products, Software and Services is rendered or received. Each party agrees to abide by those laws and regulations applicable to such party in the course of performance of its obligations under this Agreement. Procuring Eligible Organization also may be subject to import or re-export restrictions in the event Procuring Eligible Organization transfers the Products, Software or Deliverables from the country of delivery and Procuring Eligible Organization is responsible for complying with applicable restrictions. If any software provided by Procuring Eligible Organization and used as part of the Products, Software and/or Services contains encryption, then Procuring Eligible Organization agrees to provide IMMIX with all of the information needed for IMMIX to obtain export licenses from the U.S. Government or any other applicable national government and to provide IMMIX with such additional assistance as

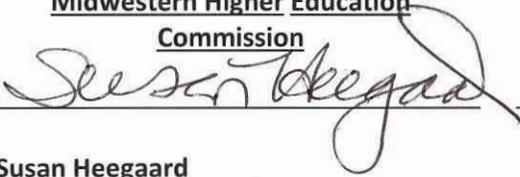
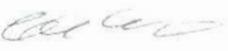
may be necessary to obtain such licenses. Notwithstanding the foregoing, Procuring Eligible Organization is solely responsible for obtaining any necessary permissions relating to software that it exports. IMMIX also may require export certifications from Procuring Eligible Organization for Procuring Eligible Organization-provided software. IMMIX's acceptance of any order for Products, Software and Services is contingent upon the issuance of any applicable export license required by the U.S. Government or any other applicable national government. IMMIX is not liable for delays or failure to deliver Products, Software or Services resulting from Procuring Eligible Organization's failure to obtain such license or to provide such certification.

- B. **Regulatory Requirements.** IMMIX is not responsible for determining whether any Product, Software and Services satisfies the local regulatory requirements of the country to which such Products, Software and Services are to be delivered or performed, and IMMIX shall not be obligated to provide any Products, Software and Services where the resulting Products, Software and Services is prohibited by law or does not satisfy the local regulatory requirements.
- C. **Excluded Data.** Procuring Eligible Organization acknowledges that no part of the Products, Software and Services is designed with security and access management for the processing and/or storage of the following categories of data: (1) data that is classified and/or used on the U.S. Munitions list, including software and technical data; (2) articles, services and related technical data designated as defense articles and defense services; (3) ITAR (International Traffic in Arms Regulations) related data; and (4) except for personally identifiable information referenced in to Section 32, personally identifiable information that is subject to heightened security requirements as a result of Procuring Eligible Organization's internal policies or practices, industry-specific standards or by law (collectively referred to as "Excluded Data"). Procuring Eligible Organization hereby agrees that Procuring Eligible Organization is solely responsible for reviewing data that it will provide to IMMIX (or to which IMMIX will have access) to ensure that it does not contain Excluded Data.

53. Miscellaneous.

All Parties to this Master Agreement may retain a reproduction (e.g., electronic image, photocopy, facsimile) of this Master Agreement that shall be considered an original and shall be admissible in any action to enforce this Master Agreement. The Parties shall accept this Master Agreement by its authorized signature. Except as provided for in this Master Agreement, all changes to this Master Agreement must be made in writing signed by both Parties; accordingly any additional terms on the Procuring Eligible Organization's Orders shall be of no force or effect.

The Parties, by their representatives signing below, agree with the terms of this Master Agreement and further certify that their respective signatories are duly authorized to execute this Agreement.

	<u>Midwestern Higher Education Commission</u>	<u>EC America, Inc.</u>
Signature:		
Name:	<u>Susan Heegaard</u>	<u>Jeff Ellinport</u>
Title:	<u>President</u>	<u>Director of Legal Affairs</u>
Address:	<u>105 Fifth Avenue South Suite 450</u>	<u>8444 Westpark Drive, Suite 200</u>

Minneapolis, Minnesota, 554401

McLean, VA 22102

Date: **03/14/2022**

03/08/2022

Exhibit A – Discount Category Pricing

IMMIX

Midwestern Higher Education Compact (MHEC) MANUFACTURER DISCOUNT SUMMARY																					
Manufacturer Name	Product Category	Product Type	Discount off MSRP (%)																		
Elastic	Security Information and Event Management	Software, Maintenance, Training, Services	1.50%																		
Fortinet	Security Threat Intelligence Prevention	Fortinet Category A	16.49%																		
Fortinet	Security Threat Intelligence Prevention	Fortinet Category B	16.77%																		
Fortinet	Security Threat Intelligence Prevention	Fortinet Category C, D, E	6.24%																		
Fortinet	Security Information and Event Management	Fortinet Category B,S	16.77%																		
Fortinet	Security Information and Event Management	Fortinet Category C,D, E	6.24%																		
LogRhythm, Inc.	Security Information and Event Management	Hardware	0.80%																		
LogRhythm, Inc.	Security Information and Event Management	Hardware Maintenance	2.99%																		
LogRhythm, Inc.	Security Information and Event Management	Software, XAAS, Services, Training	3.31%																		
LogRhythm, Inc.	Security Information and Event Management	Software Maintenance	2.99%																		
Tanium	Security Threat Intelligence Prevention	Hardware, Maintenance	3.98%																		
Tanium	Security Threat Intelligence Prevention	Software																			
			<table border="1"> <thead> <tr> <th>Number of Endpoints (per order)</th> <th>Discount off MSRP/List</th> </tr> </thead> <tbody> <tr> <td>1-5,000</td> <td>3.98%</td> </tr> <tr> <td>5,001 -10,000</td> <td>7.98%</td> </tr> <tr> <td>10,001 -15,000</td> <td>10.98%</td> </tr> <tr> <td>15,001 -20,000</td> <td>13.98%</td> </tr> <tr> <td>20,001 -25,000</td> <td>21.98%</td> </tr> <tr> <td>25,001 -50,000</td> <td>29.98%</td> </tr> <tr> <td>50,001 -75,000</td> <td>36.98%</td> </tr> <tr> <td>75,001+</td> <td>43.98%</td> </tr> </tbody> </table>	Number of Endpoints (per order)	Discount off MSRP/List	1-5,000	3.98%	5,001 -10,000	7.98%	10,001 -15,000	10.98%	15,001 -20,000	13.98%	20,001 -25,000	21.98%	25,001 -50,000	29.98%	50,001 -75,000	36.98%	75,001+	43.98%
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50,001 -75,000	36.98%																				
75,001+	43.98%																				

Exhibit B – MHEC/IMMIX Sample Manufacturer Agreements**Elastic**

1. Self- Managed Subscription Agreement
2. Self- Managed Subscription Addendum

Fortinet

1. Product License Agreement / EULA and Warranty Terms
2. Service Terms & Conditions
3. Professional Service Terms and Conditions Master Professional Services Agreement

LogRhythm

1. End User License Agreement Terms and Conditions (North America)
2. Cloud Services Addendum
3. Hardware Procurement Addendum
4. Support Services Addendum
5. Professional Services Addendum

Tanium

1. EULA (with Exhibit A Support Services Terms and Conditions & Appendix A Support Services Resources)
2. Tanium-as-a-Service (TaaS) Subscription Agreement

Exhibit C – EC America Rider to Product Specific License Terms and Conditions

1. Elasticsearch Inc.
2. Fortinet, Inc.
3. LogRhythm, Inc.
4. Tanium



ELASTIC

SELF-MANAGED SUBSCRIPTION AGREEMENT

NOT FOR EDITING OR NEGOTIATION.
Effective Date: 18 NOVEMBER 2019

This **Elastic Self-Managed Subscription Agreement**, including all attachments, addenda, schedules and exhibits, and documents at referenced URLs (this "**Agreement**") is entered into by and between Elasticsearch Inc., a Delaware corporation, with its principal place of business located at 800 W. El Camino Real, Suite 350, Mountain View CA 94040 ("**Elastic**"), and the entity identified as the "**Customer**" ("**Customer**") on the signature block of the Elastic order form executed by Elastic and Customer ("**Order Form**"), as of the date specified in such Order Form ("**Effective Date**").

1 DEFINITIONS

Capitalized terms used herein have the meaning ascribed below, or where such terms are first used, as applicable.

1.1 "**Addendum**" means, an addendum to this Agreement which sets forth additional terms and conditions that are specific to Subscriptions.

1.2 "**Affiliate**" means, with respect to a party, any entity that controls, is controlled by, or which is under common control with, such party, where "control" means ownership of at least fifty percent (50%) of the outstanding voting shares of the entity, or the contractual right to establish policy for, and manage the operations of, the entity.

1.3 "**Documentation**" means the end user documentation published at <https://www.elastic.co/guide/index.html> by Elastic.

1.4 "**Order Form**" means an ordering document provided by Elastic pursuant to which Customer, or a Reseller acting on Customer's behalf, purchases Subscriptions under this Agreement.

1.5 "**Product**" means Self-Managed Software.

1.6 "**Reseller**" means a third party authorized by Elastic to promote and resell Subscriptions.

1.7 "**Self-Managed Software**" means Elastic software that is licensed for use on Customer's premises or in Customer's public cloud account under a Subscription.

1.8 "**Subscription**" means Customer's right, for a fixed period of time, to possess, use and/or access, an applicable Product, and if applicable, to receive associated Support Services.

1.9 "**Subscription Level**" means Customer's right, for a fixed period of time, to possess, use and/or access, an applicable Product, and if applicable, to receive associated Support Services.

1.10 "**Subscription Term**" means the period of time for which a Subscription is valid, as further described in Section 8.1 of this Agreement.

1.11 "**Support Services**" means maintenance and support services for applicable Product, as more fully described in the applicable Support Services Policy.

1.12 "**Support Services Policy**" means Elastic's support services policy for a Product, as further described at a URL referenced in an applicable Addendum.

2 AGREEMENT SCOPE

2.1 Product Terms and Conditions. The additional terms and conditions for the applicable Product can be found in the attached Addendum.

2.2 Subscription Orders.

(a) **Initial Orders**. Orders for Subscriptions may be placed by Customer through the execution of Order Forms with Elastic, setting forth the (i) Subscription Level, (ii) quantitative and other limitations applied to a Subscription, (iii) Subscription Term, and (iv) total price for such Subscription. Each executed Order Form is incorporated

by reference into, and shall be governed by the terms and conditions of, this Agreement.

(b) **Additions and Upgrades to Subscriptions**. Customer may add to Subscriptions, and/or upgrade the Subscription Level for an existing Subscription, by executing one or more additional Order Forms setting forth the details of such addition and/or upgrade, and referencing the Order Form under which the Subscription was initially purchased. Upon execution of such an Order Form by the parties, a new Subscription and Subscription Term may be initiated, that includes the addition and/or upgrade, and Customer will be provided with a credit for the unused portion of the existing Subscription.

2.3 Subscriptions Purchased Through Resellers. The parties agree that Customer may purchase through Resellers Subscriptions that are governed by this Agreement. Orders for Subscriptions purchased through a Reseller, including multi-year Subscriptions, are not subject to cancellation by Customer. Where Customer purchases a Subscription through a Reseller, the Reseller will enter into an Order Form with Elastic for the purchase of a Subscription that shows Customer as the "ship to" party and Reseller as the "bill to" party, and Reseller and Customer will enter into a separate agreement setting forth the fees to be paid by Customer to Reseller for such Subscription, as well as any other terms or conditions that apply between them. Elastic hereby agrees that, subject to receiving payment from the Reseller, it shall be responsible to Customer, pursuant to the terms and conditions of this Agreement, for providing the Subscriptions under any such Order Form. Customer hereby acknowledges that Elastic will not be responsible for the obligations of any Reseller to Customer under such separate agreement, for the acts or omissions of Reseller, or for any third party products or services furnished to Customer by any Reseller. For the avoidance of doubt, Sections 3.1 and 3.2 below will be of no effect where Customer purchases a Subscription through a Reseller, as payment and taxes will be addressed in the agreement between Reseller and Customer.

3 PAYMENT AND TAXES

3.1 Payment. Customer agrees to pay Elastic the fees stated on each Order Form within thirty (30) days after receipt of an applicable invoice. All invoices will be paid in the currency set forth on the applicable Order Form. Payments will be made without right of set-off or chargeback. If Customer does not pay the invoices when due, Elastic may charge interest at the lesser of one percent (1%) per month on the unpaid balance or the highest percentage allowed under applicable law. Except as otherwise expressly provided in this Agreement, any and all payments made by Customer pursuant to this Agreement or any Order Form are non-refundable, and all commitments to make any payments hereunder or under any Order Form are non-cancellable.

3.2 Taxes. All fees stated on an Order Form are exclusive of any applicable sales, use, value added and excise taxes levied upon the delivery or use of the taxable components, if any, of the Subscription purchased by Customer under this Agreement (collectively, "**Taxes**"). Taxes do not include any taxes on the net income of Elastic or any of its Affiliates. Unless Customer provides Elastic a valid state sales/use/excise tax exemption certificate or Direct Pay Permit, and provided that Elastic separately states any such taxes in the applicable invoice, Customer will pay and be solely responsible for all Taxes. If Customer is required by any foreign governmental authority to deduct or

withhold any portion of the amount invoiced for the delivery or use of Support Services or the Commercial Software under this Agreement, Customer shall increase the sum paid to Elastic by an amount necessary for the total payment to Elastic equal to the amount originally invoiced.

4 CONFIDENTIAL INFORMATION

4.1 Confidential Information. Both parties acknowledge that, in the course of performing this Agreement, they may obtain information relating to products (such as goods, services, and software) of the other party, or relating to the parties themselves, which is of a confidential and proprietary nature ("**Confidential Information**"). Confidential Information includes materials and all communications concerning Elastic's or Customer's business and marketing strategies, including but not limited to employee and customer lists, customer profiles, project plans, design documents, product strategies and pricing data, research, advertising plans, leads and sources of supply, development activities, design and coding, interfaces with the Software, anything provided by either party to the other in connection with the Commercial Software or Support Services provided under this Agreement, including, without limitation, computer programs, technical drawings, algorithms, know-how, formulas, processes, ideas, inventions (whether patentable or not), schematics and other technical plans and other information of the parties which by its nature can be reasonably expected to be proprietary and confidential, whether it is presented in oral, printed, written, graphic or photographic or other tangible form (including information received, stored or transmitted electronically) even though specific designation as Confidential Information has not been made. Confidential Information also includes any notes, summaries, analyses of the foregoing that are prepared by the receiving party.

4.2 Non-use and Non-disclosure. The parties shall at all times, both during the Term and thereafter keep in trust and confidence all Confidential Information of the other party using commercially reasonable care (but in no event less than the same degree of care that the receiving party uses to protect its own Confidential Information) and shall not use such Confidential Information other than as necessary to carry out its duties under this Agreement, nor shall either party disclose any such Confidential Information to third parties other than to Affiliates or as necessary to carry out its duties under this Agreement without the other party's prior written consent, provided that each party shall be allowed to disclose Confidential Information of the other party to the extent that such disclosure is approved in writing by such other party, or necessary to enforce its rights under this Agreement.

4.3 Non-Applicability. The obligations of confidentiality shall not apply to information which (i) has entered the public domain or is otherwise publicly available, except where such entry or availability is the result of a party's breach of this Agreement; (ii) prior to disclosure hereunder was already in the receiving party's possession without restriction as evidenced by appropriate documentation; (iii) subsequent to disclosure hereunder is obtained by the receiving party on a non-confidential basis from a third party who has the right to disclose such information; or (iv) was developed by the receiving party without any use of any of the Confidential Information as evidenced by appropriate documentation.

4.4 Terms of this Agreement. Except as required by law or governmental regulation, neither party shall disclose, advertise, or publish the terms and conditions of this Agreement without the prior written consent of the other party, except that either party may disclose the terms of this Agreement to potential acquirers, referral partners involved in an applicable transaction, accountants, attorneys and parent organizations pursuant to the terms of a non-disclosure or confidentiality agreement. If Customer is using a third party provider to host a Product, then such provider may also receive, subject to a confidentiality obligation, information related to the terms of this Agreement or Customer's usage of the applicable Product.

4.5 Disclosure Required by Law. Notwithstanding anything to the contrary herein, each party may disclose the other party's Confidential Information in order to comply with applicable law and/or an order from a court or other governmental body of competent jurisdiction, and, in connection with compliance with such an order only, if such party: (i) unless prohibited by law, gives the other party prior written notice to such disclosure if the time between that order and such disclosure reasonably permits or, if time does not permit, gives the other party written notice of such disclosure promptly after complying with that order and (ii) fully

cooperates with the other party, at the other party's cost and expense, in seeking a protective order, or confidential treatment, or taking other measures to oppose or limit such disclosure. Each party must not release any more of the other party's Confidential Information than is, in the opinion of its counsel, reasonably necessary to comply with an applicable order.

5 WARRANTIES AND DISCLAIMER OF WARRANTIES

5.1 Limited Support Services Performance Warranty. Elastic warrants that it will perform the Support Services, as applicable, in a professional, workmanlike manner, consistent with generally accepted industry practice, and in accordance with any applicable Support Services Policy. In the event of a breach of the foregoing warranty, Elastic's sole obligation, and Customer's exclusive remedy, shall be for Elastic to re-perform the applicable Support Services.

5.2 Limited Product Performance Warranty. Elastic warrants that during the applicable Subscription Term, the Products will perform in all material respects in accordance with the Documentation. In the event of a breach of the foregoing warranty, Elastic's sole obligation, and Customer's exclusive remedy shall be for Elastic to (i) correct any failure(s) of the Products to perform in all material respects in accordance with the Documentation or (ii) if Elastic is unable to provide such a correction within thirty (30) days of receipt of notice of the applicable non-conformity, Customer may elect to terminate the associated Subscription, and Elastic will promptly refund to Customer any pre-paid, unused fees paid by Customer to Elastic for such Subscription. The warranty set forth in this Section 5.2 does not apply to any trial use of a Product or any Beta version of a Product, or if the Product or any portion thereof: (a) has been altered, except by or on behalf of Elastic; (b) has not been used, installed, operated, repaired, or maintained in accordance with this Agreement and/or the Documentation; or (c) is used on equipment, products, or systems not meeting specifications identified by Elastic in the Documentation. Additionally, the warranties set forth herein only apply when notice of a warranty claim is provided to Elastic during the applicable Subscription Term, and do not apply to any bug, defect or error caused by or attributable to software or hardware not supplied by Elastic.

5.3 Warranty Disclaimer. EXCEPT AS SET FORTH IN SECTIONS 5.1 AND 5.2 ABOVE OR IN AN ADDENDUM, THE PRODUCTS AND SUPPORT SERVICES ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND AND ELASTIC MAKES NO ADDITIONAL WARRANTIES, WHETHER EXPRESSED, IMPLIED OR STATUTORY, REGARDING OR RELATING TO THE PRODUCTS AND SUPPORT SERVICES OR ANY MATERIALS FURNISHED OR PROVIDED TO CUSTOMER UNDER THIS AGREEMENT. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, ELASTIC SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT WITH RESPECT TO THE PRODUCTS AND SUPPORT SERVICES AND ANY MATERIALS FURNISHED OR PROVIDED TO CUSTOMER UNDER THIS AGREEMENT. CUSTOMER AGREES THAT IT IS SOLELY RESPONSIBLE FOR THE RESULTS OBTAINED IN CONNECTION WITH ITS USE OF THE PRODUCTS AND SUPPORT SERVICES. IN ADDITION, CUSTOMER UNDERSTANDS AND AGREES THAT THE PRODUCTS AND SUPPORT SERVICES AND ANY MATERIALS FURNISHED OR PROVIDED TO CUSTOMER UNDER THIS AGREEMENT ARE NOT DESIGNED OR INTENDED FOR USE IN THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT, WEAPONS SYSTEMS, OR LIFE SUPPORT SYSTEMS.

6 INFRINGEMENT CLAIMS

6.1 Obligation. Elastic will, at its expense: (i) defend, or at its option settle, any claim brought against Customer by an unaffiliated third party alleging that Customer's use in accordance with this Agreement and Addendum, during the Subscription Term, of the Product infringed such party's patent registered as of the Effective Date, or any copyright or trademark of such party enforceable in the jurisdiction of Customer's use of the Product, or made unlawful use of such party's trade secret (each, an "**Infringement Claim**") and (ii) indemnify Customer against and pay (1) any settlement of such Infringement Claim consented to by Elastic or (2) any damages finally awarded by a court of competent jurisdiction to such third party as relief or remedy in such Infringement Claim.

6.2 **Exclusions.** Elastic will have no obligation to Customer to the extent any Infringement Claim or resulting award is based upon or results from: (i) Customer's use of the Product in a country that is not a contracting state to the Patent Cooperation Treaty; (ii) the failure of Customer to use, within thirty (30) days of Customer's receipt of notice from Elastic regarding the availability of such update and that such update addresses an infringement issue, an update of the Commercial Software that would have avoided the Infringement Claim; (iii) a modification of the Product that is not performed by or on behalf of Elastic; (iv) the combination, operation, or use of the Product with any other products, services or equipment not provided by Elastic or branded as Elastic products or services, where there would be no Infringement Claim but for such combination; (v) use of the Product other than in accordance with the terms and conditions of this Agreement; (vi) where Products are incorporated into, or constitute a component of, a larger system or solution, including but not limited to a software-as-a-service, damages attributable to the value of the use of any non-Elastic product or service or (vii) any open source software included in a Product.

6.3 **Certain Remedies.** If a Product are, or in Elastic's reasonable opinion are likely to become, the subject of an Infringement Claim and/or an injunction as the result of an Infringement Claim, Elastic may, at its expense and option: (i) obtain the right for Customer to continue to use the Product; (ii) modify the Product to make it/them non-infringing, but substantially functionally equivalent; or (iii) in the event that neither (i) or (ii) are, in Elastic's reasonable judgement, commercially reasonable options, terminate Customer's right to use the Product, and, at Customer's written request, terminate all affected Order Forms and promptly refund to Customer any unused pre-paid fees paid by Customer to Elastic under such terminated Order Forms.

6.4 **Conditions.** The obligations of Elastic in this Section 6 are conditioned upon Customer (i) notifying Elastic promptly in writing of any threatened or pending Infringement Claim, provided that failure to provide such notice will only relieve Elastic of its obligations under this Section 5 to the extent its ability to defend or settle an applicable Infringement Claim is materially prejudiced by such failure to provide notice, (ii) giving Elastic, at Elastic's expense, reasonable assistance and information requested by Elastic in connection with the defense and/or settlement of the Infringement Claim and (iii) tendering to Elastic sole control over the defense and settlement of the Infringement Claim. Customer's counsel will have the right to participate in the defense of the Infringement Claim, at Customer's own expense. Customer will not, without the prior written consent of Elastic, make any admission or prejudicial statement, settle, compromise or consent to the entry of any judgment with respect to any pending or threatened Infringement Claim.

6.5 **Exclusive Remedy.** THE FOREGOING PROVISIONS OF THIS SECTION 6 STATE THE ENTIRE LIABILITY AND OBLIGATIONS OF ELASTIC, AND THE EXCLUSIVE REMEDY OF CUSTOMER, WITH RESPECT TO ANY ACTUAL OR ALLEGED INFRINGEMENT OF ANY PATENT, COPYRIGHT, OR TRADEMARK OR OTHER INTELLECTUAL PROPERTY RIGHT, OR MISAPPROPRIATION OF ANY TRADE SECRET, BY ANY PRODUCT AND/OR SUPPORT SERVICES].

7 LIMITATION OF LIABILITY

7.1 **Excluded Damages.** IN NO EVENT SHALL ELASTIC, OR THEIR RESPECTIVE AFFILIATES, BE LIABLE FOR ANY LOSS OF PROFITS, LOSS OF USE, BUSINESS INTERRUPTION, LOSS OF DATA, COST OF SUBSTITUTE GOODS OR SERVICES, OR FOR ANY PUNITIVE, INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND IN CONNECTION WITH OR ARISING OUT OF THE PERFORMANCE OF OR FAILURE TO PERFORM THIS AGREEMENT, WHETHER ALLEGED AS A BREACH OF CONTRACT OR TORTIOUS CONDUCT, INCLUDING NEGLIGENCE, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

7.2 **Damages Cap.** EXCEPT WITH RESPECT TO A BREACH OF ITS OBLIGATIONS UNDER SECTION 4, AND WITH RESPECT TO ITS OBLIGATIONS UNDER SECTION 6.1(i), IN NO EVENT SHALL ELASTIC'S TOTAL, CUMULATIVE LIABILITY UNDER ANY ORDER FORM EXCEED THE AMOUNT PAID BY CUSTOMER TO ELASTIC UNDER THIS AGREEMENT IN CONNECTION WITH SUCH ORDER FORM IN THE TWELVE (12) MONTHS IMMEDIATELY PRIOR TO THE FIRST EVENT GIVING RISE TO LIABILITY.

7.3 **Basis of the Bargain.** THE ALLOCATIONS OF LIABILITY IN THIS SECTION 7 REPRESENT THE AGREED AND BARGAINED FOR UNDERSTANDING OF THE PARTIES, AND THE COMPENSATION OF ELASTIC FOR THE SERVICES AND/OR GOODS PROVIDED HEREUNDER REFLECTS SUCH ALLOCATIONS. THE FOREGOING LIMITATIONS, EXCLUSIONS AND DISCLAIMERS WILL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EVEN IF ANY REMEDY FAILS IN ITS ESSENTIAL PURPOSE.

8 TERM AND TERMINATION

8.1 **Subscription Term.** The initial Subscription Term will commence and expire in accordance with the start date and end date set forth on the Order Form, unless earlier terminated in accordance with Section 8.2 below. Thereafter, the Subscription shall automatically renew for additional one (1) year periods (or for such longer period as may be set forth on a renewal Order Form executed by the parties) unless either party gives written notice to the other of its intention not to renew the Subscription at least thirty (30) days prior to the expiration of the then-current Subscription Term. The initial Subscription Term, plus any subsequent renewal Subscription Term shall be the "**Subscription Term**". For the avoidance of doubt, the term of this Agreement shall be coterminous with the Subscription Term.

8.2 **Termination.** Each party may terminate this Agreement and the Subscription, and all associated Order Forms, upon giving notice in writing to the other party if the non-terminating party commits a material breach of this Agreement, and has failed to cure such breach within thirty (30) days following a request in writing from the notifying party to do so. Upon the termination or expiration of this Agreement, the rights and obligations of the parties will, subject to Section 8.3 below, cease.

8.3 **Survival.** Upon the expiration or termination of an Order Form or this Agreement, (i) Customer shall have no further rights under any affected Subscription(s); and (ii) any payment obligations accrued under Section 6, as well as the provisions of Sections 1, 4, 5, 6, 7, 8.3 and 9 of this Agreement will survive such expiration or termination.

9 GENERAL

9.1 **Anti-Corruption.** Each party acknowledges that it is aware of, understands and has complied and will comply with, all applicable U.S. and foreign anti-corruption laws, including without limitation, the U.S. Foreign Corrupt Practices Act of 1977 and the U.K. Bribery Act of 2010, and similarly applicable anti-corruption and anti-bribery laws ("**Anti-Corruption Laws**"). Each party agrees that no one acting on its behalf will give, offer, agree or promise to give, or authorize the giving directly or indirectly, of any money or other thing of value, including travel, entertainment, or gifts, to anyone as an unlawful inducement or reward for favorable action or forbearance from action or the exercise of unlawful influence (a) to any governmental official or employee (including employees of government-owned and government-controlled corporations or agencies or public international organizations), (b) to any political party, official of a political party, or candidate, (c) to an intermediary for payment to any of the foregoing, or (d) to any other person or entity in a corrupt or improper effort to obtain or retain business or any commercial advantage, such as receiving a permit or license, or directing business to any person. Improper payments, provisions, bribes, kickbacks, influence payments, or other unlawful provisions to any person are prohibited under this Agreement.

9.2 **Assignment.** Neither party may assign this Agreement, in whole or in part, without the prior written consent of the other party, provided that no such consent will be required to assign this Agreement in its entirety to (i) an Affiliate that is able to satisfy the obligations of the assigning party under this Agreement or (ii) a successor in interest in connection with a merger, acquisition or sale of all or substantially all of the assigning party's assets. Any assignment in violation of this Section 9.2 shall be void, *ab initio*, and of no effect. Subject to the foregoing, this Agreement is binding upon, inures to the benefit of and is enforceable by, the parties and their respective permitted successors and assigns.

9.3 **Attorneys' Fees.** If any action or proceeding, whether regulatory, administrative, at law or in equity is commenced or instituted to enforce or interpret any of the terms or provisions of this Agreement, the prevailing party in any such action or proceeding shall be entitled to recover its reasonable attorneys' fees, expert witness fees, costs of suit

and expenses, in addition to any other relief to which such prevailing party may be entitled. As used herein, "prevailing party" includes without limitation, a party who dismisses an action for recovery hereunder in exchange for payment of the sums allegedly due, performance of covenants allegedly breached, or consideration substantially equal to the relief sought in the action.

9.4 **Customer Identification.** Unless Elastic has first obtained Customer's prior written consent, Elastic shall not identify Customer as a user of the Products, on its website, through a press release issued by Elastic and in other promotional materials.

9.5 **Export Control.** Customer acknowledges that the Software, Support Services, and technologies related thereto are subject to the Export Administration Regulations ("**EAR**") (15 C.F.R. Parts 730-774 (2010)) and the economic sanctions regulations and guidelines of the U.S. Department of the Treasury, Office of Foreign Assets Control. Customer is now and will remain in the future compliant with all such export control laws and regulations, and will not export, re-export, otherwise transfer any Elastic goods, software or technology or disclose any Elastic software or technology to any person contrary to such laws or regulations. Customer acknowledges that remote access to the Software may in certain circumstances be considered a re-export of such Products, and accordingly, may not be granted in contravention of U.S. export control laws and regulations.

9.6 **Force Majeure.** Except with respect to payment obligations, neither party will be liable for, or be considered to be in breach of, or in default under, this Agreement, as a result of any cause or condition beyond such party's reasonable control.

9.7 **Future Features and Functions.** Customer understands and agrees that any features or functions of services or products referenced on any Elastic website, or in any presentations, press releases or public statements, which are not currently available or not currently available as a GA release, may not be delivered on time or at all. The development, release, and timing of any features or functionality described for Elastic's products remains at Elastic's sole discretion. Accordingly, Customer agrees that it is purchasing products and services based solely upon features and functions that are currently available as of the time an Order Form is executed, and not in expectation of any future feature or function.

9.8 **Governing Law, Jurisdiction and Venue.**

(a) **Customers in California.** If Customer is located in California (as determined by the Customer address on the applicable Order Form), this Agreement will be governed by the laws of the State of California, without regard to its conflict of laws principles, and all suits hereunder will be brought solely in Federal Court for the Northern District of California, or if that court lacks subject matter jurisdiction, in any California State Court located in Santa Clara County.

(b) **Customers Outside of California.** If Customer is located anywhere other than California (as determined by the Customer address on the applicable Order Form), this Agreement will be governed by the laws of the State of Delaware, without regard to its conflict of laws principles, and all suits hereunder will be brought solely in Federal Court for the District of Delaware, or if that court lacks subject matter jurisdiction, in any Delaware State Court located in Wilmington, Delaware.

(c) **All Customers.** This Agreement shall not be governed by the 1980 UN Convention on Contracts for the International Sale of Goods. The parties hereby irrevocably waive any and all claims and defenses either might otherwise have in any action or proceeding in any of the applicable courts set forth in (a) or (b) above, based upon any alleged lack of personal jurisdiction, improper venue, *forum non conveniens*, or any similar claim or defense.

(d) **Equitable Relief.** A breach or threatened breach, by either party of Section 4 may cause irreparable harm for which damages at law may not provide adequate relief, and therefore the non-breaching party shall be entitled to seek injunctive relief without being required to post a bond.

9.9 **Notices.** Any notice or other communication under this Agreement given by either party to the other will be deemed to be properly given if given in writing and delivered in person or by e-mail, if

acknowledged received by return e-mail or followed within one day by a delivered or mailed copy of such notice, or if mailed, properly addressed and stamped with the required postage, to the intended recipient at its address specified on the Order Form. Notices to Elastic may also be sent to legal@elastic.co. Either party may from time to time change its address for notices under this Section by giving the other party notice of the change in accordance with this Section 9.9.

9.10 **Non-waiver.** Any failure of either party to insist upon or enforce performance by the other party of any of the provisions of this Agreement or to exercise any rights or remedies under this Agreement will not be interpreted or construed as a waiver or relinquishment of such party's right to assert or rely upon such provision, right or remedy in that or any other instance.

9.11 **Product Usage Data.** Elastic may collect and use Product Usage Data (defined below) for security, support, product and operations management, and research and development. "**Product Usage Data**" is information other than Customer content that may be automatically collected and reported by the Product. Detailed information on Product Usage Data is provided in Elastic's Privacy Statement at <https://www.elastic.co/legal/privacy-statement>.

9.12 **Relationship of the Parties.** The relationship of the parties hereunder shall be that of independent contractors, and nothing herein shall be deemed or construed to create any employment, agency or fiduciary relationship between the parties. Each party shall be solely responsible for the supervision, direction, control and payment of its personnel, including, without limitation, for taxes, deductions and withholdings, compensation and benefits, and nothing herein will be deemed to result in either party having an employer-employee relationship with the personnel of the other party.

9.13 **Severability.** If any provision of this Agreement is held to be invalid or unenforceable, the remaining portions will remain in full force and effect and such provision will be enforced to the maximum extent possible so as to give effect to the intent of the parties and will be reformed to the extent necessary to make such provision valid and enforceable.

9.14 **Suggestions, Ideas and Feedback.** Subject to its obligations under Section 4 of this Agreement (Confidential Information), Elastic will be free to use, irrevocably, in perpetuity and for any purpose, all suggestions, ideas and/or feedback (collectively, "**Feedback**") provided to Elastic by Customer, or its Affiliates and their respective employees, contractors or other agents, with respect to the Product and/or Support Services. The foregoing grant of rights is made without any duty to account to any of the foregoing persons or entities for the use of such Feedback.

9.15 **Threat Data.** If a Customer has purchased a Subscription that includes endpoint security, Elastic may collect and use Threat Data (defined below) for threat analysis and mitigation, customer support, product management and improvement, and research and development. "**Threat Data**" is data derived from, or communicated to, the Product that is related to malicious or potentially malicious code, attacks or activity. Threat Data will not be shared with third parties in a manner attributable to an individual or end user.

9.16 **Entire Agreement; Amendment.** This Agreement, together with any Order Forms executed by the parties, and the Support Services Policy, each of which is hereby incorporated herein by this reference, constitutes the entire agreement between the parties concerning the subject matter hereof, and it supersedes, and its terms govern, all prior proposals, agreements, or other communications between the parties, oral or written, regarding such subject matter. In the event of any conflict between the terms and conditions of any of the foregoing documents, the conflict shall be resolved based on the following order of precedence: (i) an applicable Order Form (but only for the transaction thereunder), (ii) this Agreement, and (iii) the Support Services Policy. For the avoidance of doubt, the parties hereby expressly acknowledge and agree that if Customer issues any purchase orders or similar documents in connection with its purchase of the Subscription, it shall do so only for its own internal, administrative purposes and not with the intent to provide any contractual terms. By entering into this Agreement, whether prior to or following receipt of Customer's purchase order or any similar document, the parties are hereby expressly showing their intention not to be contractually bound by the contents of any such purchase order or similar document, which are hereby deemed rejected

and extraneous to this Agreement, and Elastic's performance of this Agreement shall not amount to: (i) an acceptance by conduct of any terms set out or referred to in the purchase order or similar document; (ii) an amendment of this Agreement, nor (iii) an agreement to amend this Agreement. This Agreement shall not be modified except by a subsequently dated, written amendment that expressly amends this Agreement and which is signed on behalf of Elastic and Customer by

their duly authorized representatives. The parties agree that the terms and conditions of this Agreement are a result of mutual negotiations. Therefore, the rule of construction that any ambiguity shall apply against the drafter is not applicable and will not apply to this Agreement. Any ambiguity shall be reasonably construed as to its fair meaning and not strictly for or against one party regardless of who authored the ambiguous language.

ELASTIC SELF-MANAGED SUBSCRIPTION ADDENDUM

This **ELASTIC SELF-MANAGED SUBSCRIPTION ADDENDUM** (this "Addendum") sets forth additional terms and conditions related to Customer's purchase of one or more Self-managed Subscriptions from Elastic.

1 COMMERCIAL SOFTWARE LICENSES AND RESTRICTIONS

1.1 License Grants. A list of the Eligible Features and Functions that correspond to each version of the Commercial Software and Subscription Levels may be found at <https://www.elastic.co/subscriptions>. Subject to the terms and conditions of the Agreement and this Addendum, including complete payment of any and all applicable Subscription fees, Elastic grants to Customer during the applicable Subscription Term, and for the restricted scope of this Addendum:

(a) in the case of a Gold or Platinum Subscription, a License to the Eligible Features and Functions of the Commercial Software that are applicable to the Subscription Level that Customer has purchased, for the number of Billable Nodes and for the specific Project for which Customer has purchased such Subscription. The Subscription Level, the number of Billable Nodes and specific Project for which Customer has purchased such Subscription, are set forth on the applicable Order Form.

(b) in the case of an Enterprise Subscription, a License to the Eligible Features and Functions of the Commercial Software that are applicable to an Enterprise Subscription, for the number of Resource Units for which Customer has purchased such Enterprise Subscription. The number of Resource Units for which Customer has purchased an Enterprise Subscription is set forth on the applicable Order Form.

1.2 License Key, Delivery and Acceptance. Promptly following execution of an applicable Order Form, Elastic will deliver to Customer a License Key or ISO file that is required in order for Customer to use the Commercial Software in accordance with the rights granted in Section 1.1 of this Addendum. For purposes of the applicable Order Form, the Commercial Software will be deemed to have been delivered to Customer upon provision of such License Key or ISO file, and the Commercial Software is deemed to be accepted by Customer upon delivery.

1.3 Reservation of Rights: Restrictions. As between Elastic and Customer, Elastic owns all right title and interest in and to the Commercial Software and any derivative works thereof, and except as expressly set forth in Section 1.1 of this Addendum, no other license to the Commercial Software is granted to Customer by implication, estoppel or otherwise. Customer agrees not to: (i) reverse engineer or decompile, decrypt, disassemble or otherwise reduce any Commercial Software or any portion thereof to human-readable form, except and only to the minimum extent permitted by applicable law, (ii) deploy more Billable Nodes or Resource Units than are permitted under an applicable Subscription, (iii) prepare derivative works from, modify, copy or use the Commercial Software in any manner except as expressly permitted herein; (iv) except as expressly permitted in Section 1.1 of this Addendum, transfer, sell, rent, lease, distribute, sublicense, loan or otherwise transfer the Commercial Software in whole or in part to any third party; (v) except for Customer's internal business purposes, or as otherwise may be expressly permitted on an applicable Order Form or in another written agreement signed by the parties, use the Commercial Software for providing any time-sharing services, software-as-a-service or "SaaS" offering, service bureau services or as part of an application services provider or other service offering; (vi) circumvent the limitations on use of the Commercial Software that are imposed or preserved by any License Key, (viii) alter or remove any marks and notices in the Commercial Software; (ix) deploy the Commercial Software on or in connection with any third party infrastructure as a service that includes any Community Software as a service, or (x) make available to any third party any analysis of the results of operation of the Commercial Software, including benchmarking results, without the prior written consent of Elastic. Customer also agrees not to: (a) access or use any Elastic-hosted infrastructure or related data, systems, or networks (collectively, "**Elastic-Hosted infrastructure**") that interface with

components of the Commercial Software for purposes of monitoring the availability, performance or functionality of such Elastic-Hosted infrastructure or for any other benchmarking or competitive purposes, including, without limitation, for the purpose of designing and/or developing any competitive services; (b) interfere with or disrupt the integrity or performance of any Elastic-Hosted infrastructure; or (c) attempt to gain unauthorized access to any Elastic-Hosted infrastructure. The Commercial Software may contain or be provided with third party open source libraries, components, utilities and other open source software (collectively, "**Third Party Open Source Software**"), which Third Party Open Source Software may have applicable license terms as identified on a website designated by Elastic or otherwise provided with the Commercial Software or Documentation. Notwithstanding anything to the contrary herein, use of the Third Party Open Source Software shall be subject to the license terms and conditions applicable to such Third Party Open Source Software, to the extent required by the applicable licensor (which terms shall not restrict the license rights granted to Customer hereunder, but may contain additional rights).

1.4 Reporting use of Excess Billable Nodes and/or Excess Resource Units. Customer agrees to promptly notify Elastic in writing if it uses a Gold or Platinum level Subscription in connection with more Billable Nodes than the number of Billable Nodes for which Customer has purchased such Subscription ("**Excess Billable Nodes**") and/or if it uses an Enterprise Subscription in connection with more Resource Units than the number of Resource Units for which Customer has purchased such Subscription ("**Excess Resource Units**"). Customer shall include in such notice the number of Excess Billable Nodes and/or Excess Resource Units and the date on which it first used any such Excess Billable Nodes and/or Excess Resource Units. Elastic will invoice Customer, or, if applicable, a Reseller, for such Excess Billable Nodes and/or Excess Resource Units, adjusted on a pro rata basis from the date of first use and for the remainder of the applicable Subscription Term.

1.5 Audit Rights. Customer agrees that, unless such right is waived in writing by Elastic, Elastic shall have the right, upon fifteen (15) days' notice to Customer, to audit Customer's use of the Commercial Software for compliance with any limitations on Customer's use of the Commercial Software that are set forth herein. Customer agrees to provide Elastic with the necessary access to the Commercial Software to conduct such an audit either (i) remotely, or (ii) if remote performance is not possible, at Customer's facilities, during normal business hours and no more than one (1) time in any twelve (12) month period. In the event any such audit reveals that Customer has used the Commercial Software in excess of the limitations set forth herein, Customer agrees to promptly pay to Elastic an amount equal to the difference between the fees actually paid and the fees that Customer should have paid to remain in compliance with such limitations. This Section 1.4 shall survive for a period of one (1) year from the termination or expiration of the Agreement.

1.6 Government Rights. The Commercial Software product is "Commercial Computer Software," as that term is defined in 48 C.F.R. 2.101, and as the term is used in 48 C.F.R. Part 12, and is a Commercial Item comprised of "commercial computer software" and "commercial computer software documentation". If acquired by or on behalf of a civilian agency, the U.S. Government acquires this commercial computer software and/or commercial computer software documentation subject to the terms of this Agreement, as specified in 48 C.F.R. 12.212 (Computer Software) and 12.211 (Technical Data) of the Federal Acquisition Regulation ("FAR") and its successors. If acquired by or on behalf of any agency within the Department of Defense ("DOD"), the U.S. Government acquires the Commercial Software and/or the Documentation, the same shall be subject to this Addendum, as specified in 48 C.F.R. 227.7202-3 and 48 C.F.R. 227.7202-4 of the DOD FAR Supplement ("DFARS") and its successors, and consistent with 48 C.F.R. 227.7202. This U.S. Government Rights clause,

consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202 is in lieu of, and supersedes, any other FAR, DFARS, or other clause or provision that addresses Government rights in computer software, computer software documentation or technical data related to the Software under this Agreement and in any Subcontract under which the Commercial Software and Documentation are acquired or licensed.

1.7 **Post Termination or Expiration.** Upon termination or expiration of the Agreement or any applicable Subscription or Order Form, for any reason, Customer shall promptly cease the use of the Commercial Software and Documentation and destroy (and certify to Elastic in writing the fact of such destruction), or return to Elastic, all copies of the Commercial Software and Documentation then in Customer's possession or under Customer's control.

1.8 **Malicious Code.** Elastic warrants that at the time the Commercial Software is made available for download; it will be free of Malicious Code. In the event of a breach of the foregoing warranty, Elastic's sole obligation, and Customer's exclusive remedy shall be for Elastic to replace the Commercial Software with Commercial Software that does not contain any Malicious Code.

2 SUPPORT SERVICES

2.1 **Provision of Support Services.** During an applicable Subscription Term, Elastic will provide Customer with Support Services in accordance with the Support Services Policy: (a) in the case of Gold and Platinum Subscriptions, for the covered Project(s), up to the applicable number of Billable Nodes included in the Subscription; and (b) in the case of an Enterprise Subscription, up to the number of Resource Units included in the Subscription. Support Services will be delivered to Customer remotely, electronically, through the Internet, and when applicable, depending on the Subscription Level purchased, via telephone. For the avoidance of doubt, Support Services are not delivered in person at Customer's facilities.

2.2 **Third Party Contractors.** At Customer's written request to the Elastic support desk (e-mail sufficient if receipt confirmed or acknowledged), Elastic will provide the Support Services to one or more Contractors, solely in connection with such Contractors' provision of services to Customer, and provided that (i) such Contractors do not offer Elastic Community Software as part of any software-as-a-service, (ii) Customer shall remain responsible to Elastic for the compliance of such Contractors with the terms and conditions of the Agreement and this Addendum, and (iii) such Contractors are contractually bound to obligations that reasonably protect Elastic's intellectual property and Confidential Information.

2.3 **Restrictions.** Support Services are provided to Customer solely for Customer's internal use (which includes use by Customer Affiliates, and, subject to Section 2.2 above), and are subject to applicable quantitative limitations on (i) the number of Billable Nodes and/or Resource Units set forth on the applicable Order Form(s), and (ii) the number of support contacts in the Support Services Policy. For the avoidance of doubt, the foregoing internal use restriction is not intended to prohibit Customer from using the Support Services for a Project in which Self-Managed Software is used in connection with or as part of a Customer website or Customer's own software-as-a-service ("SaaS") offering, provided that any such SaaS offering must include substantial, additional value-added software application features and functions, in addition to the features and functions of the Self-Managed Software. In addition, Customer agrees to not: (a) use the Support Services to supply any consulting, support or training services regarding the Software to any third party other than Customer Affiliates; (b) use the Support Services to obtain support for Customer's use of any Community Software that is being hosted by a third party providing such Community Software as a service (provided, that this prohibition shall not prohibit Customer from running the Software on physical or virtual systems hosted by a third party, where the third party provides compute, storage or other infrastructure services to Customer, but does not provide the Community Software or its features and functions to Customer as part of such services); or (c) use Support Services to obtain support (i) for its use of Community Software in a Project for which no Subscription has been purchased or (ii) under a higher Subscription Level for its use of Software in a Project for which Customer has purchased a lower Subscription Level. Customer agrees that any knowing failure to comply with the terms of this Section 2.3 will be deemed a material breach of this Agreement. In the event of any failure to comply this Section 2.3,

Elastic may, without prejudice to any other remedies available hereunder, at law or in equity, suspend the provision of Support Services to Customer if Customer fails to cure such breach within fifteen (15) days after receipt of written notice thereof.

3 ADDITIONAL DEFINITIONS

3.1 **"Addressable"** with respect to RAM means the quantity of RAM that benefits the execution of the applicable software.

3.2 **"Billable Enterprise Software"** means all Community Software and Commercial Software (collectively, **"Software"**), except for Software branded under the names Beats, Logstash, Endgame Agent, and Elastic Endpoint agent (or any successor or alternative names for such Software).

3.3 **"Billable Nodes"** means, with respect to a Subscription, a number that is the greater of (i) the number of Nodes running across all Projects covered by the Subscription or (ii) the total GB of RAM Addressable by all Nodes across all Projects covered by the Subscription divided by 64, with any fractional remainder being rounded up to the next whole number. Nodes deployed in a Non-production Environment are not counted as Billable Nodes.

3.4 **"Commercial Software"** means Elastic-branded software that is subject to proprietary license terms, including all updates thereto and new releases thereof, that are made generally available by Elastic to its customers during an applicable Subscription Term.

3.5 **"Community Software"** means Elastic-branded software that is licensed and distributed under the Apache License Version 2.0, including all updates thereto and new releases thereof.

3.6 **"Contractor"** means any third-party contractor performing services on Customer's behalf.

3.7 **"License"** means a limited, non-exclusive, non-transferable, fully paid up, right and license (without the right to grant or authorize sublicenses) solely for Customer's internal business operations to (i) install and use, in object code format, the Commercial Software, (ii) use, and distribute internally a reasonable number of copies of the Documentation, provided that Customer must include on such copies all marks and notices; (iii) permit Contractors and Customer's Affiliates to use the Commercial Software and Documentation as set forth in (i) and (ii) above, provided that such use by Contractors must be solely for Customer's benefit, and Customer shall be responsible for all acts and omissions of such Contractors and Affiliates in connection with their use of the Commercial Software that are contrary to the terms and conditions of this Agreement.

3.8 **"License Key"** means an alphanumeric code that enables use of software.

3.9 **"Malicious Code"** means any code that is designed to harm, or otherwise disrupt in any unauthorized manner, the operation of Customer's computer programs or computer systems or destroy or damage data. For clarity, Malicious Code shall not include any software bugs or errors handled through Support Services, or any standard features or functions of the Commercial Software and/or any License Key that are intended to enforce the temporal and/or other limitations on the scope of the use of the Commercial Software to the scope of the License granted to Customer.

3.10 **"Node"** means an instance of the Community Software product known as "Elasticsearch," running on a server, which is not configured as a dedicated client node, dedicated coordinating node, or dedicated ingest node, as described in the Documentation.

3.11 **"Non-production Environment"** means an environment such as development, staging, or quality assurance, where software is not used for production purposes.

3.12 **"Project"** means a specific Customer use case for the Community Software, with Nodes being deployed for use in a logical grouping of functionality to support such use case.

3.13 **"Resource Units"** means, with respect to an Enterprise Subscription, a number that is equal to the total GB of RAM Addressable by all Billable Enterprise Software deployed by Customer in connection with the Enterprise Subscription, divided by 64, with any fractional remainder being rounded up to the next whole number.

3.14 **“Support Services Policy”** means Elastic’s support services policy for Self-managed Subscriptions set forth at https://www.elastic.co/support_policy/english, which provides the details of Elastic’s Support Services obligations. Elastic reserves the right to reasonably modify the Support Services Policy during a Subscription Term. However, Elastic agrees not to diminish the level of Support Services in any material respect during the Subscription Term.

The effective date of each version of the Support Services Policy will be stated therein, and Elastic will retain an archived copy of each version that will be made available to Customer upon request. The Support Services Policy is hereby incorporated into these terms and conditions by this reference.



Product License Agreement / EULA and Warranty Terms

Product License Agreement

The parties to this agreement are you (the end-customer) and Fortinet, Inc. ("Fortinet"). CAREFULLY READ THE FOLLOWING LEGAL AGREEMENT (THE OR THIS "AGREEMENT" OR "EULA"). USE OR INSTALLATION OF FORTINET PRODUCT(S) AND ANY UPDATES THERETO, INCLUDING HARDWARE APPLIANCE PRODUCTS, SOFTWARE AND FIRMWARE INCLUDED THEREIN BY FORTINET, AND STAND-ALONE SOFTWARE PRODUCTS SOLD BY FORTINET (TOGETHER, THE "PRODUCTS") CONSTITUTES ACCEPTANCE BY YOU OF THE TERMS IN THIS AGREEMENT, AS AMENDED OR UPDATED FROM TIME TO TIME IN FORTINET'S DISCRETION BY FORTINET PUBLISHING AN AMENDED OR UPDATED VERSION. FORTINET SHALL NOT BE BOUND BY ANY ADDITIONAL AND/OR CONFLICTING PROVISIONS IN ANY ORDER, RELEASE, ACCEPTANCE OR OTHER WRITTEN CORRESPONDENCE OR OTHER WRITTEN OR VERBAL COMMUNICATION UNLESS EXPRESSLY AGREED TO IN A WRITING SIGNED BY THE GENERAL COUNSEL OF FORTINET. IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THIS AGREEMENT, DO NOT START THE INSTALLATION PROCESS OR USE THE PRODUCTS. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, YOU SHOULD IMMEDIATELY, AND IN NO EVENT LATER THAN FIVE (5) CALENDAR DAYS AFTER YOUR RECEIPT OF THE PRODUCT, IMMEDIATELY NOTIFY FORTINET LEGAL LEGAL@FORTINET.COM OF REQUESTED EULA CHANGES.

1. License Grant.

This is a license agreement between you and Fortinet, not a sales agreement. The term "Software", as used throughout this Agreement, includes all Fortinet and third party firmware and software provided to you with, or incorporated into, Fortinet appliances and any stand-alone software provided to you by Fortinet, with the exception of any open source software contained in Fortinet's Products which is discussed in detail in section 15 below, and the term "Software" includes any accompanying documentation, any updates and enhancements of the software or firmware provided to you by Fortinet, at its option. Fortinet grants to you a non-transferable (except as provided in section 5 ("Transfer")) and section 15 ("Open Source Software") below), non-exclusive, revocable (in the event of your failure to comply with these terms, in the event of termination, or in the event Fortinet is not properly paid for the applicable Product) license to use the Software solely for your internal business purposes provided, (a) if agreed by Fortinet in writing, (b) you are authorized by Fortinet in writing to provide managed service provider services ("MSSP" or to your end-customers, and (c) you pay for an MSSP license, then you may use the Software on and/or Software embedded in Fortinet Hardware to provide those services, subject to the other restrictions in this Agreement), in accordance with the terms set forth in this Agreement and subject to any further restrictions in Fortinet documentation (including license term restrictions), and solely on the Fortinet appliance, or, in the case of blades, CPUs, platform, devices or databases, on the single blade, CPU, platform, device or database on which Fortinet installed the Software, or, for stand-alone Software, solely on a single computer running a validly-licensed copy of the operating system for which the Software was designed unless and except set forth in the published documentation otherwise. For clarity, notwithstanding anything to the contrary, all licenses of Software to be installed on blades, CPUs, platforms, devices or databases are licensed per blade, solely for one blade and not for multiple blades that may be installed in a chassis, per CPU, per platform, per device, or per database basis, up to the blade, CPU, platform, device, database number defined in the license and as applicable and in accordance with the documentation. The Software is "in use" on any appliances, blades, CPUs, platforms, devices, or databases when it is loaded into temporary memory (i.e. RAM), accessed, downloaded, installed, or used on an appliance, blade, CPU, platform, device, or database. You agree that, except for the limited, specific license rights granted in this section 1, you receive no license rights to the Software.

2. Limitation on Use.

You may not attempt to, and, if you are a corporation, you are responsible to prevent your employees and contractors from attempting to: (a) modify, translate, reverse engineer, decompile, disassemble, create derivative works based on, sublicense, or distribute the Software; (b) rent or lease any rights in the Software in any form to any third party or make the Software available or accessible to third parties in any other manner (except as expressly permitted for MSSP partners); (c) transfer assign or sublicense right to any other person or entity (except as provided in section 5); (d) remove any proprietary notice, labels, or marks on the Software, Products, and containers; (e) use the Software to determine, or disclose the results of, any benchmarking or performance measurements; (f) interfere with a platform for use of the Software; (g) use the Software on a device not owned and controlled by you; (h) use automated means to access online portions of the platform for the Software; or, (i) use the Software for third-party training, commercial time-sharing or service bureau use or use the Software to provide services to third parties, except as expressly set forth in this Agreement.

3. Proprietary Rights.

All rights (including copyrights, trade secret, patent and other intellectual property rights), title, interest in and to the Software and any Product, and any copy thereof remain with Fortinet. You acknowledge that no title or other intellectual property rights in the Software or other Products is transferred to you and you will not acquire any rights to the Software or other Products except for the specific limited license as expressly set forth in section 1 ("License Grant") above. You expressly agree and acknowledge that Fortinet owns, retains, and shall retain all intellectual property rights in and to, and you have no intellectual property rights in and to, the Products and the Software other than the License Grant. You agree to keep confidential all Fortinet confidential information and only to use such information for the purposes for which Fortinet disclosed it.

4. Term and Termination.

The term of the license is the shorter of (a) the term as set forth in the ordering documents, other Fortinet documentation, or per Fortinet practices or policies (such as with evaluation or beta licenses or subscription or other term licenses) and (b) for the duration of Fortinet's copyright in the Software. Fortinet may terminate this Agreement, and the licenses and other rights herein, immediately without notice if you breach or fail to comply with any of the terms and conditions of this Agreement or for other reasons as stated in Fortinet's other documentation. You agree that, upon such termination, you will cease using the Software and any Product and either destroy all copies of the Fortinet documentation or return all materials to Fortinet.

5. Transfer.

If you are a Fortinet contracted and authorized reseller or distributor of Products, you may transfer (not rent or lease unless specifically agreed to in writing by Fortinet) the Software to one end user on a permanent basis, provided that: (i) you ensure that your customer and the end user receives a copy of this Agreement, is bound by its terms and conditions, and, by selling the Product or Software, you hereby agree to enforce the terms in this Agreement against such end user, (ii) you at all times comply with all applicable United States export control laws and regulations, and (iii) you agree to refund any fees paid to you by an end user who purchased Product(s) from you but does not agree to the terms contained in this Agreement and therefore wishes to return the Product(s) as provided for in this Agreement. Further, if you are a non-authorized reseller of Products and Services, you are not authorized to sell Product(s), Software or Services, but, regardless, by selling Product(s), Software or Services, you hereby agree you are bound by the restrictions and obligations herein and are bound to: (i) ensure that your customer and the end user receive a copy of this Agreement and are bound in full by all restrictions and obligations herein (ii) enforce the restrictions and obligations in this Agreement against such customer and/or end user, (iii) comply with all applicable United States export control laws and regulations and all other applicable laws, and (iv) refund any fees paid to you by a customer and/or end user who purchased Product(s) from you but does not agree to the restrictions and obligations contained in this Agreement and therefore wishes to return the Product(s) as provided for in this Agreement. Notwithstanding anything to the contrary, distributors, resellers and other Fortinet partners (a) are not agents of Fortinet and (b) are not authorized to bind Fortinet in any way, Fortinet's license, warranty, and support is only available for Products that you purchased directly from an authorized Fortinet channel partner. Products not purchased from an authorized Fortinet channel partner are not eligible, will not be supported, and may be blocked from registration.

6. Limited Warranty.

Fortinet provides this limited warranty for its product only to the single end-user person or entity that originally purchased the Product from Fortinet or its authorized reseller or distributor and paid for such Product. The warranty is only valid for

Products which are properly registered on Fortinet's Support Website, <https://support.fortinet.com>, or such other website as provided by Fortinet, or for which the warranty otherwise starts according to Fortinet's policies, and any support is only valid for products properly purchased through authorized distributors and resellers. The warranty periods discussed below will start according to Fortinet's policies posted at <http://www.fortinet.com/aboutus/legal.html> or such other website as provided by Fortinet. It is the Fortinet distributor's and reseller's responsibility to make clear to the end user the date the product was originally shipped from Fortinet, and it is the end user's responsibility to understand the original ship date from the party from which the end user purchased the product. All warranty claims must be submitted in writing to Fortinet before the expiration of the warranty term or such claims are waived in full. Fortinet provides no warranty for any beta, donation or evaluation Products. Fortinet warrants that the hardware portion of the Products ("Hardware") will be free from material defects in workmanship as compared to the functional specifications for the period set forth as follows and applicable to the Product type ("Hardware Warranty Period"): (a) a three hundred sixty-five (365) day limited warranty for the Hardware products; (b) for FORTIAP, the warranty herein shall last from the start of the warranty period as discussed above until five (5) years following the product announced end-of-life date Hardware; (c) for FortiSwitch Hardware appliance products other than the FortiSwitch-5000 series, the warranty herein shall last from the start of the warranty period as discussed above until five (5) years following the product announced end-of-life date Hardware. Fortinet's sole obligation shall be to repair or offer replacement Hardware for the defective Hardware at no charge to the original owner. This obligation is exclusive of transport fees, labor, de-installation, installation, reconfiguration, or return shipment and handling fees and costs, and Fortinet shall have no obligation related thereto. Such repair or replacement will be rendered by Fortinet at an authorized Fortinet service facility as determined by Fortinet. The replacement Hardware need not be new or of an identical make, model, or part; Fortinet may, in its discretion, replace the defective Hardware (or any part thereof) with any reconditioned Product that Fortinet reasonably determines is substantially equivalent (or superior) in all material respects to the defective Hardware. The Hardware Warranty Period for the repaired or replacement Hardware shall be for the greater of the remaining Hardware Warranty Period or ninety days from the delivery of the repaired or replacement Hardware. If Fortinet determines in its reasonable discretion that a material defect is incapable of correction or that it is not practical to repair or replace defective Hardware, the price paid by the original purchaser for the defective Hardware will be refunded by Fortinet upon return to Fortinet of the defective Hardware. All Hardware (or part thereof) that is replaced by Fortinet, or for which the purchase price is refunded, shall become the property of Fortinet upon replacement or refund. Fortinet warrants that Software as initially shipped by Fortinet will substantially conform to Fortinet's then-current functional specifications for the Software, as set forth in the applicable documentation for a period of ninety (90) days ("Software Warranty Period"), if the Software is properly installed on approved Hardware and operated as contemplated in its documentation. Fortinet's sole obligation shall be to repair or offer replacement Software for the non-conforming Software with software that substantially conforms to Fortinet's functional specifications. This obligation is exclusive of transport fees, labor, de-installation, installation, reconfiguration, or return shipment and handling fees and costs, and Fortinet shall have no obligation related thereto. Except as otherwise agreed by Fortinet in writing, the warranty replacement Software is provided only to the original licensee, and is subject to the terms and conditions of the license granted by Fortinet for the Software. The Software Warranty Period shall extend for an additional ninety (90) days after any warranty replacement software is delivered. If Fortinet determines in its reasonable discretion that a material non-conformance is incapable of correction or that it is not practical to repair or replace the non-conforming Software, the price paid by the original licensee for the non-conforming Software will be refunded by Fortinet; provided that the non-conforming Software (and all copies thereof) is first returned to Fortinet. The license granted respecting any Software for which a refund is given automatically terminates immediately upon refund. For purpose of the above hardware and software warranties, the term "functional specifications" means solely those specifications authorized and published by Fortinet that expressly state in such specifications that they are the functional specifications referred to in this section 6 of this Agreement, and, in the event no such specifications are provided to you with the Software or Hardware, there shall be no warranty on such Software.

7. Disclaimer of Other Warranties and Restrictions.

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15. The warranty disclaimer contained in Sections 11 and 12 of the preceding GPL License is incorporated herein.

Fortinet Service Terms & Conditions
For FortiCare, FortiGuard and other Fortinet Service Offerings

THESE TERMS AND CONDITIONS APPLY TO THE PROVISION OF SERVICES BY FORTINET AND EXCLUSIVELY GOVERN THE LEGAL RELATIONSHIP BETWEEN YOU (THE CUSTOMER) AND FORTINET. IT SETS FORTH THE LEGALLY BINDING RIGHTS AND OBLIGATIONS OF THE CUSTOMER IN RELATION TO FORTICARE SUPPORT OR FORTIGUARD SUBSCRIPTION SERVICES OR OTHER FORTINET SERVICE OFFERINGS. THE CUSTOMER CONSENTS TO BE BOUND BY THESE TERMS AND CONDITIONS AND TO HAVE BECOME PARTY TO THIS 'AGREEMENT' (THIS OR THE "AGREEMENT") AND REPRESENTS TO HAVE READ AND UNDERSTOOD THIS AGREEMENT AND HAVE HAD SUFFICIENT OPPORTUNITY TO CONSULT WITH COUNSEL BEFORE AGREEING TO THE TERMS HEREIN. THE CUSTOMER AGREES THAT ANY OF THE FOLLOWING ACTIONS BY CUSTOMER REPRESENTATIVES REPRESENT THE CUSTOMER'S AUTHORIZED CONSENT TO BE BOUND BY THIS AGREEMENT: (I) RECEIVING, DOWNLOADING, DEPLOYING OR USING ANY SOFTWARE PROVIDED IN CONNECTION WITH FORTINET SERVICES, (II) RECEIVING, CONFIGURING, LOGGING IN, REGISTERING OR OTHERWISE USING OR BENEFITTING FROM THE SERVICES, OR (III) BY CLICKING ON THE "ACCEPT" BUTTON UPON REGISTRATION (ANY OF (I), (II), OR (III) SHALL CONSTITUTE "ACCEPTANCE" BY CUSTOMER). THE CUSTOMER HEREBY ACKNOWLEDGE AND AGREES THAT THE PERSON ENGAGING IN (I), (II), AND/OR (III) IS AUTHORIZED TO BIND THE CUSTOMER TO THE TERMS HEREIN. FOR CLARITY, NOTWITHSTANDING ANYTHING TO THE CONTRARY, IF CUSTOMER IS USING AN AUTOREGISTRATION TOOL, CUSTOMER ACKNOWLEDGES AND AGREES THAT ANY AND ALL UNITS REGISTERED USING SUCH TOOL SHALL BE SUBJECT TO THESE TERMS AND CONDITIONS.

Services are available independently or in connection with the purchase of Fortinet's commercial networking products and related equipment, including hardware products with embedded software, and software products sold and licensed to you pursuant to Fortinet's End User License Agreement ("EULA"), which EULA is available at <https://www.fortinet.com/content/dam/fortinet/assets/legal/EULA.pdf>, and you hereby agree to the terms of the EULA.

This Agreement and the Sales Order Acknowledgment represent a legal agreement between the parties with respect to FortiCare and FortiGuard Subscription services or other Fortinet services, and shall supersede all prior representations, discussions, negotiations and agreements, whether written or oral. This document expressly supersedes the Customer Service & Support Reference Guide (CSS Reference Guide) and all other service descriptions, and, notwithstanding anything to the contrary, Fortinet is only bound by, and Customer is only entitled to, services pursuant to official service descriptions that are authorized by Fortinet pursuant to this Agreement and are contractually binding on Fortinet pursuant to the terms herein

1. DEFINITIONS

1.1. "Active Service Coverage Level" means the level of Technical Support as purchased by Customer pursuant to a Service Contract.

1.2. "Agreement" means these Terms and Conditions.

1.3. "Customer" means any entity or person that has purchased a Fortinet Service Contract for use within their business and not for further sale.

1.4. "Documentation" means any customer support manuals, technical manuals, and/or "Help" files within the Services that relate to the Services and that Fortinet makes available to Customer in connection with this Agreement and/or through the Services.

1.5. "FortiCare" means a subscription to Technical Support Services, which may be purchased by Customer directly or from a third party, and which are delivered by Fortinet on behalf of that third party.

1.6. "Fortinet" means Fortinet, Inc.

1.7. "Services" when used individually means a subscription to one of Fortinet's service offerings (FortiCare, FortiGuard, etc.), which may be purchased by the Customer directly or from a third party.

1.8. "FortiPartner" means a Fortinet authorized distributor or reseller of Fortinet Products and Services.

1.9. "Hardware" means a Fortinet appliance or chassis, excluding all software incorporated or bundled with such devices.

1.10. "Hardware Bundle" means hardware sold with defined Services.

1.11. "Product" means any Hardware with associated software including Hardware Bundles, or stand-alone Software which is available for sale through a FortiPartner or directly from Fortinet and is covered by a FortiCare Service Contract.

1.12. "Registration Date" means the date the Product or Service is registered in the applicable service or Support Portal.

1.13. "Serial Number" means the unique identifier of a Product which may be registered in the Support Portal.

1.14. "Renewal Service Contract" means the continuation of a Service Contract pursuant to the terms of the Service Contract.

1.15. "Service Contract" means this Agreement, as applied to the provision of Technical Support or other Services.

1.16. "Software" means Fortinet computer software, Fortinet software subscription services and bug fixes, in each case provided by Fortinet either directly or from FortiPartner, whether purchased as embedded within the hardware or as a standalone software product or operating software release or update service.

1.17. "Support Portal" means an on-line service designed to allow Customers to configure and access their purchased Services. For example, the Technical Support Portal can be used to create Technical Tickets, access documentation, and obtain software releases. The technical Support Portal is available at <https://support.fortinet.com>. For FortiPartners the portal is available at <https://partners.fortinet.com>.

1.18. "TAC" means Fortinet's Technical Assistance Center which is comprised of a number of technical support centers.

1.19. "Technical Support" means the provision of technical support assistance to resolve issues on Products and Services.

1.20. "Technical Ticket" means the Customer's request for Technical Support, including any description by the Customer of the reason why Customer seeks Technical Support.

2. FORTICARE

2.1. Fortinet offers FortiCare, which provides Technical Support Services. Upon activation of a FortiCare Service Contract, the Customer will (a) obtain access to the Support Portal; (b) obtain access to the TAC for customer service assistance as well as resolution of Technical Tickets, access to Software updates (maintenance and feature releases) and the replacement of Hardware determined by Fortinet to be defective. Technical Support Services will be provided in accordance with the Active Service Coverage Level. For more details refer to the Service Description 'FortiCare Technical Support - 8702318' and Fortinet's policies.

Technical Support

2.2. Fortinet shall provide Customer assistance by telephone or via the Support Portal or via web-chat in relation to troubleshooting of Product issues, as well as usage and configuration.

2.3. Fortinet shall provide access to the TAC 24 hours a day, 7 days a week, 365 days a year.

2.4. Fortinet shall allow 24x7 access to the Support Portal for the Customer to create Technical Tickets, manage assets, obtain Software updates, as well as providing access to Documentation including trouble-shooting information. Technical Tickets shall be processed by Fortinet in accordance with Section 2.5.

2.5. Fortinet shall process Technical Tickets in accordance with the Technical Support procedures and support day/time limitations outlined in the applicable FortiCare service documents.

2.6. Fortinet shall use commercially-reasonable efforts to provide acceptable workaround solutions, resolutions or Software maintenance releases to resolve Technical Tickets. The Customer acknowledges that Software and/or Hardware are never error-free and that, despite commercially-reasonable efforts, Fortinet may be unable

to provide answers to, or be unable to resolve, some requests for Software or Hardware support.

2.7. Fortinet shall provide maintenance releases and feature updates for Software. Customer may access such updates via password-protected web access. This is subject to one copy per Software release or signature file as appropriate and is subject to the EULA.

2.8. Use commercially reasonable efforts to ensure availability of hosted solutions, if applicable.

Hardware Replacement

2.9. Where Hardware replacement is deemed necessary by Fortinet, Fortinet shall provide Hardware replacement services, using commercially-reasonable efforts, in accordance with the Active Service Coverage Level.

2.10. Hardware replacements are shipped to the Customer with incoterm DAP (Delivery At Place) using a Fortinet carrier, freight prepaid by Fortinet, excluding any import duties, taxes or other fees.

2.11. Hardware replacement services are subject to geographical restrictions.

2.12. Fortinet is not responsible for transportation or custom delays. Customer compliance with export controls and destination customs processes may condition shipment times.

Product Life Cycle

2.13. The type of Technical Support provided under FortiCare may vary depending on the Product's life cycle. An up-to-date version of the Product life cycle shall either be stored on the Support Portal or available by contacting Fortinet.

2.14. For any Software that is in the "End of Support" phase, as defined in Fortinet's then-active Product life cycle policy, Fortinet may provide Technical Support for Software issues at its sole discretion. Such Support Services are limited to advisory support and do not include new Software releases to address Software defects.

Exclusions

2.15. Fortinet shall have no obligation to provide Technical Support under FortiCare in any of the following circumstances:

- FortiCare does not include any on-site activity, or any request for step-by-step installation and configuration of a Product or creation of custom SQL reports. Professional services may be available for purchase by Customer to provide such services.

- In the event the Customer alters, damages or modifies the Product or any portion thereof.

- For any problem caused by: accident; transportation; neglect or misuse; alteration, modification, or enhancement of the Product; failure to provide a suitable installation environment; use of supplies or materials not meeting specifications; use of the Product for other than the specific purposes for which the Product is designed; for any problems caused by the

Customer's or end-user's negligence, abuse, or misapplication.

- For the Product on any systems other than the specified Hardware platform for such Product. Fortinet shall have no liability for any changes in the Customer's hardware, which may be necessary to use the Product due to a workaround or maintenance release.
- For any Hardware that is in the "End of Support" phase, as defined in Fortinet's then active Product life cycle policy.
- For any Product that has not been publicly released.
- For third-party devices (including, without limitation, hardware, software, infrastructure such as cabling) or problems associated with such elements.
- Any usage of FortiGuard service updates that are not specifically authorized by Fortinet in writing including, without limitation, accessing signature packages for the purpose of duplication.
- For issues related to hardware consumables, which may be physically installed within a Fortinet appliance, such as SFPs, SDD cards and hard disks, if these are non-Fortinet-purchased hardware and as a result of a technical analysis a fault or defect is traced to the use of non-Fortinet supplied hardware, then service or warranty entitlement will be forfeit for the affected Fortinet appliance.
- For any other violation by Customer of this Agreement.

Customer Obligations

Customer is obligated and responsible for the following, and Fortinet's responsibilities and obligations shall be subject in full to Customer meeting its following obligations:

- 2.16. Activate and register FortiCare subject to this Service Contract against a specified Product unit.
- 2.17. Ensure that the Product covered by FortiCare is used for its intended purpose and in line with the applicable Product specifications and is maintained in accordance with applicable Product documentation.
- 2.18. Maintain Fortinet Software at the current Software release and to upgrade to the latest release of Software if it is required to resolve a reported technical issue.
- 2.19. Comply with Fortinet's Technical Support recommendations.
- 2.20. Provide access at Customer's expense to the Product in order for Fortinet to troubleshoot a Technical Ticket, subject to the Customer and Fortinet agreeing on appropriate security measures to prevent unauthorized access to Customer's network, however, the ultimate responsibility for the security of the network lies with the Customer. Fortinet will not connect to the Customer's network without prior authorization and such connection will be solely to provide Technical Support services. Customer has the right to monitor such access by Fortinet. Where (a) the Customer causes delay in providing connectivity in accordance with this section or (b) Customer and Fortinet cannot agree on appropriate

security measures to prevent unauthorized access to Customer's network in the performance of Technical Support services, Fortinet will be excused from any damages or other losses attributable to such delay or lack of agreement.

- 2.21. Make available knowledgeable technical staff to aid in troubleshooting.
- 2.22. (a) Assume all costs associated with returning the Product (and follow, Fortinet's specifications for packaging and labeling of the returned unit and insurance of all returned equipment); and (b) returning the unit within 30 days of the receipt of a replacement Product. Returns that are improperly packaged will not be accepted by Fortinet and returned at the Customer's expense.
- 2.23. Ensure Service Contracts are transferred to any replacement Products. Customer acknowledges that this action is required to continue to receive FortiCare Support Services and accepts that there may be a delay of up to four hours to re-establish FortiGuard security services.
- 2.24. Maintaining reasonable internal security policies and processes, such as related to internal passwords, its facilities, its administrator access to information and systems, and use of wireless access points.

3. FORTIGUARD

- 3.1. FortiGuard is a Fortinet service that provides a threat research feed under which Fortinet undertakes commercially-reasonable efforts to provide solutions to identified network security threats. These are developed in response to evolving internet activity and delivered via security threat databases, produced by machine intelligence and experts.
- 3.2. The Customer is responsible for configuring the frequency of FortiGuard security updates, which may be available on either an automatic or manual basis.
- 3.3. The creation of Technical Tickets with Fortinet Technical Support for issues related to FortiGuard requires an active FortiCare Service Contract covering the FortiGuard service.

4. FEES, TERMS, AND TERMINATION

- 4.1. Ordering and use. Each Product or Service is covered individually by this Agreement, and expires in accordance with the terms contained in this Agreement or according to Fortinet's policies and the term of the Service contract. Accordingly, where this Agreement (including Service Contracts) terminate for a particular unit of Product, the Agreement remains in full force and effect individually for any other Product or support services purchased by Customer. Service Contracts may apply only to a single unit of Product. An attempt to use a Service Contract with more than one unit of Product, (i.e. in addition to the unit of Product the Service Contract was originally purchased for) is considered a material breach of the Service Contract and will result in the termination of such Service Contract without refund of any fees paid by Customer and

additional fees will be immediately due by Customer to Fortinet based on Fortinet's then-current list price for any incremental, additional services beyond those authorized by the Service Contract.

4.2. Payment Terms. By purchasing Services, Customer agrees to pay the purchase price for the Services, and all sales, use, valued-added and other taxes and all customs duties and tariffs now or hereafter claimed or imposed by any governmental authority upon the sale of the Services. All payments shall be due upon purchase, in U.S. Dollars, and free of any currency control or other restrictions. All sales are final and the Services are not returnable.

4.3. Registration and renewal registration. Customer must register the 'Service Contract Registration Number' which references the purchased Service or the Serial Number (for a Hardware Bundle), within three hundred sixty-five (365) days from the date of the original shipment by Fortinet of the Service Contract or Hardware Bundle to its distributor, FortiPartner or Customer, whichever originally purchased directly from Fortinet. ANY SERVICE CONTRACTS INCLUDING THOSE WHICH ARE INCLUDED IN HARDWARE BUNDLES WHICH ARE NOT REGISTERED WITHIN THREE HUNDRED SIXTY-FIVE (365) DAYS FROM THE DATE THE SERVICE CONTRACT OR HARDWARE BUNDLE WAS ORIGINALLY SHIPPED FROM FORTINET SHALL BE FORFEITED AND FORTINET SHALL HAVE NO OBLIGATION TO THE CUSTOMER REGARDING THIS AGREEMENT OR ANY RELATED SUPPORT SERVICES. It is the Customer's responsibility to register the Service Contract within the three hundred sixty-five (365) day period and to understand the original ship date from the party from which the Customer purchased the Product.

4.4. Notwithstanding anything to the contrary, Fortinet may register any Renewal Service Contract upon invoicing. Upon renewal of the Service Contract, Customer authorizes Fortinet to automatically register the Renewal Service Contract for subsequent renewal periods for which a purchase order has been placed.

4.5. In order to maintain a continuous service period, the effective date of any Renewal Service Contract shall begin as set forth herein, (the "Renewal Service Contract effective date"). In the event that registration of a Renewal Service Contract is beyond ten (10) calendar days following the expiration date of the previous Service Contract, such Renewal Service Contract effective date will be the later of (a) the calendar day following the expiration date of the Customer's previous Service Contract and (b) the date that is one hundred eighty (180) calendar days prior to the actual registration date of the Renewal Service Contract. The above does not apply if Renewal Service Contracts are registered and started within ten (10) calendar days following the expiration date of the Customer's previous services contract. In such case the start date shall be the date of registration.

4.6. Term and Termination. This Agreement is valid for the length of time provided for in the Customer's purchased service certificate which is viewable upon activation in the applicable service/support portal and which starts from (a) the Registration Date of the Service

Contract or in the case of a Hardware Bundle the Registration Date of the Product; or (b) in the event of a Renewal Service Contract that has been registered prior to the expiration date of the previous Service Contract or within ten (10) calendar days of the expiration of the previous Service Contract, starting from the calendar day following the expiration date of the previous Service Contract; or (c) in the event of a Renewal Service Contract that has not been registered within ten (10) calendar days following the expiration of the previous Service Contract, starting from the actual registration date of the Renewal Service Contract. To the extent the Services experience any interruption due to Customer's failure to complete a Renewal Service Contract, Fortinet shall not be responsible for providing Services during such interruption and will not be responsible for any losses or damages incurred by Customer or any third party attributable to this interruption in Services.

4.7. Fortinet reserves the right to terminate this Agreement and/or any and all Services being provided hereunder, in its discretion, in the event of (a) breach of any terms herein by Customer or (b) non-payment to Fortinet for any services by the Customer or a third party, with such termination having immediate effect, if such breach has not been cured within fifteen (15) calendar days after written notice by Fortinet to Customer or immediately upon notice of termination in the event of a breach that by its nature cannot be remedied within fifteen (15) calendar days. Fortinet may also terminate this Agreement without notice if Customer becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors. Upon any termination, Fortinet shall have no obligation to provide the Services hereunder.

4.8. Third-party providers and Service modifications. Fortinet reserves the right to subcontract its obligations herein to third-party organizations. Fortinet also reserves the right to change service subcontractors without notice.

4.9. Non-Fortinet Support. To the extent Customer provides its own technical support or engages a non-approved third party to provide technical support, Fortinet is not responsible for such support, and Customer represents and warrants that all such technical support pursuant to Section 4.9 shall be performed in a satisfactory and commercially reasonable manner and will not infringe upon Fortinet's rights or the rights of any third party.

4.10. A description of the various Fortinet Services is available on the Fortinet website, and generally on the applicable services portal. In its sole discretion Fortinet may make updates to its service offerings from time to time. If Fortinet makes a material change to the Services, those changes will be reflected in the on-line service descriptions stored on the applicable portal. Fortinet may also make changes to this Agreement, including any linked documents, from time to time. Unless otherwise noted by Fortinet, material changes to the Agreement will become effective thirty (30) days after they are posted, except if the changes apply to new functionality in which case they will be effective immediately. If Customer does not agree

to the revised agreement, Customer must stop using the Services.

4.11. Service/support portal access and security. As part of receiving Fortinet Services, Customer may receive administrative access ID's and passwords upon installation, registration. Customer shall be solely responsible for maintaining the security of its administration access information, and shall be fully responsible for, all activities which occur, relating to access to the Services under Customer's administrative access ID. Fortinet is not responsible for unexpected use of Services or data whether by ex-employees, compromised user passwords or any other misuse of Customer accounts. Upon termination of the Services, all data, including configuration data will be deleted, and Fortinet has no responsibility for such data.

4.12. Loss of data and accuracy of data. While Fortinet takes commercially reasonable and industry standard technical and organizational steps to ensure the security of the Services, it is not responsible for the accidental loss or destruction of any data any End User transmits using the applicable service and Fortinet disclaims all liability of any kind in relation to the content or security of data that any End User sends or receives through the service. Further, Fortinet does not guaranty the accuracy of the reports, which may be compromised by various network incidents that impact data collection and accuracy; e.g. network outages, hardware upgrades, and the like.

5. PRIVACY

5.1. Customer consents to Fortinet's collection, use, protection and transfer of Customer's information as described in the Fortinet Privacy Policy on the Fortinet web site (<http://www.fortinet.com/aboutus/privacy.html>).

5.2. Customer consent and privacy. Fortinet recommends, and (where required by law) requires, the posting of legally sufficient notices to consumers and other relevant individuals ("End Users") regarding the collection of End User data through the Services. IT IS CUSTOMER'S SOLE OBLIGATION TO COMPLY WITH ALL NATIONAL AND LOCAL LAWS REGARDING CONSUMER DATA PRIVACY AND PRIVACY DISCLOSURE LAWS.

5.3. Customer agrees and acknowledges, and warrants that all End Users agree and acknowledge, that Fortinet may be required by law to provide assistance to law enforcement, governmental agencies and other authorities. Accordingly, Customer agrees, and shall procure that all End Users agree:

5.3.1. that Fortinet may implement and maintain an interception capability suitable to meet these requirements where Fortinet and/or partners are obliged by law to ensure or procure that such a capability is implemented and maintained;

5.3.2. that Fortinet may implement and maintain a data retention capability for the service to meet requirements where Fortinet and/or its partners are obliged by law to ensure or procure that data is retained; and

5.3.3. Fortinet may at times cooperate with law enforcement authorities and rights-holders in the investigation of any suspected or alleged illegal activity by Customer or End Users. If Fortinet is required to do so by law, this may include but is not limited to, disclosure of the Customer's or End Users' contact information to law enforcement authorities or rights-holders.

5.4. To the extent Customer receives administrative access IDs and passwords in connection with any accounts for the Services, Customer shall be solely responsible for maintaining the security of its admin access information, and shall be fully responsible for all activities which occur relating to access to the Services and use of any other features (including wireless access point(s), as applicable) under that administrative access ID. Customer agrees to notify Fortinet immediately of any actual or suspected unauthorized use of Customer's account or any other breach of security known by Customer.

5.5. Although some of our Services may provide certain notices or may seek certain consents from certain users, Fortinet does not provide legal advice, and Customer remains solely responsible and solely liable for independently (i) determining what notices and consents are legally required and (ii) providing such notices and obtaining such consents.

6. SOFTWARE RESTRICTIONS

6.1. Customer hereby agrees (i) not to create or attempt to create by reverse engineering, disassembly, decompilation or otherwise, the source code, internal structure, hardware design or organization of the product or support updates or software, or any part thereof, or to aid or to permit others to do so, except and only to the extent as expressly required by applicable law; (ii) not to remove any identification or notices of any proprietary or copyright restrictions from any product or support updates or software; (iii) not to copy the product or support updates or software, modify, translate or, unless otherwise agreed, develop any derivative works thereof or include any portion of the software in any other software program; (iv) only to use the product and support updates and software for internal business purposes, and (v) to keep confidential any software and support updates and not share them with third parties.

7. INDEMNIFICATION

7.1. Customer will defend Fortinet against any claim, demand, suit or proceeding made or brought against Fortinet by a third party arising out of Customer's breach of this Agreement, any infringement or misappropriation of intellectual property rights caused by Customer (whether or not Customer has concurrently violated this Agreement), or any illegality of Customer data (individually and collectively, a "Claim"), and will indemnify Fortinet from any damages, attorney fees and costs finally awarded against Fortinet as a result of, or for any amounts paid by Fortinet under a settlement of, a Claim, provided Fortinet

promptly gives Customer written notice of the Claim (provided that failure to so notify will not remove Customer's obligation except to the extent Customer is materially prejudiced thereby). For a Claim, Customer controls the defense and settlement of the Claim and Fortinet agrees to give Customer all reasonable assistance, at Customer's expense. Customer will not settle, compromise, or otherwise enter into any agreement regarding the disposition of any Claim without the prior written consent and approval of Fortinet unless such settlement (a) is solely for a cash payment, (b) requires no admission of liability or wrongdoing on the part of Fortinet, (c) imposes no obligation on Fortinet, (d) imposes no restriction on Fortinet's business, (e) provides that the parties to such settlement shall keep the terms of the settlement confidential, and (f) provides for a full and complete release of Fortinet. You shall reimburse Fortinet within 30 calendar days after demand for any losses incurred by Fortinet that is subject to an indemnification obligation as set forth in this Section.

8. WARRANTY

8.1. Service Warranties. Fortinet provides its Services and Products on an "AS IS" basis. Neither Fortinet nor any of its officers, directors, employees, partners or agents, makes any representation, claim or warranty with respect to the Services or reports or data, whether express or implied, including without limitation, any warranty of quality, performance, non-infringement, merchantability, or fitness for a particular purpose, or any results generated from use of the Services or the reports. Fortinet makes no warranty that the Services will meet your requirements, or that the Services will be uninterrupted, timely, or secure.

8.2. Fortinet will have no obligation to correct, and makes no warranty with respect to, errors caused by: (a) improper installation of the Software or Hardware; (b) changes that you have made to the Software or Hardware; (c) use of the Software or Hardware in a manner inconsistent with the Documentation and instructions; (d) the combination of the Software or Hardware with hardware or software not approved by Fortinet; (e) malfunction, modification or relocation of your Hardware or Software transferred to unapproved or unregistered devices; (f) your failure to use the Software and Services in accordance with local laws; or (g) business and/or service decisions based on reliance on the analysis or data aggregation results.

8.3. Product Warranties. Except as expressly stated in its EULA, Fortinet does not provide any warranty whatsoever and nothing in this Agreement shall be construed as expanding or adding to the warranty set forth in the EULA. In the event of a conflict between this Agreement and the EULA, the EULA shall govern. Fortinet cannot guarantee that every question or problem raised in connection with the Services will be addressed or resolved, and in no event does Fortinet warranty or guaranty security and protection from all threats. EXCEPT FOR WARRANTIES CLEARLY AND EXPRESSLY STATED HEREIN, NOTWITHSTANDING ANYTHING TO THE CONTRARY, FORTINET MAKES, AND YOU RECEIVE, NO OTHER 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 HEREUNDER, AND, TO THE EXTENT PERMISSIBLE BY LAW, FORTINET SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTY OF SATISFACTORY QUALITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS.

9. LIMITATION OF LIABILITY

9.1. NOTWITHSTANDING ANYTHING TO THE CONTRARY, IN NO EVENT WILL FORTINET BE LIABLE TO THE CUSTOMER FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES OF ANY KIND, INCLUDING BUT NOT LIMITED TO ANY LOST PROFITS OR LOSS OF DATA HOWEVER CAUSED, WHETHER FOR BREACH OR REPUDIATION OF CONTRACT, TORT, BREACH OF WARRANTY, NEGLIGENCE, OR OTHERWISE, WHETHER OR NOT FORTINET WAS ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES. NOTWITHSTANDING ANYTHING TO THE CONTRARY, FORTINET'S TOTAL POSSIBLE LIABILITY TO THE CUSTOMER AND OTHERS ARISING FROM OR IN RELATION TO THIS AGREEMENT AND THE SERVICES, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR STRICT LIABILITY, SHALL BE LIMITED TO THE TOTAL PAYMENTS MADE BY CUSTOMER TO FORTINET UNDER THIS AGREEMENT DURING THE THREE HUNDRED SIXTY-FIVE (365) CALENDAR DAYS PRIOR TO THE DATE OF THE EVENT GIVING RISE TO THE LIABILITY. THIS LIMITATION WILL APPLY TO ALL CAUSES OF ACTION IN THE AGGREGATE. IN NO EVENT WILL FORTINET BE LIABLE FOR THE COST OF PROCUREMENT OR REPLACEMENT OF SUBSTITUTE GOODS. IN THE EVENT FORTINET SUSPENDS OR TERMINATES SERVICES IN THE MIDDLE OF A SERVICE TERM FOR ANY REASON, NOTWITHSTANDING ANYTHING TO THE CONTRARY, FORTINET'S MAXIMUM LIABILITY SHALL BE THE PRO-RATED AMOUNT OF THE FEES ACTUALLY PAID TO FORTINET FOR SUCH SERVICES FOR THE PERIOD OF THE CURRENT TERM DURING WHICH NO SUCH SERVICES ARE PERFORMED (I.E. THE PRO-RATED AMOUNT PAID FOR THE PERIOD FROM SUSPENSION OR TERMINATION TO THE END OF THE CURRENT TERM). IN ALL EVENTS, CUSTOMER IS RESPONSIBLE TO WORK IN GOOD FAITH TO MITIGATE ANY DAMAGES CUSTOMER MAY REALIZE. THE FOREGOING LIMITATIONS OF LIABILITY SHALL NOT APPLY TO DAMAGES ARISING FROM DEATH OR PERSONAL INJURY IN ANY JURISDICTION WHERE SUCH LIMITATION IS PROHIBITED BY APPLICABLE LAW.

10. GENERAL PROVISIONS

10.1. Compliance with laws. Customer hereby agrees to comply with all applicable laws, such as data privacy and privacy disclosure laws. Fortinet's Products and Services may be subject to the United States Export Administration Regulations and other import and export laws. Diversion contrary to United States law and regulation is prohibited. Customer agrees to comply with, and ensure compliance with, all applicable laws that apply to the products as well as the Customer and destination restrictions issued by U.S.

and other governments. As just one example, if Customer is a FortiPartner that provides Return Manufacturer Authorization, or RMA, Services or other Services on behalf of another entity or otherwise provides Product or Services, Customer shall ensure proper, required export licenses are obtained for all Product, whether newly-purchased or RMA, prior to exporting those appliances and prior to providing any Services related to those appliances, if such export license is required. In addition, if Customer or the end-user on whose behalf Customer is providing RMA, Services or other Services is designated a Denied Party, Specially Designated National, on the Entity List, or otherwise subject to an export license requirement after this agreement, then Fortinet may terminate or suspend, in its sole discretion, any and all Services related to Product or Services exported without full compliance with applicable export laws. For additional information on U.S. export controls see www.bis.doc.gov. Fortinet assumes no responsibility or liability for Customer's or partners' failure to obtain any necessary import and export approvals. Customer represents that neither the United States Bureau of Industry and Security nor any other governmental agency has issued sanctions against Customer or otherwise suspended, revoked or denied Customer's export privileges. Customer agrees not to use or transfer the Products or Services for any use relating to nuclear, chemical or biological weapons, or missile technology, unless authorized by the United States Government by regulation or specific written license. Additionally, Customer agrees not to directly or indirectly export, import or transmit the Products or Services contrary to the laws or regulations of any other governmental entity that has jurisdiction over such export, import, transmission or use. Customer represents that Customer understands, and Customer hereby agrees to comply with, all requirements of the U.S. Foreign Corrupt Practices Act and all other applicable laws. Fortinet is not responsible for service delays or outages or loss of data resulting from activities related to Fortinet's and its service partners compliance with export regulations and cooperation with applicable domestic or foreign regulatory agencies (e.g., delays caused by requirement to obtain required licenses). Customer agrees, acknowledges and warrants that it will take reasonable steps to ensure it will meet all legal requirement to assist law enforcement agencies.

10.2. Survival of terms. The terms contained herein which by their nature are intended to survive the termination of this Agreement shall do so.

10.3. Transferability. Customer may not assign or otherwise transfer this Agreement without written consent from Fortinet. Any attempted assignment or attempted transfer without Fortinet's consent shall be null and void. Fortinet may assign its rights and obligation under this Agreement to a third party without consent from Customer.

10.4. Entire Agreement. The provisions of this Agreement constitute the entire agreement between the parties with respect to the subject matter hereof, and this Agreement supersedes all prior agreements or representations, oral or written, regarding such subject matter. With the exception

of the EULA, this Agreement takes precedence over any conflicting provisions in a document a Fortinet portal website, such as a service description or support portal terms. This Agreement may be modified or amended only in accordance with Section 4.10 herein. All notices from Customer to Fortinet must be made by opening a new support ticket through the Support Portal.

10.5. Confidential information. Customer may be exposed to certain information concerning the Products and Services including, without limitation, maintenance releases (regularly scheduled and released updates and upgrades to software), feature releases (enhancements released through Fortinet's Product planning practices or through Customer requests) and other product, service or business information, which is Fortinet's confidential or proprietary information (herein "Confidential Information"). The Customer agrees that during and after the term of this Agreement, the Customer will not use or disclose to any third party any Confidential Information without the prior written consent of Fortinet, and Customer will use reasonable efforts to protect the confidentiality of such Confidential Information. The Customer may disclose the Confidential Information only to its employees as is reasonably necessary for the purposes for which such information was disclosed to customer; provided that each such employee is under a written obligation of nondisclosure which protects the Confidential Information under terms substantially similar to those herein. Fortinet may process and store customer data in the United States or any other country in which Fortinet or its agents work or maintain facilities. Customer will take reasonable steps not to disclose to Fortinet any personally identifiable, confidential or sensitive data, and customer hereby consents to Fortinet's processing and storage of customer data. Customer acknowledges and agrees that Fortinet is merely a data processor.

10.6. Governing Law, venue and settlement of controversies. This Agreement shall be governed by the laws of the State of California, as applied to agreements entered into and to be performed entirely within California between California residents, without regard to the principles of conflict of laws or the United Nations Convention on Contracts for the International Sale of Goods. Any controversies or claims arising from or relating to this Agreement, or the breach hereof, which cannot be amicably settled by and between the parties, shall be referred to and finally settled by arbitration. The place of arbitration shall be Santa Clara, California, pursuant to the Streamlined Arbitration Rules and Procedures of Judicial Arbitration and Mediation Services (JAMS), or its successor, before a sole, mutually agreed upon arbitrator and shall be conducted in English. Award for such dispute will be rendered by a single, neutral, mutually agreeable arbitrator. The parties specifically consent and agree that the Federal Courts located in the Northern District of California will have exclusive jurisdiction over enforcement of any arbitration decisions.

10.7. Taxes and Duty. All prices payable under this Agreement are exclusive of all foreign, federal, state, municipal tax or duty now in force or enacted in the future.

Customer shall comply with all applicable tax laws and regulations and the Customer will promptly pay or reimburse Fortinet for any costs and damages related to any liability incurred as a result of Customer's non-compliance or delay with its responsibilities herein. The Customer's obligations under this section shall survive termination or expiration of this Agreement.

10.8. English language and interpretation. This Agreement is in the English language only, which language shall be controlling in all respects. Any versions of this Agreement in any other language will be for accommodation only and will not be binding upon either party. In construing or interpreting this Agreement, the word "or" shall not be construed as exclusive, and the word "including" shall not be limiting. The parties agree that this Agreement shall be fairly interpreted in accordance with its terms without any strict construction in favor of or against either party and that ambiguities shall not be interpreted against the drafting party.

10.9. No waiver and severability. Failure by Fortinet to enforce any provision of this Agreement will not be deemed a waiver of future enforcement of that or any other provision. The exercise by either party of any remedy under this Agreement will be without prejudice to its other remedies under this Agreement or otherwise. If for any reason a court of competent jurisdiction or an agreed-upon arbitrator finds any provision of this Agreement, or portion

thereof, to be unenforceable, that provision of the Agreement shall be enforced to the maximum extent permissible so as to affect the intent of the parties, and the remainder of this Agreement shall continue in full force and effect.

10.10. Force Majeure. Fortinet shall be excused from performance to the extent performance is rendered impossible by strike, fire, flood, governmental acts or orders or restrictions, failure of suppliers or any other reason where failure to perform is beyond Fortinet's reasonable control.

10.11. Future Functionality. Customer agrees that its purchases of Products or Services are not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by Fortinet regarding future functionality or features.

10.12. 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.

10.13. No Third-Party Beneficiaries. There are no third-party beneficiaries to this Agreement. For clarity, End Users (as defined in Section 9) are not third-party beneficiaries to this Agreement.

February 2019

-----End of Document-----

Fortinet Professional Service Terms and Conditions Master Professional Services Agreement

CAREFULLY READ THE FOLLOWING TERMS OF FORTINET'S PROFESSIONAL SERVICES BETWEEN YOU AND FORTINET, INC., OR FORTINET, INC.'S SUBSIDIARIES OR AFFILIATES ("FORTINET"). YOU ARE AGREEING TO BE BOUND BY AND ACCEPT THESE TERMS AND CONDITIONS OF SALE. IF YOU DO NOT AGREE TO THESE TERMS AND CONDITIONS, DO NOT SIGN THE STATEMENT OF WORK PROVIDED BY FORTINET.

FORTINET SHALL NOT BE BOUND BY ANY ADDITIONAL, INCONSISTENT, AND/OR CONFLICTING PROVISIONS IN ANY ORDER, RELEASE, ACCEPTANCE OR OTHER CORRESPONDENCE UNLESS EXPRESSLY AGREED TO IN A WRITING SIGNED BY FORTINET,'S GENERAL COUNSEL, AND IN NO EVENT SHALL FORTINET BE DEEMED TO HAVE ACCEPTED ANY TERMS IN YOUR PURPORTED OFFER OR OFFER DOCUMENTS.

1. SERVICES AND PROJECT MANAGERMENTS

- 1.1. **Statement of Work.** Fortinet agrees to provide certain security information technology, installation, or modification services (the "**Services**") to Company that are mutually agreed from time to time between the Parties. The specific Services will be set forth in one or more Statements of Work that the Parties may execute pursuant to these terms and conditions ("**Statement of Work**" or "**SOW**"), substantially in the form above. Each SOW shall be incorporated into and become part of these terms and conditions and be governed by the provisions of these terms and conditions. In the event of a conflict between the terms and conditions of these terms and conditions and a SOW, the provisions of these terms and conditions shall prevail unless the Parties have obtained the express written consent of authorized signatories of each Party to deviate from the terms and conditions of these terms and conditions for a particular SOW and the SOW expressly states that the conflicting terms in the SOW shall prevail over the terms of these terms and conditions. Fortinet shall not be required to commence work under these terms and conditions unless a Statement of Work is duly executed. To the extent applicable, "**Deliverables**" shall mean those items specifically described and itemized in the SOW as final work products to be delivered by Fortinet pursuant to such SOW. For clarity, unless expressly and specifically described in an SOW, Fortinet shall not have responsibility to perform Services.
- 1.2. **Points of Contact.** Fortinet and Company will each designate an individual in the Statement of Work to act as a primary point of contact between the Parties with respect to the Services ("**POCs**"). Such POCs will have the power to make technical and project-level decisions within the scope of these terms and conditions (including, for example, staffing decisions, Change Orders, and Acceptance of Deliverables) that are binding on their respective entities. Amendments to these terms and conditions, however, must be made in accordance with the clause hereto governing contract amendments.
- 1.3. **Changes to Services.** Either Party may request a change order ("**Change Order**") in the event of actual or anticipated change(s) to the agreed scope of Services, Deliverables, project schedule, price, or any other aspect of the Statement of Work. Fortinet will prepare a Change Order reflecting the proposed changes, including but not limited to the impact on the Deliverables, project schedule, and price. Absent a Change Order signed by the Parties, Fortinet shall not be bound to perform any additional or out-of-scope services beyond what is stated in the SOW. The Parties agree to negotiate all Change Order requests expeditiously and in good faith. The Parties further agree that: (a) Fortinet may at its discretion undertake and accomplish tasks of a de minimis nature necessary to perform its obligations under any SOW at no additional cost and without requiring the execution of a Change Order; and (b) Fortinet shall be compensated with or without a Change Order for unplanned idle time and project delays (to the extent such delays are not caused by Fortinet).
- 1.4. **Acceptance.** If applicable, following submission of any Deliverable(s) by Fortinet, Company will perform testing and review in accordance with previously agreed testing standards and procedures as agreed by the Parties in the SOW. By the expiration of such review period, Company will submit a written statement (a "**Deliverable Review Statement**") to the Fortinet Project Manager indicating acceptance of the Deliverable(s) ("**Acceptance**") or specifying in detail how the submitted Deliverable(s) fails to materially conform to the agreed specification, in which case Fortinet shall be afforded a commercially reasonable period of time not less than thirty (30) days to correct any nonconformities, whereupon the review cycle will recommence. Deliverables will be deemed to be fully and finally accepted by Company in the event Company has not submitted a Deliverable Review Statement to Fortinet before the expiration of the applicable review period, or when Company uses the Deliverable in its business, whichever occurs first ("**Deemed Acceptance**"). Fortinet may request that Company execute a Work Complete as confirmation of acceptance and Company shall execute such Work Complete and/or identify any issues with the Services that prevent confirmation of the Work Complete within five (5) business days of Fortinet's request. Unless specifically agreed in an SOW, Fortinet's invoicing will be on a periodic basis and not linked to Acceptance. Notwithstanding anything to the contrary, Company shall be obligated to pay for Services performed regardless of Acceptance.
- 1.5. **Company Input and Responsibilities.** Company will supply in a timely manner information, materials and actions necessary to the project including as applicable data, designs, programs, specifications, management decisions, approvals, acceptance criteria, and other information and material, plus any other assistance and materials as reasonably requested by Fortinet at Company's cost, for Fortinet's use in carrying out the Services ("**Inputs**"). Further Company responsibilities

may be set out in a Statement of Work or project planning document agreed between the Parties. Company may further provide equipment and software (“**Project Tools**”) to Fortinet in order for Fortinet to provide the Services. Company shall bear all license, procurement and maintenance expenses related to the Project Tools.

- 1.6. **Performance Generally.** Fortinet’s failure to perform its contractual responsibilities, to perform the services, or to meet agreed service levels shall be excused if and to the extent Fortinet’s non-performance is caused by Company’s omission to act, delay, wrongful action, failure to provide Inputs, or failure to perform its obligations under these terms and conditions

2. STAFFING

- 2.1. **Team Composition.** Fortinet shall determine, after consultation with Company, the size, composition and distribution of the resource team, which Fortinet may change from time to time based upon the scope and complexity of the Services.
- 2.2. **Removal.** Company may require Fortinet to remove a team member if, after due consultation with Fortinet, it is reasonably determined that the individual is not suitable to perform the Services. Any such removal shall be effective after a minimum of fourteen (14) days written notice. Fortinet shall assign a replacement resource to the Services as soon as practicable. Company understands and acknowledges, however, that removal of a resource in fixed-price or fixed-schedule engagements may affect the pricing and project schedule for the affected Services and agrees to execute appropriate Change Orders to accommodate such removal.

3. PRICING, INVOICING & PAYMENT

- 3.1. **Pricing & Payments.** Projects will be performed as stated on this SOW and be billed in accordance with Fortinet’s then-current rates as of the date of execution of the SOW. Unless stated otherwise in the applicable SOW, if applicable, Customer must pay invoices within thirty (30) days from the date of Fortinet’s invoice. Fortinet may charge interest at the lower of (a) a rate of 1.5% per month for delayed payments or (b) to the maximum extent allowed by law.
- 3.2. **Taxes.** The fees chargeable by Fortinet are stated exclusive of all taxes, duties and levies imposed by any government body. Company shall be liable and will pay for all applicable tax liabilities such as sales, services, use or value added taxes, but specifically excluding employment related taxes concerning Fortinet personnel and corporate taxes based on Fortinet’s net income.

4. CONFIDENTIALITY

- 4.1. The Parties agree that with respect to any business information of the disclosing Party which (a) is marked as “confidential,” proprietary” or some similar indication; (b) is expressly advised by the disclosing Party to be confidential through some contemporaneous written means; or (c) which the receiving Party would reasonably construe to be confidential information under the circumstances (collectively referred to as “Confidential Information”): (i) to use such Confidential Information only in relation to the Services; (ii) not to disclose any such Confidential Information or any part thereof to a person outside the Party’s business organization for any purposes unless expressly authorized by the owner of such Confidential Information; (iii) to limit dissemination of such Confidential Information to persons within the Party’s business organization who are directly involved in the performance of Services under these terms and conditions and have a need to use such Confidential Information; (iv) to safeguard the Confidential Information to the same extent that it safeguards its own confidential materials or data.
- 4.2. Confidential Information shall not include information that: (a) is as of the time of its disclosure part of the public domain; (b) is subsequently learned from a third Party without a duty of confidentiality; (c) at the time of disclosure was already in the possession of the receiving Party; (d) was developed by employees or agents of the receiving Party independently of and without reference to any information communicated to the receiving Party; or (e) is required to be disclosed pursuant to a court order or government authority, whereupon the receiving Party shall, at its earliest opportunity, provide written notice to the disclosing Party prior to such disclosure and where feasible giving the disclosing Party a reasonable opportunity to secure a protective order or take other action as appropriate.
- 4.3. The Parties’ obligations under this Section shall extend to the non-publicizing of any dispute arising out of these terms and conditions.
- 4.4. The terms of this clause shall continue in full force and effect for a period of three(3) years from the date of disclosure of such Confidential Information.
- 4.5. In the event of termination of these terms and conditions, upon written request of the disclosing Party, the receiving Party shall immediately return the disclosing Party’s Confidential Information, or at the disclosing Party’s option destroy any remaining Confidential Information and certify that such destruction has taken place, provided however that Fortinet may retain a minimum of one copy of all work product and relevant project documentation for archival and audit purposes.

5. PROPRIETARY RIGHTS

- 5.1. Retained Rights. Each Party owns, and will continue to own all right, title and interest in and to any inventions however embodied, know how, works in any media, software, information, trade secrets, materials, property or proprietary interest that it owned prior to these terms and conditions, or that it created or acquired independently of its obligations pursuant to these terms and conditions (collectively, "Retained Rights"). All Retained Rights not expressly transferred or licensed herein are reserved to the respective owner.
- 5.2. Deliverables and Fortinet Materials. All intellectual property rights in, or related to, any developments, Deliverables, enhancements, or other work product of Fortinet or related to the services to be performed hereunder or under any SOW shall be owned solely by Fortinet. Fortinet owns (or will own) any such material that is used in, enhanced, or developed in the course of providing services hereunder, and all intellectual property rights to such material, including: any and all rights throughout the word, arising out of, or associated with models, designs, patents, applications therefor, all trade secrets, proprietary information rights, know how, works of authorship, mask works, trade names, logos, trademarks, service marks, methodologies; delivery procedures; manuals; generic software tools, routines, frameworks, and components; generic content, research and background materials; templates; analytical models; project tools; development tools; and all other intellectual property and ownership rights (collectively, "Fortinet Materials"). To the extent any Fortinet Materials are necessarily required for the proper functioning of the Deliverables (such that the Deliverables will not function without the Fortinet Materials) or are embedded into the Deliverables, Fortinet grants to Company a perpetual, nonexclusive, non-transferable, royalty-free, worldwide license to use such Fortinet Materials solely in conjunction with its use of such Deliverables. Company acknowledges that the Fortinet Materials are Confidential Information of Fortinet, regardless of whether so designated. This section shall not prohibit fee-based licensing of certain intellectual property of Fortinet as may be agreed by the Parties.

6. REPRESENTATIONS, WARRANTIES AND COVENANTS

- 6.1. Authority to Contract. The Parties each represent and warrant that they have obtained all necessary corporate approvals to enter into these terms and conditions and that no consent, approval, or withholding of objection is required from any external authority with respect to the entering into of these terms and conditions. The Parties further represent and warrant that they are under no obligation or restriction, nor will they assume any such obligation or restriction, that would in any way interfere or conflict with any obligations under these terms and conditions.
- 6.2. Compliance with Laws. The Parties covenant that they will comply with all applicable laws and regulations in their conduct pursuant to these terms and conditions. The Parties further covenant that a change in laws that materially alters the assumptions upon which Fortinet entered these terms and conditions or a particular SOW shall warrant a Change Order.
- 6.3. Warranty on Services. Fortinet warrants that it will perform the Services in a professional and workmanlike manner and that its personnel have the requisite skills and experiences to perform the Services. Company agrees that in the event of a breach of the foregoing warranty, its only remedy shall be the re-performance of the Services by Fortinet.
- 6.4. Warranty Disclaimer. EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 6, FORTINET EXCLUDES AND DISCLAIMS ALL OTHER WARRANTIES, CONDITIONS OR STATEMENTS, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR THAT DELIVERABLES WILL BE ERROR-FREE

7. INDEMNIFICATION

- 7.1. Subject to Section 8, Company shall indemnify, defend, and hold harmless from and against any damages, costs, attorneys' fees, penalties, fines, liabilities, or expenses that arise from third party actions or claims (collectively, "Losses") against Fortinet and its affiliates, officers and directors, employees, agents, and representatives relating to (a) death or injury to persons caused by the Company; (b) a violation of applicable laws by the Company; or (c) Company's infringement of a third Party's intellectual property rights where such third Party is located in either the country where the Services were provided or received.
- 7.2. Subject to Section 8, Fortinet shall indemnify, defend, and hold harmless from and against any damages, costs, attorneys' fees, penalties, fines, liabilities, or expenses that arise from third party actions or claims (collectively, "Losses") against Company relating to (a) death or injury to persons caused by the Fortinet; or (b) Fortinet's infringement of a third Party's intellectual property rights where such third Party is located in either the country where the Services were provided or received, provided however that Fortinet shall not have any liability to Company under this Section to the extent that any infringement or claim thereof is attributable to: (i) the combination, operation or use of a Deliverable with equipment or software supplied by Company where the Deliverable would not itself be infringing; (ii) compliance with designs, specifications or instructions provided by Company; (iii) use of a Deliverable in an application or environment for which it was not designed or contemplated under these terms and conditions; or (iv) modifications of a Deliverable by anyone other than Fortinet where the unmodified version of the Deliverable would not have been infringing. Fortinet will completely satisfy its obligations hereunder if, after receiving notice of a claim, Fortinet obtains for Company the right to

continue using such Deliverables as provided without infringement, or replace or modify such Deliverables so that they become non-infringing.

- 7.3. Promptly after an indemnitee receives notice of any claim for which it will seek indemnification pursuant to these terms and conditions, the indemnitee will notify the indemnitor of the claim in writing. No failure to so notify the indemnitor will abrogate or diminish the indemnitor's obligations under this Section if the indemnitor has or receives knowledge of the claim by other means or if the failure to notify does not materially prejudice its ability to defend the claim. Within fifteen (15) days after receiving an indemnitee's notice of a claim, but no later than ten (10) days before the date on which any formal response to the claim is due, the indemnitor will notify the Indemnitee in writing as to whether the indemnitor acknowledges its indemnification obligation and elects to assume control of the defense and settlement of the claim (a "**Notice of Election**"). In issuing a Notice of Election, the indemnitor waives any right of contribution against the indemnitee unless the Notice of Election expressly states that indemnitor believes in good faith that the Indemnitee may be liable for portions of the claim that are not subject to indemnification by the Indemnitor, in which case the indemnitee will have the right to participate in the defense and settlement of the claim at its own expense using counsel selected by it.
- 7.4. If the indemnitor timely delivers a Notice of Election, it will be entitled to have sole control over the defense and settlement of the claim except as provided in the immediately preceding paragraph. After delivering a timely Notice of Election, the indemnitor will not be liable to the Indemnitee for any attorneys' fees subsequently incurred by the indemnitee in defending or settling the claim. In addition, the indemnitor will not be required to reimburse the indemnitee for any amount paid or payable by the indemnitee in settlement of the claim if the settlement was agreed to without the written consent of the indemnitor.
- 7.5. If the indemnitor does not deliver a timely Notice of Election for a claim, the indemnitee may defend and/or settle the claim in such manner as it may deem appropriate, and the indemnitor will promptly reimburse the indemnitee upon demand for all Losses suffered or incurred by the Indemnitee with respect to the claim.
- 7.6. Exclusive Remedy. This Section 7 "Indemnification" constitutes the exclusive rights and remedies for the matters indemnified.

8. LIMITATION OF LIABILITY

- 8.1. Limitation of Liability. NOTWITHSTANDING ANYTHING TO THE CONTRARY ELSEWHERE CONTAINED IN THESE TERMS AND CONDITIONS, NEITHER PARTY SHALL, IN ANY EVENT, REGARDLESS OF THE FORM OF CLAIM, BE LIABLE FOR (1) ANY INDIRECT, SPECIAL, PUNITIVE, EXEMPLARY, SPECULATIVE OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, ANY LOSS OF USE, LOSS OF DATA, BUSINESS INTERRUPTION, AND LOSS OF INCOME OR PROFITS, IRRESPECTIVE OF WHETHER IT HAD AN ADVANCE NOTICE OF THE POSSIBILITY OF ANY SUCH DAMAGES; OR (2) DAMAGES RELATING TO ANY CLAIM THAT ACCRUED MORE THAN TWO (2) YEARS BEFORE THE INSTITUTION OF ADVERSARIAL PROCEEDINGS THEREON. TOTAL LIABILITY. SUBJECT TO THE ABOVE AND NOTWITHSTANDING ANYTHING TO THE CONTRARY ELSEWHERE CONTAINED HEREIN, THE MAXIMUM AGGREGATE LIABILITY OF FORTINET SHALL BE, REGARDLESS OF THE FORM OF CLAIM, THE CONSIDERATION RECEIVED BY FORTINET FOR THE STATEMENT OF WORK TO WHICH THE CLAIM RELATES DURING THE PRECEDING THREE (3) MONTHS. FOR CLAIMS THAT ARISE UNDER THESE TERMS AND CONDITIONS AND THAT DO NOT LOGICALLY RELATE TO A PARTICULAR STATEMENT OF WORK, THE MAXIMUM AGGREGATE LIABILITY OF FORTINET SHALL BE THE SUM OF THE CONSIDERATION RECEIVED UNDER ALL ACTIVE STATEMENTS OF WORK UNDER THESE TERMS AND CONDITIONS FOR THE PRECEDING THREE (3) MONTHS.

9. TERMINATION

- 9.1. Termination for Convenience. Fortinet may, without cause or for convenience, terminate any SOW and/or these terms and conditions upon written notice of two (2) months to the other party.
- 9.2. Termination for Cause. Either Party may terminate any SOW upon written notice to the other in the event that: (a) the other Party commits a material breach of these terms and conditions or Statement of Work and fails to cure such default to the non-defaulting Party's reasonable satisfaction within thirty (30) days after receipt of notice; or (b) the other Party becomes insolvent or bankrupt, assigns all or a substantial part of its business or assets for the benefit of creditors, permits the appointment of a receiver for its business or assets, becomes subject to any legal proceeding relating to insolvency or the protection of creditors' rights or otherwise ceases to conduct business in the normal course.
- 9.3. Effects of Termination. In the event of termination of an SOW hereunder, Company shall pay Fortinet: (1) all fees as specified in the SOW and expenses up to the effective date of the termination, including work in progress, plus fees for the applicable notice period irrespective of whether Company requires Fortinet's services during such period; and (2) any termination charges agreed by the Parties. If these terms and conditions is terminated before all SOWs executed hereunder are terminated or completed, the terms of these terms and conditions shall remain in full force until the termination or completion of such Statements of Work.

10. MISCELLANEOUS

10.1. Relationship of the Parties. It is understood and agreed that Fortinet will provide services under these terms and conditions as an independent contractor and that during the performance of Services under these terms and conditions, Fortinet's employees will not be considered employees of Company for any purpose whatsoever. Accordingly, Fortinet shall be solely responsible for the compensation of such employees and all employment-related taxes. Further, nothing herein shall be construed to entitle either Party to be a representative, agent, partner or joint venturer of the other.

11. FORCE MAJEURE

11.1. Force Majeure. Except for the obligation to make payments, nonperformance of either party shall be excused to the extent performance is rendered impossible by strike, fire, flood, governmental acts or orders or restrictions, failure of suppliers or any other reason where failure to perform is beyond the reasonable control of and is not caused by the negligence of the non-performing party. In the event such an event prevents performance thereunder for a period in excess of sixty (60) days, then the non-defaulting party may elect to terminate these terms and conditions and/or cancel or suspend any SOWs thereunder by a written notice to the defaulting party.

12. DISPUTE RESOLUTION

12.1. Dispute Resolution and Venue. Any controversies or claims arising from or relating to these terms and conditions, or the breach or validity thereof, which cannot be amicably settled by and between the parties, shall be referred to and finally settled by arbitration. The place of arbitration shall be Santa Clara, California, pursuant to the Streamlined Arbitration Rules and Procedures of Judicial Arbitration and Mediation Services (JAMS), or its successor, before a sole, mutually agreeable arbitrator, in accordance with the laws of the State of California for agreements made in and to be performed in that State.

13. GENERAL

13.1. Governing Law. These terms and conditions shall be interpreted and construed in accordance with the laws of the State of California, without regard to its conflicts of laws provisions.

13.2. Headings. The headings used in these terms and conditions are for the convenience of the Parties only and shall not be deemed a part of, or referenced in, construction of these terms and conditions.

13.3. Assignments. These terms and conditions will be binding on the Parties hereto and their respective successors and assigns. Neither Party may assign these terms and conditions or SOWs without the prior written consent of the other. Any assignment by operation of law, order of any court, or pursuant to any plan of merger, consolidation or liquidation, will be deemed an assignment for which prior consent is required and any assignment made without any such consent will be void and of no effect as between the Parties. Notwithstanding the forgoing Fortinet may assign these terms and conditions pursuant to a merger, acquisition, or sale of at least fifty percent (50%) its assets without consent.

13.4. Entire Agreement. The provisions of these terms and conditions, including any appendices, schedules, exhibits, or SOWs referred to herein and/or attached hereto, constitute the entire agreement between the parties with respect to the subject matter hereof, and these terms and conditions supersedes all prior agreements or representations, oral or written, regarding such subject matter. Except as provided for in these terms and conditions, these terms and conditions may not be modified or amended except in a writing signed by a duly authorized representative of each party, and, furthermore, Company acknowledges and agrees that Fortinet is not bound by any purported amendment or new agreement signed by a representative of Fortinet other than Fortinet's General Counsel. For clarity, only Fortinet's General Counsel is authorized to alter, amend, or modify these terms and conditions in any way or enter a new agreement on behalf of Fortinet or its affiliates, and any amendment or new agreement that is not signed by Fortinet's General Counsel, regardless of whether including a Fortinet, or Fortinet affiliate, company seal or chop, is null and void and of no force and effect.

13.5. Modifications. No amendment or change to these terms and conditions or any waiver or discharge or any rights or obligations under these terms and conditions will be valid unless in writing and signed by an authorized representative of the Party against which such amendment, change, waiver or discharge is sought to be enforced.

13.6. Severability. In the event that any provision of these terms and conditions conflicts with the law under which these terms and conditions is to be construed or if any such provision is held invalid by a competent authority, such provision will be deemed to be restated to reflect as nearly as possible the original intentions of the Parties in accordance with applicable law. The remainder of these terms and conditions will remain in full force and effect.

13.7. Survivability. Any provision of these terms and conditions that contemplates performance or observance subsequent to termination or expiration of these terms and conditions will survive termination or expiration of these terms and conditions and continue in full force and effect, including the following:

Pricing, Invoicing, and Payment (Section 3)
Confidentiality (Section 4)
Proprietary Rights (Section 5)
Representations, Warranties, and Covenants (Section 6)
Indemnification (Section 7)
Limitation of Liability (Section 8)
Dispute Resolution (Section 12)
General (Section 13).

Notices. All notices, requests, demands and determinations under these terms and conditions other than routine operational communications will be in writing through (i) hand delivery, (ii) express overnight courier with a reliable system for tracking delivery, or (iii) confirmed facsimile or electronic mail with a copy sent by another means specified herein, to the following:

If to Fortinet: Fortinet, Inc.
899 Kifer Rd
Sunnyvale, CA 94086
Attn: General Counsel

with a copy to: Chief Financial Officer

If to Company: Address as set forth in the Statement of Work between
Company and Fortinet.

June 2016

-----End of Document-----



The Security Intelligence Company

LOGRHYTHM GLOBAL END USER LICENSE AGREEMENT

Important – read this carefully before installing, using or electronically accessing this proprietary product.

This LogRhythm Global End User License Agreement, which incorporates the applicable attached Schedules and any Statements of Work and Orders agreed by the parties (“**Agreement**”), is a legal agreement between LogRhythm, Inc. (“**LogRhythm**”) and the business entity that you (“**You**”) are acting on behalf of (“**Customer**”) as the purchaser of the LogRhythm hardware, services and/or the end user of the LogRhythm software accompanying this Agreement, which includes the object code version of the software and may include associated media, printed materials and documentation.

You agree that You are an employee or agent of Customer and are entering into this Agreement to purchase the hardware, services and/or obtain the software for use by Customer for Customer’s own business purposes. You hereby agree that You enter into this Agreement on behalf of Customer and that You have the authority to bind Customer to the terms and conditions of this Agreement.

You will be required to indicate your agreement to these terms and conditions in order to use the software. By installing, downloading, configuring, accessing, or otherwise using the hardware or the software, including any updates, upgrades, or newer versions, You acknowledge that You have read this Agreement, understand this Agreement, and that Customer agrees to be bound by all of the terms of this Agreement.

This Agreement includes and incorporated attachment as follows:

1. If you purchase the LogRhythm products and/or services in the APJ Region (as defined below), Schedule A is incorporated into this Agreement
2. If you purchase the LogRhythm, products and/or services in Europe (excluding Turkey), Schedule B is incorporated into this Agreement.
3. If you purchase the LogRhythm products and/or services in the Middle East, Turkey and/or Africa, Schedule C is incorporated into this Agreement.
4. If you purchase the LogRhythm products and/or services in North America, Central America, South America or any other country or territory not specifically referenced above, Schedule D is incorporated into this Agreement.

For purposes of this Agreement, “APJ Region” means Japan, South Korea, China, Taiwan, Myanmar, India, Pakistan, Nepal, Bangladesh, Thailand, Vietnam, Philippines, Cambodia, Malaysia, Singapore, Australia, New Zealand, and the Pacific Islands.

SCHEDULE A
APJ TERMS AND CONDITIONS

1. DEFINITIONS.

1.1 "Affiliate" means, with respect to a party, any other entity that directly or indirectly controls, is controlled by or is under common control with such entity, where "control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of such entity through the ownership of fifty percent (50%) or more of the outstanding voting securities (but only for as long as such entity meets these requirements).

1.2 "Appliance" means a Product comprised of Hardware and Software installed on that Hardware.

1.3 "Australian Consumer Law" means Schedule 2 to the *Competition and Consumer Act 2010* (Cth).

1.4 "Authorized Reseller" means a reseller, distributor or partner authorized and approved by LogRhythm to resell the Products, Cloud Services and related services.

1.5 "Cloud Services" means a software as a service or other cloud-based offering that LogRhythm provides using the Software.

1.6 "Cloud Service Subscription" means a right to access and use the LogRhythm Cloud Services for the duration specified in the applicable Order.

1.7 "Customer Data" means Customer Information (as defined in Section 11) that is (a) disclosed or provided to LogRhythm by or on behalf of Customer or (b) collected or received from Customer by LogRhythm.

1.8 "Documentation" means the user manuals provided to Customer with the Software Hardware or Cloud Services upon delivery or activation, in either electronic, online help files or hard copy format. All Documentation is provided in English.

1.9 "Effective Date" means the date the Order was signed by LogRhythm or, if there is no signed Order, the date the Order was accepted by LogRhythm.

1.10 "Error" shall mean a reproducible defect in a Product which causes the Product not to operate substantially in accordance with the Documentation.

1.11 "Hardware" means the hardware supplied by LogRhythm as set forth on an Order.

1.12 "Intellectual Property Rights" means all intellectual and industrial property rights throughout the world, including but not limited to copyright and related rights, trademarks, service marks, rights to preserve the confidentiality of information (including know-how and trade secrets), trade names, domain names, rights in get-up, goodwill and right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, patents, patent applications, moral rights, contract rights and other intellectual proprietary rights, including all applications for (and right to apply for and be granted) renewals or extensions of, and right to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist, now or in the future, or in any part of the world. "

1.13 "Non-Excludable Provision" has the meaning given in Section 10.3.

1.14 "Order" means ordering documentation between Customer and LogRhythm or an Authorized Reseller and may include a signed quotation from LogRhythm or a Customer purchase order accepted by LogRhythm.

1.15 "Perpetual" means the license right to use the Software indefinitely.

1.16 "Personal Information" means personal information, as that term is defined in the *Privacy Act 1988* (Cth), that is provided to, or obtained or accessed by, either party in the course of performing its obligations under this Agreement.

1.17 "PPSA" means the *Personal Property Securities Act 2009* (Cth).

1.18 "Privacy Legislation" means the *Privacy Act 1988* (Cth) and any legislation in any non-Australian jurisdiction (to the extent that either party or any of its Personal Information is subject to the laws of that jurisdiction) affecting privacy, Personal Information or the collection, handling, storage, processing, use or disclosure of personal data.

1.19 "Product(s)" means the Software, Appliance and/or Hardware.

1.20 "Protected System" means the network attached device generating network traffic.

1.21 "Software" means the LogRhythm software programs identified in an Order, including Third Party Software, and any Upgrade, Update or Maintenance Release (as defined in Exhibit A) that LogRhythm provides to Customer pursuant to the Support Services.

1.22 "Subscription" means a term license right to use the Software the duration which is specified in the Applicable Order.

1.23 "Support Services" means LogRhythm's technical support and maintenance services set forth in the Support Services Addendum.

1.24 "Support Services Fees" has the meaning given in Section 6.1.

1.25 "Third Party Software" means any software that is provided with the Software but that is not owned by LogRhythm.

1.26 “User” means individuals or a unique entry in Customer’s directory of record for Customer’s employees, which includes but is not limited to employees, contractors or agents of Customer actively utilizing Customer’s IT infrastructure and any end customers monitored by Customer. End customers can include unique active directory entries of Customer’s customers for example, a payment, billing, or authentication system used by the Customer to conduct business with the end customers.

2. LICENSE GRANT AND OTHER RIGHTS.

2.1 License Grant. Subject to the terms and conditions of this Agreement and payment by Customer of all license fees due for the Software, LogRhythm grants to Customer during the term (either a Perpetual license or Subscription license, as specified Order), a non-exclusive, non-transferable (except as set forth in Section 13.3) license to use the Software solely for Customer’s internal business purposes in accordance with the Documentation and any limitations set forth in this Agreement or the Order. If Customer elects to deploy the Software for use in another host environment or another virtual environment (including any copy of the Software for backup and disaster recovery purposes), each instance requires its own license for which Customer will need a license key which shall be provided by LogRhythm upon request of Customer. The Software shall be deemed delivered when a license key which unlocks the Software is provided by LogRhythm to Customer.

2.2 License Metrics. If Customer’s Product is licensed by: (a) messages per second (“MPS”) as specified in the Order, the MPS use limitation of the license refers to a rolling 24-hour average of messages per second received by the Software whereby “message” means each individual log or system event received by the Product including without limitation flat file, SNMP, SMTP, netflow (j flow and S flow), syslog or other event or system record. Customer may exceed the MPS limitation by up to 10% without additional charge, and Customer will not be charged for a one-time anomalous event that causes a spike in MPS usage above the specified MPS limitation; (b) network bandwidth (specified in the Order as a bandwidth or bandwidth per second such as 1GB or 1GB/second), the network bandwidth use limitation refers to a rolling 15-minute average of network bandwidth usage per second; (c) “Identity”, an Identity is a unique person or service account. A person-based Identity may have multiple identifiers such as user accounts, email addresses, and phone numbers. A service account is a user account that is created explicitly to provide an authentication context for a computer or set of computers and/or services running on that computer. An Identity license is required for each unique person-based Identity and each unique service account; (d) User, as defined above, is based on Customer’s identity directory of record for its User count at the inception of the Order; or (e) a Protected System, as defined above, includes a network attached device generating network traffic. Examples include but are not limited to servers, workstations, infrastructure devices, virtual systems and other equipment that protects and monitors network traffic using analytics and optional response to identify and remediate threats.

2.3 Affiliate Usage. Customer may utilize this Software on behalf of Customer Affiliates, provided Customer’s Affiliates are included in the appropriate license metrics count. If Customer’s Affiliates are not included in the license metric count, Customer is the only entity that may use the Software under this Agreement and the rights granted to Customer under this Agreement do not extend to any Customer Affiliate. Customer shall not permit any Customer Affiliates to use the Software on behalf of Customer or on behalf of such Affiliates. Any Customer Affiliate that desires to license the Software may enter into a separate Order with LogRhythm utilizing this Agreement, which shall be a separate agreement between LogRhythm and such Customer Affiliate.

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

2.5 Restrictions on Use. Except as expressly permitted by this Agreement, Customer shall not: (a) modify, adapt, alter, translate, or create derivative works from the Software, Cloud Services or Documentation; (b) rent, lease, loan, sublicense, distribute, sell or otherwise transfer the Software, Cloud Services or Documentation to any third party; (c) use the Software or Cloud Services in a service bureau or time sharing arrangement; (d) reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code for the Software or Cloud Services; (e) otherwise use or copy the Software, Cloud Services or Documentation except as expressly permitted in this Agreement; or (f) disclose to any third party the results of any benchmark tests or other evaluation of the Software or Cloud Services. If Customer will utilize the Cloud Services for any purpose other than the detection, mitigation, containment and eradication of cyberthreats, Customer is responsible for providing notice to, and obtaining consents from, individuals as required by applicable law.

3. CLOUD AI SERVICES. If Customer orders and pays for Cloud AI Services from LogRhythm, the terms and conditions set forth in the Cloud AI Services Addendum located on the LogRhythm website at <https://gallery.logrhythm.com/terms-and-conditions/addendums/LogRhythm-Cloud-AI-Services-Addendum-3-2021.pdf> and incorporated herein or attached to this Agreement shall apply to such Cloud Services in addition to the terms of this Agreement.

4. HARDWARE. If Customer orders and pays for Hardware from LogRhythm, the terms and conditions set forth in the Hardware Addendum located on the LogRhythm website at <https://gallery.logrhythm.com/terms-and-conditions/addendums/LogRhythm-Hardware-Procurement-Addendum-3-2021.pdf> and incorporated herein or attached to this Agreement shall apply to such Hardware purchases.

5. Evaluation License Grant. Notwithstanding anything to the contrary contained in Section 2 of this Agreement, if Customer is provided with evaluation Products or Cloud Services, then the term of use for evaluation will be limited to the free trial period specified in the Order or as otherwise determined by LogRhythm ("**Evaluation Period**"). During the Evaluation Period, LogRhythm grants to Customer a limited, non-exclusive, non-transferable, non-sublicensable license to install and use the evaluation Products or access and use the evaluation Cloud Service: (a) for internal use in a non-production capacity; and (b) to test and evaluate the Products or Cloud Service to assist Customer in its purchase decision. Any evaluation hardware provided to Customer shall remain the property of LogRhythm. Upon the expiration of the Evaluation Period the license or right of use granted to Customer will terminate and, within five (5) days after such termination, Customer will, at its own expense, uninstall all copies of the evaluation Software, and return the evaluation Hardware, if applicable, to LogRhythm. **The evaluation of the Products are provided "AS IS" and no warranty obligations of LogRhythm will apply and Support Services obligations do not apply to any evaluation Services.**

6. SUPPORT SERVICES; DEPLOYMENT; TRAINING.

6.1 Support Services. Support Services shall be subject to terms and conditions set forth in the Support Services Addendum located on the LogRhythm website at <https://gallery.logrhythm.com/terms-and-conditions/addendums/LogRhythm-Support-Services-Addendum-3-2021.pdf> and incorporated herein or attached to this Agreement. The initial Support Services term for Perpetual Software licenses and/or Hardware or an Appliance is one (1) year beginning on the Effective Date unless otherwise specified in the Order ("Initial Term"). Thereafter, Support Services for Perpetual licenses and/or Hardware or an Appliance shall renew automatically for additional one (1) year terms unless Customer elects to terminate Support Services by providing LogRhythm with at least thirty (30) days' written notice prior to the end of the applicable annual Support Services term. Support Services for Subscriptions are included in the Subscription Fee and Support Services are provided during the Subscription Term. Upon termination of such Support Services for a Perpetual license, Customer may continue to use the Software in accordance with this Agreement without the benefits provided under the Support Services Addendum. Support Services Fees for the Initial Term are set forth in the applicable Order and are invoiced on the Effective Date. LogRhythm may increase Support Services Fees for Perpetual licenses, Hardware and/or an Appliance for a Support Services renewal term up to seven percent over the prior year's Support Services Fees.

6.2 Professional Services. Subject to payment of the professional service fees set forth in an Order, LogRhythm shall provide to Customer the professional services specified in the Order and in accordance with the Professional Services Addendum located on the LogRhythm website at <https://gallery.logrhythm.com/terms-and-conditions/addendums/LogRhythm-Professional-Services-Addendum-3-2021.pdf> and incorporated herein or attached to this Agreement ("**Professional Services**"). Unless otherwise specified in an Order Customer must use any contracted Professional Services within one year of the Effective Date of the Order for Professional Services. Unless otherwise expressly stated in an Order, Customer shall pay all of LogRhythm's reasonable travel, meals and lodging costs and expenses incurred by LogRhythm in connection with the provision of all services by LogRhythm at Customer's facilities under this Agreement. Upon Customer's request, LogRhythm shall submit written evidence of each such expenditure to Customer prior to receiving reimbursement of such costs and expenses.

6.3 Training. Subject to payment of any training fees, Customer may obtain training services from LogRhythm in accordance with the applicable Order ("**Training Services**"). Customer must use any contracted Training Services within fifteen months of the date of purchase of such Training Services.

7. FEES AND PAYMENT.

7.1 Payment Customer shall pay LogRhythm or the Authorized Reseller the applicable fees specified in the Order ("Fees"). Unless otherwise expressly provided in this Agreement, LogRhythm shall invoice Customer on the Effective Date and Customer shall pay all invoices within thirty (30) days from the date of the invoice. Fees exclude, and Customer shall make all payments of fees to LogRhythm free and clear of, all applicable sales, use, and other taxes (excluding taxes based on LogRhythm's income) and all applicable export and import fees, customs duties and similar charges. If LogRhythm has a legal obligation to pay or collect taxes for which Customer is responsible under this Agreement, then the appropriate amount shall be invoiced to and paid by Customer, unless Customer specifies in the applicable Order that it claims tax exempt status for amounts due under this Agreement and provides LogRhythm a valid tax exemption certificate (authorized by the applicable governmental authority) at least five (5) Business Days prior to the date of the applicable LogRhythm invoice. LogRhythm may charge interest on all late payments at a rate of one and one-half percent (1½%) per month or the maximum rate permitted by applicable law; whichever is less, from the due date until paid. All Fees are non-refundable unless otherwise expressly stated herein. If Customer purchases Product or services through an Authorized Reseller, price and payment terms are between Customer and the Authorized Reseller.

7.2 Reports Audit Rights. LogRhythm may periodically run a report to determine the number of MPS Customer is utilizing with the Products. LogRhythm may also audit or appoint an independent audit firm selected by LogRhythm to audit Customer's records relating to Customer's use of the Products pursuant to this Agreement to verify that Customer has complied with the terms of this Agreement and to verify Customers compliance with the license rights Products. Any audit shall be conducted no more than once in any period of twelve consecutive months during Customer's normal business

hours and upon at least fifteen days' prior written notice. The audit shall be conducted at LogRhythm's expense unless the audit reveals that Customer has underpaid the amounts owed to LogRhythm by five percent or more, in which case Customer shall reimburse LogRhythm for all reasonable costs and expenses incurred by LogRhythm in connection with such audit. Customer shall promptly pay to LogRhythm any amounts owed plus interest as provided in Section 7.1.

8. WARRANTY.

8.1 Product Warranty. For a period of ninety (90) days after the Effective Date ("Warranty Period"), LogRhythm warrants that the Product, when used in accordance with the instructions in the applicable Documentation, shall operate as described in the Documentation in all material respects. LogRhythm does not warrant that Customer's use of the Product will be error-free or uninterrupted. LogRhythm shall, at its own expense and as its sole obligation and Customer's exclusive remedy for any breach of this warranty, (a) correct any reproducible Error in the Product reported to LogRhythm by Customer in writing during the Warranty Period, or (b) if LogRhythm determines that it is unable to correct the Error or replace the Product, Customer may terminate this Agreement and, LogRhythm shall refund to Customer Product and Support Services Fees actually paid for the defective Product, in which case Customer's right to use the Software shall terminate.

8.2 Disclaimers. All express or implied guarantees, warranties, representations, or other terms and conditions relating to this Agreement or its subject matter which are not contained in this Agreement, are excluded from this Agreement to the maximum extent permitted by law.

9. INFRINGEMENT CLAIMS.

9.1 Indemnity. LogRhythm shall defend Customer at LogRhythm's expense, against any claim demand, suit, or proceeding brought against Customer by a third party alleging that Software infringes or misappropriates any third party's Intellectual Property Rights (each, a "**Claim**"), and LogRhythm shall indemnify Customer from damages, reasonable attorney's fees and costs finally awarded against Customer as a result of, or for amounts paid by Customer under a settlement approved by LogRhythm in writing of a Claim. The foregoing obligations are conditioned on Customer (a) notifying LogRhythm promptly in writing of the Claim, (b) giving LogRhythm sole control of the defense thereof and any related settlement negotiations, and (c) reasonably cooperating and, at LogRhythm's request and expense, assists in such defense.

9.2 Injunction. If the Product becomes, or in LogRhythm's opinion is likely to become, the subject of an infringement claim, LogRhythm may, at LogRhythm's discretion and at no cost to Customer (a) procure for Customer the right to continue using the Product, or (b) replace or modify the Product so that it becomes non-infringing and remains functionally equivalent; or (c) if in LogRhythm's reasonable opinion, neither (a) or (b) option is commercially viable, notify Customer in writing that this Agreement will terminate on the date specified in the notice of termination issued by LogRhythm to Customer. If this Agreement is terminated under this Section 9.2: (i) For Products, LogRhythm will refund Customer the fees paid for such Product computed according to a thirty-six (36) month straight-line amortization schedule beginning on the Effective Date and Customer will be entitled to terminate any Support Services related to such Product and if Customer elects to do so, those Support Services will terminate on the date specified in the notice of termination issued by Customer to LogRhythm and LogRhythm will refund to Customer the unexpired portion of the Support Services Fees.

9.3 Exclusions. Notwithstanding the foregoing, LogRhythm shall have no obligation under this Section 9 or otherwise with respect to any Claim to the extent based on: (a) any use of the Product not in accordance with this Agreement or the Documentation; (b) any use of the Product in combination with other products, hardware, equipment, or software not provided by LogRhythm if the Product, or use thereof would not infringe without such combination; (c) use of any release of the Software other than the most current release made available to Customer; provided that LogRhythm notified Customer that any Update to the Software could avoid infringement and further provided that LogRhythm will provide indemnity for use up to the date of such notification; or (d) any modification of the Software by any person other than LogRhythm or its authorized agents or subcontractors. Section 9 states LogRhythm's entire liability and Customer's exclusive remedy for infringement claims and actions.

10. LIMITATION OF LIABILITY.

10.1 Subject to this Section 10 and LogRhythm's obligations under the Non-Excludable Provisions, and to the maximum extent permitted by law, in no event will either party be liable under this Agreement for any consequential, indirect, exemplary, special, or incidental damages, damages for any loss or corruption of data, loss of profits, revenue, goodwill or anticipated savings, or the cost of procurement of substitute goods or services, arising from or relating to this Agreement, whether in contract, tort (including negligence), in equity, under statute, under an indemnity, whether or not such loss or damage was foreseeable and even if such party has been advised of the possibility of the loss or damage.

10.2 Nothing in this Agreement excludes, restricts or modifies any right or remedy, or any guarantee, warranty or other term or condition, implied or imposed by any legislation which cannot lawfully be excluded or limited. This may include the Australian Consumer Law, which contains guarantees that protect the purchasers of goods and services in certain circumstances.

10.3 If any guarantee, warranty, term or condition is implied or imposed in relation to this Agreement under the Australian Consumer Law or any other applicable legislation and cannot be excluded (a "**Non-Excludable Provision**"), and

LogRhythm is able to limit Customer's remedy for a breach of the Non-Excludable Provision, then the liability for breach of the Non-Excludable Provision is limited to one or more of the following at LogRhythm's option:

(a) in the case of goods, the replacement of the goods or the supply of equivalent goods, the repair of the goods, the payment of the cost of replacing the goods or of acquiring equivalent goods, or the payment of the cost of having the goods repaired; or

(b) in the case of services, the supplying of the services again, or the payment of the cost of having the services supplied again.

10.4 Subject to this Section 10.4 and LogRhythm's obligations under the Non-Excludable Provisions, and to the maximum extent permitted by law, the maximum aggregate liability of each party for all claims under or relating to this Agreement or its subject matter, whether in contract, tort (including without limitation negligence), in equity, under statute, under an indemnity or otherwise, shall not exceed the amount of the Fees paid by Customer to LogRhythm during the twelve (12) month period preceding the events giving rise to such liability.

10.5 The limits on liability set out in this Section 10.5 shall not apply in respect of:

(a) LogRhythm's liability under the indemnity provisions in section 9.1;

(b) Customer's breach of LogRhythm's Intellectual Property Rights;

(c) any breach of section 11;

(d) liability for fraud or willful misconduct; or

(e) Customer's obligation to pay fees or charges to LogRhythm under or in connection with this Agreement.

11. CONFIDENTIALITY AND PRIVACY.

11.1 Confidential Information. For the purposes of this Section 11, "**Confidential 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, that:

(a) should reasonably have been understood by Recipient to be proprietary and confidential to Discloser or to a third party, including because of the circumstances of disclosure;

(b) is designated by Discloser as confidential, including by the use of legends or other markings; or

(c) is by its nature confidential. Confidential Information may be disclosed in written or other tangible form (including on magnetic media) or by oral, visual or other means. Confidential Information includes, without limitation, information of or relating to 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 Discloser, as well as the terms of this Agreement.

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

11.3 Exceptions. Recipient's obligations under Section 11.2 with respect to any Confidential Information of Discloser shall terminate only to the extent that such information: (a) was already known to Recipient at the time of disclosure by Discloser; (b) was disclosed to Recipient by a third party who had the right to make such disclosure without any confidentiality restrictions; (c) is, or through no fault of Recipient has become, generally available to the public; or (d) was independently developed by Recipient without access to, or use of, Discloser's Confidential Information. In addition, Recipient shall be allowed to disclose Confidential Information of Discloser to the extent that such disclosure is: (i) approved in writing by Discloser prior to any disclosure; (ii) necessary for Recipient to enforce its rights under this 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, or in order to comply with any rules or regulations of any stock exchanges, provided that Recipient notifies Discloser of such required disclosure promptly and in writing and cooperates with Discloser, at Discloser's request and expense, in any lawful action to contest or limit the scope of such required disclosure.

11.4 Return of Information. Except as otherwise expressly provided in this Agreement, Recipient shall return to Discloser or destroy all Confidential Information of Discloser in Recipient's possession or control and permanently erase all electronic copies of such Confidential Information promptly upon the written request of Discloser. Recipient shall certify in writing signed by an officer of Recipient that it has fully complied with its obligations under this Section 11.4.

11.5 Privacy. If either party collects, uses, discloses, transfers or otherwise handles any Personal Information in connection with this Agreement, it must comply with all applicable Privacy Legislation.

12. TERM AND TERMINATION.

12.1 Term. The “Term” of a Perpetual license continues until terminated as provided in Section 12.2. The “Term” of a Subscription Term Agreement expires at the end of the Subscription specified in the applicable Order unless the parties enter into a new Subscription.

12.2 Termination. Either party may terminate this Agreement if the other party breaches any material provision of this Agreement and does not cure such breach within thirty (30) days after receiving written notice thereof.

12.3 Refund or Payment upon Termination. If this Agreement is terminated by Customer in accordance with Section 12.2 (Termination), LogRhythm will refund Customer: any prepaid, unused Fees for services.;. If this Agreement is terminated by LogRhythm in accordance with Section 12.2, Customer will pay any unpaid Fees covering the remainder of the applicable term of all Orders. In no event will termination relieve Customer of its obligation to pay any Fees payable to LogRhythm prior to the effective date of termination.

12.4 Effects of Termination. Upon termination or expiry of this Agreement (i) all licensed rights granted in this Agreement shall immediately terminate, and Customer will lose access to the applicable Cloud Service; and (ii) Customer must promptly discontinue all use of the Software, erase all copies of the Software from Customer’s computers, return to LogRhythm or destroy all copies of the Software, Documentation and other LogRhythm Information in Customer’s possession or control. Sections 1, 2.5, 6, 7.3, 8,9,11, 13 and Sections 3 and 7 of the Cloud Services Addendum shall survive expiry or termination of this Agreement for any reason, together with any accrued payment obligations and any other sections of this Agreement which expressly or by their nature survive expiry or termination.

13. GENERAL.

13.1 Proprietary Rights. The Products 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, Cloud Services and Documentation not expressly granted to Customer in this Agreement are reserved by LogRhythm and its licensors. Customer shall not remove, alter, or obscure any proprietary notices (including copyright notices) of LogRhythm or its licensors on or within the Software, Cloud Services or Documentation.

13.2 Compliance with Laws. Customer shall not export, reexport, or transfer, directly or indirectly, any information, process, product, technology, funds or services to countries or territories specified as prohibited destinations under U.S. trade controls laws, including Cuba, Iran, North Korea, Sudan, Syria, and the Crimea region or as otherwise prohibited by U.S. trade control laws, including the economic sanctions and export control laws and regulations administered by the U.S. Department of Commerce, U.S. Department of the Treasury, and U.S. Department of State.

13.3 Assignment. Neither party shall have the right to assign, novate or transfer, by operation of law or otherwise, this Agreement or any of its rights under this Agreement without the other party’s prior written consent, which consent shall not be unreasonably withheld or delayed; except that LogRhythm shall have the right to assign this Agreement, without consent, to any successor to all or substantially all its business or assets to which this Agreement relates, whether by merger, sale of assets, sale of stock, reorganization or otherwise. If consent to assign the Agreement is approved by LogRhythm, Customer, may be required to acquire additional licenses to remain compliant with the number of licenses granted to Customer. Any attempted assignment, novation or transfer in violation of the foregoing will be null and void. This Agreement is binding upon and inures to the benefit of the parties, and to their permitted successors and assigns.

13.4 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.

13.5 Notices. Any notices or other communications required or permitted to be given or delivered under this Agreement shall be in writing and delivered by one of the following methods: (a) personal delivery; (b) registered or certified mail, in each case, with tracking and/or signature on delivery and postage prepaid; or (c) nationally recognized courier specifying next day delivery and notification of receipt. Operational approvals and consents required under this Agreement may be delivered by e-mail. A notice meeting all requirements of this Section 13.5 will be deemed effectively received: (i) when personally delivered, upon personal delivery to the party to be notified; (ii) when sent by registered or certified mail within the same country, three (3) Business Days after having been sent by registered or certified mail; (iii) when sent by registered or certified mail internationally, two (2) weeks after having been sent by registered or certified mail; (iv) when sent via nationally recognized overnight courier within the same country, one (1) Business Day after deposit with such courier; or (iv) on the date on which such notice is delivered by e-mail transmission. A party shall deliver notices to the address, e-mail address number set forth on the applicable Order or to such other address, e-mail address or facsimile number as a party may designate by ten (10) days’ advance written notice to the other parties.

13.6 Governing Law. The laws of the State of New South Wales shall govern this Agreement, without regard to any conflicts of laws principles that would require the application of the laws of a different jurisdiction. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales including, for the avoidance of doubt, the Federal Court of Australia sitting in New South Wales. The U.N. Convention for the International Sale of Goods is expressly excluded from, and does not apply to, this Agreement.

13.7 Arbitration. Subject to Section 13.10:

- (a) Any dispute or difference whatsoever arising out of or in connection with this Agreement, its negotiation, performance, breach, existence or validity, shall be submitted to arbitration in accordance with, and subject to, Resolution Institute Arbitration Rules.
- (b) The number of arbitrators shall be one.
- (c) Unless the parties agree upon an arbitrator within 10 days after receipt of a notice from one party to the other requesting arbitration, either party may request that the Chair of Resolution Institute selects the arbitrator.
- (d) The place of arbitration shall be Sydney, Australia.
- (e) The language of the arbitration shall be English.
- (f) The parties agree that the award (or awards, if the arbitrator makes separate awards on different issues) of the arbitrator shall be the sole and exclusive remedy between them regarding any claims and counterclaims presented or pled to the arbitrator. The decision of the arbitrator shall be final and binding.
- (g) Judgment upon the award rendered may be entered by any court having jurisdiction, or application may be made to such court for a judicial recognition of the award or an order for enforcement thereof.
- (h) The costs of the arbitration shall be paid as the arbitrator may determine.
- (i) All obligations under this Agreement will continue during the arbitration proceedings, and no payments due or payable by Customer shall be withheld on account of such proceedings.
- (j) The parties agree to keep all details of the arbitration proceedings and arbitral award strictly confidential and shall use all reasonable efforts to take such action as may be appropriate to prevent the unauthorized disclosure of the proceedings, any information disclosed in connection therewith, and the award granted.

13.8 Remedies. Except as provided in in this Agreement, the parties' rights and remedies under this Agreement are cumulative. Customer acknowledges that the Software and Cloud Services contain valuable trade secrets and proprietary information of LogRhythm, that any actual or threatened breach of Sections 2 or 9 by Customer will constitute immediate, irreparable harm to LogRhythm for which monetary damages would be an inadequate remedy, and that notwithstanding Section 9.2, LogRhythm may seek and obtain injunctive relief in respect of such actual or threatened breach.

13.9 Waivers. No delay or failure of a party to exercise any of its rights, powers or remedies or to require satisfaction of a condition under this Agreement will impair any such right, power, remedy, or condition, nor will any delay or omission be construed to be a waiver of any breach, default or noncompliance under this Agreement. 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 the same provision on any other occasion. To be effective, a waiver must be in writing signed by the party granting the waiver and will be effective only to the extent specifically set forth in such writing.

13.10 Third Party Software. Certain Third-Party Software may be provided with the Products or used in the Cloud Services that is subject to the accompanying license(s), if any, of its respective owner(s). To the extent portions of the Products or Cloud Services are subject to open source licenses obligating LogRhythm to make the source code for such portions publicly available (such as the GNU General Public License ("GPL") or the GNU Lesser General Public License ("LGPL")), LogRhythm will make such source code portions (including LogRhythm modifications, as appropriate) available upon request for a period of up to three (3) years from the date of distribution. Such request can be made in writing to 4780 Pearl East Circle, Boulder, CO 80301: Attn: Legal Department. Customer may obtain a copy of the GPL at <http://www.gnu.org/licenses/gpl.html>, and a copy of the LGPL at <http://www.gnu.org/licenses/lgpl.html>. Subject to the terms of any applicable open source license(s), Third Party Software is licensed solely for use as embedded or integrated with the Products or Cloud Service.

13.11 Severability. If a provision of this Agreement is unenforceable, invalid, void, or illegal, then the intent of the parties is that (a) the validity, legality, and enforceability of the remaining provisions of this Agreement are not affected or impacted in any way and the remainder of this Agreement is enforceable between the parties, and (b) the unenforceable, invalid, void, or illegal provision will be severed to the extent that it is unenforceable, invalid, void, or illegal.

13.12 Construction. In this Agreement:

- (a) the headings of sections of this Agreement are for convenience and are not to be used in interpreting this Agreement;
- (b) the words "including", "such as", "particularly" and similar expressions are not used as, nor intended to be interpreted as, words of limitation; and
- (c) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Agreement or any part of it.

13.13 Counterparts. The parties may execute this Agreement in several counterparts, each of which will constitute an original and all of which, when taken together, will constitute one agreement.

13.14 Entire Agreement. This Agreement (together with all exhibits and attachments and all Orders and Statements of Work made hereunder) constitutes the final agreement between the parties and is the complete and exclusive expression of the parties' agreement to the matters contained in this Agreement. This Agreement supersedes and merges all prior and contemporaneous understandings, agreements or representations by or among the parties, written or oral, that may have related in any way to the subject matter hereof. This Agreement may be amended only by a written instrument signed by each of the parties. Customer may issue a purchase order to LogRhythm to confirm any Order, but no terms of any purchase order or similar document submitted by Customer (whether additional or contradictory) shall apply to this Agreement and all such terms are hereby rejected. Unless otherwise specified in a future Order this Agreement governs all future transactions for LogRhythm products and services between the parties.

SCHEDULE B
EUROPE TERMS AND CONDITIONS

1. DEFINITIONS.

1.1 "Affiliate" means, with respect to a party, any other entity that directly or indirectly controls, is controlled by or is under common control with such entity, where "control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of such entity through the ownership of fifty percent (50%) or more of the outstanding voting securities (but only for as long as such entity meets these requirements).

1.2 "Appliance" means a Product comprised of Hardware and Software installed on that Hardware.

1.3 "Authorized Reseller" means the reseller, distributor or partner authorized and approved by LogRhythm to resell the Products, Cloud Services and related services.

1.4 "Cloud Services" means a software as a service or other cloud-based offering that LogRhythm provides using the Software.

1.5 "Cloud Service Subscription" means a right to access and use the LogRhythm Cloud Services for the duration specified in the applicable Order.

1.6 "Customer Data" means Customer Information (defined in Section 13) that is (a) disclosed or provided to LogRhythm by or on behalf of Customer or (b) collected or received from Customer by LogRhythm.

1.7 "Documentation" means the user manuals provided to Customer with the Software Hardware or Cloud Services upon delivery or activation, in either electronic, online help files or hard copy format. All Documentation is provided in English.

1.8 "Effective Date" means the date the Order was signed by LogRhythm or, if there is no signed Order, the date the Order was accepted by LogRhythm.

1.9 "Error" means a reproducible defect in a Product, which causes the Product not to operate substantially in accordance with the Documentation.

1.10 "Hardware" means the hardware supplied by LogRhythm as set forth on an Order.

1.11 "Intellectual Property Rights" means all intellectual and industrial property rights throughout the world, including but not limited to copyright and related rights, trademarks, service marks, rights to preserve the confidentiality of information (including know-how and trade secrets), trade names, domain names, rights in get-up, goodwill and right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, patents, patent applications, moral rights, contract rights and other intellectual proprietary rights, including all applications for (and right to apply for and be granted) renewals or extensions of, and right to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist, now or in the future, or in any party of the world.

1.12 "Order" means ordering documentation between Customer and LogRhythm or an Authorized Reseller and may include a signed quotation from LogRhythm or a Customer purchase order.

1.13 "Perpetual" means the license right to use the Software indefinitely.

1.14 "Product(s)" means the Software, Appliance and/or Hardware.

1.15 "Protected System" means the network attached device generating network traffic.

1.16 "Software" means the LogRhythm software programs identified in an Order, including Third Party Software, and any Upgrade, Update or Maintenance Release (as defined in the Support Services Addendum) that LogRhythm may provide to Customer pursuant to the Support Services.

1.17 "Subscription" means a term license right to use the Software for the duration which is specified in an applicable Order.

1.18 "Support Services" means LogRhythm's technical support and maintenance services set forth in the Support Services Addendum.

1.19 "Support Services Fees" has the meaning given in Section 6.1.

1.20 "Third Party Software" means any software that is provided with the Software but that is not owned by LogRhythm.

1.21 "User" means individuals or a unique entry in Customer's directory of record for customers employees, which includes but is not limited to employees, contractors or agents of Customer actively utilizing Customer's IT infrastructure and any end customers monitored by Customer. End customers can include unique active directory entries of Customer's customers for example, a payment, billing, or authentication system used by the Customer to conduct business with the end customers.

2. SOFTWARE LICENCE GRANT AND OTHER RIGHTS.

2.1 Software License Grant. Subject to the terms and conditions of this Agreement and payment by Customer of all license fees due for the Software, LogRhythm grants to Customer during the term (either a Perpetual or Subscription license, as specified in the Order), a non-exclusive, non-transferable (except as set forth in Section 15.5) license to use the Software solely for Customer's internal business purposes in accordance with the Documentation and any limitations set forth in this Agreement or the Order. The duration of the license is as specified on the Order. If Customer elects to deploy the Software for use in another host environment or another virtual environment (including any copy of the Software for backup and disaster recovery purposes), each instance requires its own license for which Customer will need a license key which shall be provided by LogRhythm upon request of Customer. The Software shall be deemed delivered when a license key which unlocks the Software is provided by LogRhythm to Customer.

2.2 License Metrics. If Customer's Product is licensed by (a) messages per second ("MPS") as specified in the Order, the MPS use limitation of the license refers to a rolling 24-hour average of messages per second received by the Software whereby "message" means each individual log or system event received by the Product including without limitation flat file, SNMP, SMTP, netflow (j flow and S flow), syslog or other event or system record. Customer may exceed the MPS limitation by up to 10% without additional charge, and Customer will not be charged for a one-time anomalous event that causes a spike in MPS usage above the specified MPS limitation; (b) network bandwidth (specified in the Order as a bandwidth or bandwidth per second such as 1GB or 1GB/second), the network bandwidth use limitation refers to a rolling 15-minute average of network bandwidth usage per second; (c) "Identity", an Identity is a unique person or service account. A person-based Identity may have multiple identifiers such as user accounts, email addresses, and phone numbers. A service account is a user account that is created explicitly to provide an authentication context for a computer or set of computers and/or services running on that computer. An Identity license is required for each unique person-based Identity and each unique service account; (d) User, as defined above, is based on Customer's identity directory of record for its User count at the inception of the Order; or (e) A Protected System, as defined above, includes a network attached device generating network traffic. Examples include but are not limited to servers, workstations, infrastructure devices, virtual systems and other equipment that protects and monitors network traffic using analytics and optional response to identify and remediate threats.

2.3 Affiliate Usage. Customer may utilize this Software on behalf of Customer Affiliates, provided Customer's Affiliates are included in the appropriate license metrics count. If Customer's Affiliates are not included in the license metric count, Customer is the only entity that may use the Software under this Agreement and the rights granted to Customer under this Agreement do not extend to any Customer Affiliate. Customer shall not permit any Customer Affiliates to use the Software on behalf of Customer or on behalf of such Affiliates. Any Customer Affiliate that desires to license the Software may enter into a separate Order with LogRhythm utilizing this Agreement which shall be a separate agreement between LogRhythm and such Customer Affiliate.

2.4 System Files. All SQL Server database files and transaction logs (collectively "System Files"), used by an Appliance must reside on either the Appliance or an external storage device. Notwithstanding the foregoing, System Files do not include LogRhythm archive files.

2.5 Restrictions on Use. as expressly permitted by this Agreement, Customer will not: (a) modify, adapt, alter, translate, or create derivative works from the Software, Cloud Services or Documentation; (b) rent, lease, loan, sublicense, distribute, sell or otherwise transfer the Software, Cloud Services or Documentation to any third party; (c) use the Software or Cloud Services in any service bureau or time sharing or hosting arrangement; (d) reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code for the Software or Cloud Services (except, as provided by statute which cannot be excluded by this Agreement of the parties, for the purpose of integration with other software used by Customer, provided that Customer first gives LogRhythm the opportunity to provide the information needed to achieve the integration or to carry out such work for a reasonable commercial fee); (e) otherwise use or copy the Software, Cloud Services or Documentation except as expressly permitted this Agreement; or (f) disclose to any third party the results of any benchmark tests or other evaluation of the Software or Cloud Services. If Customer will utilize the Cloud Services for any purpose other than the detection, mitigation, containment and eradication of cyberthreats, Customer is responsible for providing notice to, and obtaining consents from, individuals as required by applicable law.

3. CLOUD AI SERVICES. If Customer orders and pays for Cloud AI Services from LogRhythm, the terms and conditions set forth in the Cloud AI Services Addendum located on the LogRhythm website <https://gallery.logrhythm.com/terms-and-conditions/addendums/LogRhythm-Cloud-AI-Services-Addendum-3-2021.pdf> and incorporated herein or attached to this Agreement shall apply to such Cloud Services in addition to the terms of this Agreement.

4. HARDWARE. If Customer orders and pays for Hardware from LogRhythm, the terms and conditions set forth in the Hardware Addendum located on the LogRhythm website at <https://gallery.logrhythm.com/terms-and-conditions/addendums/LogRhythm-Hardware-Procurement-Addendum-3-2021.pdf> and incorporated herein or attached to this Agreement shall apply to such Hardware purchases.

5. EVALUATION PRODUCTS. Notwithstanding anything to the contrary contained in Section 2 of this Agreement, if Customer is provided with evaluation Products, then the term will be limited to the free trial period specified in the Order Document or as otherwise determined by LogRhythm ("Evaluation Period"). During the Evaluation Period, LogRhythm

grants to Customer a limited, non-exclusive, non-transferable, non-sublicensable licence to install and use the evaluation Products only or access and use the evaluation Cloud Services: (a) for internal use in a non-production capacity; and (c) to test and evaluate the Products to assist Customer in its purchase decision. Any evaluation Hardware (if applicable) provided to Customer with the evaluation Software shall remain the property of LogRhythm. Upon the expiration of the Evaluation Period, the evaluation licence or right of use granted to Customer will terminate and, within five (5) days after such expiration or termination, Customer will, at its own expense, uninstall all copies of the evaluation Software, and return the evaluation Hardware (if applicable), to LogRhythm. **The evaluation of the Products are provided “AS IS” and no warranty obligations of LogRhythm will apply and Support Services obligations do not apply to any evaluation Services.**

6. SUPPORT SERVICES; DEPLOYMENT; TRAINING.

6.1 Support Services. Support Services shall be subject to terms and conditions set forth in the Support Services Addendum located on the LogRhythm website at <https://gallery.logrhythm.com/terms-and-conditions/addendums/LogRhythm-Support-Services-Addendum-3-2021.pdf> and incorporated herein or attached to this Agreement. The initial Support Services term for Perpetual basis licenses and/or Hardware or an Appliance is one (1) year beginning on the Effective Date unless otherwise specified in the Order (“Initial Term”). Thereafter Support Services for Perpetual licenses, and/or Hardware or an Appliance shall renew automatically for additional one (1) year terms unless Customer elects to terminate Support Services by providing LogRhythm with written notice of its intent not to renew Support Services at least thirty (30) days prior to the end of the applicable annual Support Services term. Support Services for Subscriptions are included in the Subscription Fee and Support Services are provided during the Subscription Term. Upon termination of such Support Services for a Perpetual license, Customer may continue to use the Software in accordance with this Agreement without the benefits provided under the Support Services Addendum. Support Services Fees for the Initial Term are set forth in the applicable Order and are invoiced on the Effective Date. Under no circumstances are the Support Services transferrable or assignable by the Customer to any third party. The Support Services term for Subscription Licenses is concurrent with the Subscription License term. LogRhythm may increase Support Services Fees for Perpetual licenses, Hardware and/or Appliance for a Support Services renewal term up to seven percent over the prior year’s Support Services Fees.

6.2 Professional Services. Subject to payment of the professional service fees set forth in an Order, LogRhythm shall provide to Customer the professional services specified in the and in accordance with Professional Services Addendum located on the LogRhythm website at <https://gallery.logrhythm.com/terms-and-conditions/addendums/LogRhythm-Professional-Services-Addendum-3-2021.pdf> and incorporated herein or attached to this Agreement (“Professional Services of the Effective Date of the Order for such Professional Services. Unless otherwise expressly stated in an Order, Customer shall pay all LogRhythm’s reasonable travel, meals and lodging costs and expenses incurred by LogRhythm in connection with the provision of all services by LogRhythm at Customer’s facilities under this Agreement. Upon Customer’s request, LogRhythm shall submit written evidence of each such expenditure to Customer prior to receiving reimbursement of such costs and expenses.

6.3 Training. Subject to payment of any training fees, Customer may obtain training services from LogRhythm in accordance with the applicable Order (“Training Services”). Customer must use any contracted Training Services within fifteen months of the date of purchase of such Training Services.

6.4 Subcontractors and Partners. LogRhythm may utilize, in whole or in part, subcontractors or distribution partners to provide maintenance, deployment or training services to Customer.

7. FEES, AUDIT AND RECORD KEEPING

7.1 Payment. Customer will pay to LogRhythm or its Authorized Reseller the applicable fees (“Fees”) as set forth in and in accordance with the applicable Order. Customers right to use the Software and received the Support Services are contingent upon the payment of all Fees as and when due to the Authorized Reseller under the applicable Order.

7.2 Authorized Reseller Fees. Fees payable to Authorized Reseller shall be paid as set forth in the applicable Order. Customer shall pay all fees due to LogRhythm within thirty (30) days from the date of the invoice unless otherwise specified in writing by LogRhythm. Customer shall be responsible for all applicable sales, VAT, use, and other taxes (excluding taxes based on LogRhythm’s income) and all applicable export and import fees, customs duties and similar charges. All Fees are non-refundable unless otherwise expressly stated herein. If Customer purchases product or services through an Authorized Reseller, price and payment terms are between Customer and the Authorized Reseller.

7.3 Late Payment. For payments due directly to LogRhythm, rather than its Authorized Reseller, LogRhythm may charge interest on all late payments at the rate of 4% above the base lending rate for the time being of Barclays Bank plc. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the due amount, whether before or after judgment. Notwithstanding the foregoing, LogRhythm reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998 or any equivalent applicable legislation in any applicable jurisdiction.

7.4 Reports; Audit Rights. LogRhythm may periodically run a report to determine the number of MPS Customer is utilizing with the Products. LogRhythm may audit or to appoint an independent audit firm selected by LogRhythm to audit Customer’s records relating to Customer’s use of the Products pursuant to this Agreement to verify that Customer has

complied with the terms of this Agreement and to verify Customers compliance with the license for the Products licensed. Any audit shall be conducted no more than once in any period of twelve consecutive months during Customer's normal business hours and upon at least fifteen days' prior written notice. The audit shall be conducted at LogRhythm's expense unless the audit reveals that Customer has underpaid the amounts owed to LogRhythm by five percent or more, in which case Customer shall reimburse LogRhythm for all reasonable costs and expenses incurred by LogRhythm in connection with such audit. Customer shall promptly pay to LogRhythm any amounts owed plus interest as provided in Section 7.3.

8. WARRANTY; DISCLAIMER.

8.1 Product Warranty. For a period of ninety (90) days after the Effective Date ("Warranty Period"), LogRhythm warrants that the Product, when used in accordance with the instructions in the applicable Documentation, will operate as described in the Documentation in all material respects. LogRhythm does not warrant that Customer's use of the Product will be error-free or uninterrupted. LogRhythm will, at its own expense and as its sole obligation and Customer's exclusive remedy for any breach of this warranty, correct any reproducible Error in the Products or replace any defective Product provided that such Error is reported to LogRhythm by Customer in writing during the Warranty Period and that Customer provides all information that may be necessary to assist LogRhythm in resolving the error or defect, or sufficient information to enable LogRhythm to recreate the Error or defect. If LogRhythm determines that it is unable to correct the Error or replace the Product, Customer may terminate this Agreement and LogRhythm or the Authorized Reseller will refund to Customer Product and Support Services Fees actually paid for the defective Product, in which case Customer's right to use the Product will terminate.

8.2 Disclaimers. The express warranties in Section 8.1 are in lieu of all other warranties, conditions and terms which might have effect between the parties or be implied or incorporated into this Agreement or any collateral contract, express, implied, statutory or otherwise, regarding the Products, and Cloud Services and Professional Services and any other ancillary services or activities in relation to this Agreement, including (but without limitation) any implied warranties, conditions or other terms as to satisfactory quality, fitness for a purpose or particular purpose, use of reasonable skill and care, non-infringement and any warranties or conditions arising from course of dealing or course of performance which are hereby disclaimed to the fullest extent permitted by law. Except for the express warranties stated in Section 8.1, the Software and Hardware are provided "as is" with all faults.

9. INFRINGEMENT CLAIMS.

9.1 Indemnity. LogRhythm will defend Customer at LogRhythm's expense against any claim, demand, suit, or proceeding brought against Customer by a third party alleging that the Software when used in accordance with the terms of this Agreement infringes or misappropriates such third party's Intellectual Property Rights (each, a "Claim"), and LogRhythm will indemnify Customer from any damages, reasonable attorney's fees and costs finally awarded against Customer as a result of, or for amounts paid by Customer under a settlement approved by LogRhythm in writing of a Claim provided that Customer (a) notifies LogRhythm promptly in writing of the Claim, (b) does not make any admission of liability, agreement or compromise in relation to any infringement claim without the prior written consent of LogRhythm (such consent not to be unreasonably conditioned, delayed or withheld), (c) gives LogRhythm sole control of the defence thereof and any related settlement negotiations, (d) reasonably cooperates and, at LogRhythm's request and expense, assist in such defence; and (e) wherever and whenever possible takes all reasonable steps to mitigate its losses that are the subject of the Claim.

9.2 Injunction. If the a Product becomes, or in LogRhythm's opinion is likely to become, the subject of an infringement claim, LogRhythm may, at LogRhythm's discretion and at no cost to Customer (a) procure for Customer the right to continue using the Product, (b) replace or modify the Product so that it becomes non-infringing and remains functionally equivalent; or (c) if, in LogRhythm's reasonable opinion, neither option (a) or (b) is commercially viable, notify Customer in writing that this Agreement will terminate on the date specified in the notice of termination issued by LogRhythm to Customer. If this Agreement is terminated under this Section 9.2: (i) for Products, LogRhythm will refund Customer the fees paid for such Product computed according to a thirty-six (36) month straight-line amortization schedule beginning on the Effective Date.

9.3 Exclusions. Notwithstanding the foregoing, LogRhythm will have no obligation under this Section 9 or otherwise with respect to any Claim based upon (a) any use of the Product not in accordance with this Agreement, (b) any use of the Product in combination with other products, hardware, equipment, or software not provided by LogRhythm if the Product or use thereof would not infringe without such combination , (c) use of any release of the Software other than the most current release made available to Customer, provided that LogRhythm notified Customer that any Update to the Software could avoid infringement and further provided that LogRhythm will provide indemnity for use up to the date of such notification; or (d) any modification of the Software by any person other than LogRhythm or its authorized agents or subcontractors. This section 9 constitutes Customer's exclusive remedy and LogRhythm's only liability in respect of Claims.

10. LIMITATION OF LIABILITY. Subject to section 9 and this section 10, in no event will either party be liable for the following loss or damage arising from or relating to this Agreement, howsoever caused, whether direct or indirect and even if such party has been advised of the possibility of such damages: (a) for any loss or corruption of data; (b) loss of profit; (c) loss of revenue; (d) loss of business opportunity; (e) loss of anticipated savings or damage to goodwill; or (f) any consequential,

indirect, exemplary, special, or incidental damages. This section 10 shall not prevent claims for loss of or damage to Customer's tangible property that falls within the terms of section 9 or any other claims for direct financial loss that are not excluded by this section 10 or in the LogRhythm's case, claims for loss or damage resulting from Customer's breach of any of LogRhythm's Intellectual Property Rights, for which the Customers liability shall be unlimited.

11. TOTAL LIABILITY. Subject to section 9 and section 10, LogRhythm's total cumulative liability in connection with this Agreement, the Products, Cloud Services and any related services, whether in contract or tort (including negligence) or otherwise, will not exceed a sum equal to 1.25 times the amount of fees (including Support Services fees (if any)) paid or payable by Customer to Authorized Reseller during the twelve (12) month period preceding the events giving rise to such liability or five thousand British pounds (GBP£5,000), whichever is the higher.

12. LIABILITY NOT EXCLUDED. Neither party excludes its liability in respect of: death or personal injury caused by the negligence of that party, its servants or agents; or liability for fraud or fraudulent misrepresentation; or breach of statutory warranties of title and quiet possession; or such other liability which cannot be excluded or limited by law.

13. CONFIDENTIALITY.

13.1 Confidential Information. For purposes of this Section 13 ("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, as well as the terms of this Agreement.

13.2 Protection of Information. Recipient will not use any Information of Discloser for any purpose not expressly permitted by this 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 this 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.

13.3 Exceptions. Recipient's obligations under Section 13.2 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 this 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.

13.4 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. Recipient will certify in writing signed by an officer of Recipient that it has fully complied with its obligations under this Section 13.4.

14. TERM AND TERMINATION

14.1 Term. The "Term" of a Perpetual license continues until terminated as provided in Section 14.2. The "Term" of a Subscription Term Agreement expires at the end of the Subscription specified in the applicable Order unless the parties enter into a new Subscription Term.

14.2 Termination. Either party may terminate this Agreement if the other party breaches any material provision of this Agreement and (if such breach is remediable) does not cure such breach within thirty (30) days after receiving written notice thereof. Subscription Term Agreements expire at the end of the Subscription Term.

14.3 Refund or Payment upon Termination. If this Agreement is terminated by Customer in accordance with Section 14.2 (Termination), LogRhythm will refund Customer any prepaid, unused fees for services. If this Agreement is terminated by LogRhythm in accordance with this Section 14.3, Customer will pay any unpaid fees covering the remainder of the applicable term of all Orders. In no event will termination relieve Customer of its obligation to pay any fees payable to LogRhythm prior to the effective date of termination.

14.4 Effects of Termination. Upon termination of this Agreement: (i) all licence and use rights granted in this Agreement will immediately cease to exist; and (ii) and Customer must promptly discontinue all use of the Software, erase all copies of the Software from Customer's computers, return to LogRhythm or destroy all copies of the Software, Documentation and other LogRhythm Information in Customer's possession or control. Sections 1, 2.5, 8.2, 9, 10, 11, 13, 14, 15 and Sections 3 and 7 of the Cloud Services Addendum together with any accrued payment obligations, will survive expiration or termination of this Agreement for any reason, together with any accrued payment obligations and any other sections of this Agreement which expressly or by their nature survive expiry or termination.

15. GENERAL

15.1 Proprietary Rights. The Software, Cloud Services 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, Cloud Services and Documentation 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.

15.2 Compliance with Laws. Each party shall comply with all laws, rules, and regulations, applicable to that party in connection with this Agreement, including all applicable export and import control laws and regulations in its use of the Products and Cloud Services and, in particular, neither party shall export or re-export Products without all required government licenses and each party agrees to comply with the export laws, restrictions, national security controls and regulations of the all applicable foreign agencies or authorities. Customer shall not export, reexport, or transfer, directly or indirectly, any information, process, product, technology, funds or services to countries or territories specified as prohibited destinations under U.S. trade controls laws, including Cuba, Iran, North Korea, Sudan, Syria, and the Crimea region or as otherwise prohibited by U.S. trade control laws, including the economic sanctions and export control laws and regulations administered by the U.S. Department of Commerce, U.S. Department of the Treasury, and U.S. Department of State.

15.3 Anti-Bribery. LogRhythm shall: (a) comply with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 ("Relevant Requirements"); (b) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK; (c) have and shall maintain in place throughout the term of this agreement its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010 or any other applicable legislation, to ensure compliance with the Relevant Requirements and Section 13.3(b), and will enforce them where appropriate; (d) promptly report to Customer any request or demand for any undue financial or other advantage of any kind received by LogRhythm in connection with the performance of this Agreement; (e) immediately notify Customer (in writing) if a foreign public official becomes an officer or employee of the LogRhythm and/or acquires a direct or indirect interest in the LogRhythm (and LogRhythm warrants that it has no foreign public officials as officers or employees and/or direct or indirect owners at the date of this Agreement); (f) on written request, certify to Customer in writing signed by an officer of LogRhythm, compliance with this Section 13.3 by LogRhythm and all persons associated with it and all other persons for whom the LogRhythm is responsible under Section 12.3(c). LogRhythm shall provide such supporting evidence of compliance as Customer may reasonably request. LogRhythm shall ensure that any person associated with LogRhythm who is performing services or providing goods in connection with this Agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on LogRhythm in this Section 13.3 ("Relevant Terms"). LogRhythm shall in all circumstances be responsible for the observance and performance by such persons of the Relevant Terms and shall in all circumstances be directly liable to the Company for any breach by such persons of any of the Relevant Terms howsoever. Breach of this Section 13.3 shall be deemed an irredeemable material breach. For the purpose of this Section 13.3, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively, or if applicable, any equivalent provisions of any other applicable legislation in another jurisdiction. For the purposes of this Section 15.3 a person associated with LogRhythm includes but is not limited to any subcontractor of LogRhythm.

15.4 Anti-Slavery: LogRhythm shall take reasonable steps to ensure that slavery and human trafficking (as such phrase is defined in section 54(12), Modern Slavery Act 2015, or any equivalent provision in equivalent legislation in another applicable jurisdiction) is not taking place in any of its supply chains or in any part of its own business. LogRhythm shall, at the Customer's request, provide the Customer with a statement of such steps it has taken, together with such other information as the Customer may reasonably require in order to enable it to prepare a slavery and human trafficking statement in accordance with section 54, Modern Slavery Act 2015, or any equivalent provision in equivalent legislation in another applicable jurisdiction.

15.5 Assignment. Neither party may assign, novate or transfer, by operation of law or otherwise, this Agreement or any of its rights under this Agreement (including the benefit of the Support Services and the Professional Services and the licence rights granted to the Customer to the Software) to any third party without the other party's prior written consent, provided that such third party assignee or transferee shall agree to be bound by the terms of this Agreement; except that LogRhythm shall have the right to assign this Agreement, without consent, to any successor to all or substantially all its

business or assets to which this Agreement relates, whether by merger, sale of assets, sale of stock, reorganization or otherwise. If consent to assign the Agreement is approved by LogRhythm, Customer, may be required to acquire additional licenses to remain compliant with the number of licenses granted to Customer. Any attempted assignment novation or transfer in breach of the foregoing will be null and void.

15.6 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. In such circumstances, the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for 3 months, the party not affected may terminate this agreement by giving 30 days written notice to the affected party.

15.7 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 in writing of the new address to the other party.

15.8 Governing Law and Jurisdiction. This Agreement, all Statements of Work and any dispute or claim arising out of or in connection with the same or its subject matters or formation (including non-contractual disputes or claims) will be governed by and interpreted in accordance with English Law, without reference to its choice of laws rules. Any proceedings relating to any claim or matter arising out of or in connection with this Agreement or any Statement of Work instituted against LogRhythm by Customer shall be brought in the courts of the State of Colorado and any such proceedings brought against Customer by LogRhythm shall be brought in the courts of England and Wales. Each party agrees that the specified courts shall have exclusive jurisdiction over such disputes save that any counterclaim may be brought in any proceedings already commenced.

15.9 Remedies. Except as provided in Sections 7 and 8, the parties' rights and remedies under this Agreement are cumulative. Customer acknowledges that the Software and Cloud Services contains valuable trade secrets and proprietary information of LogRhythm, that any actual or threatened breach of Section 2 by Customer will constitute immediate, irreparable harm to LogRhythm for which monetary damages would be an inadequate remedy, and that injunctive relief is an appropriate remedy for such breach. If any legal action is brought by a party to enforce this Agreement, the prevailing party will be entitled to receive its reasonable legal fees, court costs, and other collection expenses, in addition to any other relief it may receive.

15.10 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.

15.11 Third Party Software. Certain Third-Party Software may be provided with the Products or used in the Cloud Services that is subject to the accompanying licence(s), if any, of its respective owner(s). To the extent portions of the Products or Cloud Services subject to open source licences obligating LogRhythm to make the source code for such portions publicly available (such as the GNU General Public License ("GPL") or the GNU Library General Public License ("LGPL")), LogRhythm will make such source code portions (including LogRhythm modifications, as appropriate) available upon request for a period of up to three (3) years from the date of distribution. Such request can be made in writing to 4780 Pearl East Circle, Boulder, CO 80301: Attn: Legal Department. Customer may obtain a copy of the GPL at <http://www.gnu.org/licenses/gpl.html>, and a copy of the LGPL at <http://www.gnu.org/licenses/lgpl.html>. Subject to the terms of any applicable open source licence(s), Third Party Software is licensed solely for use as embedded or integrated with the Products or Cloud Services.

15.12 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 or shall, to the extent required, be deemed not to form part of this Agreement, in either case, the remaining provisions of this Agreement will continue in full force and effect. Without limiting the generality of the foregoing, Section 6 will remain in effect notwithstanding the unenforceability of any provision in Section 8.

15.13 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."

15.14 Third Parties. The parties confirm that this Agreement is not intended to confer any rights on third parties and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement.

15.15 Entire Agreement. This Agreement (including the addendums and attachments and all Orders and Statements of Work made hereunder) constitutes the entire agreement between LogRhythm and the Customer regarding the subject hereof and supersedes all prior or contemporaneous agreements, understandings, and communication, whether written or oral. Each party acknowledges that, in entering into this Agreement, it has not relied on any statement, representation (whether negligent or innocent), assurance or warranty, whether written or oral, of any person (whether a party to this Agreement or not) other than as expressly set out in this Agreement and that it shall have no remedy in respect of such representations. This section shall not apply to any statement, representation, assurance or warranty made fraudulently. Each party agrees and undertakes to the other party that the only rights and remedies available to it arising out of or in

connection with this Agreement or its subject matter shall be for breach of contract. Unless otherwise specified in a future Order, this Agreement governs all future transactions for LogRhythm products between the parties.

15.16 Amendment This Agreement may be amended only by a written document signed by both parties. The terms of any purchase order or similar document submitted by Customer to LogRhythm will have no effect.

SCHEDULE C
MIDDLE EAST, TURKEY AND AFRICA TERMS AND CONDITIONS

1. DEFINITIONS.

- 1.1 "Affiliate"** means, with respect to a party, any other entity that directly or indirectly controls, is controlled by or is under common control with such entity, where "control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of such entity through the ownership of fifty percent (50%) or more of the outstanding voting securities (but only for as long as such entity meets these requirements).
- 1.2 "Appliance"** means a Product comprised of Hardware and Software installed on that Hardware.
- 1.3 "Authorized Reseller"** means the reseller, distributor or partner authorized and approved by LogRhythm to resell the Products, Cloud Services and related services.
- 1.4 "Cloud Services"** means a software as a service or other cloud-based offering that LogRhythm provides using the Software.
- 1.5 "Cloud Service Subscription"** means a right to access and use the LogRhythm Cloud Services for the duration specified in the applicable Order.
- 1.6 "Customer Data"** means Customer Information (as defined in Section 13) that is (a) disclosed or provided to LogRhythm by or on behalf of Customer or (b) collected or received from Customer by LogRhythm.
- 1.7 "Documentation"** means the user manuals provided to Customer with the Software Hardware or Cloud Services upon delivery or activation, in either electronic, online help files or hard copy format. All Documentation is provided in English.
- 1.8 "Effective Date"** means the date the Order was signed by LogRhythm or, if there is no signed Order, the date the Order was accepted by LogRhythm.
- 1.9 "Error"** means a reproducible defect in a Product, which causes the Product not to operate substantially in accordance with the Documentation.
- 1.10 "Hardware"** means the hardware supplied by LogRhythm as set forth on an Order.
- 1.11 "Intellectual Property Rights"** means all intellectual and industrial property rights throughout the world, including but not limited to copyright and related rights, trademarks, service marks, rights to preserve the confidentiality of information (including know-how and trade secrets), trade names, domain names, rights in get-up, goodwill and right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, patents, patent applications, moral rights, contract rights and other intellectual proprietary rights, including all applications for (and right to apply for and be granted) renewals or extensions of, and right to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist, now or in the future, or in any party of the world.
- 1.12 "Order"** means ordering documentation between Customer and LogRhythm or an Authorized Reseller and may include a signed quotation from LogRhythm or a Customer purchase order accepted by LogRhythm.
- 1.13 "Perpetual"** means the license right to use the Software indefinitely.
- 1.14 "Product(s)"** means the Software, Appliance and/or Hardware.
- 1.15 "Protected System"** means the network attached device generating network traffic.
- 1.16 "Software"** means the LogRhythm software programs identified in an Order, including Third Party Software, and any Upgrade, Update or Maintenance Release (as defined in Support Services Addendum) that LogRhythm may provide to Customer pursuant to the Support Services.
- 1.17 "Subscription"** means a term license right to use the Software for the duration which specified in the applicable Order.
- 1.18 "Support Services"** means LogRhythm's technical support and Software maintenance services.
- 1.19 "Support Services Fees"** has the meaning given in Section 6.1.
- 1.20 "Third Party Software"** means any software that is provided with the Software but that is not owned by LogRhythm.
- 1.21 "User"** means individuals or a unique entry in Customer's directory of record for Customers employees, which includes but is not limited to employees, contractors or agents of Customer actively utilizing Customer's IT infrastructure and any end customers monitored by Customer. End customers can include unique active directory entries of Customer's customers for example, a payment, billing, or authentication system used by the Customer to conduct business with the end customers.

2. SOFTWARE LICENSE GRANT AND OTHER RIGHTS.

2.1 Software License Grant. Subject to the terms and conditions of this Agreement and payment by Customer of all license fees due for the Software, LogRhythm grants to Customer during the Term, (either a Perpetual or Subscription license as specified in the Order), a non-exclusive, non-transferable (except as set forth in Section 15.5) license to use the Software solely for Customer's internal business purposes in accordance with the Documentation and any limitations set forth in this Agreement or the Order. The Duration of the license is as specified on the Order. If Customer elects to deploy the Software for use in another host environment or another virtual environment (including any copy of the Software for backup and disaster recovery purposes), each instance requires its own license for which Customer will need a license key which shall be provided by LogRhythm upon request of Customer. The Software shall be deemed delivered when a license key which unlocks the Software is provided by LogRhythm to Customer.

2.2 License Metrics. If Customer's Product is licensed by (a) messages per second ("MPS") as specified in the Order, the MPS use limitation of the license refers to a rolling 24-hour average of messages per second received by the Software whereby "message" means each individual log or system event received by the Product including without limitation flat file, SNMP, SMTP, netflow (j flow and S flow), syslog or other event or system record. Customer may exceed the MPS limitation by up to 10% without additional charge, and Customer will not be charged for a one-time anomalous event that causes a spike in MPS usage above the specified MPS limitation; (b) by network bandwidth (specified in the Order as a bandwidth or bandwidth per second such as 1GB or 1GB/second), the network bandwidth use limitation refers to a rolling 15-minute average of network bandwidth usage per second; (c) "Identity", an Identity is a unique person or service account. A person-based Identity may have multiple identifiers such as user accounts, email addresses, and phone numbers. A service account is a user account that is created explicitly to provide an authentication context for a computer or set of computers and/or services running on that computer. An Identity license is required for each unique person-based Identity and each unique service account; (d) User, as defined above, is based on Customer's identity directory of record for its User count at the inception of the Order; or e) a Protected System, as defined above, includes a network attached device generating network traffic. Examples include but are not limited to servers, workstations, infrastructure devices, virtual systems and other equipment that protects and monitors network traffic using analytics and optional response to identify and remediate threats.

2.3 Affiliate Usage. Customer may utilize this Software on behalf of Customer Affiliates, provided Customer's Affiliates are included in the appropriate license metrics count. If Customer's Affiliates are not included in the license metric count, Customer is the only entity that may use the Software under this Agreement and the rights granted to Customer under this Agreement do not extend to any Customer Affiliate. Customer shall not permit any Customer Affiliates to use the Software on behalf of Customer or on behalf of such Affiliates. Any Customer Affiliate that desires to license the Software may enter into a separate Order with LogRhythm utilizing this Agreement which shall be a separate agreement between LogRhythm and such Customer Affiliate.

2.4 System Files. All SQL Server database files and transaction logs (collectively "System Files"), used by an Appliance must reside on either the Appliance or an external storage device. Notwithstanding the foregoing, System Files do not include LogRhythm archive files.

2.5 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, Cloud Services or Documentation; (b) rent, lease, loan, sublicense, distribute, sell or otherwise transfer the Software, Cloud Services or Documentation to any third party; (c) use the Software Cloud Services in any service bureau or time sharing or hosting arrangement; (d) reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code for the Software or Cloud Services (except, as provided by statute which cannot be excluded by this Agreement of the parties, for the purpose of integration with other software used by Customer, provided that Customer first gives LogRhythm the opportunity to provide the information needed to achieve the integration or to carry out such work for a reasonable commercial fee); (e) otherwise use or copy the Software, Cloud Services or Documentation except as expressly permitted this Agreement; or (f) disclose to any third party the results of any benchmark tests or other evaluation of the Software or Cloud Services. If Customer will utilize the Cloud Services for any purpose other than the detection, mitigation, containment and eradication of cyberthreats, Customer is responsible for providing notice to, and obtaining consents from, individuals as required by applicable law.

3. CLOUD AI SERVICES. If Customer orders and pays for Cloud AI Services from LogRhythm, the terms and conditions set forth in the Cloud AI Services Addendum located on the LogRhythm website at <https://gallery.logrhythm.com/terms-and-conditions/addendums/LogRhythm-Cloud-AI-Services-Addendum-3-2021.pdf> and incorporated herein or attached to this Agreement shall apply to such Cloud AI Services in addition to the terms of this Agreement.

4. HARDWARE. If Customer orders and pays for Hardware from LogRhythm, the terms and conditions set forth in the Hardware Addendum located on the LogRhythm website at <https://gallery.logrhythm.com/terms-and-conditions/addendums/LogRhythm-Hardware-Procurement-Addendum-3-2021.pdf> and incorporated herein or attached to this Agreement shall apply to such Hardware purchases.

5. EVALUATION PRODUCTS.

Notwithstanding anything to the contrary contained in Section 2 of this Agreement, Customer is provided with evaluation Products or Cloud Services ("Evaluation Products"), then the term will be limited to the free trial period specified in the Order Document as otherwise determined by LogRhythm (the "Evaluation Period"). During the Evaluation Period, LogRhythm grants to Customer a limited, non-exclusive, non-transferable, non-sublicensable license to install and use the Software only or access and use the evaluation Cloud Services: (a) for internal use in a non-production capacity; and (c) to test and evaluate the Software or Cloud Services to assist Customer in its decision. Any evaluation Hardware (if applicable) provided to Customer with the evaluation Software shall remain the property of LogRhythm. Upon the expiration of the Evaluation Period, the Evaluation License or right of use granted to Customer will terminate and, within five (5) days after such expiration or termination, Customer will, at its own expense, uninstall all copies of the evaluation Software, and return the evaluation Hardware (if applicable), to LogRhythm. **The evaluation of the Products is provided "AS IS" and no warranty obligations of LogRhythm will apply and Support Services obligations do not apply to any evaluation Services.**

6. SUPPORT SERVICES; DEPLOYMENT; TRAINING.

6.1 Support Services. Support Services shall be subject to terms and conditions set forth in the Support Services Addendum located on the LogRhythm website at <https://gallery.logrhythm.com/terms-and-conditions/addendums/LogRhythm-Support-Services-Addendum-3-2021.pdf> and incorporated herein or attached to this Agreement. The initial Support Services term for Perpetual Software licenses and/or Hardware or an Appliance is one (1) year beginning on the Effective Date unless otherwise specified in the Order ("Initial Term"). Thereafter Support Services for Perpetual licenses and/or Hardware or an Appliance shall renew automatically for additional one (1) year terms unless Customer elects to terminate Support Services by providing LogRhythm written notice of its intent not to renew Support Services at least thirty (30) days prior to the end of the applicable annual Support Services term. Support Services for Subscriptions are included in the Subscription Fee and Support Services are provided during the Subscription Term. Upon termination of such Support Services for a Perpetual license, Appliances and/or Hardware, Customer may continue to use the Software in accordance with this Agreement without the benefits provided under the Support Services Addendum. Support Services Fees for the Initial Term are set forth in the applicable Order and are invoiced on the Effective Date. Under no circumstances are the Support Services transferrable or assignable by the Customer to any third party. The Support Services term for Subscription Licenses is concurrent with the Subscription License term. LogRhythm may increase Support Services Fees for Perpetual licenses, Hardware and/or an Appliance for a Support Services renewal term up to seven percent over the prior year's Support Services Fees.

6.2 Professional Services. Subject to payment of the professional service fees set forth in an Order, LogRhythm shall provide to Customer the professional services specified in the Order and in accordance the Professional Services Addendum located on the LogRhythm website at <https://gallery.logrhythm.com/terms-and-conditions/addendums/LogRhythm-Professional-Services-Addendum-3-2021.pdf> and incorporated herein or attached to this Agreement ("Professional Services"). Unless otherwise specified in an Order, Customer must use any contracted Professional Services within one year of the Effective Date of the Order for such Professional Services. Unless otherwise expressly stated in an Order, Customer shall pay all of LogRhythm's reasonable travel, meals and lodging costs and expenses incurred by LogRhythm in connection with the provision of all services by LogRhythm at Customer's facilities under this Agreement. Upon Customer's request, LogRhythm shall submit written evidence of each such expenditure to Customer prior to receiving reimbursement of such costs and expenses.

6.3 Training. Subject to payment of any training fees, Customer may obtain training services from LogRhythm in accordance with the applicable Order ("Training Services"). Customer must use any contracted Training Services within fifteen months of the date of purchase of such Training Services.

7. Subcontractors and Partners. LogRhythm may utilize, in whole or in part, subcontractors or distribution partners to provide maintenance, deployment or training services to Customer. **FEES, AUDIT AND RECORD KEEPING**

7.1 Payment. Customer will pay to LogRhythm or its Authorized Reseller the applicable fees ("Fees") as set forth in and in accordance with the applicable Order. Customers right to use the Software and received the Support Services are contingent upon the payment of all Fees as and when due to the Authorized Reseller under the applicable Order.

7.2 Authorized Reseller. Fees payable to Authorized Reseller shall be paid as set forth in the applicable Order. Customer shall pay all Fees due to LogRhythm within thirty (30) days from the date of the invoice unless otherwise specified in writing by LogRhythm. Customer shall be responsible for all applicable sales, VAT, use, and other taxes (excluding taxes based on LogRhythm's income) and all applicable export and import fees, customs duties and similar charges. All Fees are non-refundable unless otherwise expressly stated herein. If Customer purchases product or services through an Authorized Reseller, price and payment terms are between Customer and the Authorized Reseller.

7.3 Late Payment. For payments due directly to LogRhythm, rather than its Authorized Reseller, LogRhythm may charge interest on all late payments at the rate of 4% above the base lending rate for the time being of Barclays Bank plc. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the due amount, whether

before or after judgment. Notwithstanding the foregoing, LogRhythm reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998 or any equivalent applicable legislation in any applicable jurisdiction.

7.4 Reports; Audit Rights. LogRhythm may periodically run a report to determine the number of MPS Customer is utilizing with the Products. LogRhythm may also audit or appoint an independent audit firm selected by LogRhythm to audit Customer's records relating to Customer's use of the Products pursuant to this Agreement to verify that Customer has complied with the terms of this Agreement and to verify Customers compliance with the license metrics for the Products licensed. Any audit shall be conducted no more than once in any period of twelve consecutive months during Customer's normal business hours and upon at least fifteen days' prior written notice. The audit shall be conducted at LogRhythm's expense unless the audit reveals that Customer has underpaid the amounts owed to LogRhythm by five percent or more, in which case Customer shall reimburse LogRhythm for all reasonable costs and expenses incurred by LogRhythm in connection with such audit. Customer shall promptly pay to LogRhythm any amounts owed plus interest as provided in Section 7.3.

8. WARRANTY; DISCLAIMER.

8.1 Product Warranty. For a period of ninety (90) days after the Effective Date ("Warranty Period"), LogRhythm warrants that the Product, when used in accordance with the instructions in the applicable Documentation, will operate as described in the Documentation in all material respects. LogRhythm does not warrant that Customer's use of the Product will be error-free or uninterrupted. LogRhythm will, at its own expense and as its sole obligation and Customer's exclusive remedy for any breach of this warranty, correct any reproducible Error in the Product or replace any defective Product provided that such Error is reported to LogRhythm by Customer in writing during the Warranty Period and that Customer provides all information that may be necessary to assist LogRhythm in resolving the error or defect, or sufficient information to enable LogRhythm to recreate the Error or defect. If LogRhythm determines that it is unable to correct the Error or replace the Product, Customer may terminate this Agreement and LogRhythm or the Authorized Reseller will refund to Customer Product and Support Services Fees actually paid for the defective Product, in which case this Agreement and Customer's right to use the Product will terminate.

8.2 Disclaimers. The express warranties in section 8.1 are in lieu of all other warranties, conditions and terms which might have effect between the parties or be implied or incorporated into this Agreement or any collateral contract, express, implied, statutory or otherwise, regarding the Products, and Cloud Services and Professional Services and any other ancillary services or activities in relation to this Agreement, including (but without limitation) any implied warranties, conditions or other terms as to satisfactory quality, fitness for a purpose or particular purpose, use of reasonable skill and care, non-infringement and any warranties or conditions arising from course of dealing or course of performance which are hereby disclaimed to the fullest extent permitted by law.

9. INFRINGEMENT CLAIMS.

9.1 Indemnity. LogRhythm will defend Customer at LogRhythm's expense against any claim, demand, suit, or proceeding brought against Customer by a third party alleging that the Software when used in accordance with the terms of this Agreement infringes or misappropriates such third party's Intellectual Property Rights (each, a "Claim"), and LogRhythm indemnify Customer from any damages, reasonable attorney's fees and costs finally awarded against Customer as a result of, or for amounts paid by Customer under in a settlement approved by LogRhythm in writing of an action. provided that Customer: (a) notifies LogRhythm promptly in writing of the Claim; (b) does not make any admission of liability, agreement or compromise in relation to any infringement claim without the prior written consent of LogRhythm (such consent not to be unreasonably conditioned, delayed or withheld); (c) gives LogRhythm sole control of the defence thereof and any related settlement negotiations; (d) reasonably cooperates and, at LogRhythm's request and expense, assist in such defence; and (e) wherever and whenever possible takes all reasonable steps to mitigate its losses that are the subject of the Claim.

9.2 Injunction. If the a Product or Cloud Service becomes, or in LogRhythm's opinion is likely to become, the subject of an infringement claim, LogRhythm may, at LogRhythm's discretion and at no cost to Customer: (a) procure for Customer the right to continue using the Products; (b) replace or modify the Products so that it becomes non-infringing and remains functionally equivalent; or (c) if, in LogRhythm's reasonable opinion, neither option (a) or (b) is commercially viable, notify Customer in writing that it requires return of the Software and this Agreement will terminate on the date specified in the notice of termination issued by LogRhythm to Customer. If this Agreement is terminated under this Section 9.2(a) for Products, LogRhythm will refund Customer the Software Fees paid for such Software upon return of the Software, computed according to a thirty-six (36) month straight-line amortization schedule beginning on the Effective Date and (b) for Cloud Services, Customer shall be entitled to a refund pursuant to Section 14.3; and Customer will be entitled to terminate any Support Services related to such Software and if Customer elects to do so, those Support Services will terminate on the date specified in the notice of termination issued by Customer to LogRhythm and LogRhythm will refund to Customer the unexpired portion of the Support Services Fees.

9.3 Exclusions. Notwithstanding the foregoing, LogRhythm will have no obligation under this Section 9 or otherwise with respect to any Claim based upon: (a) any use of the Product or Cloud Service not in accordance with this Agreement;

(b) any use of the Product or Cloud Service or use thereof would not infringe without such combination; (c) use of any release of the Software other than the most current release made available to Customer, provided that LogRhythm notified Customer that any Update to the Software could avoid infringement and LogRhythm will provide indemnity for use up to the date of such notification; or (d) any modification of the Software or Cloud Service by any person other than LogRhythm or its authorized agents or subcontractors. This section 7 constitutes Customer's exclusive remedy and LogRhythm's only liability in respect of Claims.

10. LIMITATION OF LIABILITY. Subject to section 9 and section 10, in no event will either party be liable for the following loss or damage arising from or relating to this Agreement, howsoever caused, whether direct or indirect and even if such party has been advised of the possibility of such damages: (a) for any loss or corruption of data; (b) loss of profit; (c) loss of revenue; (d) loss of business opportunity; (e) loss of anticipated savings or damage to goodwill; or (f) any consequential, indirect, exemplary, special, or incidental damages. This section 10 shall not prevent claims for loss of or damage to Customer's tangible property that falls within the terms of section 10 or any other claims for direct financial loss that are not excluded by this section 8 or in the LogRhythm's case, claims for loss or damage resulting from Customer's breach of any of LogRhythm's Intellectual Property Rights, for which the Customer's liability shall be unlimited.

11. TOTAL LIABILITY. Subject to section 9 and section 10, LogRhythm's total cumulative liability in connection with this Agreement, the Products, Cloud Services and related services, whether in contract or tort (including negligence) or otherwise, will not exceed a sum equal to 1.25 times the amount of fees (including Support Services Fees (if any)) paid or payable by Customer to Authorized Reseller during the twelve (12) month period preceding the events giving rise to such liability or five thousand British pounds (GBP£5,000), whichever is the higher.

12. LIABILITY NOT EXCLUDED. Neither party excludes its liability in respect of: death or personal injury caused by the negligence of that party, its servants or agents; or liability for fraud or fraudulent misrepresentation; or breach of statutory warranties of title and quiet possession; or such other liability which cannot be excluded or limited by law.

13. CONFIDENTIALITY.

13.1 Confidential Information. For purposes of this Section 13 ("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, as well as the terms of this Agreement.

13.2 Protection of Information. Recipient will not use any Information of Discloser for any purpose not expressly permitted by this 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 this 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.

13.3 Exceptions. Recipient's obligations under Section 13.2 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 this 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.

13.4 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. Recipient will certify in writing signed by an officer of Recipient that it has fully complied with its obligations under this Section 13.4.

14. TERM AND TERMINATION

14.1 Term. The “Term” of a Perpetual license continues until terminated as provided in Section 14.2. The “Term” of a Subscription Term Agreement expires at the end of the Subscription specified in the applicable Order unless the parties enter into a new Subscription.)

14.2 Termination. Either party may terminate this Agreement if the other party breaches any material provision of this Agreement and (if such breach is remediable) does not cure such breach within thirty (30) days after receiving written notice thereof. Subscription Term Agreements expire at the end of the Subscription Term.

14.3 Refund or Payment upon Termination. If this Agreement is terminated by Customer in accordance with Section 14.2 (Termination), LogRhythm will refund Customer any prepaid, unused fees for services. If this Agreement is terminated by LogRhythm in accordance with Section 14.2, Customer will pay any unpaid fees covering the remainder of the applicable term of all Orders. In no event will termination relieve Customer of its obligation to pay any fees payable to LogRhythm prior to the effective date of termination.

14.4 Effects of Termination. Upon termination of this Agreement: (i) all license and use rights granted in this Agreement will immediately cease to exist, and (ii) Customer must promptly discontinue all use of the Software, erase all copies of the Software from Customer’s computers, return to LogRhythm or destroy all copies of the Software, Documentation and other LogRhythm Information in Customer’s possession or control. Sections 1, 7, 9.3, 10, 11, 12, 13, 14, 15, and Sections 3 and 7 of the Cloud Services Addendum, together with any accrued payment obligations, will survive expiration or termination of this Agreement for any reason, together with any accrued payment obligations and any other sections of this Agreement which expressly or by their nature survive expiry or termination.

15. GENERAL

15.1 Proprietary Rights. The Software, Cloud Services 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, Cloud Services and Documentation 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, Cloud Services or Documentation.

15.2 Compliance with Laws. Each party shall comply with all laws, rules, and regulations, applicable to that party in connection with this Agreement, including all applicable export and import control laws and regulations in its use of the Products and Cloud Services and, in particular, neither party shall export or re-export Products without all required government licenses and each party agrees to comply with the export laws, restrictions, national security controls and regulations of the all applicable foreign agencies or authorities. Customer shall not export, reexport, or transfer, directly or indirectly, any information, process, product, technology, funds or services to countries or territories specified as prohibited destinations under U.S. trade controls laws, including Cuba, Iran, North Korea, Sudan, Syria, and the Crimea region or as otherwise prohibited by U.S. trade control laws, including the economic sanctions and export control laws and regulations administered by the U.S. Department of Commerce, U.S. Department of the Treasury, and U.S. Department of State.

15.3 Anti-Bribery. LogRhythm shall: (a) comply with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (“Relevant Requirements”); (b) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK; (c) have and shall maintain in place throughout the term of this agreement its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010 or any other applicable legislation, to ensure compliance with the Relevant Requirements and Section 14.3(b), and will enforce them where appropriate; (d) promptly report to Customer any request or demand for any undue financial or other advantage of any kind received by LogRhythm in connection with the performance of this Agreement; (e) immediately notify Customer (in writing) if a foreign public official becomes an officer or employee of the LogRhythm and/or acquires a direct or indirect interest in the LogRhythm (and LogRhythm warrants that it has no foreign public officials as officers or employees and/or direct or indirect owners at the date of this Agreement); (f) on written request, certify to Customer in writing signed by an officer of LogRhythm, compliance with this Section 13.3 by LogRhythm and all persons associated with it and all other persons for whom the LogRhythm is responsible under Section 14.3(c). LogRhythm shall provide such supporting evidence of compliance as Customer may reasonably request. LogRhythm shall ensure that any person associated with LogRhythm who is performing services or providing goods in connection with this Agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on LogRhythm in this Section 13.3 (“Relevant Terms”). LogRhythm shall in all circumstances be responsible for the observance and performance by such persons of the Relevant Terms and shall in all circumstances be directly liable to the Company for any breach by such persons of any of the Relevant Terms howsoever. Breach of this Section 14.3 shall be deemed an irredeemable material breach. For the purpose of this Section 13.3, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively,

or if applicable, any equivalent provisions of any other applicable legislation in another jurisdiction. For the purposes of this Section 13.3 a person associated with LogRhythm includes but is not limited to any subcontractor of LogRhythm.

15.4 Anti-Slavery. LogRhythm shall take reasonable steps to ensure that slavery and human trafficking (as such phrase is defined in section 54(12), Modern Slavery Act 2015, or any equivalent provision in equivalent legislation in another applicable jurisdiction) is not taking place in any of its supply chains or in any part of its own business. LogRhythm shall, at the Customer's request, provide the Customer with a statement of such steps it has taken, together with such other information as the Customer may reasonably require in order to enable it to prepare a slavery and human trafficking statement in accordance with section 54, Modern Slavery Act 2015, or any equivalent provision in equivalent legislation in another applicable jurisdiction.

15.5 Assignment. Neither party may assign, novate or transfer, by operation of law or otherwise, this Agreement or any of its rights under this Agreement (including the benefit of the Support Services and the Professional Services and the license rights granted to the Customer to the Software) to any third party without the other party's prior written consent, provided that such third party assignee or transferee shall agree to be bound by the terms of this Agreement; except that LogRhythm shall have the right to assign this Agreement, without consent, to any successor to all or substantially all its business or assets to which this Agreement relates, whether by merger, sale of assets, sale of stock, reorganization or otherwise. If consent to assign the Agreement is approved by LogRhythm, Customer, may be required to acquire additional licenses to remain compliant with the number of licenses granted to Customer. Any attempted assignment novation or transfer in breach of the foregoing will be null and void.

15.6 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. In such circumstances, the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for 3 months, the party not affected may terminate this agreement by giving 30 days written notice to the affected party.

15.7 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 in writing of the new address to the other party.

15.8 Governing Law and Jurisdiction. This Agreement, all Statements of Work and any dispute or claim arising out of or in connection with the same or its subject matters or formation (including non-contractual disputes or claims) will be governed by and interpreted in accordance with English Law, without reference to its choice of laws rules. Any dispute arising out of or in connection with this contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the LCIA Rules, which Rules are deemed to be incorporated by reference into this clause. The number of arbitrators shall be one. The seat, or legal place, of arbitration shall be London, England. The language to be used in the arbitral proceedings shall be English.

15.9 Remedies. Except as provided in Sections 10 and 11, the parties' rights and remedies under this Agreement are cumulative. Customer acknowledges that the Software and Cloud Services contain valuable trade secrets and proprietary information of LogRhythm, that any actual or threatened breach of Section 2 by Customer will constitute immediate, irreparable harm to LogRhythm for which monetary damages would be an inadequate remedy, and that injunctive relief is an appropriate remedy for such breach. If any legal action is brought by a party to enforce this Agreement, the prevailing party will be entitled to receive its reasonable legal fees, court costs, and other collection expenses, in addition to any other relief it may receive.

15.10 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.

15.11 Third Party Software. Certain Third-Party Software may be provided with the Product or used in the Cloud Services that is subject to the accompanying license(s), if any, of its respective owner(s). To the extent portions of the Product or Cloud Services are distributed under and subject to open source licenses obligating LogRhythm to make the source code for such portions publicly available (such as the GNU General Public License ("GPL") or the GNU Library General Public License ("LGPL")), LogRhythm will make such source code portions (including LogRhythm modifications, as appropriate) available upon request for a period of up to three (3) years from the date of distribution. Such request can be made in writing to 4780 Pearl East Circle, Boulder, CO 80301: Attn: Legal Department. Customer may obtain a copy of the GPL at <http://www.gnu.org/licenses/gpl.html>, and a copy of the LGPL at <http://www.gnu.org/licenses/lgpl.html>. Subject to the terms of any applicable open source license(s), Third Party Software is licensed solely for use as embedded or integrated with the Product or Cloud Services.

15.12 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 or shall, to the extent required, be deemed not to form part of this Agreement, in either case, the remaining provisions of this Agreement will

continue in full force and effect. Without limiting the generality of the foregoing, Section 10 will remain in effect notwithstanding the unenforceability of any provision in Section 8.

15.13 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.”

15.14 Third Parties. The parties confirm that this Agreement is not intended to confer any rights on third parties and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement.

15.15 Entire Agreement. This Agreement (including the addendums and attachments and all Orders and Statements of Work made hereunder) constitutes the entire agreement between LogRhythm and the Customer regarding the subject hereof and supersedes all prior or contemporaneous agreements, understandings, and communication, whether written or oral.

Each party acknowledges that, in entering into this Agreement, it has not relied on any statement, representation (whether negligent or innocent), assurance or warranty, whether written or oral, of any person (whether a party to this Agreement or not) other than as expressly set out in this Agreement and that it shall have no remedy in respect of such representations. This section shall not apply to any statement, representation, assurance or warranty made fraudulently. Each party agrees and undertakes to the other party that the only rights and remedies available to it arising out of or in connection with this Agreement or its subject matter shall be for breach of contract. Unless otherwise specified in a future Order, this Agreement governs all future transactions for LogRhythm products between the parties.

15.16 Amendment This Agreement may be amended only by a written document signed by both parties. The terms of any purchase order or similar document submitted by Customer to LogRhythm will have no effect.

SCHEDULE D
THE AMERICA'S TERMS AND CONDITIONS

1. DEFINITIONS.

- 1.1 "Affiliate"** means, with respect to a party, any other entity that directly or indirectly controls, is controlled by or is under common control with such entity, where "control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of such entity through the ownership of fifty percent (50%) or more of the outstanding voting securities (but only for as long as such entity meets these requirements).
- 1.2 "Appliance"** means a Product comprised of Hardware and Software installed on that Hardware.
- 1.3 "Authorized Reseller"** means a reseller, distributor or partner authorized and approved by LogRhythm to resell the Products, Cloud Services and related services.
- 1.4 "Cloud Services"** means a software as a service or other cloud-based offering that LogRhythm provides using the Software.
- 1.5 "Cloud Service Subscription"** means a right to access and use the LogRhythm Cloud Services for the duration specified in the applicable Order.
- 1.6 "Customer Data"** means Information (as defined in Section 11) that is (a) disclosed or provided to LogRhythm by or on behalf of Customer, or (b) collected or received from Customer by LogRhythm.
- 1.7 "Documentation"** means the user manuals provided to Customer with the Software, Appliance, Hardware or Cloud Services upon delivery or activation, in either electronic, online help files or hard copy format. All Documentation is provided in English.
- 1.8 "Effective Date"** means the date the Order was signed by LogRhythm or, if there is no signed Order, the date the Order was accepted by LogRhythm.
- 1.9 "Error"** means a reproducible defect in a Product, which causes the Product not to operate substantially in accordance with the Documentation.
- 1.10 "Hardware"** means the hardware supplied from LogRhythm as set forth on an Order.
- 1.11 "Intellectual Property Rights"** means all intellectual and industrial property rights throughout the world, including but not limited to copyright and related rights, trademarks, service marks, rights to preserve the confidentiality of information (including know-how and trade secrets), trade names, domain names, rights in get-up, goodwill and right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, patents, patent applications, moral rights, contract rights and other intellectual proprietary rights, including all applications for (and right to apply for and be granted) renewals or extensions of, and right to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist, now or in the future, or in any part of the world.
- 1.12 "Order"** means ordering documentation between Customer and LogRhythm or an Authorized Reseller and may include a signed quotation from LogRhythm or a Customer purchase order accepted by LogRhythm.
- 1.13 "Perpetual"** means the license right to use the Software indefinitely.
- 1.14 "Product(s)"** means the Software, Appliance and/or Hardware.
- 1.15 "Protected System"** means the network attached device generating network traffic.
- 1.16 "Software"** means the LogRhythm software programs identified in an Order, including Third Party Software, and any Upgrade, Update or Maintenance Release (as defined in the Support Services Addendum) that LogRhythm provides to Customer pursuant to the Support Services.
- 1.17 "Subscription"** means a term license right to use the Software the duration which is specified in the applicable Order.
- 1.18 "Support Services"** means LogRhythm's technical support and maintenance services set forth in the Support Services Addendum.
- 1.19 "Support Services Fees"** has the meaning given in Section 6.1.
- 1.20 "Third Party Software"** means any software that is provided with the Software but that is not owned by LogRhythm.
- 1.21 "User"** means individuals or a unique entry in Customer's directory of record for Customer's employees, which includes but is not limited to employees, contractors or agents of Customer actively utilizing Customer's IT infrastructure and any end customers monitored by Customer. End Customers can include unique active directory entries of Customer's customers for example, a payment, billing, or authentication system used by the Customer to conduct business with the end customers.

2. LICENSE GRANT AND OTHER RIGHTS.

2.1 Software License Grant. Subject to the terms and conditions of this Agreement and payment by Customer of all license fees due for the Software, LogRhythm grants to Customer during the term, (either a Perpetual license or Subscription license as specified in the Order), a non-exclusive, non-transferable (except as set forth in Section 13.3) license to use the Software solely for Customer's internal business purposes in accordance with the Documentation and any limitations set forth in this Agreement or the Order. If Customer elects to deploy the Software for use in another host environment or another virtual environment (including any copy of the Software for backup and disaster recovery purposes), each instance requires its own license for which Customer will need a license key which shall be provided by LogRhythm upon request of Customer. The Software shall be deemed delivered when a license key which unlocks the Software is provided by LogRhythm to Customer.

2.2 License Metrics. If Customer's Product is licensed by: (a) messages per second ("MPS") as specified in the Order, the MPS use limitation of the license refers to a rolling 24-hour average of messages per second received by the Software whereby "message" means each individual log or system event received by the Product including without limitation flat file, SNMP, SMTP, netflow (j flow and S flow), syslog or other event or system record. Customer may exceed the MPS limitation by up to 10% without additional charge, and Customer will not be charged for a one-time anomalous event that causes a spike in MPS usage above the specified MPS limitation; (b) network bandwidth (specified in the Order as a bandwidth or bandwidth per second such as 1GB or 1GB/second), the network bandwidth use limitation refers to a rolling 15-minute average of network bandwidth usage per second; (c) "Identity", an Identity is a unique person or service account. A person-based Identity may have multiple identifiers such as user accounts, email addresses, and phone numbers. A service account is a user account that is created explicitly to provide an authentication context for a computer or set of computers and/or services running on that computer. An Identity license is required for each unique person-based Identity and each unique service account; (d) User, as defined above, is based on Customer's identity directory of record for its User count at the inception of the Order; or (e) A Protected System, as defined above, includes a network attached device generating network traffic. Examples include but are not limited to servers, workstations, infrastructure devices, virtual systems and other equipment that protects and monitors network traffic using analytics and optional response to identify and remediate threats.

2.3 Affiliate Usage. Customer may utilize this Software on behalf of Customer Affiliates, provided Customer's Affiliates are included in the appropriate license metrics count. If Customer's Affiliates are not included in the license metric count, Customer is the only entity that may use the Software under this Agreement and the rights granted to Customer under this Agreement do not extend to any Customer Affiliate. Customer shall not permit any Customer Affiliates to use the Software on behalf of Customer or on behalf of such Affiliates. Any Customer Affiliate that desires to license the Software may enter into a separate Order with LogRhythm utilizing this Agreement, which shall be a separate agreement between LogRhythm and such Customer Affiliate.

2.4 System Files. All SQL Server database files and transaction logs (collectively, the "System Files"), used by an Appliance must reside on either the Appliance or an external storage device. Notwithstanding the foregoing, System Files do not include LogRhythm archive files.

2.5 Restrictions on Use. Except as expressly permitted by this Agreement, Customer shall not: (a) modify, adapt, alter, translate, or create derivative works from the Software, Cloud Services or Documentation; (b) rent, lease, loan, sublicense, distribute, sell or otherwise transfer the Software, Cloud Services or Documentation to any third party; (c) use the Software or Cloud Services in a service bureau or time sharing arrangement; (d) reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code for the Software or Cloud Services; (e) otherwise use or copy the Software, Cloud Services or Documentation except as expressly permitted in this Agreement; or (f) disclose to any third party the results of any benchmark tests or other evaluation of the Software or Cloud Services. If Customer will utilize the Cloud Services for any purpose other than the detection, mitigation, containment and eradication of cyberthreats, Customer is responsible for providing notice to, and obtaining consents from, individuals as required by applicable law.

3. CLOUD AI SERVICES. If Customer orders and pays for Cloud AI Services from LogRhythm, the terms and conditions set forth in the Cloud AI Services Addendum located on the LogRhythm website at <https://gallery.logrhythm.com/terms-and-conditions/addendums/LogRhythm-Cloud-AI-Services-Addendum-3-2021.pdf> and incorporated herein or attached to this Agreement shall apply to such Cloud AI Services in addition to the terms of this Agreement.

4. HARDWARE. If Customer orders and pays for Hardware from LogRhythm, the terms and conditions set forth in the Hardware Procurement Addendum located on the LogRhythm website at <https://gallery.logrhythm.com/terms-and-conditions/addendums/LogRhythm-Hardware-Procurement-Addendum-3-2021.pdf> and incorporated herein or attached to this Agreement shall apply to such Hardware purchases.

5. EVALUATION PRODUCTS. Notwithstanding anything to the contrary contained in Section 2, if Customer is provided with evaluation Products, then the term of use for evaluation will be limited to the free trial period specified in the Order or as otherwise determined by LogRhythm ("Evaluation Period"). During the Evaluation Period, LogRhythm grants to Customer a limited, non-exclusive, non-transferable, non-sublicensable license to install and use the evaluation Products for Customer's internal use in a non-production capacity to test and evaluate the Software to assist Customer in its purchase

decision. Any evaluation Hardware provided to Customer shall remain the property of LogRhythm. Upon the expiration of the Evaluation Period, the license granted to Customer will terminate and, within five (5) days after such termination, Customer will, at its own expense, uninstall all copies of the evaluation Software, and return the evaluation Hardware, if applicable, to LogRhythm. **The evaluation of the Products is provided “AS IS” and no warranty obligations of LogRhythm will apply and Support Services obligations do not apply to any evaluation Products.**

6. SUPPORT SERVICES; DEPLOYMENT; TRAINING.

6.1 Support Services. Support Services shall be subject to terms and conditions set forth in the Support Services Addendum located on the LogRhythm website at <https://gallery.logrhythm.com/terms-and-conditions/addendums/LogRhythm-Support-Services-Addendum-3-2021.pdf> and incorporated herein or attached to this Agreement. The initial Support Services term for Perpetual Software licenses and/or Hardware or an Appliance is one year beginning on the Effective Date unless otherwise specified in the Order (“Initial Support Term”). Thereafter, Support Services for Perpetual licenses and/or Hardware or an Appliance shall renew automatically for additional one-year terms unless Customer elects to terminate Support Services by providing LogRhythm with written notice of its intent not to renew Support Services at least 30 days prior to the end of the applicable annual Support Services term. Support Services for Subscriptions are included in the Subscription Fee and Support Services are provided during the Subscription Term. Upon termination of such Support Services for a Perpetual license, Customer may continue to use the Software in accordance with this Agreement without the benefits provided under the Support Services Addendum. Support Services Fees for the Initial Term are set forth in the applicable Order and are invoiced on the Effective Date. LogRhythm may increase Support Services Fees for Perpetual licenses, Hardware and/or an Appliance for a Support Services renewal term up to seven percent over the prior year’s Support Services Fees.

6.2 Professional Services. Subject to payment of the professional service fees set forth in an Order, LogRhythm shall provide to Customer the professional services specified in the Order and in accordance with Professional Services Addendum located on the LogRhythm website at <https://gallery.logrhythm.com/terms-and-conditions/addendums/LogRhythm-Professional-Services-Addendum-3-2021.pdf> and incorporated herein or attached to this Agreement (“Professional Services”). Unless otherwise specified in an Order, Customer must use any contracted Professional Services within one year of the Effective Date of the Order for such Professional Services. Unless otherwise expressly stated in an Order, Customer shall pay all LogRhythm’s reasonable travel, meals and lodging costs and expenses incurred by LogRhythm in connection with the provision of all services by LogRhythm at Customer’s facilities under this Agreement. Upon Customer’s request, LogRhythm shall submit written evidence of each such expenditure to Customer prior to receiving reimbursement of such costs and expenses.

6.3 Training. Subject to payment of any training fees, Customer may obtain training services from LogRhythm in accordance with the applicable Order (“Training Services”). Customer must use any contracted Training Services within fifteen months of the date of purchase of such Training Services.

7. FEES AND PAYMENT.

7.1 Payment. Customer shall pay LogRhythm or the Authorized Reseller the applicable fees specified in the Order (“Fees”). Unless otherwise expressly provided in this Agreement, LogRhythm shall invoice Customer on the Effective Date and Customer shall pay all invoices within thirty (30) days from the date of the invoice. Fees exclude, and Customer shall make all payments of Fees to LogRhythm free and clear of, all applicable sales, use, and other taxes (excluding taxes based on LogRhythm’s income) and all applicable export and import fees, customs duties and similar charges. If LogRhythm has a legal obligation to pay or collect taxes for which Customer is responsible under this Agreement, then the appropriate amount shall be invoiced to and paid by Customer, unless Customer specifies in the applicable Order that it claims tax exempt status for amounts due under this Agreement and provides LogRhythm a valid tax exemption certificate (authorized by the applicable governmental authority) at least five (5) business days prior to the date of the applicable LogRhythm invoice. LogRhythm may charge interest on all late payments at a rate of one and one-half percent (1½%) per month or the maximum rate permitted by applicable law; whichever is less, from the due date until paid. All Fees are non-refundable unless otherwise expressly stated herein. If Customer purchases Product or services through an Authorized Reseller, price and payment terms are between Customer and the Authorized Reseller.

7.2 Reports; Audit Rights. LogRhythm may periodically run a report to determine the number of MPS Customer is utilizing with the Product. LogRhythm may also audit or appoint an independent audit firm selected by LogRhythm to audit Customer’s records relating to Customer’s use of the Product pursuant to this Agreement to verify that Customer has complied with the terms of this Agreement and to verify Customer’s compliance with the licensed Product. Any audit shall be conducted no more than once in any period of twelve consecutive months during Customer’s normal business hours and upon at least fifteen days’ prior written notice. The audit shall be conducted at LogRhythm’s expense unless the audit reveals that Customer has underpaid the amounts owed to LogRhythm by five percent or more, in which case Customer shall reimburse LogRhythm for all reasonable costs and expenses incurred by LogRhythm in connection with such audit. Customer shall promptly pay to LogRhythm any amounts owed plus interest as provided in Section 7.1.

8. WARRANTY.

8.1 Product Warranty. For a period of ninety (90) days after the Effective Date (“Warranty Period”), LogRhythm warrants that the Product, when used in accordance with the instructions in the applicable Documentation, will operate as described in the Documentation in all material respects. LogRhythm does not warrant that Customer’s use of the Products will be error-free or uninterrupted. LogRhythm will, at its own expense and as its sole obligation and Customer’s exclusive remedy for any breach of this warranty, correct any reproducible Error in the Products or replace any defective Product provided that such Error is reported to LogRhythm by Customer in writing during the Warranty Period and that Customer provides all information that may be necessary to assist LogRhythm in resolving the Error, or sufficient information to enable LogRhythm to recreate the Error. If LogRhythm determines that it is unable to correct the Error or replace the Product, Customer may terminate this Agreement and LogRhythm shall refund to Customer all Product and Support Services Fees actually paid for the defective Product, in which case Customer’s right to use the Product shall terminate.

8.2 Disclaimers. THE EXPRESS WARRANTIES IN SECTION 8.1 ARE THE ONLY WARRANTIES APPLICABLE TO THE PRODUCTS. LOGRHYTHM AND ITS SUPPLIERS EXPRESSLY DISCLAIM ALL OTHER WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, REGARDING THE PRODUCTS, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, 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 8.1, THE PRODUCTS ARE PROVIDED “AS IS” WITH ALL FAULTS.

9. INFRINGEMENT CLAIMS.

9.1 Indemnity. LogRhythm shall defend Customer, at LogRhythm’s expense, against any claim, demand, suit, or proceeding brought against Customer by a third party alleging that the Software infringes or misappropriates such third party’s Intellectual Property Rights (each, a “Claim”), and LogRhythm will indemnify Customer from any damages, reasonable attorney’s fees and costs finally awarded against Customer as a result of, or for amounts paid by Customer under a settlement approved by LogRhythm in writing of, a Claim against Customer provided that Customer: (a) notifies LogRhythm promptly in writing of the Claim; (b) does not make any admission of liability, agreement or compromise in relation to any Claim without the prior written consent of LogRhythm (such consent not to be unreasonably conditioned, delayed or withheld); (c) gives LogRhythm sole control of the defense thereof and any related settlement negotiations; (d) reasonably cooperates and, at LogRhythm’s request and expense, assists in such defense; and (e) wherever and whenever possible takes all reasonable steps to mitigate its losses that are the subject of the Claim.

9.2 Injunction. If a Product becomes, or in LogRhythm’s opinion is likely to become, the subject of an infringement claim, LogRhythm may, at LogRhythm’s discretion and at no cost to Customer: (a) procure for Customer the right to continue using the Product; (b) replace or modify the Product so that it becomes non-infringing and remains functionally equivalent; or; (c) if in LogRhythm’s reasonable opinion, neither option (a) or (b) is commercially viable, notify Customer in writing that this Agreement will terminate on the date specified in the notice of termination issued by LogRhythm to Customer. If this Agreement is terminated under this Section 9.2, LogRhythm will refund Customer the fees paid for such Product upon return of the Product, computed according to a thirty-six (36) month straight-line amortization schedule beginning on the Effective Date.

9.3 Exclusions. Notwithstanding the foregoing, LogRhythm shall have no obligation under this Section 9 or otherwise with respect to any Claim to the extent based on: (a) any use of the Product not in accordance with this Agreement or the Documentation; (b) any use of the Product in combination with other products, hardware, equipment, or software not provided by LogRhythm if the Product or use thereof would not infringe without such combination; (c) use of any release of the Software other than the most current release made available to Customer; provided that LogRhythm notified Customer that any Update to the Software could avoid infringement and further provided that LogRhythm will provide indemnity for use up to the date of such notification; or (d) any modification of the Software by any person other than LogRhythm or its authorized agents or subcontractors. This Section 9 states LogRhythm’s entire liability and Customer’s exclusive remedy for infringement claims and actions.

10. 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, LOST PROFITS OR COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, ARISING FROM OR RELATING TO THIS AGREEMENT EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. TOTAL CUMULATIVE LIABILITY OF LOGRHYTHM AND ITS THIRD-PARTY SUPPLIERS IN CONNECTION WITH THIS AGREEMENT, WHETHER IN CONTRACT OR TORT OR OTHERWISE, SHALL NOT EXCEED THE AMOUNT OF FEES PAID TO LOGRHYTHM DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENTS GIVING RISE TO SUCH LIABILITY. THE FOREGOING LIMITATIONS OF LIABILITY SHALL NOT APPLY TO LIABILITY ARISING FROM A BREACH OF SECTIONS 2.5 OR 11, ANY INDEMNITY OBLIGATIONS IN SECTION 9 OR ANY VIOLATIONS OF THE OTHER PARTY’S INTELLECTUAL PROPERTY RIGHTS.

11. CONFIDENTIALITY.

11.1 Confidential Information. For purposes of this Section 11, (“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, as well as the terms of this Agreement.

11.2 Protection of Information. Recipient shall not use any Information of Discloser for any purpose not expressly permitted by this Agreement and shall disclose the Information of Discloser only to the employees or contractors of Recipient who have a need to know such Information for purposes of this Agreement and who are under a duty of confidentiality no less restrictive than Recipient’s duty hereunder. Recipient shall 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.

11.3 Exceptions. Recipient’s obligations under Section 11.2 with respect to any Information of Discloser shall 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 shall 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 this 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.

11.4 Return of Information. Except as otherwise expressly provided in this Agreement, Recipient shall 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. Recipient shall certify in writing signed by an officer of Recipient that it has fully complied with its obligations under this Section 11.4.

12. TERM AND TERMINATION.

12.1 Term. The “Term” of a Perpetual license continues until terminated as provided in Section 12.2. The “Term” of a Subscription Term Agreement expires at the end of the Subscription specified in the applicable Order unless the parties enter into a new Subscription.

12.2 Termination. Either party may terminate the Agreement if the other party breaches any material provision of this Agreement and does not cure such breach within 30 days of receiving written notice thereof.

12.3 Refund or Payment upon Termination. If this Agreement is terminated by Customer in accordance with Section 12.2, LogRhythm will refund Customer: (a) any prepaid, unused Fees for services after the effective date of termination. If this Agreement is terminated by LogRhythm in accordance with Section 12.2, Customer will pay any unpaid Fees covering the remainder of the applicable term of all Orders. In no event will termination relieve Customer of its obligation to pay any Fees payable to LogRhythm prior to the effective date of termination.

12.4 Effects of Termination. Upon termination of this Agreement: (i) all license and use rights granted in this Agreement shall immediately terminate; and (ii) Customer must promptly discontinue all use of the Software, erase all copies of the Software from Customer’s computers, return to LogRhythm or destroy all copies of the Software, Documentation and other LogRhythm Information in Customer’s possession or control. Sections 1, 2.5, 7, 9, 10, 11, 13 and Sections 3 and 7 of the Cloud Services Addendum together with any accrued payment obligations, shall survive expiration or termination of this Agreement for any reason, together with any accrued payment obligations and any other sections of this Agreement which expressly or by their nature survive expiry or termination.

13. GENERAL.

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

13.2 Compliance with Laws. Each party shall comply with all laws, rules, and regulations, applicable to that party in connection with this Agreement, including all applicable export and import control laws and regulations in its use of the Products and, in particular, neither party shall export or re-export Products without all required government licenses and each party agrees to comply with the export laws, restrictions, national security controls and regulations of all the applicable foreign agencies or authorities. Customer shall not export, reexport, or transfer, directly or indirectly, any information, process, product, technology, funds or services to countries or territories specified as prohibited destinations under U.S. trade controls laws or as otherwise prohibited by U.S. trade control laws, including the economic sanctions and export control laws and regulations administered by the U.S. Department of Commerce, U.S. Department of the Treasury, and U.S. Department of State.

13.3 Assignment. Neither party shall have the right to assign, novate or transfer, by operation of law or otherwise, this Agreement or any of its rights under this Agreement without the other party's prior written consent, which consent shall not be unreasonably withheld or delayed; except LogRhythm shall have the right to assign this Agreement, without consent, to any successor to all or substantially all its business or assets to which this Agreement relates, whether by merger, sale of assets, sale of stock, reorganization or otherwise. Any attempted assignment, novation or transfer in violation of the foregoing will be null and void. If consent to assign the Agreement is approved by LogRhythm, Customer, may be required to acquire additional licenses to remain compliant with the number of licenses granted to Customer. This Agreement is binding upon and inures to the benefit of the parties, and to their permitted successors and assigns.

13.4 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.

13.5 U.S. Government End Users. If Customer is a branch or agency of the United States Government, the following provision applies. The Software and Cloud Services are 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.

13.6 Notices. Any notices or other communications required or permitted to be given or delivered under this Agreement shall be in writing and delivered by one of the following methods: (a) personal delivery; (b) registered or certified mail, in each case, return receipt requested and postage prepaid; or (c) nationally recognized overnight courier specifying next day delivery and notification of receipt. Operational approvals and consents required under this Agreement may be delivered by e-mail. A notice meeting all requirements of this Section 13.6 will be deemed effectively received: (i) upon personal delivery to the party to be notified; (ii) three (3) business days after having been sent by registered or certified mail; (iii) one business day after deposit with a nationally recognized overnight courier; or (iv) on the date on which such notice is delivered by e-mail transmission. A party shall deliver notices to the address, e-mail address number set forth on the applicable Order or to such other address, e-mail address or facsimile number as a party may designate by ten (10) days' advance written notice to the other parties.

13.7 Governing Law. The laws of the State of Colorado shall govern this Agreement, without regard to any conflicts of laws principles that would require the application of the laws of a different jurisdiction. The U.N. Convention for the International Sale of Goods is expressly excluded from, and does not apply to, this Agreement.

13.8 Venue. Any party bringing a legal action or proceeding against the other party arising out of or relating to this Agreement, including, without limitation, to interpret or enforce any provision of this Agreement, shall bring the legal action or proceeding only in the state or federal courts located in Denver, Colorado. Each party consents and submits to the exclusive jurisdiction and venue of those courts for all legal actions and proceedings arising out of or relating to this Agreement. Each party irrevocably waives, to the fullest extent permitted by applicable law, (a) any objection that party may have to the laying of venue of any such proceeding or legal action brought in those courts and (b) any defense of inconvenient forum for the maintenance of a proceeding or legal action brought in those courts. Each of the parties consents to process being served by any party to this Agreement in any action or legal proceeding by the delivery of a copy thereof in accordance with the notice provisions in this Agreement.

13.9 Remedies. Except as provided in in this Agreement, the parties' rights and remedies under this Agreement are cumulative. Customer acknowledges that the Software and Cloud Services contain valuable trade secrets and proprietary information of LogRhythm, that any actual or threatened breach of Section 2 or 11 by Customer will constitute immediate, irreparable harm to LogRhythm for which monetary damages would be an inadequate remedy, and that injunctive relief is an appropriate remedy for such breach. In any action, arbitration or other proceeding brought under this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party, and the non-prevailing party shall pay the prevailing party's reasonable attorneys' fees, costs, and expenses, in each of the foregoing cases, that are incurred in connection with such action, arbitration, or proceeding.

13.10 Waivers. No delay or failure of a party to exercise any of its rights, powers or remedies or to require satisfaction of a condition under this Agreement will impair any such right, power, remedy, or condition, nor will any delay or omission be

construed to be a waiver of any breach, default or noncompliance under this Agreement. 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 the same provision on any other occasion. To be effective, a waiver must be in writing signed by the party granting the waiver and will be effective only to the extent specifically set forth in such writing.

13.11 Third Party Software. Certain Third-Party Software may be provided with the Products or used in the Cloud Services that is subject to the accompanying license(s), if any, of its respective owner(s). To the extent portions of the Products or Cloud Services are subject to open source licenses obligating LogRhythm to make the source code for such portions publicly available (such as the GNU General Public License ("GPL") or the GNU Library General Public License ("LGPL")), LogRhythm will make such source code portions (including LogRhythm modifications, as appropriate) available upon request for a period of up to three (3) years from the date of distribution. Such request can be made in writing to 4780 Pearl East Circle, Boulder, CO 80301: Attn: Legal Department. Customer may obtain a copy of the GPL at <http://www.gnu.org/licenses/gpl.html>, and a copy of the LGPL at <http://www.gnu.org/licenses/lgpl.html>. Subject to the terms of any applicable open source license(s), Third Party Software is licensed solely for use as embedded or integrated with the Product or Cloud Services.

13.12 Severability. If a provision of this Agreement is unenforceable, invalid, or illegal, then the intent of the parties is that (a) the validity, legality, and enforceability of the remaining provisions of this Agreement are not affected or impacted in any way and the remainder of this Agreement is enforceable between the parties, and (b) the unenforceable, invalid, or illegal provision will be modified and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law.

13.13 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."

13.14 Counterparts. The parties may execute this Agreement in several counterparts, each of which will constitute an original and all of which, when taken together, will constitute one agreement.

13.15 Entire Agreement. This Agreement, together with all addenda, exhibits, attachments, Orders and Statements of Work made hereunder, constitutes the final agreement between the parties and is the complete and exclusive expression of the parties' agreement to the matters contained in the Agreement. Customer may order more Products under this Agreement by executing the LogRhythm or Authorized Reseller's Order. All Orders by Customer are non-cancellable. This Agreement supersedes and merges all prior and contemporaneous understandings, agreements or representations by or among the parties, written or oral, that may have related in any way to the subject matter hereof. This Agreement may be amended only by a written instrument signed by each of the parties. Customer may issue a purchase order to LogRhythm to confirm the Order, but no terms of any purchase order or similar document submitted by Customer (whether additional or contradictory) shall apply to this Agreement and all such terms are hereby rejected. Unless otherwise specified in a future Order (which must be signed by both parties), and services, this Agreement governs all future transactions for LogRhythm Products between the parties.

CLOUD AI SERVICES ADDENDUM

This Cloud AI Services Addendum (“Addendum”) is incorporated by reference into and made a part of the applicable End User License Agreement between LogRhythm and the Customer set forth in such agreement (“Agreement”). This Addendum sets forth certain rights, duties, and obligations of the parties with respect to Cloud AI Services provided or made available to Customer by LogRhythm pursuant to an Order. This Addendum shall supplement (and not supersede) the Agreement and shall take precedence solely to the extent of any conflict between this Addendum and the Agreement. All capitalized terms used and not expressly defined in this Addendum shall have the meanings given to them in the Agreement.

Subject to the terms and conditions of “Agreement”, LogRhythm shall provide the Cloud AI Services in accordance with the terms and conditions set forth below.

1. Provision of Cloud AI Services. Subject to the terms and conditions of this Agreement and payment by Customer of all fees due for the Cloud AI Services, LogRhythm grants to Customer a non-exclusive, non-transferable (except as set forth in the Agreement) right to access and use the Cloud AI Services for internal business purposes in accordance with the Documentation and any limitations set forth in this Agreement or the Order. LogRhythm will make the Cloud AI Services available to Customer pursuant to this Addendum and any applicable Orders and provide Support Services for the Cloud AI Services to Customer during the Cloud Service Subscription term at no additional charge.

2. Cloud AI Services Term. Unless otherwise specified in the Order, the Cloud AI Services Subscription term begins on the date that LogRhythm has provided Customer with, or enabled Customer to electronically download, a certificate or other authentication for access to the Cloud Service. The Support Services term for Cloud AI Services Subscriptions is concurrent with the applicable subscription term.

3. Protection of Customer Data. LogRhythm will maintain administrative, physical, and technical safeguards for protection of the confidentiality, integrity, availability and security of Customer Data and LogRhythm will maintain a security program that is reasonably designed to: (i) ensure the confidentiality, integrity, and availability of Customer Data; (ii) comply with current industry standards and all applicable laws; (iii) protect against threats or hazards to the security or integrity of such information; (iv) protect against misuse of Customer Data; and (v) ensure compliance with this Section 3 by its workforce. For Cloud AI Services, LogRhythm’s security program will include, without limitation, those safeguards described in LogRhythm’s SOC 2 Type II Report, ISO/IEC27001:2013 and the LogRhythm Cloud Service Security Description at <https://logrhythm.com/pdfs/terms-and-conditions/CloudAI-Security-Overview.pdf>.

4. Use of Customer Data. Except as expressly permitted by this Agreement, LogRhythm shall not use Customer Data for other than as necessary to provide the Cloud AI Services to Customer pursuant to Customer’s Cloud Service Subscription.

5. Evaluation License Grant. Notwithstanding Section 2 or 3 of the Agreement, if Customer is provided with evaluation Cloud AI Services, then the term of use for the evaluation will be limited to the free trial period specified in the Order or as otherwise determined by LogRhythm (the “Evaluation Period”). During the Evaluation Period, LogRhythm grants to Customer a limited, non-exclusive, non-transferable, non-sublicensable right to access and use the evaluation Cloud AI Services; (a) for internal use in a non-production capacity; and (b) to test and evaluate the Cloud AI Services to assist Customer in its purchase decision. Upon the expiration of the Evaluation Period, the license or right of use granted to Customer will terminate. **The evaluation of the Cloud AI Services is provided “AS IS” and no warranty obligations of LogRhythm will apply and Support Services obligations do not apply to any evaluation Cloud AI Services.**

6. Cloud AI Services Warranty. LogRhythm warrants that, during the Cloud AI Services Subscription term: (i) the Cloud AI Services will perform materially in accordance with the applicable Documentation; and (ii) LogRhythm will use commercially reasonable efforts to make the Cloud AI Services available 24 hours a day, 7 days a week, except for planned downtime. For any breach of this warranty, Customer’s exclusive remedies are those described in the “Termination” and “Refund or Payment upon Termination” sections below.

7. Warranty Disclaimers.

7.1 THE EXPRESS WARRANTIES IN CLOUD AI SERVICES ADDENDUM ARE THE ONLY WARRANTIES APPLICABLE TO THE CLOUD AI SERVICES. LOGRHYTHM AND ITS SUPPLIERS EXPRESSLY DISCLAIM ALL OTHER WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, REGARDING THE CLOUD AI SERVICES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, 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 THIS CLOUD AI SERVICES ADDENDUM, THE CLOUD AI SERVICES ARE PROVIDED "AS IS" WITH ALL FAULTS.

7.2 CUSTOMER SHALL NOT USE THE PRODUCTS OR CLOUD AI SERVICES WITH OR IN ANY APPLICATION OR SITUATION WHERE A FAILURE COULD LEAD TO DEATH OR SERIOUS BODILY INJURY OF ANY PERSON, OR TO SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE ("HIGH RISK ACTIVITIES"). LOGRHYTHM AND ITS LICENSORS SPECIFICALLY DISCLAIM ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS FOR HIGH RISK ACTIVITIES, AND LOGRHYTHM AND ITS LICENSORS SHALL HAVE NO LIABILITY OF ANY NATURE AS A RESULT OF ANY SUCH USE OF THE PRODUCTS OR CLOUD AI SERVICES.

8. Refund or Payment upon Termination. If this Agreement is terminated by Customer in accordance with Section 12.2 of the Agreement, LogRhythm will refund Customer: (a) any prepaid, unused fees for Cloud AI Services; and (b) prepaid fees for Cloud AI Services covering the remainder of the Cloud AI Services Subscription term after the effective date of termination. If this Agreement is terminated by LogRhythm in accordance with Section 12.2, Customer will pay any unpaid fees covering the remainder of the applicable term of all Orders. In no event will termination relieve Customer of its obligation to pay any fees payable to LogRhythm prior to the effective date of termination.

9. Effects of Termination. Upon termination of this Addendum: (i) all use rights granted in this Addendum shall immediately terminate and Customer will lose access to the applicable Cloud AI Services; and (ii) Customer must promptly discontinue all use of the Cloud AI Services, return to LogRhythm or destroy all copies of the Documentation and other LogRhythm Information in Customer's possession or control.

10. Customer Data Portability and Deletion. Upon termination of a Cloud AI Service Subscription, Customer will be granted access, at no additional charge, to the Cloud AI Services for an additional 30 days following such termination to enable Customer to access any Customer Data that is archived in the Cloud Service. Upon written request by Customer made before the effective date of termination of a Cloud Service Subscription and for a mutually agreed upon fee, LogRhythm may assist Customer with the transition of Customer Data which remains archived in a Cloud Service after termination of the Cloud AI Services Subscription. Thirty-one days following expiration or termination of Customer's Cloud AI Services Subscription, LogRhythm will have no obligation to maintain or provide any of Customer Data relating to the Cloud Service, and Customer hereby authorizes LogRhythm thereafter to delete all Customer Data relating to such Cloud Service that is in its possession or under its control, unless LogRhythm is otherwise legally prohibited from doing so.

HARDWARE PROCUREMENT ADDENDUM

This Hardware Procurement Addendum (“Addendum”) is incorporated by reference into and made a part of the applicable End User License Agreement between LogRhythm and the Customer set forth in such agreement (“Agreement”). All capitalized terms used and not expressly defined in this Addendum shall have the meanings given to them in this Agreement. This Addendum shall supplement (and not supersede) the Agreement and shall take precedence solely to the extent of any conflict between this Addendum and the Agreement.

This Addendum sets forth certain rights, duties, and obligations of the parties with respect to hardware described in an Order (“Hardware” as applicable) procured by Customer from LogRhythm in connection with the Software licensed or remotely accessed by Customer under the Agreement.

Subject to the terms and conditions of the Agreement, LogRhythm shall provide the Hardware in accordance with the terms and conditions set forth below.

1. HARDWARE AND APPLIANCE DELIVERY AUTHORIZED RESELLERS. To the extent Customer purchases Hardware from an Authorized Reseller, delivery terms shall be between Customer and the Authorized Reseller. If Customer is purchasing Hardware from LogRhythm subject to the terms and conditions of this Addendum, 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 following:

2. DELIVERY. LogRhythm shall ship the Hardware, pay the freight and add the shipping costs to Customer’s invoice. Title to purchased Hardware (but not to any Software incorporated or embedded therein, which is licensed hereunder and not sold to Customer) and risk of loss and damage shall pass to Customer when the Hardware is put into the possession of the carrier at LogRhythm’s shipment location. LogRhythm shall use reasonable commercial efforts to meet the delivery schedule set forth in an Order, if any. All Hardware shall be delivered to Customer at Customer’s address set forth on an Order and may be delivered in lots determined by LogRhythm.

2.1 INSPECTION. Customer shall have ten (10) business days after receipt of Hardware (the “Return Period”) to notify LogRhythm in writing of any discrepancies in the shipments or lost or damaged goods. LogRhythm will, at its cost, repair or replace Hardware lost or damaged in shipment. LogRhythm shall only accept returns from Customer of Hardware for which notification is sent to LogRhythm during the Return Period. Any damaged Hardware must be returned by Customer with a return material authorization number issued by LogRhythm and accompanied by a notice specifying the discrepancy.

3. SECURITY INTEREST. Customer hereby grants LogRhythm a purchase money security interest in all Hardware sold by LogRhythm to Customer hereunder and in any proceeds, Customer receives from the resale thereof (including accounts receivable), until LogRhythm has received payment in full of the Hardware fees and related charges.

SUPPORT SERVICES ADDENDUM

This Support Services Addendum (“Addendum”) is incorporated by reference into and made a part of the applicable End User License Agreement between LogRhythm and the Customer set forth in such agreement (“Agreement”). All capitalized terms used and not expressly defined in this Addendum shall have the meanings given to them in the Agreement. This Addendum shall supplement (and not supersede) the Agreement and shall take precedence solely to the extent of any conflict between this Addendum and the Agreement.

This Addendum sets forth certain rights, duties, and obligations of the parties with respect to Support Services provided or made available to Customer by LogRhythm with regard to the Hardware described in an Order purchased by Customer from LogRhythm and/or Software licensed or remotely accessed by Customer under the Agreement.

Subject to the terms and conditions of the Agreement LogRhythm shall provide Support Services for the Products as set forth below.

1. DEFINITIONS.

1.1 “Business Day” means the following for each LogRhythm defined regions under the Agreement. Business Day is based on the country of Customer’s headquarters location:

(a) “APJ” means 7:00 a.m. to 6:00 p.m. Singapore time, Monday through Friday (excluding LogRhythm holidays), which are posted on LogRhythm’s Customer portal.

(b) “Europe” means 7:00 a.m. to 6:00 p.m. London time, Monday through Friday (excluding LogRhythm holidays), which are posted on LogRhythm’s Customer portal.

(c) “Middle East” means 7:00 a.m. to 6:00 p.m. Dubai time, Sunday through Thursday (excluding LogRhythm holidays), which are posted on LogRhythm’s Customer portal.

(d) “North America” means 7:00 a.m. to 6:00 p.m. Mountain Time, Monday through Friday (excluding LogRhythm holidays), which are posted on LogRhythm’s Customer portal.

1.2 “Designated Deployment” means the Customer deployment of the LogRhythm Software in accordance with the LogRhythm Documentation.

1.3 “Enhanced Support Services” means optional 24/7 Support Services, subject to the payment of any required additional fees; for purposes of Enhanced Support Services, “Business Day” means 24/7.

1.4 “Maintenance Release” means subsequent patch releases of the Software that LogRhythm generally makes available for Software licensees at no additional fee to customers provided the customers are under a current Support Services Agreement with LogRhythm. The maintenance/patch version is indicated by the third number in the Software version name.

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

1.6 “Support Case” means a request from Customer for assistance which Customer may submit to LogRhythm via the telephone or LogRhythm’s Customer portal or via email to LogRhythm’s Support Services.

1.7 “Support Hour” means an hour during a Business Day.

1.8 “Supported Program” means a supported version of the Software in a Designated Deployment, for which Customer has paid the then-current Support Services Fees.

1.9 “Update Release” means subsequent minor releases of the Software and knowledge base content 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. The update/minor version is indicated by the second number in the Software version name. Updates shall not include any option or future product which LogRhythm licenses separately from the existing Product for an additional fee.

1.10 “Upgrade Release” means subsequent major releases of the Software 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. The upgrade/major version is indicated by the first number in the software version name.

2. SERVICES PROVIDED.

2.1 Technical Support. LogRhythm shall provide technical support to the designated users during the Business Day. Support Services are provided in English, both written and spoken, and shall be provided remotely at LogRhythm’s principal place of business unless mutually agreed to by the parties. A Support Case response may include the following:

- (a) Assistance in identifying and verifying the causes of suspected Errors in the Software;
- (b) Advice on bypassing identified Errors in the Software, if reasonably possible; and
- (c) Assistance in troubleshooting and identifying LogRhythm Hardware-related problems.

2.2 Initial Target Response (“ITR”) Times. LogRhythm shall respond to new Support Cases within the following period following LogRhythm receipt of the Support Case from Customer:

11x5 Standard Support	
Severity	ITR (Hours)
Critical	4
High	8
Medium	12
Low	16
24x7 Enhanced Support	
Severity	ITR (Hours)
Critical	2
High	4
Medium	8
Low	12

2.3 Ticket Severity: LogRhythm classifies tickets per the following categories:

<p><i>Critical</i>– Production System(s) have crashed or in a down state and no immediate work around is available.</p> <ul style="list-style-type: none"> • Resulting impacts would include high risk of data loss or corruption • High impact to business operations
<p><i>High</i> – System is severely degraded such that a major component or feature is inaccessible or inoperable.</p> <ul style="list-style-type: none"> • Operations may continue but at a degraded state • Project or Business Deliverable milestones are at risk
<p><i>Medium</i> – A system component or feature is degraded with potential partial loss of system functionality.</p>
<p><i>Low</i> – General configuration or usage questions.</p> <ul style="list-style-type: none"> • Documentation Requests • How To

2.4 LogRhythm Community Site. LogRhythm maintains a support site containing product manuals and additional support related information (e.g., FAQ's, Knowledge Base). Subject to the payment of Support Services Fees, Customer shall be provided 24/7 access to the community site.

2.5 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.

2.6 Exceptions. LogRhythm shall have no responsibility under this Addendum 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 conflict with the Documentation; or (c) Errors 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:

3.1 Updates. Customer shall be entitled to Updates for the Supported Program as and when developed for general release in LogRhythm's sole discretion while a Support Services Agreement is in effect. Each Update will consist of a set of programs and files made available from LogRhythm's Customer portal and shall 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 shall be entitled to Upgrades for the Supported Program at no additional cost while a Support Services Agreement is in effect. It may be necessary for Customer to upgrade the LogRhythm provided Hardware in order to utilize any such Upgrades.

3.3 Maintenance Release. Customer shall be entitled to Maintenance Releases for the Supported Program at no additional cost while a Support Services Agreement is in effect.

3.4 Knowledge Base Updates. Customer shall be entitled to knowledge base updates at no additional cost, while a current Support Services Agreement is in effect.

3.5 Version Support. LogRhythm version support can be found at https://logrhythm.com/wp-content/uploads/2020/05/LogRhythm_End_of_Life_Policy-May_2019.pdf.

3.6 Version Support, Third Party. 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, which may include notice via publication on LogRhythm's Customer portal.

4. HARDWARE SUPPORT. Subject to the payment of the Support Services Fees, Customer will be entitled to receive the following Support Services related to the Hardware:

4.1 Hardware Support Services. In addition to the Support Services described above, LogRhythm provides Hardware maintenance and support services and parts, with related labor services to repair or replace defects in workmanship pursuant to and occurring within the Support Services term applicable to Customer's Hardware product(s) "**Hardware Support Services**" are only available on Hardware that are under a current Support Services Agreement with LogRhythm.

(a) LogRhythm provides Hardware Support Services with assistance from its hardware OEM provider, Dell global services ("Dell"). Support Services are available for Hardware for up to five (5) years from the Effective Date provided Customer remains current on a Support Services plan. Hardware Support Services also include:

(i) Onsite dispatch of a technician and/or service parts to Customer's business location for repair and resolution, if appropriate and if on-site services are available in Customer's region.

(ii) With Customer's consent, remote troubleshooting sessions, when available, where the Hardware manufacturer's technician conducts a troubleshooting session in Customer's network.

(iii) Onsite troubleshooting assistance when LogRhythm has evaluated a problem and determined that field support is necessary for diagnostics and resolution and if on-site services are available in Customer's region.

(b) Hardware shipped to Customer will support the release of the Software installed on the Hardware at time of delivery. If a subsequent Upgrade Release requires an upgrade to the Hardware, Customer may choose

to either: (i) upgrade the Hardware at its cost and install the subsequent Upgrade Release; or (ii) receive Support Services on Customer's current Hardware and Software through the support life cycle of the applicable Software and Hardware.

4.2 Pre-Replacement of Defective Hardware. Replacements for defective Hardware provided to Customer under this Addendum are sent on a pre-replacement basis when possible. Customer shall have ten (10) business days to return the defective Hardware and all components, including hard drives, to LogRhythm. If Customer fails to return the defective Hardware to LogRhythm, Customer agrees to pay the costs charged by Dell for the replacement Hardware. If the replacement of a complete Hardware is required, the replacement Hardware shall be shipped with Software 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 Program, including, but not limited to: (a) assuring proper Supported Environment configuration, Supported Program 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. Customer must purchase identical Support Services for Products and may not select different Support Services options to cover different Product installations. Unless Customer is upgrading the Products, Customer agrees that it will maintain Support Services on all Products licensed or purchased from LogRhythm.

5.2 Training. Customer is responsible for ensuring that all appropriate personnel are trained and familiar with the operation and use of the Supported Program 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 Maintenance Release, Update Release, or Upgrade Release available from LogRhythm, Customer must subscribe to the LogRhythm Community forum.

5.4 Access to Personnel and Equipment. Customer shall provide LogRhythm with access to Customer's personnel and, at Customer's discretion, its equipment. LogRhythm shall, 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 Customer may elect to pay LogRhythm additional Support Services Fees and expenses incurred for onsite Support Services. 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 use Hardware for any lawful purpose at Customer's discretion and may replace the LogRhythm Software or install Third Party Software onto Hardware in addition to the LogRhythm Software. It is recommended that Customer contact LogRhythm before installing any Third Party Software on the Hardware for use concurrently with the LogRhythm Software and in such an instance, Customer acknowledges that: (a) LogRhythm is not responsible for the functionality of any such Third Party Software; (b) LogRhythm reserves the right to require the removal of any and all such Third Party Software when addressing support issues with the LogRhythm Software; (c) any such installation may negatively impact the performance, reliability and/or security of the LogRhythm Software; and (d) the LogRhythm Software may not perform as intended or in accordance with the LogRhythm Documentation.

PROFESSIONAL SERVICES ADDENDUM

This Professional Services Addendum (“Addendum”) is incorporated by reference into and made a part of the applicable End User License Agreement between LogRhythm and the Customer set forth in such agreement (“Agreement”). This Addendum sets forth certain rights, duties, and obligations of the parties with respect to Professional Services provided or made available to Customer by LogRhythm in connection with the Software licensed or remotely accessed by Customer under the Agreement. This Addendum shall supplement (and not supersede) the Agreement and shall take precedence solely to the extent of any conflict between this Addendum and the Agreement. All capitalized terms used and not expressly defined in this Addendum shall have the meanings given to them in the Agreement.

Subject to the terms and conditions of the Agreement, LogRhythm shall provide the Professional Services in accordance with the terms and conditions set forth below.

1. Scope of Services. LogRhythm shall provide the Professional Services to Customer under this Addendum. At the start of the deployment planning, Customer and LogRhythm may develop a mutually agreed upon deployment plan that may be detailed in one or more Statements of Work (“SOW”) (the “Services”). Professional Services include but are not limited to the process of configuring the Software, Appliances or Cloud Services. Each party shall designate a project lead with the qualifications, expertise, and knowledge who is authorized by that party to act as a liaison between Customer and LogRhythm and assume the responsibilities detailed in Section 2.4 below (“Project Lead”).

1.1 Unless tasks are otherwise specified as “Fixed Fee” in the Quote, all Services are performed as Time and Materials and sold as “Professional Services Days.” As such, all effort estimates listed the Quote are produced in good faith and do not guarantee scope completion.

1.2 In the absence of a SOW, the Professional Services Days may be used as agreed upon by Customer and LogRhythm Project Management.

1.3 Project Management. Project Management is a component of LogRhythm’s Professional Services engagements and is a factor in the number of days quoted to Customer. Project Management activities may include and are not limited to:

- (a) Being the primary point of contact representing LogRhythm Professional Services for the project.
- (b) Work with Customer’s project manager or single point of contact to review the project scope, define success criteria, create the project schedule, and review the implementation process including Customer tasks and deliverables.
- (c) Hold a pre-deployment meeting via conference call that will include some or all of the following activities:
 - (i) Review the purchased scope of work
 - (ii) Explain the project approach
 - (iii) Confirm Customer’s overall objectives of the project
 - (iv) Review the required Customer participation, tasks, and deliverables
 - (v) Discuss the preliminary deployment schedule
- (d) Hold periodic progress meetings and provide written status reports, including a summary of hours billed to the project.

1.4 As it pertains to the scope defined above, billable activities include, but are not limited to: design; implementation; testing; documentation; meetings (preparation, participation, and follow-up); phone calls; emails; status updates; and knowledge transfer.

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 Addendum:

- (a) Changes to this Addendum shall be documented using a Project Change Request form in accordance with the process outlined in this Addendum.
- (b) Customer shall ensure that data backup is performed. Except as may be purchased under a separate LogRhythm Services Agreement, LogRhythm shall 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 Addendum.

(c) Unless otherwise specified, all Services will be performed remotely.

(d) LogRhythm will not be responsible for the configuration of any third-party application other than supported LogRhythm products and solutions during the deployment.

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 Addendum:

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

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

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

(d) LogRhythm employees will comply with all Customer network security standards that are disclosed to LogRhythm before the engagement.

2.3 Customer Responsibilities. Completion of the Services by LogRhythm in adherence to the terms of this Addendum is contingent upon Customer fulfilling the following responsibilities:

(a) Customer shall complete all necessary facilities arrangements prior to the commencement of the Services which shall 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 Professional Services Addendum.

(b) Customer shall 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 Addendum.

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

(d) Customer shall 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 shall assign system administrators and operators available by phone or pager for the duration of this Addendum.

(f) If required to be onsite, Customer shall provide LogRhythm adequate onsite access to office space and equipment, and to telephones with outside lines and a dedicated, secure line for internet access. For remote Services, Customer will provide LogRhythm remote access via web conference (e.g. WebEx) to the Customer LogRhythm platform and Customer network for the duration of the project.

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

(h) Where applicable, Customer shall provide security passes to cover the duration of this Addendum 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 Addendum.

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

(j) Customer is responsible for racking and cabling all hardware unless explicitly delegated to LogRhythm resources in a custom SOW.

(k) If Customer is deploying to a virtual environment, all prerequisites and specifications outlined in the LogRhythm Software Installation Guide will be met before the start of any deployment work.

(l) Any network environment issues which arise outside of the deployment activities are the responsibility of Customer. Any issues which impact the deployment timelines must be resolved by Customer within agreed timeframes so as to limit the impact on the deployment.

(m) Deliverables will be reviewed by Customer and returned with comments within 10 business days of delivery.

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

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

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

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

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

(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 Addendum, promptly initiate the Project Change Process as described in Section 6 of this Addendum, to address the potential delay.

3. Service Warranty. LogRhythm warrants that the Services will be provided with all reasonable care and skill in accordance with Good Professional Practice. "Good Professional Practice" means practices, methods and procedures which would be commensurate with those practices, methods and procedures adopted by a supplier of services the same as or similar to the Services and exercising in the general conduct of its undertaking that degree of skill, diligence, prudence and foresight which would ordinarily and reasonably be expected from such a supplier.

4. Scheduling Authority for Professional Services. The Services will be coordinated with Customer's Project Lead. Customer may appoint in writing (email) additional representatives to act on Customer's behalf.

4.1 Work Scheduling. Services are to be performed during normal business hours as defined below, Customer local time, excluding LogRhythm corporate holidays. Work performed after-hours on weekdays will be charged at a rate of 1.5 hours per hour worked. For work performed on weekends, 2 hours will be billed per hour worked. If onsite Services are requested, the duration may not be less than three days.

(a) One (1) consulting day is eight (8) hours, inclusive of one (1) hour to cover breaks.

(b) Normal business hours by region, Customer local time:

(i) North and South America: Monday – Friday 8 AM – 5 PM

(ii) Europe, Asia, India, and Australia: Monday – Friday 9 AM – 5 PM

(iii) Middle East: Sunday – Thursday 9 AM – 5 PM

(c) For weekly Subscription Services, including Enhanced Support Account Management and Co-Pilot, the consultant will make a reasonable effort to deliver at least forty-six sessions over the course of a twelve-month engagement or the prorated equivalent thereof to account for vacations, holidays, and cancellations. Bi-weekly subscription services will make a reasonable effort to deliver all twenty-six sessions over the course of a twelve-month engagement or the prorated equivalent thereof. Upon the Customer's request, the consultant or Project Manager will make a reasonable attempt to reschedule any missed engagements at a later date or with another consultant.

4.2 Professional Services Cancellation Policy.

(a) **Customer On-Site Services.** All requests for cancellations of scheduled Services that are to be delivered on a Customer's site must be received by LogRhythm at least one (1) business week in advance of the time the Services are scheduled to begin. If a cancellation is made less than one (1) business week prior to the start of the scheduled session, LogRhythm will make reasonable attempts to fill the allotted consultant time with other customer engagements. If LogRhythm does not fill the allotted time, then the Customer's Services hours will be decremented in the amount of one working day (8 hours) and Customer will reimburse LogRhythm for any actual non-cancellable travel and accommodation expenses.

(b) **Remote Services.** All requests for cancellations of scheduled Services that are to be delivered remotely must be received by LogRhythm at least 2 business days in advance of the time the service is scheduled to begin. If the cancellation is made fewer than 2 business days prior to the start of the scheduled session, LogRhythm will make reasonable attempts to fill the allotted consultant time with other customer engagements. If LogRhythm does not fill the allotted time, then Customer's Services hours will be decremented in the amount of the pre-scheduled Services hours, up to a maximum of 8 hours.

(c) To cancel a session, Customer will contact the appropriate LogRhythm Project Management team:

- (i) North and South America: projectmgmt@logrhythm.com
- (ii) Europe, Middle East, and India: projectmgmt.emea@logrhythm.com
- (iii) Asia and Australia: projectmgmt.apj@logrhythm.com

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

6. **Project Change Process.** Any change to the Addendum shall be coordinated with the parties Project Leads.

6.1 **Change Initiation.** LogRhythm or 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 shall submit each change request to the other party's Project Lead, and then both Project Leads shall review such request for validation.

7. **Acceptance.** The completion of all work delivered will be assumed accepted if there are no objections raised in writing to the LogRhythm Project Manager within 10 business days of the work being performed alongside of the Customer or the written status report being delivered to Customer.

8. Fee Description and Payment

8.1 **Payments.** Professional Services Fees shall be billed in accordance with Section 7 of the Agreement.

8.2 **Rights to Development.** LogRhythm shall 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 shall be subject to future discussion and under a separate agreement with terms to be mutually agreed upon by both parties. LogRhythm shall retain right title and interest in and to any Indicators of Compromise discovered or developed by LogRhythm pursuant to this Agreement; and LogRhythm may use, copy, modify, distribute and sublicense, for the benefit of LogRhythm and its end-users, all Indicators of Compromise disclosed to LogRhythm. For purposes of this Section 8.2, "Indicator of Compromise" means data, observable artifacts and patterns and groupings thereof indicative of a cyber intrusion, compromise or incident or user behavior and which can be modeled for use with LogRhythm Hardware or Software Products. Indicators of Compromise discovered, developed or otherwise provided

by LogRhythm pursuant to this Agreement are licensed to Customer for use with the LogRhythm Products and Cloud Services.

Last Updated: February 2022

IF CUSTOMER DOES NOT AGREE TO THE TERMS AND CONDITIONS BELOW, DO NOT ACCESS, DOWNLOAD, INSTALL, USE OR COPY THE LICENSED SOFTWARE. BY DOWNLOADING, INSTALLING, USING OR COPYING THE LICENSED SOFTWARE, CUSTOMER AGREES TO THE TERMS AND CONDITIONS OF THIS AGREEMENT AND THAT IT IS LEGALLY BOUND BY ITS TERMS. THE PERSON ACCEPTING THE TERMS AND CONDITIONS OF THIS AGREEMENT ON BEHALF OF CUSTOMER REPRESENTS THAT HE OR SHE (1) HAS FULL AUTHORITY TO BIND CUSTOMER TO THIS AGREEMENT; AND (2) HAS READ AND UNDERSTANDS ALL THE PROVISIONS OF THIS AGREEMENT. BY CLICKING THROUGH OR OTHERWISE ACCEPTING THIS AGREEMENT ELECTRONICALLY, INCLUDING BY DOWNLOADING, INSTALLING, USING OR COPYING THE LICENSED SOFTWARE, CUSTOMER IS CONSENTING TO THE USE OF ELECTRONIC DELIVERY OF DOCUMENTS AND AN ELECTRONIC SIGNATURE, AND AGREES THAT SUCH ELECTRONIC SIGNATURE IN CONNECTION WITH THIS AGREEMENT AND THE TRANSACTIONS CONTEMPLATED HEREBY SHALL BE BINDING TO THE SAME EXTENT AS ORIGINAL SIGNATURES.

This End User License Agreement (the “**Agreement**”) is entered into by and between Tanium and the end user customer (hereinafter “**Customer**”), to permit the use of the Licensed Software and Support as defined herein and purchased by Customer. The “**Effective Date**” of the Agreement and license(s) granted under this Agreement will be the earlier of the date set forth in the schedule(s) or purchase order(s) entered into by Tanium and Customer that describe the Licensed Software and any Support to be acquired by Customer (each a “**Schedule**”), or the date on which Tanium initially delivers a license key that allows the Customer to download or access the Licensed Software. “**Tanium**” means the Tanium entity listed or identified on the current approved Tanium-provided quote for the Licensed Software and Support (the “**Quote**”), or otherwise communicated to Customer by Tanium. Tanium and Customer may be referred to collectively as the “**parties**” or individually as “**party**.” The Agreement consists of two parts: PART 1 – General Terms; and PART 2 – Country-specific Terms. The terms of PART 2 may replace or modify those of PART 1.

PART 1 – General Terms

1. Grant of License.

1.1 License. Subject to the terms and conditions of this Agreement, Tanium grants Customer a revocable, non-transferable, non-exclusive license (“**License**”) to copy and use the proprietary software in object code form and related proprietary components made Generally Available by Tanium and provided by or on behalf of Tanium to Customer in connection with this Agreement (the “**Licensed Software**”) in accordance with the

Documentation for Customer's internal use only during the applicable Licensed Term. The term "Licensed Software" will include Tanium's then-current documentation made available by Tanium in English to its customer base for use of the Licensed Software, as updated from time to time by Tanium in its discretion (the "**Documentation**"), and any updates, bug fixes, APIs, sensors, scripts, releases, 'Saved Questions' and versions (collectively, "**Enhancements**") made Generally Available by Tanium and provided by Tanium to Customer. During the Licensed Term, Tanium may also provide Customer with non-GA materials including 'Labs' or 'Community' content, sensors, scripts, releases, and 'Saved Questions' (the "**Support Materials**"). Customer may use the Support Materials during the applicable Licensed Term only as needed for Customer to use the Licensed Software. The term "**Generally Available**" or "**GA**" means a production version made available to Tanium's customer base.

1.2 Ownership. The Licensed Software and Support Materials are licensed to Customer, not sold. The Licensed Software, Documentation, Support Materials and Support provided by Tanium contain material that is protected by copyright, patent, trade secret law, and other intellectual property law, and by international treaty provisions. All rights not expressly granted to Customer under this Agreement are reserved by Tanium. All copyrights, patents, trade secrets, trademarks, service marks, trade names, moral rights, and other intellectual property and proprietary rights in the Licensed Software, Documentation, Support Materials and Support provided by Tanium whether or not registered will remain the sole and exclusive property of Tanium or its licensors and suppliers, as applicable.

1.3 License Metric. The Licensed Software is licensed on a per Managed OS Instance basis. A "**Managed OS Instance**" means a physical device or virtual machine where the Licensed Software can be installed, and where that device is capable of processing data. Managed OS Instances include: mobile/smart phone, diskless workstation, personal computer workstation, networked computer workstation, homemaker/teleworker, home-based system, file server, print server, e-mail server, internet gateway device, storage area network server, terminal servers, portable workstation connecting to a server or network, or container (host and/or constituent container). Certain Tanium modules may be licensed and charged on a per container basis, as more fully set forth in the Quote or Schedule. In the case of a virtual system, in addition to the virtual Managed OS Instance(s), the hypervisor is considered to be a single Managed OS Instance if the Licensed Software is installed at the hypervisor level.

1.4 System Configuration. Hardware and software requirements for proper installation and use of the Licensed Software are set forth in the relevant Documentation. Customer is solely responsible and fully liable for purchasing, providing, installing, and using all required equipment, networks, peripherals, third-party software, and hardware, including, but not limited to, third-party software, scripts, or other technologies that may interoperate and be used in conjunction with the Licensed Software, all of which are expressly excluded from all warranty, indemnity and support obligations described elsewhere in this Agreement to the extent permissible under applicable law.

2. Restrictions.

Customer's license to the Licensed Software is subject to the following license conditions and restrictions:

2.1 Customer's Benefit. Customer must not use or permit the Licensed Software or Support Materials to be used in any manner, whether directly or indirectly, that would enable Customer's personnel or any other person or entity to use the Licensed Software or Support Materials for anyone's benefit other than Customer or its Affiliates. Customer must purchase each license it intends to use. Use of and access to the Licensed Software and Support Materials is permitted only by Customer-designated personnel.

2.2 Limitations on Copying and Distribution. Customer must not copy or distribute the Licensed Software or Support Materials, whether directly or indirectly, except to the extent that copying is necessary to use the Licensed Software or Support Materials for the purposes set forth herein. Customer may make a single copy of the Licensed Software and Support Materials for backup and archival purposes.

2.3 Limitations on Reverse Engineering and Modification. Except to the extent such a limitation is expressly prohibited by applicable law, Customer must not reverse engineer, decompile, disassemble, modify, or create derivative works of the Licensed Software or Support Materials whether directly or indirectly.

2.4 Sublicense, Rental and Third Party Use. Except to the extent expressly permitted by this Agreement, Customer must not assign, sublicense, rent, timeshare, loan, lease or otherwise transfer the Licensed Software or Support Materials, or directly or indirectly permit any third party to use or copy the Licensed Software or Support Materials. Customer must not operate a service bureau or other similar service for the benefit of third parties using the Licensed Software or Support Materials.

2.5 Proprietary Notices. Customer must not remove any proprietary notices (e.g., copyright and trademark notices) from the Licensed Software or Support Materials. Customer must reproduce the copyright and all other proprietary notices displayed on the Licensed Software or Support Materials on each permitted back-up or archival copy.

2.6 Use in Accordance with Documentation. All use of the Licensed Software shall be in accordance with the Documentation and this Agreement.

2.7 Use of the Licensed Software. Customer shall be solely responsible and fully liable for its use of the Licensed Software and Support Materials, including, but not limited to, for ensuring that the use of the Licensed Software is in compliance with all applicable foreign, federal, state, and local laws, rules, and regulations.

2.8 Tanium's Intellectual Property. Customer shall not use the Licensed Software, Support Materials or Tanium Confidential Information whether directly or indirectly to

contest the validity of any Tanium intellectual property, including the Licensed Software; any such use of Tanium's information will constitute a material, non-curable breach of this Agreement.

2.9 Competition. Customer shall not use the Licensed Software, Support Materials or Tanium Confidential Information in a manner to compete with Tanium or to assist a third party in competing with Tanium, or for benchmarking or competitive analysis.

2.10 Notice and Prevention. Customer shall notify Tanium promptly upon learning of any attempt by anyone to misuse, misappropriate, copy, modify, derive, or reverse engineer any Licensed Software or Support Materials and Customer shall cooperate and assist Tanium in discovering, preventing, and recovering damages for any such misappropriation, copying, modification, derivation, or reverse engineering of the Licensed Software.

3. Affiliates and Managing Parties.

The term "**Affiliate**" means an entity that is controlled by, controls, or is under common control of a party, where "control" means the ownership, in the case of a corporation, of more than fifty percent (50%) of the voting securities in such corporation or, in the case of any other entity, the ownership of a majority of the beneficial or voting interest of such entity. Customer may allow its Affiliate(s) to use the Licensed Software and Support Materials provided that (a) the Affiliate only uses the Licensed Software and Support Materials for Customer's or Affiliate's internal business purposes and up to the authorized number of Managed OS Instances in accordance with the terms and conditions of this Agreement and (b) Customer is responsible for and remains liable for the Affiliate's use of the Licensed Software and Support Materials in compliance with the terms and conditions of this Agreement. If Customer enters into a contract with a third party that manages Customer's information technology resources ("**Managing Party**"), Customer may allow its Managing Party to use the Licensed Software and Support Materials on Customer's Managed OS Instances, provided that (a) the Managing Party only uses the Licensed Software for Customer's internal business purposes and not for the benefit of any third party or for the Managing Party, (b) the Managing Party agrees to comply with the terms and conditions of this Agreement, and (c) Customer is responsible for and remains liable for the Managing Party's use of the Licensed Software and Support Materials in compliance with the terms and conditions of this Agreement. In addition, Customer shall ensure that its personnel comply with the terms of this Agreement.

4. Term and Termination.

Unless otherwise agreed in a Schedule, the License(s) will commence upon the initial delivery of the license keys that allow Customer to download or access the Licensed Software ("**Delivery**") and will continue for the term of the applicable License(s) or until this Agreement is terminated as provided in this Section, whichever occurs first (the "**Licensed Term**"). The Licensed Term will be as set forth in the Schedule. Either party may terminate this Agreement on written notice to the other party if the other party is in

material breach of its obligations hereunder and fails to cure the material breach within thirty (30) days of such written notice, or within five (5) days of such written notice in the case of Customer's breach of Sections 1 (Grant of License) or 2 (Restrictions). Notwithstanding the foregoing, if a material failure is not curable, the non-defaulting party may immediately terminate this Agreement upon written notice to the other party. In addition, if Customer fails to make payments as required hereunder and such failure is not cured within fifteen (15) days of written notice from Tanium, Tanium may immediately cease performing Support Services. Subject to applicable law, either party may, in its sole discretion, elect to terminate this Agreement on written notice to the other party upon the bankruptcy or insolvency of the other party or upon the commencement of any voluntary or involuntary winding up, or upon the filing of any petition seeking the winding up of the other party. Upon any termination or expiration of this Agreement, the Licenses granted in Section 1 (Grant of License) will automatically terminate and Customer will have no further right to possess or use the Licensed Software. Unless otherwise stated in this Agreement, termination of the Agreement or any Schedule will not entitle Customer to a refund of any fees. Tanium reserves the right to seek all remedies available at law and in equity for Customer's material breach of this Agreement.

5.Fees and Expenses; Payment Terms; Taxes.

5.1 Fees and Expenses. Notwithstanding anything else to the contrary, if Customer orders from a Tanium authorized business partner ("**Reseller**"), final terms of the transaction (e.g., pricing, discounts, fees, payments, and taxes) are solely subject to the agreement between Customer and its Reseller of choice. This Agreement will govern Tanium's provision of and Customer's license to the Licensed Software and Support whether Customer orders the Licensed Software and Support from Tanium or a Reseller. Unless Customer orders directly from a Reseller, Customer will pay the Licensed Software and Support fees directly to Tanium and Tanium will fulfill all orders. The parties will enter into a schedule(s) or purchase order(s) that describe the Licensed Software and/or Support to be acquired by Customer (each a "**Schedule**"). This Agreement applies to any Schedule that references this Agreement. When a purchase order will be utilized as a Schedule, the purchase order must reference and be made pursuant to this Agreement and the applicable Quote. Notwithstanding anything else to the contrary, any terms and conditions in the purchase order that conflict or are inconsistent with the Quote or this Agreement will have no force or effect. The purchase order will not add or remove terms from the Quote or this Agreement. Tanium further reserves the right to expressly reject any purchase order that does not comport to the requirements of this Section.

5.2 Payment Terms. Unless otherwise set forth in a Schedule: (a) fees for Licenses and Support will be billed, due, and payable fully in advance thirty (30) days after Customer's receipt of an invoice. Payments will be made by electronic transfer to a bank account designated by Tanium on the invoice in the amount of fees for the Licensed Software and Support ordered (less any applicable credits and deductions and plus any applicable taxes, shipping, and other charges). The effective date of payment shall be the date on which the entire amount due is credited to Tanium's bank account or the instrument enabling

immediate collection of the entire amount due is received. All payments not made by Customer when due will be subject to late charges of the lesser of (i) one percent (1%) per month of the overdue amount or (ii) the maximum amount permitted under applicable law. Customer shall pay all court costs, fees, expenses, and reasonable attorneys' fees incurred by Tanium in collecting delinquent fees.

5.3 Taxes.

5.3.1 All amounts payable by Customer to Tanium under this Agreement are exclusive of any taxes, levies, or duties, of any nature, that may be assessed by any jurisdiction (collectively "**Taxes**"). Customer is responsible for paying all Taxes including sales, use, excise, import or export values or fees, stamp duties, foreign withholding (if applicable to paying jurisdiction), value-added, personal property, or any other tax resulting from the delivery, possession, or use of the Licensed Software, purchases of hardware, or performance of any Support hereunder in the execution or performance of this Agreement. Taxes do not include any taxes payable by Tanium for its employees or for its net income.

5.3.2 All Licensed Software will be delivered and accessed electronically. In conjunction with the billing, collection and payment of any Taxes, Customer must provide Tanium with a physical address of the download site for the Licensed Software. This address will be used as the "shipped to address" on all invoices. Customer will pay all Taxes relating to, or under this Agreement, unless Customer is exempt from the payment of such Taxes and provides Tanium with evidence of valid exemption certificate(s). If its tax status changes, Customer must notify Tanium in writing (email is sufficient) at least 30 days in advance of Customer's next billing cycle. If Tanium becomes entitled to a refund or credit of Taxes previously paid by Customer pursuant to this Section, any such refunded or credited amounts (including any interest received thereon) shall be promptly granted as a credit memo against Customer's account or, upon Customer's request, paid over to Customer.

5.3.3 Unless both Customer and Tanium agree otherwise, Customer will make no deduction from any amounts owed to Tanium for any un-invoiced taxes of any type. Subject to applicable laws, Tanium will cooperate with Customer to reduce the amount of applicable withholding taxes and Customer will not take any action that is prejudicial to obtaining an available tax exemption by Tanium. Upon Customer's written request, Tanium will provide Customer with written proof that it has made all registrations and reports required for these tax payments. If Tanium claims a tax exemption that may affect any obligations of Customer, Tanium will disclose this exemption to Customer on a timely basis and provide Customer with all exemption documentation requested by Customer. If Customer is required to withhold amounts from any payments due to Tanium hereunder as prescribed by applicable law, Customer will make such withholding, remit such amounts to the appropriate taxing authorities. Customer agrees to increase the amount payable as necessary so that after making all required deductions and withholdings, Tanium receives and retains (free from any Tax liability) an amount equal to the amount it would have received had no such deductions or withholdings been made. Customer will indemnify Tanium from and against any disputed taxes, including interest and penalties, on the

Licensed Software or Support, by the taxing authorities. If the taxation of the item(s) is disputed by the taxing authorities, Tanium will notify Customer, if practical, to work with Customer and the taxing authorities to minimize any potential deficiencies.

6. Support; Personal Data and Systems Information; Supplemental Support and Training.

6.1 Support. The term “**Support**” means, collectively, the Support Services, Supplemental Support, Training, and any other services acquired by Customer from Tanium, all of which are provided in accordance with, and governed by, the terms and conditions of this Agreement. The type, term, and level of Support are as set forth in the applicable Schedule. If Customer has a current Support Services entitlement or a subscription license governed by this Agreement, then Tanium will provide Customer with the support and maintenance services described in Section 6.2 (the “**Support Services**”) during the term specified in the Schedule (the “**Support Term**”). Once the Support Term has expired, Customer has no further right to receive any Support Services. All Support is provided subject to the terms and conditions of this Agreement. Geographic limitations may apply. Unless otherwise agreed upon in writing by the parties, Support Services will be provided in English only.

6.2 Support Services. Unless otherwise set forth in the Schedule, Tanium will provide the following Support Services to Customer:

6.2.1 General. During the Support Term, Tanium shall provide Customer with reasonable support for the person(s) designated by customer that may contact Tanium for Support Services (“**Technical Support Contact(s)**”). Customer may contact Tanium for Support Services Monday through Friday, 7 a.m. to 7 p.m. Pacific Standard Time, excluding Tanium holidays. Tanium shall use good faith efforts to work with Customer during Customer’s normal business hours in the time zone in which the Customer is located to resolve any issues raised by Customer. Customer may designate up to a maximum of two (2) Technical Support Contacts and may change its designation of Technical Support Contact(s) upon written notice to Tanium.

6.2.2 Contacting Tanium. Customer’s Technical Support Contact(s) may contact Tanium for Support Services by submitting a request via the internet-based support platform, which requires registration to use.

6.2.3 Customer’s Obligations. Customer is responsible for: (1) preparing and maintaining their systems (e.g., multi-factor authentication) and facilities in accordance with the Documentation and specifications of the appropriate suppliers; (2) implementing all Enhancements as they are released; (3) securing all required permits, inspections, and licenses necessary to use the Licensed Software and Support Services; (4) complying with all applicable laws while using the Licensed Software and Support Services; and (5) determining whether the Licensed Software (a) adheres to any applicable laws to which it is subject and (b) meets its business needs. Customer shall be solely responsible for maintaining all necessary backup and recovery procedures to prevent loss of its data.

Customer acknowledges and agrees that Customer is solely responsible for the function, performance, and results achieved in using or accessing the Support Materials that Tanium may make available to Customer in connection with the Support Services.

6.2.4 Third-Party Support. Notwithstanding anything else to the contrary in this Agreement, if Customer enters into an agreement with a Reseller under which the Reseller will provide support to Customer for the Licensed Software (“**Third-Party Support**”), Customer must contact the Reseller, and not Tanium, for support. Customer acknowledges that (i) all terms and conditions related to Third-Party Support are solely subject to the agreement between Customer and the Reseller; and (ii) Tanium has no responsibility or liability for Third-Party Support.

6.2.5 Supported Versions. Tanium will provide Support Services for the most current version of the Licensed Software and any prior versions expressly identified in the Documentation as being supported by Tanium (“**Supported Versions**”). Support Services for non-Supported Versions may be provided by Tanium in its sole discretion on an “as-is” basis without warranty of any kind.

6.3 Personal Data and Systems Information.

6.3.1 Personal Data. Customer, rather than Tanium, determines which types of data, including Personal Data (as defined in the Data Processing Addendum), exists within its endpoint environment, and determines to what extent Personal Data is processed through its use of the Licensed Software and Support. To the extent that Tanium processes Personal Data on behalf of Customer while providing the Licensed Software and Support, Tanium will process such Personal Data pursuant to the Data Processing Addendum found at <http://tanium.com/dpa>, which is hereby incorporated into and made a part of this Agreement.

6.3.2 Systems Information. During the term of the Agreement, Customer may provide to Tanium and the Licensed Software and Support may collect performance, usage, and analytics information relating to Customer’s operation and use of the Licensed Software and Support, metadata relating to Customer’s networks, software, applications, and systems, device identifiers, network telemetry, endpoint telemetry, system configuration, and data generated through any of the foregoing (collectively, “**Systems Information**”). Because Customer’s endpoint environment is unique in configurations and naming conventions, the Systems Information could potentially include Personal Data. Customer may redact, edit, or otherwise suppress any Systems Information, including Personal Data, prior to providing to Tanium for processing. To the extent any Systems Information includes Personal Data, Customer represents and warrants that it has made all necessary disclosures and has a lawful basis to share the Personal Data with Tanium for the Permitted Purpose.

Customer agrees that Tanium may use Systems Information: (a) to provide the Licensed Software and Support; (b) to research, develop, and improve Tanium’s products and

services; (c) as directed or instructed by Customer; and (d) on an aggregated and/or anonymized basis, for marketing purposes (the “**Permitted Purpose**”). To the extent Systems Information identifies Customer, such Systems Information will be held in confidence by Tanium in accordance with Section 10 (Confidentiality).

6.3.3 As between Customer and Tanium, this Section states Tanium’s entire obligation with respect to Personal Data.

6.4 *Supplemental Support and Training.* Supplemental Support may be purchased by Customer and provided by Tanium in accordance with Appendix A. Product training may also be purchased by Customer and provided by Tanium with respect to the Licensed Software (“**Training**”).

7. Limited Warranty; Disclaimer; Integrations with Third-Party Software and Services.

7.1 *Limited Warranty.* During the Warranty Period, Tanium warrants that (i) the Licensed Software will operate in substantial conformity with the Documentation; and (ii) it shall use commercially reasonable efforts to screen the Licensed Software prior to Delivery to Customer for viruses, Trojan horses, and other malicious code. The term “**Warranty Period**” means ninety (90) days from the Effective Date. If the Licensed Term is less than ninety (90) days, the Warranty Period will be for the length of the applicable Licensed Term. The foregoing warranties are solely for the benefit of Customer and Customer shall have no authority to extend such warranty to any third party. The sole and exclusive remedy of Customer, and the sole and exclusive liability of Tanium, for breach of the foregoing warranties in this Section, shall be to repair or replace the non-conforming Licensed Software, or if repair or replacement would, in Tanium’s opinion, be commercially unreasonable, then Tanium shall terminate the relevant licenses and refund to Customer the unused portion of prepaid license fees for such non-conforming Licensed Software. This warranty is contingent upon the proper installation and use of the Licensed Software as described in the Documentation and this Agreement; Tanium shall not be responsible for Customer’s use of the Licensed Software if not operated in a manner recommended in the Documentation. Any modification to the Licensed Software by Customer or any third party or failure by Customer to implement any Enhancements to the Licensed Software may void Tanium’s obligation to provide Support Services and Tanium’s warranties under this Section.

7.2 *Additional Warranty.* In addition, Tanium warrants that any Supplemental Support and Training will be provided in a professional and workmanlike manner consistent with relevant industry standards. If Tanium breaches the foregoing warranty, Customer’s sole remedy will be to terminate the applicable Supplemental Support and/or Training and receive a refund of any prepaid unused fees for such non-conforming Supplemental Support and/or Training.

7.3 EXCEPT AS PROVIDED IN SECTION 7.1 AND 7.2, THE LICENSED SOFTWARE, SUPPORT MATERIALS, AND SUPPORT ARE PROVIDED ON AN “AS-AVAILABLE,” “AS-IS” BASIS. TO THE MAXIMUM EXTENT PERMITTED BY LAW, TANIUM AND ITS LICENSORS AND SUPPLIERS DISCLAIM ALL OTHER WARRANTIES WITH RESPECT TO THE LICENSED SOFTWARE, SUPPORT MATERIALS AND SUPPORT, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF NON-INFRINGEMENT, TITLE, MERCHANTABILITY, QUIET ENJOYMENT, QUALITY OF INFORMATION, AND FITNESS FOR A PARTICULAR PURPOSE. TANIUM DOES NOT WARRANT THAT THE LICENSED SOFTWARE OR SUPPORT WILL MEET CUSTOMER’S REQUIREMENTS; THAT CUSTOMER’S USE OF THE LICENSED SOFTWARE OR SUPPORT WILL SATISFY ANY STATUTORY OR REGULATORY OBLIGATIONS; THAT THE OPERATION OF THE LICENSED SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE; OR THAT ERRORS OR DEFECTS IN THE LICENSED SOFTWARE WILL BE CORRECTED. TANIUM DOES NOT PROVIDE WARRANTIES WITH RESPECT TO ANY NON-GA PRODUCTS, SCRIPTS, CONTENT, OR OTHER TECHNOLOGIES, INCLUDING THE SUPPORT MATERIALS AND ANY INFORMATION OR ADVICE PROVIDED BY TANIUM PERSONNEL IN THE COURSE OF PROVIDING SUPPORT. TANIUM HAS NO RESPONSIBILITY OR LIABILITY FOR ANY THIRD-PARTY PRODUCTS OR TECHNOLOGIES USED BY CUSTOMER WHETHER INDEPENDENTLY OR IN CONJUNCTION WITH THE LICENSED SOFTWARE. If applicable law affords Customer implied warranties, guarantees or conditions despite these exclusions, those warranties will be limited to one (1) year from the Effective Date and Customer’s remedies will be limited to the maximum extent allowed by Sections 7 (Limited Warranty; Disclaimer; Integrations with Third-Party Software and Services) and 9 (Limitation of Liability).

7.4 Integrations with Third-Party Software and Services. Customer acknowledges that the Licensed Software may contain features designed to integrate or interoperate with third-party software or services, that Tanium reserves the right to remove or alter any such Licensed Software features, and that any such removal or alteration does not entitle Customer to any refund, credit, or other compensation. If Customer elects to use third-party software or services with the Licensed Software, Customer grants Tanium permission to allow the third-party software services or its provider to access Customer’s data and information pertinent to Customer’s usage of the third-party software and services as appropriate for the integration or interoperability of such third-party software or services with the Licensed Software.

8. Indemnities.

If a third party claims that Customer’s use of the Licensed Software in compliance with the terms of this Agreement infringes a United States: (i) patent, (ii) copyright, or (iii) trademark, or misappropriates a trade secret, of that third party, Tanium, at its sole cost and expense, will defend Customer against any such claim, and indemnify Customer from any damages, liabilities, costs and expenses awarded by a court to the third party claiming infringement or set forth in a settlement agreed to by Tanium. The foregoing obligation of Tanium is contingent upon Customer promptly notifying Tanium in writing of such claim, permitting Tanium sole authority to control the defense or settlement of such claim, and

providing Tanium reasonable assistance in connection therewith. Tanium will not enter into any settlement agreeing to any injunctive relief, payment or admission of liability affecting Customer without Customer's written consent. If a claim of infringement under this Section occurs, or if Tanium determines a claim is likely to occur, Tanium will have the right, in its sole discretion, to: (xx) procure for Customer the right or license to continue to use the Licensed Software; (yy) modify the Licensed Software to make it non-infringing, without loss of material functionality; or (zz) replace the Licensed Software with a functionally equivalent, non-infringing software or offering. If none of these remedies is reasonably available to Tanium, Tanium may, in its sole discretion, immediately terminate this Agreement and return the license fees paid by Customer for the infringing Licensed Software, prorated for use over the lesser of (A) a three (3) year period or (B) the remaining unused Licensed Term. Notwithstanding the foregoing, Tanium shall have no obligation with respect to any claim of infringement that is based upon or arises out of (each of the following an "**Excluded Claim**"): (I) the use or combination of the Licensed Software with any third-party or Customer hardware, software, products, data or other materials; (II) modification or alteration of the Licensed Software by anyone other than Tanium; (III) Customer's failure to implement any Enhancement or Workaround that would have avoided the claim; (IV) Customer's use of the Licensed Software in excess of the rights granted in this Agreement; (V) any third-party components; or (VI) a business method or process that is inherent to Customer's business. The provisions of this Section state Customer's sole and exclusive remedy and the sole and exclusive obligations and liability of Tanium and its licensors and suppliers for any claim of intellectual property infringement arising out of or relating to the Licensed Software and/or this Agreement and are in lieu of any implied warranties of non-infringement, all of which are expressly disclaimed. Customer will indemnify, defend, and hold Tanium and its Affiliates and their officers, directors, agents, employees, contractors, successors and assigns harmless from any claim, demand, action, proceeding, judgment, or liability from a third-party claim arising out of an Excluded Claim. Customer's indemnification obligation is contingent upon Tanium promptly notifying Customer in writing of such claim, permitting Customer sole authority to control the defense or settlement of such claim, and providing Customer reasonable assistance in connection therewith. Customer will not enter into any settlement agreeing to any injunctive relief, payment or admission of liability affecting Tanium without Tanium's written consent. The indemnified party may participate in the defense at its sole cost.

9. Limitation of Liability.

TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL TANIUM OR ITS LICENSORS OR SUPPLIERS BE LIABLE TO CUSTOMER, ITS AFFILIATES OR ANY THIRD PARTY FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR INDIRECT DAMAGES, WHICH THE PARTIES EXPRESSLY AGREE SHALL INCLUDE, WITHOUT LIMITATION AND REGARDLESS OF ITS LEGAL CATEGORIZATION, ANY DAMAGES FOR PERSONAL INJURY, LOST PROFITS, LOST DATA AND BUSINESS INTERRUPTION, COMPUTER FAILURE AND MALFUNCTION, AND/OR COST OF REPLACEMENT GOODS OR SERVICES, EVEN IF TANIUM HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH

DAMAGES. IN ANY CASE, THE MAXIMUM AGGREGATE LIABILITY OF TANIUM AND ITS LICENSORS AND SUPPLIERS UNDER THIS AGREEMENT FOR ALL DAMAGES, LOSSES, AND CAUSES OF ACTION (WHETHER IN CONTRACT, TORT, OR OTHERWISE) SHALL BE LIMITED TO THE FEES PAID BY CUSTOMER FOR THE LICENSED SOFTWARE OR SUPPORT GIVING RISE TO SUCH CLAIM DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO SUCH CLAIM. THE FOREGOING IS INTENDED TO BE AN AGGREGATE LIMIT, NOT PER INCIDENT. THE PARTIES ACKNOWLEDGE THAT ONLY CUSTOMER CAN IMPLEMENT BACK-UP PLANS AND SAFEGUARDS APPROPRIATE TO THEIR OWN NEEDS TO PROTECT THEMSELVES IF AN ERROR IN THE SOFTWARE CAUSES COMPUTER PROBLEMS AND RELATED DATA LOSSES. FOR THESE REASONS, CUSTOMER AGREES TO THE LIMITATIONS OF LIABILITY IN THIS SECTION AND ACKNOWLEDGES THAT WITHOUT CUSTOMER'S AGREEMENT TO THESE TERMS, THE FEES CHARGED FOR THE LICENSED SOFTWARE WOULD BE HIGHER. NO CAUSE OF ACTION, REGARDLESS OF FORM, ARISING OUT OF ANY OF THE TRANSACTIONS UNDER THIS AGREEMENT MAY BE BROUGHT BY CUSTOMER MORE THAN ONE (1) YEAR AFTER CUSTOMER IS MADE AWARE OF THE CIRCUMSTANCES THAT RESULTED IN SUCH CAUSE OF ACTION. IN THE EVENT TANIUM MAKES A REFUND OR CREDIT UNDER THIS AGREEMENT, ANY SUCH MONIES REFUNDED OR CREDITED BY TANIUM WILL BE APPLIED TO THE MEASURE OF DAMAGES SUBSEQUENTLY AWARDED BY THE COURT, IF ANY. NEITHER PARTY WILL SEEK A DUPLICATE AWARD OF DAMAGES FOR ANY REFUNDED OR INDEMNIFIED MONIES PAID UNDER THIS AGREEMENT.

10. Confidentiality.

Each party agrees to hold the other party's (and that of its affiliates disclosed in connection with this Agreement) Confidential Information in confidence using the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (at all time exercising at least a commercially reasonable degree of care in the protection of such Confidential Information), and not to make each other's Confidential Information available in any form to any third party (other than their authorized agents) or to use each other's Confidential Information for any purpose other than as specified in this Agreement (subject in all cases to the rights granted to Tanium in Section 11.2). Each party agrees to take all reasonable steps to ensure that Confidential Information of the other party is not disclosed, used, or distributed by its employees, agents, or consultants in violation of the provisions of this Agreement. In addition, Customer must ensure that any Managing Party will hold Tanium's Confidential Information in confidence and otherwise comply with this Section. "**Confidential Information**" shall mean, with respect to a party hereto, all information or material disclosed or made available by one party or its affiliates to the other party or its affiliates in connection with this Agreement which is marked confidential or proprietary or from all the relevant circumstances should reasonably be assumed to be confidential. Confidential Information includes, but is not limited to, the Licensed Software and Support Materials. Each party's Confidential Information shall remain the sole and exclusive property of that party. Neither party shall have any obligation with respect to Confidential Information which: (i) is or becomes generally known to the public by any means other than a breach of the obligations of a receiving party; (ii) was previously

known to the receiving party or rightly received by the receiving party from a third party without restrictions on disclosure; (iii) is independently developed by the receiving party without reliance upon or use of the disclosing party's Confidential Information; or (iv) is approved for release by the disclosing party in writing. Notwithstanding the foregoing, Customer acknowledges and agrees that Tanium may use Customer's Confidential Information internally at Tanium for sales/support analytics and training. Each party acknowledges and agrees that due to the unique nature of the Confidential Information there can be no adequate remedy at law for any breach of its obligations hereunder, that any such breach or threatened breach may allow a party or third parties to unfairly compete with the other party, resulting in irreparable harm to such party, and therefore, that upon any such breach or any threat thereof, each party will be entitled to seek appropriate equitable and injunctive relief from a court of competent jurisdiction without the necessity of proving actual loss, in addition to whatever remedies either of them might have at law or equity. In the event the parties previously executed a non-disclosure agreement related to Customer's prospective license of the Licensed Software or Support, the terms of this Section 10 (Confidentiality) will supersede such non-disclosure agreement from and after the Effective Date.

11. Evaluation Software and Feedback.

11.1 Evaluation Software. This Section only applies to Licensed Software designated by Tanium as "**Evaluation Software.**" Subject to Section 2 (Restrictions), Tanium grants to Customer a non-transferable, non-exclusive limited license to use the Evaluation Software for its internal evaluation and lab purposes only. The term of this license is for a period of thirty (30) days following Delivery of the Evaluation Software ("**Evaluation Period**"). Tanium may extend the Evaluation Period in writing at its discretion. Unless otherwise agreed in writing by Tanium, Customer agrees to use the Evaluation Software in a non-production environment. Customer bears the sole risk of using the Evaluation Software. TANIUM PROVIDES THE EVALUATION SOFTWARE TO CUSTOMER "AS-IS" AND GIVES NO REPRESENTATION, WARRANTY, INDEMNITY, GUARANTEE OR CONDITION OF ANY KIND. TO THE MAXIMUM EXTENT PERMITTED BY LAW, TANIUM'S TOTAL AGGREGATE LIABILITY AND THAT OF ITS LICENSORS, SUPPLIERS, AND PARTNERS IS EXPRESSLY LIMITED TO FIVE HUNDRED DOLLARS (\$500) FOR ANY AND ALL DAMAGES REGARDLESS OF THE NATURE OF THE CLAIM OR THEORY OF LIABILITY. Because the Evaluation Software is provided "AS-IS," Tanium may not provide Support for it. This Section supersedes any inconsistent term in the Agreement for purposes of the Evaluation Software.

11.2 Feedback. Customer may provide suggestions, comments, or other feedback (collectively, "**Feedback**") to Tanium with respect to its products and services, including the Licensed Software. Feedback is voluntary and Tanium is not required to hold it in confidence. Tanium may use Feedback for any purpose without obligation of any kind. To the extent a license is required under Customer's intellectual property rights to make use of the Feedback, Customer hereby grants Tanium a worldwide, irrevocable, non-exclusive,

perpetual, royalty-free license, with the right to sublicense, to use the Feedback in connection with Tanium's business, including enhancement of the Licensed Software.

11.3 Beta Software. If the Licensed Software released to Customer has been identified by Tanium as "**Beta Software**," then the provisions of Section 11.1 (Evaluation Software) will apply, in addition to this Section 11.3 (Beta Software). Customer is under no obligation to use any Beta Software; doing so is in Customer's sole discretion. Because Beta Software can be at various stages of development, operation and use of the Beta Software may be unpredictable. Customer acknowledges and agrees that: (1) Beta Software has not been fully tested; (2) use or operation of Beta Software should not occur in a production environment; (3) Customer's use of Beta Software will be for purposes of evaluating and testing new functionality and providing Feedback to Tanium; and (4) Customer will inform its personnel regarding the nature of the Beta Software. In addition, Tanium has no obligation to Customer to (1) further develop or release the Beta Software or (2) provide Support for the Beta Software. If Tanium releases another version of the Beta Software, Customer will return or destroy all prior version(s) or release(s) of the Beta Software that it received from Tanium.

12. Governing Law/Jurisdiction.

Except as set forth in PART 2, this Agreement will be governed by and construed in accordance with the substantive laws in force in the State of Washington, USA. This Agreement will not be governed by the conflict of laws rules of any jurisdiction or the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded. The Uniform Computer Information Transactions Act as enacted shall not apply. Except as set forth in PART 2, the state or federal courts of competent jurisdiction located in King County, Washington will have exclusive jurisdiction over all disputes relating to this Agreement.

13. General.

This Agreement (including PART 1 and PART 2 where applicable), together with the Data Processing Addendum, Documentation, Schedules and any exhibits attached hereto, constitutes the entire understanding and agreement between Tanium and Customer with respect to the subject matter of this Agreement and supersedes all prior or contemporaneous oral or written communications, including without limitation the terms and conditions on any Customer purchase order, payment portal, or other document with respect to the subject matter of this Agreement (even where Tanium has not explicitly objected to them), all of which are merged in this Agreement. This Agreement shall not be modified, amended or in any way altered except by an instrument in writing signed by authorized representatives of both parties and specifically referencing this Agreement, and this Agreement shall supersede any non-disclosure agreement required to be signed by Tanium employees or contractors prior to accessing Customer facilities or systems. In the event any provision of this Agreement is found invalid or unenforceable pursuant to judicial decree, the remainder of this Agreement shall remain valid and enforceable

according to its terms. Any failure by Tanium to strictly enforce any provision of this Agreement will not operate as a waiver of that provision or any subsequent breach of that provision. Any notice or consent under this Agreement addressed to Tanium should be marked "Attention Chief Legal Officer" and may be sent (i) to the address identified on the Quote, which will be considered delivered three (3) days after deposit in the mail (registered mail) or one (1) day after being sent by overnight courier, or (ii) via email, to Legal@tanium.com, which will be considered delivered when receipt is confirmed by Tanium. Any notice or consent under this Agreement addressed to Customer should be marked "Attention Chief Legal Officer" and may be sent (a) to the address provided when purchasing the Licensed Software, which will be considered delivered three (3) days after deposit in the mail (registered mail) or one (1) day after being sent by overnight courier, or (b) via email, to the email address provided by Customer when purchasing the Licensed Software, which will be considered delivered when receipt is confirmed by the recipient. There are no intended or implied third-party beneficiaries of this Agreement. The following provisions of PART 1 will survive any termination or expiration of this Agreement: Sections 2 (Restrictions), 4 (Term and Termination), 5 (Fees and Expenses; Payment Terms; Taxes), 6.3 (Personal Data and Systems Information), 9 (Limitation of Liability), 10 (Confidentiality), 11.2 (Feedback), 12 (Governing Law/Jurisdiction), 13 (General), 15 (U.S. Government Rights), 16 (Audit), 17 (Force Majeure), 18 (Construction), and Customer's indemnity obligations hereunder. All provisions of PART 2 will survive any termination or expiration of this Agreement. Tanium may assign any of its rights or obligations hereunder as it deems necessary. **IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT IN THE EVENT ANY REMEDY HEREUNDER IS DETERMINED TO HAVE FAILED OF ITS ESSENTIAL PURPOSE, ALL LIMITATIONS OF LIABILITY AND EXCLUSIONS OF DAMAGES SET FORTH HEREIN SHALL REMAIN IN EFFECT.**

14. Export or Import.

Customer acknowledges that the Licensed Software and Support, which contain encryption, are subject to the export, import, economic sanctions, and trade restriction laws, regulations and requirements of the United States and other countries including European Union regulations. Tanium will reasonably cooperate, in Tanium's discretion, in assisting Customer with respect to an application for any required export or import licenses and approvals; however, Customer agrees and acknowledges that it is Customer's ultimate responsibility to comply with all export and import laws and that Tanium has no further responsibility after the initial sale to Customer within the original country of sale, including Customer's importation of the Licensed Software and Support into other countries. Without limiting the foregoing, Customer agrees that it will not export, re-export, re-transfer, or provide access to the Licensed Software and Support to any person, in any jurisdiction, or to any user that would create a licensing requirement under U.S. Export control and economic sanctions laws, regulations and requirements without first obtaining any such license. Customer will not export to, or use the Licensed Software and Support in, any country not supported by Tanium, including, but not limited to, embargoed and sanctioned countries as promulgated by the United States Government. Customer shall defend, indemnify, and hold harmless Tanium from and against any and all damages, fines,

penalties, assessments, liabilities, costs, and expenses (including attorneys' fees and expenses) arising out of or relating to any claim the Licensed Software and Support were imported, exported, accessed, or otherwise shipped or transported by Customer in violation of applicable laws, rules, and regulations as described in this Section.

15. U.S. Government Rights.

The Licensed Software is commercial computer software as described in DFARS 252.227-7014(a) (1) and FAR 2.101. If acquired by or on behalf of the Department of Defense or any component thereof, the U.S. Government acquires this commercial computer software and/or commercial computer software documentation subject to the terms of this Agreement as specified in DFARS 227.7202-3, Rights in Commercial Computer Software or Commercial Computer Software Documentation. If acquired by or on behalf of any civilian agency, the U.S. Government acquires this commercial computer software and/or commercial computer software documentation subject to the terms of this Agreement as specified in FAR 12.212, Computer Software.

16. Audit.

During the term of this Agreement and for one (1) year thereafter, no more than once in any twelve (12) month period, Tanium may audit Customer's use of the Licensed Software ("**Audit**"). An Audit will generally consist of Customer providing a system-generated deployment report evidencing Customer's deployment of the Licensed Software. Customer will reasonably cooperate with Tanium and any auditor retained by Tanium in the conduct of the Audit. Audits will be conducted during Customer's normal business hours. Customer will immediately remit payment for any Licensed Software deployed in excess of the Licenses purchased by Customer under this Agreement.

17. Force Majeure.

Except for Customer's payment obligations, neither party will be liable for any failure or delay in performance under this Agreement which is due to any event beyond the reasonable control of such party, including without limitation, fire, explosion, unavailability of utilities or raw materials, unavailability of components, labor difficulties, war, riot, act of God, export control regulation, laws, judgments, or government instructions.

18. Construction.

This Agreement has been negotiated and approved by the parties and, notwithstanding any rule or maxim of law or construction to the contrary, any ambiguity or uncertainty will not be construed against either of the parties by reason of the authorship of any of the provisions of this Agreement.

PART 2 – Country-specific Terms

1. For purposes of this PART 2, Customer is considered “**Domiciled**” at the physical address of the download site for the Licensed Software, as provided by Customer to Tanium for calculation of taxes.

2. For **Customers Domiciled in Germany**, the following changes are made to the terms in PART 1:

2.1 Sections 2.3 and 2.4 of PART 1 are replaced with the following:

2.3 *Limitations on Reverse Engineering and Modification.* Except to the extent such a limitation is expressly prohibited by applicable law, in particular clause 69e of the German Copyright Act (Urheberrechtsgesetz “UrhG”), Customer must not reverse engineer, decompile, disassemble, modify, or create derivative works of the Licensed Software or Support Materials whether directly or indirectly unless it is necessary for the use of the Licensed Software or Support Materials in accordance with its intended purpose under 69d UrhG.

2.4 *Sublicense, Rental and Third Party Use.* Except to the extent expressly permitted by this Agreement, Customer must not assign, sublicense, rent, timeshare, loan, lease or otherwise transfer the Licensed Software or Support Materials, or directly or indirectly permit any third party to use or copy the Licensed Software or Support Materials, unless it is necessary for the use of the Licensed Software or Support Materials in accordance with its intended purpose under clause 69d of UrhG. Customer shall not operate a service bureau or other similar service for the benefit of third parties using the Licensed Software or Support Materials.

2.2 Section 5.2 (Payment Terms) of PART 1 is replaced with the following:

5.2 *Payment Terms.* Unless otherwise set forth in a Schedule, (a) fees for Licensed Software will be billed on an annual basis, payable in advance; and (b) all amounts to be paid by Customer are due and payable thirty (30) days after Customer’s receipt of an invoice. Payments will be made by electronic transfer to a bank account designated by Tanium on the invoice in the amount of fees for the Licensed Software, Supplemental Services and Training ordered (less any applicable credits and deductions and plus any applicable taxes, shipping, and other charges). The effective date of payment shall be the date on which the entire amount due is credited to Tanium’s bank account or the instrument enabling immediate collection of the entire amount due is received. All undisputed payment not made by Customer when due will be subject to late charges of default interest of nine (9) percentage points above the base interest rate. Customer shall pay all court costs, fees, expenses, and legal attorneys’ fees (as stipulated by Statutory law) incurred by Tanium in collecting delinquent fees.

2.3 Notwithstanding the support hours listed in Section 6.2 (Support Services), Customer may contact Tanium for Support Services Monday through Friday, 8 a.m. to 6 p.m. CET, excluding Tanium holidays.

2.4 Sections 7.1, 7.2 and 7.3 (Limited Warranty; Disclaimer) of PART 1 are replaced with the following:

7.1 Limited Warranty. During the Warranty Period, Tanium warrants that (i) the Licensed Software will operate in substantial conformity with the Documentation; and (ii) it will screen the Licensed Software prior to Delivery to Customer for viruses, Trojan horses, and other malicious code. The “**Warranty Period**” is limited to the maximum period mandated under applicable law or the duration of the Licensed Term if shorter. All warranty claims not made in writing within the Warranty Period will be deemed waived. The foregoing warranties apply only to Licensed Software provided to Customer during the Warranty Period and are solely for the benefit of Customer and Customer shall have no authority to extend such warranty to any third-party. The sole and exclusive remedy of Customer, and the entire liability of Tanium, for breach of the foregoing warranties in this Section, shall be to seek repair or replacement delivery at the discretion of Tanium. Liability without fault for initial defects is excluded. The liability with fault remains unchanged. In assessing whether or not Tanium is in fault, Customer acknowledges that software cannot be free of any defects. The Customer shall be exempt from paying any fees for the Licensed Software for the duration of any time taken to repair or replace the Licensed Software where the Customer is unable to use the Licensed Software. If a breach of the warranties set out in this Section cannot be remedied by repair or replacement, either party is entitled to terminate the relevant Schedule(s) or Quote(s), and Tanium shall refund to Customer license fees paid for the non-conforming Licensed Software. The Customer is only entitled to a termination pursuant to sec. 543 subsec, 2 sentence 1 no.1 German Civil Code due to the failure to grant use in accordance with the Agreement if Tanium has been given sufficient opportunity to rectify the deficiency and such attempt has failed. This warranty is contingent upon the proper installation and use of the Licensed Software as described in the Documentation and this Agreement; Tanium shall not be responsible for Customer’s use of the Licensed Software if not operated in a manner recommended in the Documentation. Any modification to the Licensed Software by Customer or any third-party or failure by Customer to implement any Enhancements to the Licensed Software may void Tanium’s warranties under this Section.

7.2 Additional Warranty. In addition, Tanium warrants that any Supplemental Support and Training will be provided in a professional and workmanlike manner consistent with relevant industry standards. If Tanium breaches the foregoing warranty, Customer’s sole remedy will be to terminate the applicable Supplemental Support or Training and receive a refund of any prepaid unused fees for such non-conforming Supplemental Support or Training.

7.3 Disclaimer. Intentionally Omitted.

7.4 Integrations with Third-Party Software and Services. Customer acknowledges that the Licensed Software may contain features designed to integrate or interoperate with third-party software or services, that Tanium reserves the right to remove or alter any such Licensed Software features, and that any such removal or alteration does not entitle

Customer to any refund, credit, or other compensation. If Customer elects to use third-party software or services with the Licensed Software, Customer grants Tanium permission to allow the third-party software services or its provider to access Customer's data and information pertinent to Customer's usage of the third-party software and services as appropriate for the integration or interoperability of such third-party software or services with the Licensed Software.

2.5 Section 9 (Limitation of Liability) of PART 1 is replaced with the following:

9. Limitation of Liability

9.1 For damages with respect to injury to health, body or life caused by Tanium, Tanium's representative, or Tanium's agents in the performance of its contractual obligations, Tanium is fully liable.

9.2 Tanium is fully liable for damages caused willfully or by the gross negligence by Tanium, Tanium's representatives, or Tanium's agents in the performance of its contractual obligations. The same applies to damages which result from the absence of a quality which was guaranteed by Tanium or to damages which result from malicious action.

9.3 If damages, except for such cases covered by Sections 9.1, 9.2 or 9.4, with respect to a breach of a contractual core duty are caused by slight negligence, Tanium is liable only for the amount of the damage which was typically foreseeable. Contractual core duties, abstractly, are such duties whose fulfillment enables proper performance of an agreement in the first place and whose performance a contractual party regularly may rely on. For the purposes of this Section, "foreseeable damages" shall mean an amount that does not exceed in the aggregate three times the amount payable to Tanium by the Customer in the 12 months period prior to the damage causing event.

9.4 Tanium's liability based on the German Product Liability Act remains unaffected.

9.5 Any further liability of Tanium is excluded.

9.6 The limitation period for claims for damages against Tanium expires after one (1) year, except for such cases covered by Sections 9.1, 9.2 or 9.4.

9.7 *Exclusions to limitations of liability.* Notwithstanding anything else to the contrary, the limitations of liability in Section 9.1-9.6 or elsewhere in this agreement do not limit, apply to, or take into account: (i) Customer's liability for payment obligations under Section 5 (Fees and Expenses; Delivery and Taxes) and/or the relevant Schedule(s) or Quote(s), (ii) Customer's liability for breach of Section 2 (Restrictions), (iii) Tanium's indemnification obligations under Section 8.1 (Infringement), (iv) either party's liability for breach of Section 10 (Confidentiality), or (v) either party's liability for its gross negligence or willful misconduct. In addition, notwithstanding the foregoing or any other term of this agreement, nothing contained herein will be construed as limiting Tanium's right to

protect, enforce and recover damages for violation or infringement of its intellectual property rights.

9.8 General. The parties acknowledge that only Customers can implement back-up plans and safeguards appropriate to their own needs to protect themselves if an error in the Licensed Software causes computer problems and related data losses. For these reasons, Customer agrees to the limitations of liability in this Section 9 and acknowledges that without Customer's agreement to these terms, the fee charged for the Licensed Software would be higher. Any limitation of liability set forth in this Section 9 that applies to Tanium also extends to Tanium's licensors and suppliers. No action, regardless of form, arising out of any of the transactions under this Agreement may be brought by Customer more than one (1) year after such action accrued except for such cases covered by Section 9.1, 9.2 or 9.4. In the event Tanium makes a refund pursuant to an express remedy under this Agreement, any such monies refunded by Tanium will be applied to the measure of damages subsequently awarded by the court, if any.

2.6. Section 11.1 (Evaluation Software) of PART 1 is replaced with the following:

11.1 Evaluation Software. This Section only applies to Licensed Software designated by Tanium as "**Evaluation Software**." Subject to Section 2 (Restrictions), Tanium grants to Customer a non-transferable, non-exclusive limited license to use the Evaluation Software for its internal evaluation and lab purposes only. The term of this license is for a period of thirty (30) days following Delivery of the Evaluation Software ("**Evaluation Period**"). Tanium may extend the Evaluation Period in writing at its discretion. Unless otherwise agreed in writing by Tanium, Customer agrees to use the Evaluation Software in a non-production environment. Customer bears the sole risk of using the Evaluation Software. Tanium provides the Evaluation Software to Customer "AS-IS" and gives no representation, warranty, indemnity, guarantee or condition except where defects have been fraudulently concealed by Tanium or its agents. Because the Evaluation Software is provided "AS-IS," Tanium is not obliged to provide support for it. This Section supersedes any inconsistent term in the Agreement for purposes of the Evaluation Software.

2.7. Section 12 (Governing Law/Jurisdiction) of PART 1 is replaced with the following:

12. Governing Law/Jurisdiction. This Agreement and any disputes arising in connection with this Agreement will be governed by and construed in accordance with the substantive laws in force in Germany. This Agreement will not be governed by the conflict of laws rules of any jurisdiction or the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded. All disputes arising out of or in connection with the Agreement will be finally settled under the Rules of Arbitration of the International Chamber of Commerce ("Rules") by a panel of three arbitrators appointed in accordance with said Rules. All proceedings shall be conducted in English and the arbitration shall take place in Hamburg, Germany. Notwithstanding the foregoing, either party may apply to a court of competent jurisdiction for temporary

equitable relief, including the issuance of temporary injunctions, in appropriate circumstances.

3. For Customers Domiciled in France:

3.1. Notwithstanding the support hours listed in Section 6.2 (Support Services), Customer may contact Tanium for Support Services Monday through Friday, 8 a.m. to 6 p.m. CET, excluding Tanium holidays.

3.2. Section 7.1 (Limited Warranty) of PART 1 is replaced with the following:

7.1 Limited Warranty. During the Warranty Period, Tanium warrants that (i) the Licensed Software will substantially perform in accordance with the Documentation (obligation de moyen); and (ii) it will use commercially reasonable efforts to screen the Licensed Software prior to Delivery to Customer for viruses, Trojan horses, and other malicious code. The term “**Warranty Period**” means ninety (90) days from the Effective Date. If the Licensed Term is less than ninety (90) days, the Warranty Period will be for the length of the applicable Licensed Term. The foregoing warranties are solely for the benefit of Customer and Customer shall have no authority to extend such warranty to any third party. The sole and exclusive remedy of Customer, and the sole and exclusive liability of Tanium, for breach of the foregoing warranties in this Section, shall be to repair or replace the non-conforming Licensed Software, or if repair or replacement would, in Tanium’s opinion, be commercially unreasonable, then Tanium shall terminate the relevant licenses and refund to Customer the portion of prepaid license fees paid for such non-conforming Licensed Software. This warranty is contingent upon the proper installation and use of the Licensed Software as described in the Documentation and this Agreement; Tanium shall not be responsible for Customer’s use of the Licensed Software if not operated in a manner recommended in the Documentation. Any modification to the Licensed Software by Customer or any third party or failure by Customer to implement any Enhancements to the Licensed Software may void Tanium’s obligation to provide Support Services and Tanium’s warranties under this Section.

3.3. Section 12 (Governing Law/Jurisdiction) of PART 1 is replaced with the following:

12. Governing Law/Arbitration. This Agreement will be governed by and construed in accordance with the substantive laws in force in France. This Agreement will not be governed by the conflict of laws rules of any jurisdiction or the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded. All disputes arising out of or in connection with the Agreement will be finally settled under the Rules of Arbitration of the International Chamber of Commerce (“Rules”) by a panel of three arbitrators appointed in accordance with said Rules. All proceedings shall be conducted in English and the arbitration shall take place in Paris, France. Notwithstanding the foregoing, either party may apply to a court of competent jurisdiction for temporary equitable relief, including the issuance of temporary injunctions, in appropriate circumstances.

3.4. Section 17 (Force Majeure) of PART 1 is replaced with the following:

17. Force Majeure. Neither party will be liable for any failure or delay in performance under this Agreement which is due to any event beyond the reasonable control of such party, and/or where such breach is caused by, or results from an act or event of force majeure, as provided by article 1218 of the French Civil Code and as defined by French case law, affecting either party, and including without limitation, fire, explosion, unavailability of utilities or raw materials, unavailability of components, labor difficulties, war, pandemic, epidemic, riot, act of God, export control regulation, laws, judgments or government instructions.

4. For Customers Domiciled in the UK, European Union, Middle East or Africa other than Germany and France:

4.1. Notwithstanding the support hours listed in Section 6.2 (Support Services), Customer may contact Tanium for Support Services Monday through Friday, 8 a.m. to 6 p.m. CET, excluding Tanium holidays.

4.2. Section 12 (Governing Law/Jurisdiction) of PART 1 is replaced with the following:

12. Governing Law/Arbitration. All disputes arising out of or in connection with the Agreement will be governed by the laws of England and will be finally settled under the Rules of Arbitration of the International Chamber of Commerce by a panel of three arbitrators appointed in accordance with said Rules. All proceedings shall be conducted in English and the arbitration shall take place in London, England. Notwithstanding the foregoing, either party may apply to a court of competent jurisdiction for temporary equitable relief, including the issuance of temporary injunctions, in appropriate circumstances.

5. For Customers Domiciled in Australia, the following changes are made to the terms in PART 1:

5.1. The following text is added to the end of *Section 7.3*: For the avoidance of doubt, nothing in this Agreement (i) restricts, excludes, or modifies any rights that cannot be excluded under any applicable law, including where applicable the consumer guarantees set out in the Australian Consumer Law (being Schedule 2 of the *Competition and Consumer Act 2010* (Cth)), or (ii) seeks to exclude Tanium's liability for any breach of the Australian Consumer Law. If Tanium is liable for a breach of a guarantee that cannot by law be excluded but liability for such breach can be limited, Tanium's liability is, to the fullest extent permitted by law, limited at Tanium's option to either: (i) in respect of Licensed Software, the repair or replacement of the non-conforming Licensed Software or the refund of the license fees paid by Customer for the non-conforming Licensed Software; or (ii) in respect of Services, remedy of the failure within a reasonable time.

5.2. Section 12 (Governing Law/Jurisdiction) of PART 1 is replaced with the following:

12. Governing Law/Arbitration. All disputes arising out of or in connection with the Agreement will be governed by the laws of Australia. This Agreement will not be governed by the conflict of laws rules of any jurisdiction or the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded. The state or federal courts of competent jurisdiction located in the state of Victoria will have exclusive jurisdiction over all disputes relating to this Agreement.

6. For Customers Domiciled in Japan:

6.1. Section 12 (Governing Law/Jurisdiction) of PART 1 is replaced with the following:

12. Governing Law/Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of Japan. Any legal suit, action, or proceeding arising out of or related to this Agreement or the matters contemplated hereunder shall be instituted exclusively in courts of Tokyo, Japan, and each party irrevocably submits to the exclusive jurisdiction of the Tokyo courts. Any matter not stipulated herein or any ambiguities regarding the interpretation of this Agreement shall be resolved by good faith discussion between the parties.

7. For Customers Domiciled in Asia or the Asia-Pacific region, exclusive of Japan and Australia:

7.1. Section 12 (Governing Law/Jurisdiction) of PART 1 is replaced with the following:

12. Governing Law/Arbitration. This Agreement will be governed by the laws of Singapore. Any dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity, or termination, shall be referred to and finally resolved by arbitration administered by the Singapore International Arbitration Centre (“SIAC”) in accordance with the Arbitration Rules of the Singapore International Arbitration Centre for the time being in force, which rules are deemed to be incorporated by reference in this clause. The seat of arbitration shall be Singapore. The Tribunal shall consist of three arbitrators. The language of the arbitration shall be English. Notwithstanding the foregoing, either party may apply to a court of competent jurisdiction for temporary equitable relief, including the issuance of temporary injunctions, in appropriate circumstances.

Appendix A

Tanium Supplemental Support

1. Supplemental Support.

1.1 *General.* Tanium Supplemental Support (“**Supplemental Support**”) may be obtained from Tanium at its then-current list price or mutually negotiated price during the Licensed Term, and the length of the engagement will be specified in the Agreement or Schedule (“**ESR Support Term**”). If Customer purchases Supplemental Support, Tanium will

provide a Tanium enterprise support resource (“**ESR**”) who will be available to provide the relevant level of Supplemental Support during the ESR Support Term, which may consist of reasonable remote and onsite support.

The ESR may provide the following support as agreed with Customer:

- - assist with the deployment, configuration, and optimization of the Tanium products;
 - plan, coordinate and implement Tanium-related projects and communicate updates;
 - provide consolidated reporting of current deployment status to Tanium’s senior technical and sales leadership and designated Customer representatives;
 - collate technical documentation on behalf of the customer;
 - help plan, communicate, and monitor the status, health and challenges associated with installation and deployment of Tanium products;
 - maintain ongoing technical relationships with Customer and provide weekly reporting to Tanium’s senior technical and sales leadership and designated Customer representatives;
 - track all tickets, bugs, feature requests, improvement requests and ongoing communications regarding Tanium products; and
 - observe ongoing operations for potential problems and improvements; such observations will be brought to the attention of Tanium’s senior technical and sales leadership and designated Customer representatives.

The ESR will not:

- - execute an action, including, but not limited to deploying a patch, using Tanium products without the advance written review and approval by a designated Customer representative;
 - use Tanium products to perform any incident response services;
 - use any destructive content (e.g., file delete action) on behalf of the Customer;
 - act in a capacity to directly support third-party hardware or software on which the Tanium product is running or dependent;
- or

- change any settings, undertake Tanium server or client tuning or conduct advanced troubleshooting without direct instruction and prior authorization from the Action Approver (or other designated Customer representative) and from the assigned primary Tanium technical account managers working with Customer (“**TAM**”).

The ESR Support Term will commence on the date set forth in the Schedule, or the effective date of the Schedule if a start date is not otherwise indicated. Customer will provide the ESR access to the Tanium environment and related Customer’s systems within thirty (30) days from agreed upon on-boarding date (“**On-Boarding Period**”). In the event Customer fails to provide the ESR with the required systems access noted above, Tanium may withdraw the assigned ESR until access is granted. Supplemental Support will be provided during normal business hours or as mutually agreed upon between Tanium and Customer. The ESR may be required to be out-of-the-office due to PTO, illness, holidays, training, vacations, or meetings. During this time out-of-the-office, or should the ESR’s employment with Tanium end, Tanium will provide to Customer with standard Support Services, unless otherwise agreed by Tanium, or when a replacement ESR is available, through the ESR Support Term.

1.2 Customer Responsibilities. Customer and its personnel shall cooperate fully with Tanium and its personnel in all respects, including, without limitation, providing information as to Customer requirements, providing access to the equipment/hardware on which the components of the Tanium products are or will be installed, and providing access to all necessary information regarding Customer’s systems. Customer shall be responsible for making, at its own expense, any changes or additions to Customer’s current systems, software, and hardware that may be required to support operation of the Tanium products.

1.3 Action Approver. Customer will assign an action reviewer/approver to act as the final Customer approver for all Tanium actions submitted by the ESR (“**Action Approver**”). The Action Approver will have the authority to approve all actions issued in the Tanium console. Any other requested changes to the Customer’s environment will require a change review process to be agreed by the parties.

1.4 Remote Support. Supplemental Support may be provided remotely via telephone or electronic communications. Customer agrees that Tanium resources may access Customer’s systems during the relevant ESR Support Term, using a defined standard virtual private network (VPN). If a network connection between Tanium and Customer’s systems is required for Tanium to perform the Supplemental Support, Customer will provide such access as follows:

- Customer is responsible for ensuring that (i) its network and systems comply with specifications provided by Tanium; (ii) all components of

Customer's Tanium environment are accessible through the VPN; and (iii) the VPN is installed in a timely manner for Tanium to perform the Supplement Support or other Support Services.

- Customer is responsible for acquiring and maintaining any equipment and performing any activities necessary to set-up and maintain network connectivity at and to Customer's Tanium environment.
- Customer will provide and maintain user accounts for, and access to, the VPN for the Tanium resources, including, but not limited to, Tanium's onsite and remote resources.
- Tanium is not responsible for network connection issues, problems or conditions arising from or related to network connections, such as bandwidth issues, excessive latency, network outages, and/or any other conditions that are caused by an internet service provider, or the network connection. If Customer's VPN client software and/or VPN infrastructure fails to allow Tanium access to perform its obligations, Customer agrees to pay for any increased costs resulting from such failure.

[End of Agreement]

Last Updated: February 2022

IF CUSTOMER DOES NOT AGREE TO THE TERMS AND CONDITIONS BELOW, DO NOT ACCESS, INSTALL, OR USE THE SERVICE. BY ACCESSING, INSTALLING OR USING THE SERVICE, CUSTOMER AGREES TO THE TERMS AND CONDITIONS OF THIS AGREEMENT AND THAT IT IS LEGALLY BOUND BY ITS TERMS. THE PERSON ACCEPTING THE TERMS AND CONDITIONS OF THIS AGREEMENT ON BEHALF OF CUSTOMER REPRESENTS THAT HE OR SHE (1) HAS FULL AUTHORITY TO BIND CUSTOMER TO THIS AGREEMENT; AND (2) HAS READ AND UNDERSTANDS ALL THE PROVISIONS OF THIS AGREEMENT. BY CLICKING THROUGH OR OTHERWISE ACCEPTING THIS AGREEMENT ELECTRONICALLY, INCLUDING BY ACCESSING, INSTALLING, OR USING THE SERVICE, CUSTOMER IS CONSENTING TO THE USE OF ELECTRONIC DELIVERY OF DOCUMENTS AND AN ELECTRONIC SIGNATURE, AND AGREES THAT SUCH ELECTRONIC SIGNATURE IN CONNECTION WITH THIS AGREEMENT AND THE TRANSACTIONS CONTEMPLATED HEREBY SHALL BE BINDING TO THE SAME EXTENT AS ORIGINAL SIGNATURES.

This Subscription Agreement for Tanium Cloud and Tanium-as-a-Service (the “**Agreement**”) is entered into by and between Tanium and the end user customer (hereinafter “**Customer**”), to permit the use of the Service and Support, as defined herein. The “**Effective Date**” of the Agreement and license(s) granted under this Agreement will be the earlier of the date set forth in the schedule(s) or purchase order(s) entered into by Tanium and Customer that describe the Service and any Support to be acquired by Customer (each a “**Schedule**”), or the date on which Tanium initially delivers an email that contains Customer’s unique credentials that allow the Customer to access the Service. “**Tanium**” means the Tanium entity listed or identified on the current approved Tanium-provided quote for the Service and/or Support (the “**Quote**”), or otherwise communicated to the Customer by Tanium. Tanium and Customer may be referred to collectively as the “**parties**” or individually as “**party**.” The Agreement consists of two parts: PART 1 – General Terms; and PART 2 – Country-specific Terms. The terms of PART 2 may replace or modify those of PART 1.

PART 1 – General Terms

1. Grant of License.

1.1. *License.* Subject to the terms and conditions of this Agreement, Tanium grants Customer a revocable, non-transferable, non-exclusive, term-based license (“**Subscription License**”) to access and use the internet-based service, and to access, use and copy the proprietary software in object code form and related proprietary components, APIs, sensors, scripts, packages, actions, and ‘Saved Questions’ made Generally Available by Tanium and provided by or on behalf of Tanium to Customer in

connection with this Agreement, as may be updated by Tanium from time to time (collectively, the “**Service**”) in accordance with the Documentation for Customer’s internal use only during the applicable Service Period (as defined in Section 4). The term “Service” includes Tanium’s then-current documentation made available by Tanium in English for use of the Service, as updated from time –to time by Tanium in its discretion (the “**Documentation**”). During the Service Period, Tanium may also provide Customer with non-GA materials including ‘Labs’ or ‘Community’ content, sensors, scripts, releases, and ‘Saved Questions’ (the “**Support Materials**”). Customer may use the Support Materials during the applicable Service Period only as needed for Customer to use the Service. The term “**Generally Available**” or “**GA**” means a production version of the Service made available to all of Tanium’s customer base.

1.2. *Ownership.*

The Service and Support Materials are licensed to Customer, not sold. The Service, Documentation, Support Materials, and Services provided by Tanium contain material that is protected by copyright, patent, trade secret law, and other intellectual property law, and by international treaty provisions. All rights not expressly granted to Customer under this Agreement are reserved by Tanium. All copyrights, patents, trade secrets, trademarks, service marks, trade names, moral rights, and other intellectual property and proprietary rights in the Service, Support, and Support Materials provided by Tanium, whether or not registered, will remain the sole and exclusive property of Tanium or its suppliers, as applicable.

1.3. *License Metric.* The Service is licensed on a per Managed OS Instance basis. A “**Managed OS Instance**” means a physical device or virtual machine where the Service can be installed, and where that device is capable of processing data. Managed OS Instances include: mobile/smart phone, diskless workstation, personal computer workstation, networked computer workstation, homemaker/teleworker, home-based system, file server, print server, e-mail server, internet gateway device, storage area network server, terminal servers, portable workstation connecting to a server or network, or container (host and/or constituent container). Certain Tanium modules may be licensed and charged on a per container basis, as more fully set forth in the Quote or Schedule. In the case of a virtual system, in addition to the virtual Managed OS Instance(s), the hypervisor is considered to be a single Managed OS Instance if the Service is installed at the hypervisor level. Customer acknowledges that the Service includes access to certain software to be installed on Customer’s Managed OS Instances, all of which is included in the defined term, “Service.”

1.4. *System Configuration.* Hardware and software requirements for proper installation and use of the Service are set forth in the relevant Documentation. Customer is solely responsible and fully liable for purchasing, providing, installing, and using all required equipment, networks, peripherals, third-party software and hardware, scripts, or other technologies that may interoperate and be used in conjunction with the Service, all of

which are expressly excluded from all warranty, indemnity and support obligations described elsewhere in this Agreement to the extent permissible under applicable law.

1.5. *Customer Data.* As between the parties, Customer and its affiliates, licensors, partners, or suppliers will retain all right, title and interest (including any and all intellectual property rights) in and to any data or data files of any type that are uploaded by or on behalf of Customer to the Service (“**Customer Data**”). Customer hereby grants to Tanium a non-exclusive, worldwide, royalty-free right to use, copy, store, transmit, modify, create derivative works of, and display the Customer Data solely to the extent necessary to provide the Service and Support to Customer under this Agreement. Customer will ensure that its use of the Service and Support and all Customer Data is at all times compliant with this Agreement, Customer’s privacy policies, and all applicable local, state, federal and international laws, regulations, and conventions, including, without limitation, those related to data privacy and data transfer, international communications, and the exportation of technical or personal data. Customer is solely responsible for the accuracy, content, and legality of all Customer Data. Customer represents and warrants to Tanium that Customer has sufficient rights in the Customer Data to grant the rights granted to Tanium in this Section and that the Customer Data does not infringe or violate the intellectual property, publicity, privacy, or other rights of any third party.

2. **Restrictions.** Customer’s Subscription License to the Service is subject to the following license conditions and restrictions:

2.1. *Customer’s Benefit.* Customer must not use or permit the Service or Support Materials to be used in any manner, whether directly or indirectly, that would enable Customer’s personnel or any other person or entity to use the Service or Support Materials for anyone’s benefit other than Customer or its Affiliates. Customer must purchase each license it intends to use. Use of and access to the Service and Support Materials is permitted only by Customer-designated personnel (“**Users**”).

2.2. *Limitations on Copying and Distribution.* Customer will not copy or distribute any part of the Service or Support Materials, whether directly or indirectly, except to the extent that copying is necessary to use the Service or Support Materials for the purposes set forth herein.

2.3. *Limitations on Reverse Engineering and Modification.* Except to the extent such a limitation is expressly prohibited by applicable law, Customer will not reverse engineer, decompile, disassemble, modify, or create derivative works of the Service or Support Materials whether directly or indirectly.

2.4. *Sublicense, Rental and Third Party Use.* Except to the extent expressly permitted by this Agreement, Customer will not assign, sublicense, rent, timeshare, loan, lease or otherwise transfer the Service or Support Materials, or directly or indirectly permit any third-party to use or copy the Service or Support Materials. Customer will not operate a

service bureau or other similar service for the benefit of third parties using the Service or Support Materials.

2.5. Proprietary Notices. Customer will not remove any proprietary notices (e.g., copyright and trademark notices) from the Service or Support Materials. Customer shall reproduce the copyright and all other proprietary notices displayed on the Service or Support Materials on each permitted back-up or archival copy.

2.6. Use in Accordance with Documentation. All use of the Service and Support Materials must be in accordance with the Documentation, Tanium's Acceptable Use Policy made available at <http://www.tanium.com/aup> ("**AUP**"), and this Agreement.

2.7. Use of the Service. Customer is solely responsible and fully liable for its use of the Service and Support Materials, including, but not limited to, for ensuring that the use of the Service and Support Materials is in compliance with all applicable foreign, federal, state, and local laws, rules, and regulations. Customer will not disable or interfere with, or disrupt the integrity or performance of the Service, or any data or content contained therein or transmitted thereby; or access the Service (or download any data or content contained therein or transmitted thereby) through the use of any engine, software, tool, agent, device, or mechanism (including spiders, robots, crawlers, or any other similar data mining tools) other than software or Service features provided by Tanium expressly for such purposes.

2.8. Tanium's Intellectual Property. Customer must not use the Service, Support Materials, or other Tanium Confidential Information whether directly or indirectly to contest the validity of any Tanium intellectual property, including the Service; any such use of Tanium's information will constitute a material, non-curable breach of this Agreement.

2.9. Competition. Customer must not use the Service, Support Materials or Tanium Confidential Information in a manner to compete with Tanium, to assist a third-party in competing with Tanium, or for benchmarking or competitive analysis.

2.10. Credential Protection; Authentication. Customer will require that all Users keep user ID and password information ("**Credentials**") strictly confidential and not share such information with anyone, including any other User. Customer agrees that neither Tanium nor its suppliers have any liability under this Agreement for actions taken using Customer's Credentials, including any unauthorized use or access caused by misuse or misappropriation of such Credentials. Customer will be responsible for initiating and facilitating the removal of Service access by any User who is no longer authorized to access the Service. Customer will use security assertion markup language 2.0 and multi-factor authentication when accessing the Service unless other related security measures are required in the Documentation. Customer will notify Tanium promptly upon learning of any attempt by anyone to misuse, misappropriate, copy, modify, derive, or reverse engineer any Service and Customer shall reasonably cooperate and assist Tanium in discovering,

preventing, and recovering damages for any such misappropriation, copying, modification, derivation, or reverse engineering of the Service.

2.11. *Prohibited Data.* Customer will not use the Service to store, maintain, process, or transmit any sensitive or special data that might impose specific data security or data protection obligations on Tanium, including, without limitation (i) “protected health information” as defined under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), (ii) “cardholder data” as defined under the Payment Card Industry Data Security Standard (PCI DSS); or (iii) “nonpublic personal information” as defined under the Gramm-Leach-Bliley Act of 1999, in each case as such Acts and standards have been or may be supplemented and amended from time to time.

3. Affiliates and Managing Parties. The term “**Affiliate**” means an entity that is controlled by, controls, or is under common control of a party, where “control” means the ownership, in the case of a corporation, of more than fifty percent (50%) of the voting securities in such corporation or, in the case of any other entity, the ownership of a majority of the beneficial or voting interest of such entity. Customer may allow its Affiliate(s) to use the Service and Support Materials provided that (a) the Affiliate only uses the Service and Support Materials for Customer’s or Affiliate’s internal business purposes and up to the authorized number of Managed OS Instances in accordance with the terms and conditions of this Agreement and (b) Customer is responsible for and remains liable for the Affiliate’s use of the Service and Support Materials in compliance with the terms and conditions of this Agreement. If Customer enters into a contract with a third party that manages Customer’s information technology resources (“**Managing Party**”), Customer may allow its Managing Party to use the Service and Support Materials on Customer’s Managed OS Instances, provided that (a) the Managing Party only uses the Service for Customer’s internal business purposes and not for the benefit of any third party or for the Managing Party, (b) the Managing Party agrees to comply with the terms and conditions of this Agreement, and (c) Customer is responsible for and remains liable for the Managing Party’s use of the Service and Support Materials in compliance with the terms and conditions of this Agreement. In addition, Customer shall ensure that its personnel comply with the terms of this Agreement.

4. Term and Termination. Unless otherwise set forth in the Schedule, the Subscription License will commence upon the Effective Date and will continue for the duration of the Subscription License term or until this Agreement is terminated as provided in this Section, whichever occurs first (the “**Service Period**”). The term of the Service Period will be as set forth in the Schedule. Either party may terminate this Agreement or any Schedule on written notice to the other party if the other party is in material breach of its obligations hereunder and fails to cure the material breach within thirty (30) days of such written notice, or within five (5) days of such written notice if Customer fails to make payments as required in this Agreement or Customer breaches Sections 1 (Grant of License) or 2 (Restrictions). Notwithstanding the foregoing, if a material failure is not curable, the non-defaulting party may immediately terminate this Agreement upon written notice to the other party. Subject to applicable law, either party may, in its sole discretion, elect to

terminate this Agreement or any Schedule on written notice to the other party upon the bankruptcy or insolvency of the other party or upon the commencement of any voluntary or involuntary winding up, or upon the filing of any petition seeking the winding up of the other party. Upon expiration of the Subscription License or any termination or expiration of this Agreement, the Subscription License granted in Section 1 (Grant of License) will automatically terminate and Tanium shall (at Customer's election) destroy, delete, or return to Customer all Customer Data in its possession or control that Tanium processes as a data processor. If Customer does not notify Tanium of its election within thirty (30) days following termination or expiry of the Service Period, then Tanium shall automatically delete all such Customer Data. Tanium shall not delete Customer Data to the extent (i) it is required by applicable law to retain some or all of Customer Data, or (ii) Customer Data was archived on back-up systems, which Customer Data Tanium shall use commercially reasonable efforts to securely isolate and protect from any further processing except to the extent required by such law. Unless otherwise stated in this Agreement or any Schedule, termination of the Agreement will not entitle Customer to a refund of any fees. Tanium reserves the right to seek all remedies available at law and in equity for Customer's material breach of this Agreement.

5. Fees and Expenses; Payment Terms; Taxes.

5.1. *Fees and Expenses.* Notwithstanding anything else to the contrary, if Customer orders from a Tanium authorized business partner ("**Reseller**"), final terms of the transaction (e.g., pricing, discounts, fees, payments, and taxes) are solely subject to the agreement between Customer and its Reseller of choice. This Agreement will govern Tanium's provision and Customer's license to the Service and Support whether Customer orders the Service and Support from Tanium or a Reseller. Unless Customer orders directly from a Reseller, (i) Customer will pay the Service and Support fees directly to Tanium and Tanium will fulfill all orders; and (ii) the parties will enter into a Schedule that describes the Service and any Support to be acquired by Customer. This Agreement applies to any Schedule that references this Agreement. When a purchase order will be utilized as a Schedule, the purchase order must reference the applicable Quote and this Agreement, which will be deemed incorporated by such reference. Notwithstanding anything else to the contrary, any terms and conditions in the purchase order that conflict or are inconsistent with the Quote or this Agreement will have no force or effect. The purchase order will not add or remove terms from the Quote or this Agreement. Tanium further reserves the right to expressly reject any purchase order that does not comport to the requirements of this Section.

5.2. *Payment Terms.* Unless otherwise set forth in a Schedule, (a) fees for Service will be billed on an annual basis, payable in advance; and (b) all amounts to be paid by Customer are due and payable thirty (30) days after Customer's receipt of an invoice. Payments will be made by electronic transfer to a bank account designated by Tanium on the invoice in the amount of fees for the Service and Support ordered (less any applicable credits and deductions and plus any applicable taxes, shipping, and other charges). The effective date of payment shall be the date on which the entire amount due is credited to Tanium's bank

account or the instrument enabling immediate collection of the entire amount due is received. All payments not made by Customer when due will be subject to late charges of the lesser of (i) one percent (1%) per month of the overdue amount or (ii) the maximum amount permitted under applicable law. Customer shall pay all court costs, fees, expenses, and reasonable attorneys' fees incurred by Tanium in collecting delinquent fees.

5.3. *Taxes.* All amounts payable by Customer to Tanium under this Agreement are exclusive of any taxes, levies, or duties, of any nature, that may be assessed by any jurisdiction (collectively "**Taxes**"). Customer is responsible for paying all Taxes including sales, use, excise, import or export values or fees, stamp duties, foreign withholding (if applicable to paying jurisdiction), value-added, personal property, or any other tax resulting from the delivery, possession, or use of the Service, Support, or purchases of hardware. Taxes do not include any taxes payable by Tanium for its employees or for its net income.

All Service will be delivered and accessed electronically. In conjunction with the billing, collection and payment of any Taxes, Customer may provide Tanium with a primary place of use for the Service. This address will be used as the "shipped to address" on all invoices. If Customer does not provide a primary place of use then Customer's purchase order "ship to address" will be used for these purposes. Customer will pay all Taxes relating to, or under this Agreement, unless Customer is exempt from the payment of such Taxes and provides Tanium with evidence of valid exemption certificate(s). If its tax status changes, Customer must notify Tanium in writing (email is sufficient) at least 30 days in advance of Customer's next billing cycle. If Tanium becomes entitled to a refund or credit of Taxes previously paid by Customer pursuant to this Section, any such refunded or credited amounts (including any interest received thereon) shall be promptly granted as a credit memo against Customer's account or, upon Customer's request, paid over to Customer. Unless Customer and Tanium agree otherwise, Customer will make no deduction from any amounts owed to Tanium for any un-invoiced taxes of any type. Subject to applicable laws, Tanium will cooperate with Customer to reduce the amount of applicable withholding taxes and Customer will not take any action that is prejudicial to obtaining an available tax exemption by Tanium. Upon Customer's written request, Tanium will provide Customer with written proof that it has made all registrations and reports required for these tax payments. If Tanium claims a tax exemption that may affect any obligations of Customer, Tanium will disclose this exemption to Customer on a timely basis and provide Customer with all exemption documentation requested by Customer. If Customer is required to withhold amounts from any payments due to Tanium hereunder as prescribed by applicable law, Customer will make such withholding, remit such amounts to the appropriate taxing authorities. Customer agrees to increase the amount payable as necessary so that after making all required deductions and withholdings, Tanium receives and retains (free from any Tax liability) an amount equal to the amount it would have received had no such deductions or withholdings been made. Customer will indemnify Tanium from and against any disputed taxes, including interest and penalties, on the Service and/or Support by the taxing authorities. If the taxation of the item(s) is disputed

by the taxing authorities, Tanium will notify Customer, if practical, to work with Customer and the taxing authorities to minimize any potential deficiencies.

6.1. *Support.* The term “**Support**” means, collectively, the Support Services, Supplemental Support, Training, and any other services acquired by Customer from Tanium, all of which are provided in accordance with, and governed by, the terms and conditions of this Agreement. The type, term, and level of Support are as set forth in the applicable Schedule. With respect to the Service, the support and maintenance described below in Section 6.2 (“**Support Services**”) are provided during the Service Period. Geographic limitations may apply. Unless otherwise agreed upon in writing by the parties or expressly stated in the Documentation, Support Services will be provided in English only.

6.2. *Support Services.* Unless otherwise set forth in a Schedule, Tanium will provide the following Support Services to Customer.

6.2.1. **General.** During the Service Period, Tanium shall provide Customer with reasonable support for the person(s) designated by customer that may contact Tanium for Support Services (“**Technical Support Contact(s)**”). Customer may contact Tanium for Support Services Monday through Friday, 7 a.m. to 7 p.m. Pacific Standard Time, excluding Tanium holidays. Tanium shall use good faith efforts to work with Customer during Customer’s normal business hours in the time zone in which the Customer is located to resolve any issues raised by Customer. Customer may designate up to a maximum of two (2) Technical Support Contacts and may change its designation of Technical Support Contact(s) upon written notice to Tanium.

6.2.2. **Contacting Tanium.** Customer’s Technical Support Contact(s) may contact Tanium for Support Services by submitting a request via the internet-based support platform, which requires registration to use.

6.2.3. **Customer’s Obligations.** Customer is responsible for: (1) preparing and maintaining their systems (e.g., multi- factor authentication) and facilities in accordance with the Documentation and specifications of the appropriate suppliers; (2) securing all required permits, inspections, and licenses necessary to use the Service; (3) complying with all applicable laws while using the Service; and (4) determining whether the Service adheres to any applicable laws to which it subject. Customer acknowledges and agrees that Customer is solely responsible for the function, performance, and results achieved in using or accessing any Support Materials that Tanium may make available to Customer in connection with Support Services.

6.2.4. **Third-Party Support.** Notwithstanding anything else to the contrary in this Agreement, if Customer enters into an agreement with a Reseller under which the Reseller will provide support or maintenance to Customer for the Service (“**Third-Party Support**”), Customer must contact the Reseller, and not Tanium, for support and maintenance. Customer acknowledges that (i) all terms and conditions related to Third-

Party Support are solely subject to the agreement between Customer and the Reseller; and (ii) Tanium has no responsibility or liability for Third-Party Support.

6.3. *Personal Data and Systems Information.*

6.3.1. Personal Data. Customer, rather than Tanium, determines which types of data, including Personal Data (as defined in the Data Processing Addendum), exists within its endpoint environment, and determines to what extent Personal Data is processed through its use of the Service. To the extent that Tanium processes Personal Data on behalf of Customer while providing the Service, Tanium will process such Personal Data pursuant to the Data Processing Addendum found at <http://tanium.com/dpa>, which is hereby incorporated into and made a part of this Agreement.

6.3.2. Systems Information. During the term of the Agreement, Customer may provide to Tanium and the Service may collect performance, usage, and analytics information relating to Customer's operation and use of the Service, metadata relating to Customer's networks, software, applications, and systems, device identifiers, network telemetry, endpoint telemetry, system configuration, and data generated through any of the foregoing (collectively, "**Systems Information**"). Because Customer's endpoint environment is unique in configurations and naming conventions, the Systems Information could potentially include Personal Data. Customer may redact, edit, or otherwise suppress any Systems Information, including Personal Data, prior to providing to Tanium for processing. To the extent any Systems Information includes Personal Data, Customer represents and warrants that it has made all necessary disclosures and has a lawful basis to share the Personal Data with Tanium for the Permitted Purpose.

Customer agrees that Tanium may use Systems Information: (a) to provide the Service and Support; (b) to research, develop, and improve Tanium's products and services; (c) as directed or instructed by Customer; and (d) on an aggregated and/or anonymized basis, for marketing purposes (the "**Permitted Purpose**"). To the extent Systems Information identifies Customer, such Systems Information will be held in confidence by Tanium in accordance with Section 10 (Confidentiality).

6.3.3. As between Customer and Tanium, this Section 6.3 states Tanium's entire obligation with respect to Personal Data.

6.4. Supplemental Support and Training. Supplemental Support may be purchased by Customer and provided by Tanium in accordance with Appendix A. Product training may be purchased by Customer and provided by Tanium with respect to the Service ("**Training**").

7. Limited Warranty; Disclaimer; Integrations with Third-Party Software and Services.

7.1. Limited Warranty. During the Warranty Period, Tanium warrants that (i) the Service will operate in substantial conformity with the Documentation; and (ii) it shall use commercially reasonable efforts to screen the Service prior to delivery to Customer for viruses, Trojan horses, and other malicious code. The term **“Warranty Period”** means ninety (90) days from the Effective Date. If the Service Period is less than ninety (90) days, the Warranty Period will be for the length of the Service Period. The foregoing warranties apply only to the Service provided to Customer during the Warranty Period and are solely for the benefit of Customer. Customer shall have no authority to extend such warranty to any third party. The sole and exclusive remedy of Customer, and the sole and exclusive liability of Tanium, for breach of the foregoing warranties in this Section, shall be to repair or replace the non-conforming Service, or if repair or replacement would, in Tanium’s opinion, be commercially unreasonable, then Tanium shall terminate the relevant licenses and refund to Customer the portion of prepaid license fees applicable to such non-conforming Service. This warranty is contingent upon the proper installation and use of the Service as described in the Documentation and this Agreement; Tanium shall not be responsible for Customer’s use of the Service if not operated in a manner recommended in the Documentation. Any modification to the Service by Customer or any third party may void Tanium’s warranties under this Section.

In addition, Tanium warrants that any Supplemental Support and Training will be provided in a professional and workmanlike manner consistent with relevant industry standards. If Tanium breaches the foregoing warranty, Customer’s sole remedy will be to terminate the applicable Supplemental Support and/or Training and receive a refund of any prepaid unused fees for such non-conforming Supplemental Support and/or Training.

7.2. Warranty Disclaimer. EXCEPT AS PROVIDED IN SECTION 7.1 AND 7.2, THE SERVICE, SUPPORT MATERIALS, AND SUPPORT ARE PROVIDED ON AN “AS AVAILABLE,” “AS-IS” BASIS. TO THE MAXIMUM EXTENT PERMITTED BY LAW, TANIUM AND ITS SUPPLIERS DISCLAIM ALL OTHER WARRANTIES WITH RESPECT TO THE SERVICE, SUPPORT MATERIALS, AND SUPPORT, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF NON- INFRINGEMENT, TITLE, MERCHANTABILITY, QUIET ENJOYMENT, QUALITY OF INFORMATION, AND FITNESS FOR A PARTICULAR PURPOSE. TANIUM DOES NOT WARRANT THAT THE SERVICE OR SUPPORT WILL MEET CUSTOMER’S REQUIREMENTS; THAT CUSTOMER’S USE OF THE SERVICE OR SUPPORT WILL SATISFY ANY STATUTORY OR REGULATORY OBLIGATIONS; THAT THE OPERATION OF THE SERVICE OR SUPPORT WILL BE UNINTERRUPTED OR ERROR-FREE; OR THAT ERRORS OR DEFECTS IN THE SERVICE OR SUPPORT WILL BE CORRECTED. TANIUM DOES NOT PROVIDE WARRANTIES WITH RESPECT TO ANY NON-GA PRODUCTS, SCRIPTS, CONTENT, OR OTHER TECHNOLOGIES, INCLUDING THE SUPPORT MATERIALS AND ANY INFORMATION OR ADVICE PROVIDED BY TANIUM PERSONNEL IN THE COURSE OF PROVIDING SUPPORT. TANIUM HAS NO RESPONSIBILITY OR LIABILITY FOR ANY THIRD-PARTY PRODUCTS OR TECHNOLOGIES USED BY CUSTOMER WHETHER INDEPENDENTLY OR IN CONJUNCTION WITH THE SERVICE. If applicable law affords Customer implied warranties, guarantees or conditions despite these exclusions, those warranties will be limited to one (1) year from the Effective Date and Customer’s remedies will be limited to

the maximum extent allowed by Sections 7 (Limited Warranty; Disclaimer; Integrations with Third-Party Software and Services) and 9 (Limitation of Liability).

7.3. Integrations with Third-Party Software and Services. Customer acknowledges that the Service may contain features designed to integrate or interoperate with third-party software or services, that Tanium reserves the right to remove or alter any such Service features, and that any such removal or alteration does not entitle Customer to any refund, credit, or other compensation. If Customer elects to use non-Tanium software or services with the Service, Customer grants Tanium permission to allow the non-Tanium software or services or its provider to access Customer Data and information about Customer's usage of the non-Tanium software or services as appropriate for the integration or interoperation of the non-Tanium software or services with the Service.

8. Indemnities. If a third party claims that Customer's licensed use of the Service in compliance with the terms of this Agreement infringes a United States (i) patent, (ii) copyright, or (iii) trademark, or misappropriates a trade secret of that third party, Tanium, at its sole cost and expense, will defend Customer against any such claim, and indemnify Customer from any damages, liabilities, costs and expenses awarded by a court to the third party claiming infringement or set forth in a settlement agreed to by Tanium. If a claim of infringement under this Section occurs, or if Tanium determines a claim is likely to occur, Tanium will have the right, in its sole discretion, to: (xx) procure for Customer the right or license to continue to use the Service; (yy) modify the Service to make it non-infringing, without loss of material functionality; or (zz) replace the Service with a functionally equivalent, non-infringing service or offering. If none of these remedies is reasonably available to Tanium, Tanium may, in its sole discretion, immediately terminate this Agreement and return the license fees paid by Customer for the infringing Service, prorated for use over the remaining unused Service Period. Notwithstanding the foregoing, Tanium shall have no obligation with respect to any claim of infringement that is based upon or arises out of (each of the following an "**Excluded Claim**"): (A) the use or combination of the Service with any third-party or Customer hardware, software, products, data or other materials; (B) modification or alteration of the Service by anyone other than Tanium; (C) Customer's failure to implement any workaround that would have avoided the claim; (D) Customer's use of the Service in breach of or excess of the rights granted in this Agreement; (E) any third-party components; or (F) a business method or process that is inherent to Customer's business. The provisions of this Section state Customer's sole and exclusive remedy and the sole and exclusive obligations and liability of Tanium and its suppliers for any claim of intellectual property infringement arising out of or relating to the Service and/or this Agreement and are in lieu of any implied warranties of non-infringement, all of which are expressly disclaimed. Customer will indemnify, defend, and hold Tanium and its Affiliates and their officers, directors, agents, employees, advertisers, partners, contractors, cloud providers, successors, and assigns harmless from any claim, demand, action, proceeding, judgment, or liability (including legal and other professional fees) from a third-party claim arising out of or related to: (I) an Excluded Claim; (II) Customer Data used by Customer (a) without the required permission(s), consent(s), right(s), or license(s), or (b) in a manner prohibited or restricted by this Agreement; (III) Customer's violation of

applicable law; or (IV) breach by Customer of the AUP. The party seeking indemnification under this Agreement shall promptly notify the indemnifying party in writing of such claim, permit the indemnifying party sole authority to control the defense or settlement of such claim, and provide the indemnifying party with reasonable assistance in connection therewith. The indemnified party may participate in the defense at its sole cost. The indemnifying party will not enter into any settlement agreeing to any injunctive relief, payment or admission of liability affecting the indemnified party without the indemnified party's written consent.

9. Limitation of Liability. TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL TANIUM OR ITS SUPPLIERS BE LIABLE TO CUSTOMER, ITS AFFILIATES OR ANY THIRD PARTY FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR INDIRECT DAMAGES, WHICH THE PARTIES EXPRESSLY AGREE INCLUDE, WITHOUT LIMITATION AND REGARDLESS OF ITS LEGAL CATEGORIZATION, ANY DAMAGES FOR PERSONAL INJURY, LOST PROFITS, LOST DATA, BUSINESS INTERRUPTION, COMPUTER FAILURE OR MALFUNCTION, AND/OR COST OF REPLACEMENT GOODS OR SERVICES, EVEN IF TANIUM HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY CASE, THE MAXIMUM AGGREGATE LIABILITY OF TANIUM AND ITS SUPPLIERS UNDER THIS AGREEMENT FOR ALL DAMAGES, LOSSES, AND CAUSES OF ACTION (WHETHER IN CONTRACT, TORT, OR OTHERWISE) IS LIMITED TO THE FEES PAID BY CUSTOMER FOR THE SERVICE OR SUPPORT GIVING RISE TO SUCH CLAIM DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO SUCH CLAIM. THE FOREGOING IS INTENDED TO BE AN AGGREGATE LIMIT, NOT PER INCIDENT. THE PARTIES ACKNOWLEDGE THAT ONLY CUSTOMERS CAN IMPLEMENT BACK-UP PLANS AND SAFEGUARDS APPROPRIATE TO THEIR OWN NEEDS TO PROTECT THEMSELVES IF AN ERROR IN THE SERVICE OR SUPPORT CAUSES COMPUTER PROBLEMS AND RELATED DATA LOSSES. FOR THESE REASONS, CUSTOMER AGREES TO THE LIMITATIONS OF LIABILITY IN THIS SECTION AND ACKNOWLEDGES THAT WITHOUT CUSTOMER'S AGREEMENT TO THESE TERMS, THE FEES CHARGED FOR THE SERVICE WOULD BE HIGHER. NO CAUSE OF ACTION, REGARDLESS OF FORM, ARISING OUT OF ANY OF THE TRANSACTIONS UNDER THIS AGREEMENT MAY BE BROUGHT BY CUSTOMER MORE THAN ONE (1) YEAR AFTER CUSTOMER IS MADE AWARE OF THE CIRCUMSTANCES THAT RESULTED IN SUCH CAUSE OF ACTION. IN THE EVENT TANIUM MAKES A REFUND OR CREDIT UNDER THIS AGREEMENT, ANY SUCH MONIES REFUNDED OR CREDITED BY TANIUM WILL BE APPLIED TO THE MEASURE OF DAMAGES SUBSEQUENTLY AWARDED BY THE COURT, IF ANY. NEITHER PARTY WILL SEEK A DUPLICATE AWARD OF DAMAGES FOR ANY REFUNDED OR INDEMNIFIED MONIES PAID UNDER THIS AGREEMENT.

10. Confidentiality. Each party agrees to hold the other party's (and that of its affiliates disclosed in connection with this Agreement) Confidential Information in confidence using the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (at all time exercising at least a commercially reasonable degree of care in the protection of such Confidential Information), and not to make each other's Confidential Information available in any form to any third party (other than their authorized agents) or to use each other's Confidential Information for any purpose other

than as specified in this Agreement (subject, in all cases, to the rights granted to Tanium in Section 11.2). Each party agrees to take all reasonable steps to ensure that Confidential Information of the other party is not disclosed, used, or distributed by its employees, agents, or consultants in violation of the provisions of this Agreement. In addition, Customer shall ensure that any Managing Party will hold Tanium's Confidential Information in confidence and otherwise comply with this Section. "**Confidential Information**" shall mean, with respect to a party hereto, all information or material disclosed or made available by one party or its affiliates to the other or its affiliates in connection with this Agreement which is marked confidential or proprietary or from all the relevant circumstances should reasonably be assumed to be confidential. Confidential Information includes, but is not limited to, the Service and Support Materials. Each party's Confidential Information shall remain the sole and exclusive property of that party. Neither party shall have any obligation with respect to Confidential Information disclosed or made available by one party or its affiliates to other party or its affiliates in connection with this Agreement which: (i) is or becomes generally known to the public by any means other than a breach of the obligations of a receiving party; (ii) was previously known to the receiving party or rightly received by the receiving party from a third party without restrictions on disclosure; (iii) is independently developed by the receiving party without reliance upon or use of the disclosing party's Confidential Information; or (iv) is approved for release by the disclosing party in writing. Each party acknowledges and agrees that due to the unique nature of the Confidential Information there can be no adequate remedy at law for any breach of its obligations hereunder, that any such breach or threatened breach may allow a party or third parties to unfairly compete with the other party, resulting in irreparable harm to such party, and therefore, that upon any such breach or any threat thereof, each party will be entitled to seek appropriate equitable and injunctive relief from a court of competent jurisdiction without the necessity of proving actual loss, in addition to whatever remedies either of them might have at law or equity. In the event the parties executed a non-disclosure agreement related to Customer's prospective license of the Service, the terms of this Section will supersede such non-disclosure agreement after the Effective Date.

11. Evaluation Software and Feedback.

11.1 *Evaluation Software.* This Section only applies to Services designated by Tanium as "**Evaluation Service(s)**." Subject to Section 2 (Restrictions), Tanium grants to Customer a non-transferable, non-exclusive limited license to use the Evaluation Service(s) for its internal evaluation and lab purposes only. The term of this license is for a period of thirty (30) days following delivery of the Evaluation Service(s) ("**Evaluation Period**"). Tanium may extend the Evaluation Period in writing at its discretion. Unless otherwise agreed in writing by Tanium, Customer agrees to use the Evaluation Service(s) in a non-production environment. Customer bears the sole risk of using the Evaluation Service(s). TANIUM PROVIDES THE EVALUATION SERVICE(S) TO CUSTOMER "AS-IS" AND GIVES NO REPRESENTATION, WARRANTY, INDEMNITY, GUARANTEE OR CONDITION OF ANY KIND. TO THE MAXIMUM EXTENT PERMITTED BY LAW, TANIUM'S TOTAL AGGREGATE LIABILITY AND THAT OF ITS SUPPLIERS IS EXPRESSLY LIMITED TO FIVE HUNDRED DOLLARS (\$500) FOR ANY AND ALL DAMAGES REGARDLESS OF THE NATURE OF THE

CLAIM OR THEORY OF LIABILITY. Because the Evaluation Service(s) are provided “AS-IS,” Tanium is not obligated to provide support for them. Tanium may receive service credits from its subprocessors in association with the Evaluation Service. This Section supersedes any inconsistent term in the Agreement for purposes of the Evaluation Service(s).

11.2 *Feedback.* Customer may provide suggestions, comments, or other feedback (collectively, “**Feedback**”) to Tanium with respect to its products and services, including the Service and Support. Feedback is voluntary and Tanium is not required to hold it in confidence. Tanium may use Feedback for any purpose without obligation of any kind. To the extent a license is required under Customer’s intellectual property rights to make use of the Feedback, Customer hereby grants Tanium an irrevocable, non-exclusive, perpetual, worldwide, transferable, royalty- free license, with the right to sublicense, to use the Feedback in connection with Tanium’s business, including enhancement of the Service.

11.3 *Beta Software.* If the Service released to Customer has been identified by Tanium as “**Beta Software**,” then the provisions of Section 11.1 (Evaluation Software) will apply, in addition to this Section 11.3 (Beta Software). Customer is under no obligation to use any Beta Software; doing so is in Customer’s sole discretion. Because Beta Software can be at various stages of development, operation and use of the Beta Software may be unpredictable. Customer acknowledges and agrees that: (1) Beta Software has not been fully tested; (2) use or operation of Beta Software should not occur in a production environment; (3) Customer’s use of Beta Software will be for purposes of evaluating and testing new functionality and providing Feedback to Tanium; and (4) Customer will inform its personnel regarding the nature of the Beta Software. In addition, Tanium has no obligation to Customer to (1) further develop or release the Beta Software or (2) provide support for the Beta Software. If Tanium releases another version of the Beta Software, Customer will return or destroy all prior version(s) or release(s) of the Beta Software that it received from Tanium.

12. **Governing Law/Jurisdiction.** Except as set forth in PART 2, this Agreement will be governed by and construed in accordance with the substantive laws in force in the State of Washington, USA. This Agreement will not be governed by the conflict of laws rules of any jurisdiction or the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded. The Uniform Computer Information Transactions Act as enacted shall not apply. Except as set forth in PART 2, the state or federal courts of competent jurisdiction located in King County, Washington will have exclusive jurisdiction over all disputes relating to this Agreement.

13. **General.** This Agreement (including PART 1 and PART 2 where applicable), together with the Schedules and any exhibits attached hereto, the Data Processing Addendum, Documentation, appendices, and the AUP, constitutes the entire understanding and agreement between Tanium and Customer with respect to the subject matter of this Agreement and supersedes all prior or contemporaneous oral or written communications, including without limitation the terms and conditions on any Customer purchase order, payment portal, or other document with respect to the subject matter of this Agreement

(even where Tanium has not explicitly objected to them), all of which are merged in this Agreement. This Agreement shall not be modified, amended or in any way altered except by an instrument in writing signed by authorized representatives of both parties and specifically referencing this Agreement, and this Agreement shall supersede any non-disclosure agreement required to be signed by Tanium employees or contractors prior to accessing Customer facilities or systems. In the event any provision of this Agreement is found invalid or unenforceable pursuant to judicial decree, the remainder of this Agreement shall remain valid and enforceable according to its terms. Any failure by Tanium to strictly enforce any provision of this Agreement will not operate as a waiver of that provision or any subsequent breach of that provision. Any notice or consent under this Agreement addressed to Tanium should be marked "Attention Chief Legal Officer" and may be sent (i) to the address identified on the Quote, which will be considered delivered three (3) days after deposit in the mail (registered mail) or one (1) day after being sent by overnight courier, or (ii) via email, to Legal@tanium.com, which will be considered delivered when receipt is confirmed by Tanium. Any notice or consent under this Agreement addressed to Customer should be marked "Attention Chief Legal Officer" and may be sent (a) to the address provided when purchasing the Service, which will be considered delivered three (3) days after deposit in the mail (registered mail) or one (1) day after being sent by overnight courier, or (b) via email, to the email address provided by Customer when purchasing the Service, which will be considered delivered when receipt is confirmed by the recipient. There are no intended or implied third-party beneficiaries of this Agreement. The following provisions of PART 1 shall survive any termination or expiration of this Agreement: Sections 2 (Restrictions), 4 (Term and Termination), 5 (Fees and Expenses; Payment Terms; Taxes), 6.3 (Personal Data and Systems Information), 9 (Limitation of Liability), 10 (Confidentiality), 11.2 (Feedback), 12 (Governing Law/Jurisdiction), 13 (General), 15 (U.S. Government Rights), 16 (Audit), 17 (Force Majeure), 18 (Construction), and Customer's indemnity obligations hereunder. All provisions of PART 2 will survive any termination or expiration of this Agreement. Tanium may assign any of its rights or obligations hereunder as it deems necessary. **IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT IN THE EVENT ANY REMEDY HEREUNDER IS DETERMINED TO HAVE FAILED OF ITS ESSENTIAL PURPOSE, ALL LIMITATIONS OF LIABILITY AND EXCLUSIONS OF DAMAGES SET FORTH HEREIN SHALL REMAIN IN EFFECT.**

14. Export or Import. Customer acknowledges that the Service, which contains encryption, is subject to the export, import, economic sanctions, and trade restriction laws, regulations and requirements of the United States and other countries including European Union regulations. Tanium will reasonably cooperate, in Tanium's discretion, in assisting Customer with respect to an application for any required export or import licenses and approvals; however, Customer agrees and acknowledges that it is Customer's ultimate responsibility to comply with all export and import laws and that Tanium has no further responsibility after the initial sale to Customer within the original country of sale, including Customer's importation of the Service into other countries. Without limiting the foregoing, Customer agrees that it will not export, re-export, re-transfer, or provide access to the Service in contravention of the foregoing, or provide the Service to any person, in any

jurisdiction, or to any user that would create a licensing requirement under U.S. Export control and economic sanctions laws, regulations and requirements without first obtaining any such license. Customer will not export to, or use the Service or Support in, any country not supported by Tanium, including, but not limited to, embargoed and sanctioned countries as promulgated by the United States Government. Customer shall defend, indemnify, and hold harmless Tanium from and against any and all damages, fines, penalties, assessments, liabilities, costs, and expenses (including attorneys' fees and expenses) arising out of or relating to any claim the Service was imported, exported, accessed, or otherwise shipped or transported by Customer in violation of applicable laws, rules and regulations as described in this Section.

15. U.S. Government Rights. The Service is commercial computer software as described in DFARS 252.227-7014(a) (1) and FAR 2.101. If acquired by or on behalf of the Department of Defense or any component thereof, the U.S. Government acquires this commercial computer software and/or commercial computer software documentation subject to the terms of this Agreement as specified in DFARS 227.7202-3, Rights in Commercial Computer Software or Commercial Computer Software Documentation. If acquired by or on behalf of any civilian agency, the U.S. Government acquires this commercial computer software and/or commercial computer software documentation subject to the terms of this Agreement as specified in FAR 12.212, Computer Software.

16. Audit. During the term of this Agreement and for one (1) year thereafter, no more than once in any twelve (12) month period, Tanium may audit Customer's use of the Service ("**Audit**"). An Audit will generally consist of Customer providing a system-generated deployment report evidencing Customer's deployment of the Service. Customer will reasonably cooperate with Tanium and any auditor retained by Tanium in the conduct of the Audit. Audits will be conducted during Customer's normal business hours. Customer will immediately remit payment for any Service deployed in excess of the Service licenses purchased by Customer under this Agreement.

17. Force Majeure. Except for Customer's payment obligations, neither party will be liable for any failure or delay in performance under this Agreement which is due to any event beyond the reasonable control of such party, including without limitation, fire, explosion, unavailability of utilities or raw materials, unavailability of components, labor difficulties, war, pandemic, epidemic, riot, act of God, export control regulation, laws, judgments, or government instructions.

18. Construction. This Agreement has been negotiated and approved by the parties and, notwithstanding any rule or maxim of law or construction to the contrary, any ambiguity or uncertainty will not be construed against either of the parties by reason of the authorship of any of the provisions of this Agreement.

PART 2 – Country-specific Terms

1. For purposes of this PART 2, Customer is considered “**Domiciled**” at the primary place of use for the Service, as provided by Customer to Tanium for calculation of taxes.

2. For **Customers Domiciled in Germany**, the following changes are made to the terms in PART 1:

2.1. Sections 2.3 and 2.4 of PART 1 are replaced with the following:

2.3 Limitations on Reverse Engineering and Modification. Except to the extent such a limitation is expressly prohibited by applicable law, in particular clause 69e of the German Copyright Act (Urheberrechtsgesetz “**UrhG**”), Customer will not reverse engineer, decompile, disassemble, modify, or create derivative works of the Service or Support Materials whether directly or indirectly unless it is necessary for the use of the Service or Support Materials in accordance with its intended purpose under 69d UrhG.

2.4 Sublicense, Rental and Third Party Use. Except to the extent expressly permitted by this Agreement, Customer shall not assign, sublicense, rent, timeshare, loan, lease or otherwise transfer the Service or Support Materials, or directly or indirectly permit any third-party to use or copy the Service or Support Materials unless it is necessary for the use of the Service or Support Materials in accordance with its intended purpose under clause 69d of UrhG. Customer shall not operate a service bureau or other similar service for the benefit of third parties using the Service or Support Materials.

2.2. Section 5.2 (Payment Terms) of PART 1 is replaced with the following:

5.2 Payment Terms. Unless otherwise set forth in a Schedule, (a) fees for Service will be billed on an annual basis, payable in advance; and (b) all amounts to be paid by Customer are due and payable thirty (30) days after Customer’s receipt of an invoice. Payments will be made by electronic transfer to a bank account designated by Tanium on the invoice in the amount of fees for the Service and Support ordered (less any applicable credits and deductions and plus any applicable taxes, shipping, and other charges). The effective date of payment shall be the date on which the entire amount due is credited to Tanium’s bank account or the instrument enabling immediate collection of the entire amount due is received. All undisputed payment not made by Customer when due will be subject to late charges of default interest of nine (9) percentage points above the base interest rate. Customer shall pay all court costs, fees, expenses and reasonable attorneys’ fees incurred by Tanium in collecting delinquent fees.

2.3. Notwithstanding the support hours listed in Section 6.2 (Support Services), Customer may contact Tanium for Support Services Monday through Friday, 8 a.m. to 6 p.m. CET, excluding Tanium holidays.

2.4. Section 7 (Limited Warranty; Disclaimer; Integrations with Third-Party Software and Services) of PART 1 is replaced with the following:

7. Limited Warranty; Disclaimer; Integrations with Third-Party Software and Services.

7.1 Limited Warranty. During the Warranty Period, Tanium warrants that (i) the Service will operate in substantial conformity with the Documentation; and (ii) it shall use commercially reasonable efforts to screen the Service prior to delivery to Customer for viruses, Trojan horses, and other malicious code. The “**Warranty Period**” is equal to the Service Period. The foregoing warranties apply only to the Service provided to Customer during the Warranty Period and are solely for the benefit of Customer. Customer shall have no authority to extend such warranty to any third party. The sole and exclusive remedy of Customer, and the sole and exclusive liability of Tanium, for breach of the foregoing warranties in this Section, shall be to repair or replace the non-conforming Service. Liability without fault for initial defects is excluded. The liability with fault remains unchanged. In assessing whether or not Tanium is in fault Customer acknowledges that Service cannot be free of any defects. The Customer shall be exempt from paying any fees for the Service for the duration of any time taken to repair or replace the Service where the Customer is unable to use the Service. If a breach of the warranties set out in this Section cannot be remedied by repair or replacement, either party is entitled to terminate the relevant Schedule(s) or Purchase Order(s), and Tanium shall refund to Customer fees paid for the non-conforming Service. The Customer is only entitled to a termination pursuant to sec. 543 subsec, 2 sentence 1 no.1 German Civil Code due to the failure to grant use in accordance with the Agreement if Tanium has been given sufficient opportunity to rectify the deficiency and such attempt has failed. This warranty is contingent upon the proper installation and use of the Service as described in the Documentation and this Agreement; Tanium shall not be responsible for Customer’s use of the Service if not operated in a manner recommended in the Documentation. Any modification to the Service by Customer or any third party may void Tanium’s warranties under this Section.

7.2 Support Services Warranty. In addition, Tanium warrants that any Support will be provided in a professional and workmanlike manner consistent with relevant industry standards. If Tanium breaches the foregoing warranty, Customer’s sole remedy will be to terminate the applicable Support and receive a refund of any fees paid for such non-conforming Support.

7.3 Disclaimer. Intentionally Omitted.

7.4 Integrations with Third-Party Software. Customer acknowledges that the Service may contain features designed to integrate or interoperate with third-party software or services, that Tanium reserves the right to remove or alter any such Service features, and that any such removal or alteration does not entitle Customer to any refund, credit, or other compensation unless the removing or alteration results in material changes to the Service. If Customer elects to use third-party software or services with the Service, Customer grants Tanium permission to allow the third-party software services or its provider to access Customer’s data and information pertinent to Customer’s usage of the

third-party software and services as appropriate for the integration or interoperability of such third-party software or services with the Service.

2.5. Section 9 (Limitation of Liability) of PART 1 is replaced with the following:

9. Limitation of Liability.

9.1 For damages with respect to injury to health, body or life caused by Tanium, Tanium's representative, or Tanium's agents in the performance of its contractual obligations, Tanium is fully liable.

9.2 Tanium is fully liable for damages caused willfully or by the gross negligence by Tanium, Tanium's representatives or Tanium's agents in the performance of its contractual obligations. The same applies to damages which result from the absence of a quality which was guaranteed by Tanium or to damages which result from malicious action.

9.3 If damages, except for such cases covered by Sections 9.1, 9.2 or 9.4, with respect to a breach of a contractual core duty are caused by slight negligence, Tanium is liable only for the amount of the damage which was typically foreseeable. Contractual core duties, abstractly, are such duties whose fulfillment enables proper performance of an agreement in the first place and whose performance a contractual party regularly may rely on. For the purposes of this Section, "foreseeable damages" shall mean an amount that does not exceed in the aggregate three times the amount payable to Tanium by the Customer in the 12 months period prior to the damage causing event.

9.4 Tanium's liability based on the German Product Liability Act remains unaffected.

9.5 Any further liability of Tanium is excluded.

9.6 The limitation period for claims for damages against Tanium expires after one (1) year, except for such cases covered by Sections 9.1, 9.2 or 9.4.

9.7 *Exclusions to limitations of liability.* Notwithstanding anything else to the contrary, the limitations of liability in Section 9.1-9.6 or elsewhere in this agreement do not limit, apply to, or take into account: (i) Customer's liability for payment obligations under Section 5 (Fees and Expenses; Payment Terms; Taxes) and/or the relevant Schedule(s) or Quote(s), (ii) Customer's liability for breach of Section 2 (Restrictions), (iii) Tanium's indemnification obligations under Section 8.1 (Infringement), (iv) either party's liability for breach of Section 10 (Confidentiality), or (v) either party's liability for its gross negligence or willful misconduct. In addition, notwithstanding the foregoing or any other term of this agreement, nothing contained herein will be construed as limiting Tanium's right to protect, enforce and recover damages for violation or infringement of its intellectual property rights.

9.8 *General*. The parties acknowledge that only Customers can implement back-up plans and safeguards appropriate to their own needs to protect themselves if an error in the Service causes computer problems and related data losses. For these reasons, customer agrees to the limitations of liability in this Section 9 and acknowledges that without Customer's agreement to these terms, the fee charged for the Service would be higher. Any limitation of liability set forth in this Section 9 that applies to Tanium also extends to Tanium's licensors and suppliers. No action, regardless of form, arising out of any of the transactions under this Agreement may be brought by Customer more than one (1) year after such action accrued except for such cases covered by Section 9.1, 9.2 or 9.4. In the event Tanium makes a refund pursuant to an express remedy under this Agreement, any such monies refunded by Tanium will be applied to the measure of damages subsequently awarded by the court, if any.

2.6. Section 11.1 (Evaluation Software) of PART 1 is replaced with the following:

11.1 *Evaluation Software*. This Section only applies to Services designated by Tanium as "**Evaluation Services**". Subject to Section 2 (Restrictions), Tanium grants to Customer a non-transferable, non-exclusive limited license to use the Evaluation Service(s) for its internal evaluation and lab purposes only. The term of this license is for a period of thirty (30) days following delivery of the Evaluation Services ("**Evaluation Period**"). Tanium may extend the Evaluation Period in writing at its discretion. Unless otherwise agreed in writing by Tanium, Customer agrees to use the Evaluation Service(s) in a non-production environment. Customer bears the sole risk of using the Evaluation Service(s). Tanium provides the Evaluation Services to Customer "AS-IS" and gives no representation, warranty, indemnity, guarantee or condition of any kind. Tanium is solely liable for damages caused by willful misconduct. Because the Evaluation Service(s) are provided "AS-IS," Tanium is not obligated to provide support for them. Tanium may receive service credits from its subprocessors in association with the Evaluation Service. This Section supersedes any inconsistent term in the Agreement for purposes of the Evaluation Service(s).

2.7. Section 12 (Governing Law/Jurisdiction) of PART 1 is replaced with the following:

12. Governing Law/Jurisdiction. This Agreement and any disputes arising in connection with this Agreement will be governed by and construed in accordance with the substantive laws in force in Germany. This Agreement will not be governed by the conflict of laws rules of any jurisdiction or the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded. All disputes arising out of or in connection with the Agreement will be finally settled under the Rules of Arbitration of the International Chamber of Commerce ("**Rules**") by a panel of three arbitrators appointed in accordance with the Rules. All proceedings shall be conducted in English and the arbitration shall take place in Hamburg, Germany. Notwithstanding the foregoing, either party may apply to a court of competent jurisdiction for temporary equitable relief, including the issuance of temporary injunctions, in appropriate circumstances.

3. For **Customers Domiciled in France:**

3.1. Notwithstanding the support hours listed in Section 6.2 (Support Services), Customer may contact Tanium for Support Services Monday through Friday, 8 a.m. to 6 p.m. CET, excluding Tanium holidays.

3.2. Section 7.1 (Limited Warranty) of PART 1 is replaced with the following:

7.1 Limited Warranty. During the Warranty Period, Tanium warrants that (i) the Service will substantially perform in accordance with the Documentation (obligation de moyen); and (ii) it shall screen the Service prior to delivery to Customer for viruses, Trojan horses, and other malicious code. The **“Warranty Period”** means one (1) year from the Effective Date. If the Service Period is less than one (1) year, the Warranty Period will be for the length of the applicable Service Period. The foregoing warranties apply only to the Service provided to Customer during the Warranty Period and are solely for the benefit of Customer. Customer shall have no authority to extend such warranty to any third party. The sole and exclusive remedy of Customer, and the sole and exclusive liability of Tanium, for breach of the foregoing warranties in this Section, shall be to repair or replace the non-conforming Service, or if repair or replacement would, in Tanium’s opinion, be commercially unreasonable, then Tanium shall terminate the relevant licenses and refund to Customer the portion of prepaid license fees paid for such non-conforming Service. This warranty is contingent upon the proper installation and use of the Service as described in the Documentation and this Agreement; Tanium shall not be responsible for Customer’s use of the Service if not operated in a manner recommended in the Documentation. Any modification to the Service by Customer or any third party may void Tanium’s warranties under this Section.

3.3. Section 12 (Governing Law/Jurisdiction) of PART 1 is replaced with the following:

12. Governing Law/Arbitration. This Agreement will be governed by and construed in accordance with the substantive laws in force in France. This Agreement will not be governed by the conflict of laws rules of any jurisdiction or the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded. All disputes arising out of or in connection with the Agreement will be finally settled under the Rules of Arbitration of the International Chamber of Commerce (**“Rules”**) by a panel of three arbitrators appointed in accordance with the Rules. All proceedings shall be conducted in English and the arbitration shall take place in Paris, France. Notwithstanding the foregoing, either party may apply to a court of competent jurisdiction for temporary equitable relief, including the issuance of temporary injunctions, in appropriate circumstances.

3.4. Section 17 (Force Majeure) of PART 1 is replaced with the following:

17. Force Majeure. Neither party will be liable for any failure or delay in performance under this Agreement which is due to any event beyond the reasonable control of such

party, and/or where such breach is caused by, or results from an act or event of force majeure, as provided by article 1218 of the French Civil Code and as defined by French case law, affecting either party, and including without limitation, fire, explosion, unavailability of utilities or raw materials, unavailability of components, labor difficulties, war, pandemic, epidemic, riot, act of God, export control regulation, laws, judgments or government instructions.

4. For **Customers Domiciled in the UK, European Union, Middle East or Africa other than Germany and France:**

4.1. Notwithstanding the support hours listed in Section 6.2 (Support Services), Customer may contact Tanium for Support Services Monday through Friday, 8 a.m. to 6 p.m. CET, excluding Tanium holidays.

4.2. Section 12 (Governing Law/Jurisdiction) of PART 1 is replaced with the following:

12. Governing Law/Arbitration. All disputes arising out of or in connection with the Agreement will be governed by the laws of England and will be finally settled under the Rules of Arbitration of the International Chamber of Commerce by a panel of three arbitrators appointed in accordance with said Rules. All proceedings shall be conducted in English and the arbitration shall take place in London, England. Notwithstanding the foregoing, either party may apply to a court of competent jurisdiction for temporary equitable relief, including the issuance of temporary injunctions, in appropriate circumstances.

5. For **Customers Domiciled in Australia**, the following changes are made to the terms in PART 1:

5.1. The following text is added to the end of Section 7.3: For the avoidance of doubt, nothing in this Agreement (i) restricts, excludes, or modifies any rights that cannot be excluded under any applicable law, including where applicable the consumer guarantees set out in the Australian Consumer Law (being Schedule 2 of the Competition and Consumer Act 2010 (Cth)), or (ii) seeks to exclude Tanium's liability for any breach of the Australian Consumer Law. If Tanium is liable for a breach of a guarantee that cannot by law be excluded but liability for such breach can be limited, Tanium's liability is, to the fullest extent permitted by law, limited at Tanium's option to either: (i) in respect of Service, the repair or replacement of the non-conforming Service or the refund of the license fees paid by Customer for the non-conforming Service; or (ii) in respect of Support, remedy of the failure within a reasonable time.

5.2. Section 12 (Governing Law/Jurisdiction) of PART 1 is replaced with the following:

12. Governing Law/Arbitration. All disputes arising out of or in connection with the Agreement will be governed by the laws of Australia. This Agreement will not be governed by the conflict of laws rules of any jurisdiction or the United Nations Convention on

Contracts for the International Sale of Goods, the application of which is expressly excluded. The state or federal courts of competent jurisdiction located in the state of Victoria will have exclusive jurisdiction over all disputes relating to this Agreement.

6. For **Customers Domiciled in Japan:**

6.1. Section 12 (Governing Law/Jurisdiction) of PART 1 is replaced with the following:

12. Governing Law/Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of Japan. Any legal suit, action, or proceeding arising out of or related to this Agreement or the matters contemplated hereunder shall be instituted exclusively in courts of Tokyo, Japan, and each party irrevocably submits to the exclusive jurisdiction of the Tokyo courts. Any matter not stipulated herein or any ambiguities regarding the interpretation of this Agreement shall be resolved by good faith discussion between the parties.

7. For **Customers Domiciled in Asia or the Asia-Pacific region, exclusive of Japan and Australia:**

7.1. Section 12 (Governing Law/Jurisdiction) of PART 1 is replaced with the following:

12. Governing Law/Arbitration. This Agreement will be governed by the laws of Singapore. Any dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity, or termination, shall be referred to and finally resolved by arbitration administered by the Singapore International Arbitration Centre (“**SIAC**”) in accordance with the Arbitration Rules of the Singapore International Arbitration Centre for the time being in force, which rules are deemed to be incorporated by reference in this clause. The seat of arbitration shall be Singapore. The Tribunal shall consist of three arbitrators. The language of the arbitration shall be English. Notwithstanding the foregoing, either party may apply to a court of competent jurisdiction for temporary equitable relief, including the issuance of temporary injunctions, in appropriate circumstances.

Appendix A

Tanium Supplemental Support

1. Supplemental Support.

1.1 *General.* Tanium Supplemental Support (“**Supplemental Support**”) may be obtained from Tanium at its then-current list price or mutually negotiated price during the Service Period, and the length of the engagement will be specified in the Agreement or Schedule (“**ESR Support Term**”). If Customer purchases Supplemental Support, Tanium will provide a Tanium enterprise support resource (“**ESR**”) who will be available to provide the

relevant level of Supplemental Support during the ESR Support Term, which may consist of reasonable remote and onsite support.

The ESR may provide the following support as agreed with Customer:

- - assist with the deployment, configuration, and optimization of the Tanium products;
 - plan, coordinate and implement Tanium-related projects and communicate updates;
 - provide consolidated reporting of current deployment status to Tanium's senior technical and sales leadership and designated Customer representatives;
 - collate technical documentation on behalf of the customer;
 - help plan, communicate, and monitor the status, health and challenges associated with installation and deployment of Tanium products;
 - maintain ongoing technical relationships with Customer and provide weekly reporting to Tanium's senior technical and sales leadership and designated Customer representatives;
 - track all tickets, bugs, feature requests, improvement requests and ongoing communications regarding Tanium products; and
 - observe ongoing operations for potential problems and improvements; such observations will be brought to the attention of Tanium's senior technical and sales leadership and designated Customer representatives.

The ESR will not:

- - execute an action, including, but not limited to deploying a patch, using Tanium products without the advance written review and approval by a designated Customer representative;
 - use Tanium products to perform any incident response services;
 - use any destructive content (e.g., file delete action) on behalf of the Customer;
 - act in a capacity to directly support third-party hardware or software on which the Tanium product is running or dependent;
or

- change any settings, undertake Tanium server or client tuning or conduct advanced troubleshooting without direct instruction and prior authorization from the Action Approver (or other designated Customer representative) and from the assigned primary Tanium technical account managers working with Customer (“**TAM**”).

The ESR Support Term will commence on the date set forth in the Schedule, or the effective date of the Schedule if a start date is not otherwise indicated. Customer will provide the ESR access to the Tanium environment and related Customer’s systems within thirty (30) days from agreed upon on-boarding date (“**On-Boarding Period**”). In the event Customer fails to provide the ESR with the required systems access noted above, Tanium may withdraw the assigned ESR until access is granted. Supplemental Support will be provided during normal business hours or as mutually agreed upon between Tanium and Customer. The ESR may be required to be out-of-the-office due to PTO, illness, holidays, training, vacations, or meetings. During this time out-of-the-office, or should the ESR’s employment with Tanium end, Tanium will provide to Customer with standard Support Services, unless otherwise agreed by Tanium, or when a replacement ESR is available, through the ESR Support Term.

1.2 Customer Responsibilities. Customer and its personnel shall cooperate fully with Tanium and its personnel in all respects, including, without limitation, providing information as to Customer requirements, providing access to the equipment/hardware on which the components of the Tanium products are or will be installed, and providing access to all necessary information regarding Customer’s systems. Customer shall be responsible for making, at its own expense, any changes or additions to Customer’s current systems, software, and hardware that may be required to support operation of the Tanium products.

1.3 Action Approver. Customer will assign an action reviewer/approver to act as the final Customer approver for all Tanium actions submitted by the ESR (“**Action Approver**”). The Action Approver will have the authority to approve all actions issued in the Tanium console. Any other requested changes to the Customer’s environment will require a change review process to be agreed by the parties.

1.4 Remote Support. Supplemental Support may be provided remotely via telephone or electronic communications. Customer agrees that Tanium resources may access Customer’s systems during the relevant ESR Support Term, using a defined standard virtual private network (VPN). If a network connection between Tanium and Customer’s systems is required for Tanium to perform the Supplemental Support, Customer will provide such access as follows:

- Customer is responsible for ensuring that (i) its network and systems comply with specifications provided by Tanium; (ii) all components of

Customer's Tanium environment are accessible through the VPN; and (iii) the VPN is installed in a timely manner for Tanium to perform the Supplement Support or other Support Services.

- Customer is responsible for acquiring and maintaining any equipment and performing any activities necessary to set-up and maintain network connectivity at and to Customer's Tanium environment.
- Customer will provide and maintain user accounts for, and access to, the VPN for the Tanium resources, including, but not limited to, Tanium's onsite and remote resources.
- Tanium is not responsible for network connection issues, problems or conditions arising from or related to network connections, such as bandwidth issues, excessive latency, network outages, and/or any other conditions that are caused by an internet service provider, or the network connection. If Customer's VPN client software and/or VPN infrastructure fails to allow Tanium access to perform its obligations, Customer agrees to pay for any increased costs resulting from such failure.

[End of Agreement]

Elasticsearch Inc.
800 West El Camino Real
Suite 350
Mountain View, California
94040
David.Henley@Elastic.co

**EC America Rider to Product Specific License Terms and Conditions
(for Midwestern Higher Education Compact Procuring Eligible Organizations)**

- 1. Scope.** This Rider and the attached **Elasticsearch Inc.** (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Procuring Eligible Organization’s Order under EC America’s Midwestern Higher Education Compact (MHEC) contract number contract# MHEC-03012022-IM (“MHEC Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Order determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid Order placed pursuant to the MHEC Contract. All references to Elasticsearch Inc. in the attached Manufacturer Specific Terms should be read as “Contractor (EC America, Inc.), acting by and through its supplier, Elasticsearch Inc.”. Nothing herein shall establish privity of contract between Manufacturer and MHEC or the Procuring Eligible Organization. Contractor remains solely responsible to the Procuring Eligible Organization for all performance under the Order.
- 2. Applicability.** Whereas MHEC and EC America agreed at the time of MHEC Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the MHEC Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the MHEC Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the MHEC Contract, but only to the extent that they are consistent with this Rider. To the extent any Attachment A Terms are inconsistent with this Rider, such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the MHEC Contract, including but not limited to the following provisions:

 - a. Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any MHEC Customer order. Termination shall be governed by the underlying MHEC Contract and the terms in any applicable Customer Purchase Orders.
 - b. Choice of Law.** The validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the laws of the state in which the Procuring Eligible Organization resides.

- c. **Equitable remedies.** Equitable remedies are generally not awarded against MHEC's Procuring Eligible Organizations absent a statute providing, therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any Procuring Eligible Organization's Order.
- d. **Unilateral Termination.** Unilateral termination by the Contractor shall not apply to a MHEC Procuring Eligible Organization's Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.
- e. **Unreasonable Delay.** The Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Procuring Eligible Organization in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Procuring Eligible Organization of the cessation of such occurrence.
- f. **Assignment.** All clauses regarding the Contractor's assignment are subject to a the MHEC Contract. All clauses governing assignment in the Manufacturer Specific Terms are hereby superseded.
- g. **Waiver of Jury Trial.** MHEC Procuring Eligible Organizations will not agree to waive any right that it may have under federal or state law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
- h. **Indemnities.** All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
- i. **Contractor Indemnities.** All Manufacturer Specific Terms that require that the Procuring Eligible Organizations give sole control over the litigation and/or settlement to the Contractor or manufacturer are hereby superseded.
- j. **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Procuring Eligible Organization to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing applicable statutes.
- k. **Taxes.** The contract price includes all applicable federal, state, local taxes, and duties. Procuring Eligible Organization shall either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide evidence necessary to sustain an exemption.

- l. **Third Party Terms.** When the end user is an instrumentality of a state government, no license terms bind the Procuring Eligible Organization unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying MHEC Contract. All terms and conditions affecting the Procuring Eligible Organization must be contained in a writing signed by a duly authorized employee of Procuring Eligible Organization. Any third-party manufacturer shall be brought into the negotiation, or the components acquired under separate agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.
- m. **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the underlying MHEC Contract, or any applicable Procuring Eligible Organization Orders.
- n. **Advertisements and Endorsements.** All Manufacturer Specific Terms that allow the Contractor or manufacturer to use the name or logo of Procuring Eligible Organization are hereby superseded.
- o. **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
- p. **Confidentiality.**
 - i. For Procuring Eligible Organizations, neither this Rider, the Manufacturer's Specific Terms nor the Price List shall be deemed "confidential information" notwithstanding marking to that effect.
 - ii. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the MHEC Contract to the contrary, the Procuring Eligible Organization may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the MHEC Contract.
 - iii. Confidential information shall be treated as set forth in Section 30 of the MHEC Contract.
- q. **Alternate Dispute Resolution.** The Procuring Eligible Organization cannot be forced to mediate or arbitrate. All Manufacturer Specific Terms that allow the Contractor or manufacturer to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.
- r. **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded.

- s. **Product Usage Data.** Any data that is collected by Contractor or manufacturer shall not be of such a nature that it enables the identification of an individual user, and can only be used for the purpose of fulfilling an order against this agreement.
3. **FERPA Acknowledgement.** To the extent the services provided under this Agreement involves the hosting or accessing of student education records by Manufacturer, as that term has been defined under the Family Educational Rights and Privacy Act (FERPA) and its implementing regulations, Manufacturer acknowledges and agrees that (i) the Procuring Eligible Organization has outsourced to Manufacturer the performance of institutional services or functions for which the Procuring Eligible Organization would otherwise use employees, (ii) Manufacturer is considered to be a “school official” with “legitimate educational interests” in “personally identifiable information” from “education records” of Procuring Eligible Organization students, as those terms have been defined under FERPA (34 CFR 99), (iii) Manufacturer is under the direct control of the Procuring Eligible Organization with respect to Manufacturer’s use and maintenance of data in the education records, and (iv) Manufacturer will abide by the limitations and requirements imposed by 34 CFR 99.33(a) on school officials. Manufacturer will use such data only for Procuring Eligible Organization’s benefit, only for the purpose of fulfilling Manufacturer’s duties under this Agreement, and will not monitor or share such data with or disclose it to any third party except as required by law, or authorized in writing by the Procuring Eligible Organization. This specifically includes, but is not limited to, a prohibition on the practice of “data mining”, whether through automated or human means.
4. **Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying MHEC Contract or a conflict between the terms of this Rider and the terms of an applicable Procuring Eligible Organization’s Order, the terms of the MHEC Contract or any specific, negotiated terms on the Procuring Eligible Organization’s Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying MHEC Contract.

Fortinet, Inc.
899 Kifer Road
Sunnyvale, CA 94086
Sales@Fortinet.com

EC America Rider to Product Specific License Terms and Conditions
(for Midwestern Higher Education Compact Procuring Eligible Organizations)

- 1. Scope.** This Rider and the attached **Fortinet, Inc.** (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Procuring Eligible Organization’s Order under EC America’s Midwestern Higher Education Compact (MHEC) contract number contract# MHEC-03012022-IM (“MHEC Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Order determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid Order placed pursuant to the MHEC Contract. All references to Fortinet, Inc. in the attached Manufacturer Specific Terms should be read as “Contractor (EC America, Inc.), acting by and through its supplier, Fortinet, Inc.”. Nothing herein shall establish privity of contract between Manufacturer and MHEC or the Procuring Eligible Organization. Contractor remains solely responsible to the Procuring Eligible Organization for all performance under the Order.

- 2. Applicability.** Whereas MHEC and EC America agreed at the time of MHEC Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the MHEC Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the MHEC Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the MHEC Contract, but only to the extent that they are consistent with this Rider. To the extent any Attachment A Terms are inconsistent with this Rider, such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the MHEC Contract, including but not limited to the following provisions:

 - a. Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any MHEC Customer order. Termination shall be governed by the underlying MHEC Contract and the terms in any applicable Customer Purchase Orders.

 - b. Choice of Law.** The validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the laws of the state in which the Procuring Eligible Organization resides.

 - c. Equitable remedies.** Equitable remedies are generally not awarded against MHEC’s Procuring Eligible Organizations absent a statute providing, therefore. In the absence of

a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any Procuring Eligible Organization's Order.

- d. **Unilateral Termination.** Unilateral termination by the Contractor shall not apply to a MHEC Procuring Eligible Organization's Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.
- e. **Unreasonable Delay.** The Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Procuring Eligible Organization in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Procuring Eligible Organization of the cessation of such occurrence.
- f. **Assignment.** All clauses regarding the Contractor's assignment are subject to a the MHEC Contract. All clauses governing assignment in the Manufacturer Specific Terms are hereby superseded.
- g. **Waiver of Jury Trial.** MHEC Procuring Eligible Organizations will not agree to waive any right that it may have under federal or state law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
- h. **Indemnities.** All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
- i. **Contractor Indemnities.** All Manufacturer Specific Terms that require that the Procuring Eligible Organizations give sole control over the litigation and/or settlement to the Contractor or manufacturer are hereby superseded.
- j. **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Procuring Eligible Organization to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing applicable statutes.
- k. **Taxes.** The contract price includes all applicable federal, state, local taxes, and duties. Procuring Eligible Organization shall either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide evidence necessary to sustain an exemption.

- l. **Third Party Terms.** When the end user is an instrumentality of a state government, no license terms bind the Procuring Eligible Organization unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying MHEC Contract. All terms and conditions affecting the Procuring Eligible Organization must be contained in a writing signed by a duly authorized employee of Procuring Eligible Organization. Any third-party manufacturer shall be brought into the negotiation, or the components acquired under separate agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.
- m. **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the underlying MHEC Contract, or any applicable Procuring Eligible Organization Orders.
- n. **Advertisements and Endorsements.** All Manufacturer Specific Terms that allow the Contractor or manufacturer to use the name or logo of Procuring Eligible Organization are hereby superseded.
- o. **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
- p. **Confidentiality.**
 - i. For Procuring Eligible Organizations, neither this Rider, the Manufacturer's Specific Terms nor the Price List shall be deemed "confidential information" notwithstanding marking to that effect.
 - ii. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the MHEC Contract to the contrary, the Procuring Eligible Organization may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the MHEC Contract.
 - iii. Confidential information shall be treated as set forth in Section 30 of the MHEC Contract.
- q. **Alternate Dispute Resolution.** The Procuring Eligible Organization cannot be forced to mediate or arbitrate. All Manufacturer Specific Terms that allow the Contractor or manufacturer to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.
- r. **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded.

- s. **Product Usage Data.** Any data that is collected by Contractor or manufacturer shall not be of such a nature that it enables the identification of an individual user, and can only be used for the purpose of fulfilling an order against this agreement.
- 3. FERPA Acknowledgement.** To the extent the services provided under this Agreement involves the hosting or accessing of student education records by Manufacturer, as that term has been defined under the Family Educational Rights and Privacy Act (FERPA) and its implementing regulations, Manufacturer acknowledges and agrees that (i) the Procuring Eligible Organization has outsourced to Manufacturer the performance of institutional services or functions for which the Procuring Eligible Organization would otherwise use employees, (ii) Manufacturer is considered to be a “school official” with “legitimate educational interests” in “personally identifiable information” from “education records” of Procuring Eligible Organization students, as those terms have been defined under FERPA (34 CFR 99), (iii) Manufacturer is under the direct control of the Procuring Eligible Organization with respect to Manufacturer’s use and maintenance of data in the education records, and (iv) Manufacturer will abide by the limitations and requirements imposed by 34 CFR 99.33(a) on school officials. Manufacturer will use such data only for Procuring Eligible Organization’s benefit, only for the purpose of fulfilling Manufacturer’s duties under this Agreement, and will not monitor or share such data with or disclose it to any third party except as required by law, or authorized in writing by the Procuring Eligible Organization. This specifically includes, but is not limited to, a prohibition on the practice of “data mining”, whether through automated or human means.
- 4. Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying MHEC Contract or a conflict between the terms of this Rider and the terms of an applicable Procuring Eligible Organization’s Order, the terms of the MHEC Contract or any specific, negotiated terms on the Procuring Eligible Organization’s Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying MHEC Contract.

LogRhythm, Inc.
Worldwide HQ
4780 Pearl East Circle
Boulder, CO 80301
info@logrhythm.com

**EC America Rider to Product Specific License Terms and Conditions
(for Midwestern Higher Education Compact Procuring Eligible Organizations)**

- 1. Scope.** This Rider and the attached **LogRhythm, Inc.** (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Procuring Eligible Organization’s Order under EC America’s Midwestern Higher Education Compact (MHEC) contract number contract# MHEC-03012022-IM (“MHEC Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Order determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid Order placed pursuant to the MHEC Contract. All references to LogRhythm, Inc. in the attached Manufacturer Specific Terms should be read as “Contractor (EC America, Inc.), acting by and through its supplier, LogRhythm, Inc.” Nothing herein shall establish privity of contract between Manufacturer and MHEC or the Procuring Eligible Organization. Contractor remains solely responsible to the Procuring Eligible Organization for all performance under the Order.

- 2. Applicability.** Whereas MHEC and EC America agreed at the time of MHEC Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the MHEC Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the MHEC Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the MHEC Contract, but only to the extent that they are consistent with this Rider. To the extent any Attachment A Terms are inconsistent with this Rider, such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the MHEC Contract, including but not limited to the following provisions:

 - a. Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any MHEC Customer order. Termination shall be governed by the underlying MHEC Contract and the terms in any applicable Customer Purchase Orders.

 - b. Choice of Law.** The validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the laws of the state in which the Procuring Eligible Organization resides.

 - c. Equitable remedies.** Equitable remedies are generally not awarded against MHEC’s Procuring Eligible Organizations absent a statute providing, therefore. In the absence of

a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any Procuring Eligible Organization's Order.

- d. **Unilateral Termination.** Unilateral termination by the Contractor shall not apply to a MHEC Procuring Eligible Organization's Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.
- e. **Unreasonable Delay.** The Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Procuring Eligible Organization in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Procuring Eligible Organization of the cessation of such occurrence.
- f. **Assignment.** All clauses regarding the Contractor's assignment are subject to a the MHEC Contract. All clauses governing assignment in the Manufacturer Specific Terms are hereby superseded.
- g. **Waiver of Jury Trial.** MHEC Procuring Eligible Organizations will not agree to waive any right that it may have under federal or state law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
- h. **Indemnities.** All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
- i. **Contractor Indemnities.** All Manufacturer Specific Terms that require that the Procuring Eligible Organizations give sole control over the litigation and/or settlement to the Contractor or manufacturer are hereby superseded.
- j. **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Procuring Eligible Organization to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing applicable statutes.
- k. **Taxes.** The contract price includes all applicable federal, state, local taxes, and duties. Procuring Eligible Organization shall either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide evidence necessary to sustain an exemption.

- l. **Third Party Terms.** When the end user is an instrumentality of a state government, no license terms bind the Procuring Eligible Organization unless included verbatim (not by reference) in the EULA, and the EULA is made an attachment to the underlying MHEC Contract. All terms and conditions affecting the Procuring Eligible Organization must be contained in a writing signed by a duly authorized employee of Procuring Eligible Organization. Any third-party manufacturer shall be brought into the negotiation, or the components acquired under separate agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.
- m. **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the underlying MHEC Contract, or any applicable Procuring Eligible Organization Orders.
- n. **Advertisements and Endorsements.** All Manufacturer Specific Terms that allow the Contractor or manufacturer to use the name or logo of Procuring Eligible Organization are hereby superseded.
- o. **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
- p. **Confidentiality.**
 - i. For Procuring Eligible Organizations, neither this Rider, the Manufacturer's Specific Terms nor the Price List shall be deemed "confidential information" notwithstanding marking to that effect.
 - ii. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the MHEC Contract to the contrary, the Procuring Eligible Organization may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the MHEC Contract.
 - iii. Confidential information shall be treated as set forth in Section 30 of the MHEC Contract.
- q. **Alternate Dispute Resolution.** The Procuring Eligible Organization cannot be forced to mediate or arbitrate. All Manufacturer Specific Terms that allow the Contractor or manufacturer to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.
- r. **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded.

- s. **Product Usage Data.** Any data that is collected by Contractor or manufacturer shall not be of such a nature that it enables the identification of an individual user, and can only be used for the purpose of fulfilling an order against this agreement.
- 3. FERPA Acknowledgement.** To the extent the services provided under this Agreement involves the hosting or accessing of student education records by Manufacturer, as that term has been defined under the Family Educational Rights and Privacy Act (FERPA) and its implementing regulations, Manufacturer acknowledges and agrees that (i) the Procuring Eligible Organization has outsourced to Manufacturer the performance of institutional services or functions for which the Procuring Eligible Organization would otherwise use employees, (ii) Manufacturer is considered to be a “school official” with “legitimate educational interests” in “personally identifiable information” from “education records” of Procuring Eligible Organization students, as those terms have been defined under FERPA (34 CFR 99), (iii) Manufacturer is under the direct control of the Procuring Eligible Organization with respect to Manufacturer’s use and maintenance of data in the education records, and (iv) Manufacturer will abide by the limitations and requirements imposed by 34 CFR 99.33(a) on school officials. Manufacturer will use such data only for Procuring Eligible Organization’s benefit, only for the purpose of fulfilling Manufacturer’s duties under this Agreement, and will not monitor or share such data with or disclose it to any third party except as required by law, or authorized in writing by the Procuring Eligible Organization. This specifically includes, but is not limited to, a prohibition on the practice of “data mining”, whether through automated or human means.
- 4. Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying MHEC Contract or a conflict between the terms of this Rider and the terms of an applicable Procuring Eligible Organization’s Order, the terms of the MHEC Contract or any specific, negotiated terms on the Procuring Eligible Organization’s Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying MHEC Contract.

TANIUM
3550 Carillon Point, Kirkland, WA 98033
Charles.Pruett@tanium.com

**EC America Rider to Product Specific License Terms and Conditions
(for Midwestern Higher Education Compact Procuring Eligible Organizations)**

- 1. Scope.** This Rider and the attached **TANIUM** (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Procuring Eligible Organization’s Order under EC America’s Midwestern Higher Education Compact (MHEC) contract number contract# MHEC-03012022-IM (“MHEC Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Order determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid Order placed pursuant to the MHEC Contract. All references to Tanium in the attached Manufacturer Specific Terms should be read as “Contractor (EC America, Inc.), acting by and through its supplier, Tanium”. Nothing herein shall establish privity of contract between Manufacturer and MHEC or the Procuring Eligible Organization. Contractor remains solely responsible to the Procuring Eligible Organization for all performance under the Order.
- 2. Applicability.** Whereas MHEC and EC America agreed at the time of MHEC Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the MHEC Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the MHEC Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the MHEC Contract, but only to the extent that they are consistent with this Rider. To the extent any Attachment A Terms are inconsistent with this Rider, such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the MHEC Contract, including but not limited to the following provisions:

 - a. Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any MHEC Customer order. Termination shall be governed by the underlying MHEC Contract and the terms in any applicable Customer Purchase Orders.
 - b. Choice of Law.** The validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the laws of the state in which the Procuring Eligible Organization resides.
 - c. Equitable remedies.** Equitable remedies are generally not awarded against MHEC’s Procuring Eligible Organizations absent a statute providing, therefore, in the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms

referencing equitable remedies are superseded and not applicable to any Procuring Eligible Organization's Order.

- d. **Unilateral Termination.** Unilateral termination by the Contractor shall not apply to a MHEC Procuring Eligible Organization's Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.
- e. **Unreasonable Delay.** The Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Procuring Eligible Organization in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Procuring Eligible Organization of the cessation of such occurrence.
- f. **Assignment.** All clauses regarding the Contractor's assignment are subject to a the MHEC Contract. All clauses governing assignment in the Manufacturer Specific Terms are hereby superseded.
- g. **Waiver of Jury Trial.** MHEC Procuring Eligible Organizations will not agree to waive any right that it may have under federal or state law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
- h. **Indemnities.** All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
- i. **Contractor Indemnities.** All Manufacturer Specific Terms that require that the Procuring Eligible Organizations give sole control over the litigation and/or settlement to the Contractor or manufacturer are hereby superseded.
- j. **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Procuring Eligible Organization to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing applicable statutes.
- k. **Taxes.** The contract price includes all applicable federal, state, local taxes, and duties. Procuring Eligible Organization shall either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide evidence necessary to sustain an exemption.
- l. **Third Party Terms.** When the end user is an instrumentality of a state government, no license terms bind the Procuring Eligible Organization unless included verbatim (not by

reference) in the EULA, and the EULA is made an attachment to the underlying MHEC Contract. All terms and conditions affecting the Procuring Eligible Organization must be contained in a writing signed by a duly authorized employee of Procuring Eligible Organization. Any third-party manufacturer shall be brought into the negotiation, or the components acquired under separate agreements, if any. All Manufacturer Specific Terms that incorporate third party terms by reference are hereby superseded.

- m. **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the underlying MHEC Contract, or any applicable Procuring Eligible Organization Orders.
- n. **Advertisements and Endorsements.** All Manufacturer Specific Terms that allow the Contractor or manufacturer to use the name or logo of Procuring Eligible Organization are hereby superseded.
- o. **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
- p. **Confidentiality.**
 - i. For Procuring Eligible Organizations, neither this Rider, the Manufacturer's Specific Terms nor the Price List shall be deemed "confidential information" notwithstanding marking to that effect.
 - ii. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the MHEC Contract to the contrary, the Procuring Eligible Organization may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the MHEC Contract.
 - iii. Confidential information shall be treated as set forth in Section 30 of the MHEC Contract.
- q. **Alternate Dispute Resolution.** The Procuring Eligible Organization cannot be forced to mediate or arbitrate. All Manufacturer Specific Terms that allow the Contractor or manufacturer to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.
- r. **Ownership of Derivative Works.** Provisions purporting to vest exclusive ownership of all derivative works in the licensor of the standard software on which such works may be based are superseded.
- s. **Product Usage Data.** Any data that is collected by Contractor or manufacturer shall not be of such a nature that it enables the identification of an individual user, and can only be used for the purpose of fulfilling an order against this agreement.

- 3. FERPA Acknowledgement.** To the extent the services provided under this Agreement involves the hosting or accessing of student education records by Manufacturer, as that term has been defined under the Family Educational Rights and Privacy Act (FERPA) and its implementing regulations, Manufacturer acknowledges and agrees that (i) the Procuring Eligible Organization has outsourced to Manufacturer the performance of institutional services or functions for which the Procuring Eligible Organization would otherwise use employees, (ii) Manufacturer is considered to be a “school official” with “legitimate educational interests” in “personally identifiable information” from “education records” of Procuring Eligible Organization students, as those terms have been defined under FERPA (34 CFR 99), (iii) Manufacturer is under the direct control of the Procuring Eligible Organization with respect to Manufacturer’s use and maintenance of data in the education records, and (iv) Manufacturer will abide by the limitations and requirements imposed by 34 CFR 99.33(a) on school officials. Manufacturer will use such data only for Procuring Eligible Organization’s benefit, only for the purpose of fulfilling Manufacturer’s duties under this Agreement, and will not monitor or share such data with or disclose it to any third party except as required by law, or authorized in writing by the Procuring Eligible Organization. This specifically includes, but is not limited to, a prohibition on the practice of “data mining”, whether through automated or human means.
- 4. Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying MHEC Contract or a conflict between the terms of this Rider and the terms of an applicable Procuring Eligible Organization’s Order, the terms of the MHEC Contract or any specific, negotiated terms on the Procuring Eligible Organization’s Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying MHEC Contract.