

**CITY OF MIRAMAR  
PROPOSED CITY COMMISSION AGENDA ITEM**

**Meeting Date:** February 11, 2026

**Presenter's Name and Title:** Vanessa J. Sauveur, Information Systems Manager

**Prepared By:** Vanessa J. Sauveur, Information Systems Manager

**Temp. Reso. Number:** 8613

**Item Description:** Temp. Reso. #R8613 APPROVING THE RENEWAL OF SOFTWARE LICENSES AND MAINTENANCE SERVICES FOR CLOUD-BASED DATA STORAGE RECOVERY SERVICES WITH R2 UNIFIED TECHNOLOGIES, UTILIZING CONTRACT NUMBER NCPA 01-169, FOR A 3-YEAR TERM IN AN AMOUNT NOT TO EXCEED \$291,100. (Vanessa J. Sauveur, Information Systems Manager)

Consent  Resolution  Ordinance  Quasi-Judicial  Public Hearing

**Instructions for the Office of the City Clerk: Please collect signatures at the dais.**

**Public Notice** – As required by the Sec. \_\_\_\_ of the City Code and/or Sec. \_\_\_\_, Florida Statutes, public notice for this item was provided as follows: on \_\_\_\_\_ in a \_\_\_\_\_ ad in the \_\_\_\_\_; by the posting the property on \_\_\_\_\_ and/or by sending mailed notice to property owners within \_\_\_\_ feet of the property on \_\_\_\_\_  
(fill in all that apply)

**Special Voting Requirement** – As required by Sec. \_\_\_\_\_, of the City Code and/or Sec. \_\_\_\_\_, Florida Statutes, approval of this item requires a \_\_\_\_\_ (unanimous, 4/5ths etc.) vote by the City Commission.

**Fiscal Impact:** Yes  No

**REMARKS:** Funding of \$291,100 is available in the Information Technology Fund, GL Account 504-58-580-516-000-603425, Software License and Maintenance.

**Content:**

- **Agenda Item Memo from the City Manager to the City Commission**
- **Resolution TR8613**
- **Attachment 1: NCPA Contract 01-169**



**CITY OF MIRAMAR  
INTEROFFICE MEMORANDUM**

**TO:** Mayor, Vice Mayor, & City Commissioners

**FROM:** Dr. Roy L. Virgin, City Manager 

**BY:** Clayton Jenkins, Information Technology Director

**DATE:** February 5, 2026

**RE:** Temp. Reso. No. 8613 approving the Renewal of Software Services and Licenses

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**RECOMMENDATION:** The City Manager recommends approval of Temp. Reso. No. 8613 for the renewal of software licenses and maintenance services for cloud-based data storage and recovery services from R2 Unified Technologies, utilizing contract number National Cooperative Purchasing Alliance (NCPA) 01-169, for a 3-year term in an amount not to exceed \$291,100.

**ISSUE:** City Commission approval is required for expenditures exceeding \$75,000 in accordance with City Code Section 2-412(a)(1).

**BACKGROUND:** In April 2023, the City Commission approved a three-year agreement, Resolution Number 23-83, to purchase a centralized, cloud-based data storage and recovery solution from R2 Unified Technologies, utilizing NCPA contract number 01-169. Furthermore, the software licenses and maintenance services for this backup solution are scheduled to expire in March 2026.

**DISCUSSION:** These services provide secure data storage and recovery capabilities, which are crucial for safeguarding the City's operations against cyber threats, data loss, and service disruptions. Renewing these software licenses and maintenance services for a three-year term not only ensures the continued protection of the City's digital infrastructure but also reduces overall costs by securing discounted pricing through a multi-year subscription.

Pursuant to City Code Section 2-413(11)c, renewal of software license and maintenance services are exempt from competitive bidding.

**ANALYSIS:** Funding of \$291,100 is available in the Information Technology Fund, GL Account 504-58-580-516-000-603425, Software License and Maintenance.

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12/29/25  
2/3/26

**CITY OF MIRAMAR  
MIRAMAR, FLORIDA**

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF MIRAMAR, FLORIDA, APPROVING THE RENEWAL OF SOFTWARE LICENSES AND MAINTENANCE SERVICES FOR CLOUD-BASED DATA STORAGE AND RECOVERY SERVICES WITH R2 UNIFIED TECHNOLOGIES, UTILIZING CONTRACT NCPA 01-169, FOR A 3-YEAR TERM IN AN AMOUNT NOT TO EXCEED \$291,100; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the City strives to implement solutions and technologies that provide the most effective and efficient services for City staff and residents; and

**WHEREAS**, Section 2-412(a)(1) of the City Code provides that all commodities or services provided by a single vendor in excess of \$75,000 must be formally approved by the City Commission; and

**WHEREAS**, in April 2023, the City Commission approved a three-year agreement with Resolution Number 23-83 to purchase a centralized and cloud-based data storage and recovery solution from R2 Unified Technologies, utilizing NCPA Contract Number 01-169; and

**WHEREAS**, the software licenses and maintenance services for these solutions are scheduled to expire in March 2026; and

Reso. No. \_\_\_\_\_

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12/29/25  
2/3/26

**WHEREAS**, these services provide secure data storage and disaster recovery capabilities, which are crucial for safeguarding the City’s operations against cyber threats, data loss, and service disruptions; and

**WHEREAS**, renewing these software licenses and maintenance services for a three-year term not only ensures the continued protection of the City’s digital infrastructure, but also reduces overall costs by securing discounted pricing through a multi-year subscription; and

**WHEREAS**, pursuant to City Code Section 2-413(11)c, renewal of software license and maintenance services are exempt from competitive bidding; and

**WHEREAS**, the City Manager recommends approval of Temp. Reso. No. 8613 for the renewal of software licenses and maintenance services for cloud-based data storage and recovery services from R2 Unified Technologies, utilizing contract number NCPA 01-169, for a 3-year term in an annual amount not to exceed \$291,100.

Temp. Reso. No. 8613  
12/29/25  
2/3/26

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF  
MIRAMAR, FLORIDA AS FOLLOWS:**

**Section 1:** That the foregoing “**WHEREAS**” clauses are ratified and confirmed as being true and correct and are made a specific part of this Resolution.

**Section 2:** The City Manager recommends approval of Temp. Reso. No. 8613 for the renewal of software licenses and maintenance services for cloud-based data storage and recovery services from R2 Unified Technologies, utilizing contract number NCPA 01-169, for a 3-year term in an annual amount not to exceed \$291,100.

**Section 3:** That the appropriate City officials are authorized to do all things necessary and expedient in order to carry out the aims of this Resolution.

**Section 4:** That this Resolution shall become effective upon adoption.

Temp. Reso. No. 8613  
12/29/25  
2/3/26

**PASSED AND ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Mayor, Wayne M. Messam

\_\_\_\_\_  
Vice Mayor, Yvette Colbourne

ATTEST:

\_\_\_\_\_  
City Clerk, Denise A. Gibbs

I HEREBY CERTIFY that I have approved  
this RESOLUTION as to form:

\_\_\_\_\_  
City Attorney,  
Austin Pamies Norris Weeks Powell, PLLC

<b><u>Requested by Administration</u></b>	<b><u>Voted</u></b>
Commissioner Maxwell B. Chambers	_____
Commissioner Avril Cherasard	_____
Vice Mayor Yvette Colbourne	_____
Commissioner Carson Edwards	_____
Mayor Wayne M. Messam	_____

Reso. No. \_\_\_\_\_

Region 14 Education Service Center

**Contract # 01-169**

*for*

Advanced Technology Solutions Aggregator

*with*

**Promark Technology, Inc.**

Effective: December 14, 2023

The following documents comprise the executed contract between the Region 14 Education Service Center, and Promark effective December 14, 2023:

- I. Vendor Award Letter
- II. Vendor Cover Letter
- III. Master Agreement-General T&Cs and executed signature form
- IV. Supplier's Response to the RFP, incorporated by reference



## Region XIV Education Service Center

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1850 Highway 351  
Abilene, TX 79601-4750  
325-675-8600  
FAX 325-675-8659

Thursday, December 14<sup>th</sup>, 2023

Promark Technology, Inc.  
ATTN: Stephen T. Hartung  
10900 Pump House Road, Suite B  
Annapolis Junction, MD 20701

Dear Stephen:

Region XIV Education Service Center is happy to announce that Promark Technology, Inc. has been awarded an annual contract for Advanced Technology Solutions Aggregator based on the proposal submitted to Region XIV ESC.

The contract is effective immediately and will expire on December 31<sup>st</sup>, 2026. The contract can then be renewed annually for an additional two years, if mutually agreed on by Region XIV ESC and Promark Technology, Inc.

We look forward to a long and successful partnership underneath this contract.

If you have any questions or concerns, feel free to contact me at 325-675-8600.

Sincerely,

DocuSigned by:  
*Shane Fields*  
Shane Fields

Region XIV, Executive Director

November 14, 2023

Region 14 Education Service Center  
1850 Highway 351  
Abilene, Texas 79601

**RE: SOLICITATION # 14-23 REQUEST FOR PROPOSAL (RFP) FOR ADVANCED TECHNOLOGY SOLUTIONS AGGREGATOR**

To whom it may concern:

Promark Technology, Inc., a wholly owned Ingram Micro company, is pleased to submit the attached response to Region 14 Education Service Centers Solicitation Number 14-23 – Request for Proposal (RFP) for Advanced Technology Solutions Aggregator. Promark, along with our parent company, Ingram Micro, Original Equipment Manufacturers (OEM) and reseller partners, are uniquely positioned to support this contract for Region 14 Education Service Center (Region 14) and the National Cooperative Purchasing Alliance (NCPA) customers throughout the United States.

As you will find outlined throughout our proposal and has been demonstrated with our current NCPA Advanced Technology Solutions Aggregator contract, we have the past performance, experience, size, and financial resources to support the expected sales level of the contract; the geographic coverage to support the customers; the ability to bring manufacturers to the contract to support the technology solutions requested, and the experience to manage the contract and its reporting requirements.

Promark, if awarded a contract, will continue to use the NCPA Contract as a centerpiece of our SLED Contract Program. We will work with Region 14 and NCPA to promote the contract's use to our Public Sector Resellers and bring our vast depth and breadth of manufacturers as participants on an awarded contract.

We look forward to the opportunity to discuss our proposal with you in more detail. Please feel free to contact me directly with any questions or clarification you may have with our response. I can be reached at 800.634.0255 or via email at toddh@promarktech.com.

Sincerely,



Stephen T. Hartung  
Director

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## **TAB 1 - MASTER AGREEMENT - GENERAL TERMS AND CONDITIONS**

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- **Customer Support**

The vendor shall provide timely and accurate technical advice and sales support. The vendor shall respond to such requests within one (1) working day after receipt of the request.

*Acknowledged and affirmed.*

- **Disclosures**

Respondent affirms that he/she has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to a public servant in connection with this contract.

The respondent affirms that, to the best of his/her knowledge, the offer has been arrived at independently, and is submitted without collusion with anyone to obtain information or gain any favoritism that would in any way limit competition or give an unfair advantage over other vendors in the award of this contract.

*Acknowledged and affirmed.*

- **Renewal of Contract**

Unless otherwise stated, all contracts are for a period of three (3) years with an option to renew for up to two (2) additional one-year terms or any combination of time equally not more than 2 years if agreed to by Region 14 ESC and the vendor.

*Acknowledged and affirmed.*

- **Funding Out Clause**

Any/all contracts exceeding one (1) year shall include a standard "funding out" clause. A contract for the acquisition, including lease, of real or personal property is a commitment of the entity's current revenue only, provided the contract contains either or both of the following provisions:

Retains to the entity the continuing right to terminate the contract at the expiration of each budget period during the term of the contract and is conditioned on a best efforts attempt by the entity to obtain appropriate funds for payment of the contract.

*Requested Exception in Appendix 2.*

- **Shipments (if applicable)**

The awarded vendor shall ship ordered products within seven (7) working days for goods available and within four (4) to six (6) weeks for specialty items after the receipt of the order unless modified. If a product cannot be shipped within that time, the awarded vendor shall notify the entity placing the order as to why the product has not shipped and shall provide an estimated shipping date. At this point the participating entity may cancel the order if estimated

shipping time is not acceptable.

*Requested Exception in Appendix 2.*

- **Tax Exempt Status**

Since this is a national contract, knowing the tax laws in each state is the sole responsibility of the vendor.

*Acknowledged and affirmed.*

- **Payments**

The entity using the contract will make payments directly to the awarded vendor or their affiliates (distributors/business partners/resellers) as long as written request and approval by NCPA is provided to the awarded vendor.

*Acknowledged and affirmed. Promark requests the ability for our authorized reseller partners submitted to Region 14 and NCPA to be able to receive payment from the purchasing entity.*

- **Adding Authorized Distributors/Dealers**

Awarded vendors may submit a list of distributors/partners/resellers to sell under their contract throughout the life of the contract. Vendor must receive written approval from NCPA before such distributors/partners/resellers considered authorized.

*Acknowledged and affirmed.*

Purchase orders and payment can only be made to awarded vendor or distributors/ business partners/resellers previously approved by NCPA.

*Acknowledged and affirmed.*

Pricing provided to members by added distributors or dealers must also be less than or equal to the pricing offered by the awarded contract holder.

*Acknowledged and affirmed.*

All distributors/partners/resellers are required to abide by the Terms and Conditions of the vendor's agreement with NCPA.

*Acknowledged and affirmed.*

- **Pricing**

All pricing submitted shall include the administrative fee to be remitted to NCPA by the awarded vendor. It is the awarded vendor's responsibility to keep all pricing up to date and on file with NCPA.

*Acknowledged and affirmed.*

All deliveries shall be freight prepaid, F.O.B. destination and shall be included in all pricing offered unless otherwise clearly stated in writing.

*Requested Exception in Appendix 2.*

- **Warranty**

Proposal should address the following warranty information:

- Applicable warranty and/or guarantees of equipment and installations including any conditions and response time for repair and/or replacement of any components during the warranty period.
- Availability of replacement parts
- Life expectancy of equipment under normal use
- Detailed information as to proposed return policy on all equipment

Products: Vendor shall provide equipment, materials and products that are new unless otherwise specified, of good quality and free of defects

Construction: Vendor shall perform services in a good and workmanlike manner and in accordance with industry standards for the service provided.

*Details of manufacturers' warranties and other answers to the above are included with the proposed equipment descriptions. Return policies are determined by the product manufacturers.*

- **Safety**

Vendors performing services shall comply with occupational safety and health rules and regulations. Also all vendors and subcontractors shall be held responsible for the safety of their employees and any conditions that may cause injury or damage to persons or property.

*Acknowledged and affirmed.*

- **Permits**

Since this is a national contract, knowing the permit laws in each state is the sole responsibility of the vendor.

*Acknowledged and affirmed.*

- **Indemnity**

The awarded vendor shall protect, indemnify, and hold harmless Region 14 ESC and its participants, administrators, employees and agents against all claims, damages, losses and expenses arising out of or resulting from the actions of the vendor, vendor employees or vendor subcontractors in the preparation of the solicitation and the later execution of the contract.

*Requested Exception in Appendix 2.*

- **Franchise Tax**

The respondent hereby certifies that he/she is not currently delinquent in the payment of any franchise taxes.

*Acknowledged and affirmed.*

- **Supplemental Agreements**

The entity participating in this contract and awarded vendor may enter into a separate supplemental agreement to further define the level of service requirements over and above the minimum defined in this contract i.e. invoice requirements, ordering requirements, specialized delivery, etc. Any supplemental agreement developed as a result of this contract is exclusively between the participating entity and awarded vendor.

*Acknowledged and affirmed.*

- **Additional Agreements**

If an awarded vendor requires additional agreements, i.e., master service agreement, end user licensing agreement, etc. a copy of the proposed agreement must be included with the proposal. Any additional agreements provided by the vendor are complementary to the terms and conditions stated herein or for the use of participating entities and shall not replace the entirety of the Master Agreement.

*Acknowledged and affirmed. Additional Agreements located in Appendix 6 - Promark/Ingram and Manufacturer Warranty and License Agreements*

- **Certificates of Insurance**

Certificates of insurance shall be delivered to the Public Agency prior to commencement of work. The insurance company shall be licensed in the applicable state in which work is being conducted. The awarded vendor shall give the participating entity a minimum of ten (10) days

notice prior to any modifications or cancellation of policies. The awarded vendor shall require all subcontractors performing any work to maintain coverage as specified.

*Acknowledged and affirmed.*

- **Legal Obligations**

It is the Respondent's responsibility to be aware of and comply with all local, state, and federal laws governing the sale of products/services identified in this RFP and any awarded contract and shall comply with all while fulfilling the RFP. Applicable laws and regulation must be followed even if not specifically identified herein.

*Acknowledged and affirmed.*

- **Protest**

A protest of an award or proposed award must be filed in writing within ten (10) days from the date of the official award notification and must be received by 5:00 pm CST. Protests shall be filed with Region 14 ESC and shall include the following:

- Name, address and telephone number of protester
- Original signature of protester or its representative
- Identification of the solicitation by RFP number
- Detailed statement of legal and factual grounds including copies of relevant documents and the form of relief requested

Any protest review and action shall be considered final with no further formalities being considered.

*Acknowledged and affirmed.*

- **Force Majeure**

If by reason of Force Majeure, either party hereto shall be rendered unable wholly or in part to carry out its obligations under this Agreement then such party shall give notice and full particulars of Force Majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied upon, and the obligation of the party giving such notice, so far as it is affected by such Force Majeure, shall be suspended during the continuance of the inability then claimed, except as hereinafter provided, but for no longer period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch.

The term Force Majeure as employed herein, shall mean acts of God, strikes, lockouts, or other industrial disturbances, act of public enemy, orders and regulation of any kind of government of the United States or any civil or military authority; insurrections; riots; epidemics; pandemic; landslides; lighting; earthquake; fires; hurricanes; storms; floods; washouts; droughts; arrests; restraint of government and people; civil disturbances; explosions, breakage or accidents to machinery, pipelines or canals, or other causes not reasonably within the

control of the party claiming such inability. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty, and that the above requirement that any Force Majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demands of the opposing party or parties when such settlement is unfavorable in the judgment of the party having the difficulty.

*Acknowledged and affirmed*

- **Prevailing Wage**

It shall be the responsibility of the Vendor to comply, when applicable, with the prevailing wage legislation in effect in the jurisdiction of the purchaser. It shall further be the responsibility of the Vendor to monitor the prevailing wage rates as established by the appropriate department of labor for any increase in rates during the term of this contract and adjust wage rates accordingly.

*Acknowledged and affirmed.*

- **Termination**

Either party may cancel this contract in whole or in part by providing written notice. The cancellation will take effect 30 business days after the other party receives the notice of cancellation. After the 30th business day all work will cease following completion of final purchase order.

*Acknowledged and affirmed.*

- **Open Records Policy**

Because Region 14 ESC is a governmental entity responses submitted are subject to release as public information after contracts are executed. If a vendor believes that its response, or parts of its response, may be exempted from disclosure, the vendor must specify page-by-page and line-by-line the parts of the response, which it believes, are exempt. In addition, the respondent must specify which exception(s) are applicable and provide detailed reasons to substantiate the exception(s).

*Acknowledged and affirmed.*

The determination of whether information is confidential and not subject to disclosure is the duty of the Office of Attorney General (OAG). Region 14 ESC must provide the OAG sufficient information to render an opinion and therefore, vague and general claims to confidentiality by the respondent are not acceptable. Region 14 ESC must comply with the opinions of the OAG. Region 14 ESC assumes no responsibility for asserting legal arguments on behalf of any vendor. Respondent are advised to consult with their legal counsel concerning disclosure issues resulting from this procurement process and to take precautions to safeguard trade secrets and other proprietary information.

*Acknowledged and affirmed.*

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## **PROCESS**

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Region 14 ESC will evaluate proposals in accordance with, and subject to, the relevant statutes, ordinances, rules, and regulations that govern its procurement practices. NCPA will assist Region 14 ESC in evaluating proposals. Award(s) will be made to the prospective vendor whose response is determined to be the most advantageous to Region 14 ESC, NCPA, and its participating agencies. To qualify for evaluation, response must have been submitted on time, and satisfy all mandatory requirements identified in this document.

- **Contract Administration**

The contract will be administered by Region 14 ESC. The National Program will be administered by NCPA on behalf of Region 14 ESC.

- **Contract Term**

The contract term will be for three (3) year starting from the date of the award. The contract maybe renewed for up to two (2) additional one-year terms or any combination of time equally not more than 2 years.

It should be noted that maintenance/service agreements may be issued for up to (5) years under this contract even if the contract only lasts for the initial term of the contract. NCPA will monitor any maintenance agreements for the term of the agreement provided they are signed prior to the termination or expiration of this contract.

- **Contract Waiver**

Any waiver of any provision of this contract shall be in writing and shall be signed by the duly authorized agent of Region 14 ESC. The waiver by either party of any term or condition of this contract shall not be deemed to constitute waiver thereof nor a waiver of any further or additional right that such party may hold under this contract.

- **Price Increases**

Should it become necessary, price increase requests may be submitted at any point during the term of the contract by written amendment. Included with the request must be documentation and/or formal cost justification for these changes. Requests will be formally reviewed, and if justified, the amendment will be approved.

- **Products and Services Additions**

New Products and/or Services may be added to the resulting contract at any time during the term by written amendment, to the extent that those products and/or services are within the scope of this RFP.

- **Competitive Range**

It may be necessary for Region 14 ESC to establish a competitive range. Responses not in the competitive range are unacceptable and do not receive further award consideration.

- **Deviations and Exceptions**

Deviations or exceptions stipulated in response may result in disqualification. It is the intent of Region 14 ESC to award a vendor's complete line of products and/or services, when possible.

- **Estimated Quantities**

While no minimum volume is guaranteed, the estimated (but not limited to) annual volume for Products and Services purchased under the proposed Master Agreement is 250 million dollars annually. This estimate is based on the anticipated volume of Region 14 ESC and current sales within the NCPA program.

- **Evaluation**

Region 14 ESC will review and evaluate all responses in accordance with, and subject to, the relevant statutes, ordinances, rules and regulations that govern its procurement practices. NCPA will assist the lead agency in evaluating proposals. Recommendations for contract awards will be based on multiple factors, each factor being assigned a point value based on its importance.

- **Formation of Contract**

A response to this solicitation is an offer to contract with Region 14 ESC based upon the terms, conditions, scope of work, and specifications contained in this request. A solicitation does not become a contract until it is accepted by Region 14 ESC. The prospective vendor must submit a signed Signature Form with the response thus, eliminating the need for a formal signing process. Contract award letter issued by Region 14 ESC is the counter-signature document establishing acceptance of the contract.

- **NCPA Administrative Agreement**

The vendor will be required to enter and execute the National Cooperative Purchasing Alliance Administration Agreement with NCPA upon award with Region 14 ESC. The agreement establishes the requirements of the vendor with respect to a nationwide contract effort.

- **Clarifications/Discussions**

Region 14 ESC may request additional information or clarification from any of the respondents after review of the proposals received for the sole purpose of elimination minor irregularities, informalities, or apparent clerical mistakes in the proposal. Clarification does not give respondent an opportunity to revise or modify its proposal, except to the extent that correction of apparent clerical mistakes results in a revision. After the initial receipt of proposals, Region 14 ESC reserves the right to conduct discussions with those respondent's whose proposals are determined to be reasonably susceptible of being selected for award. Discussions occur when oral or written communications between Region 14 ESC and respondent's are conducted for the purpose clarifications involving information essential for determining the acceptability of a proposal or that provides respondent an opportunity to revise or modify its proposal. Region 14 ESC will not assist respondent bring its proposal up to the level of other proposals through discussions. Region 14 ESC will not indicate to respondent a cost or price that it must meet to neither obtain further consideration nor will it provide any information about other respondents' proposals or prices.

- **Multiple Awards**

Multiple Contracts may be awarded as a result of the solicitation. Multiple Awards will ensure that any ensuing contracts fulfill current and future requirements of the diverse and large number of participating public agencies.

- **Past Performance**

Past performance is relevant information regarding a vendor's actions under previously awarded contracts; including the administrative aspects of performance; the vendor's history of reasonable and cooperative behavior and commitment to customer satisfaction; and generally, the vendor's businesslike concern for the interests of the customer.

Promark acknowledges the NCPA proposal evaluation process and proposal and contract terms.

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## **EVALUATION CRITERIA**

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- **Pricing (40 points)**

Electronic Price Lists

- Products, Services, Warranties, etc. price list
- Prices listed will be used to establish both the extent of a vendor's product lines, services, warranties, etc. available from a particular bidder and the pricing per item.

- **Ability to Provide and Perform the Required Services for the Contract (25 points)**

- Product Delivery within participating entities specified parameters
- Number of line items delivered complete within the normal delivery time as a percentage of line items ordered.
- Vendor's ability to perform towards above requirements and desired specifications.
- Past Cooperative Program Performance. Quantity of line items available that are commonly purchased by the entity.
- Quantity of line items available that are commonly purchased by the entity.
- Quality of line items available compared to normal participating entity standards.

- **References and Experience (20 points)**

- A minimum of ten (10) customer references for product and/or services of similar scope dating within past 3 years
- Respondent Reputation in marketplace
- Past Experience working with public sector.
- Exhibited understanding of cooperative purchasing

- **Value Added Products/Services Description, (8 points)**

- Additional Products/Services related to the scope of RFP
- Marketing and Training
- Programs and practices that may be advantageous to Public Agencies
- Customer Service

- **Technology for Supporting the Program (7 points)**

- Electronic on-line catalog, order entry use by and suitability for the entity's needs
- Quality of vendor's on-line resources for NCPA members.
- Specifications and features offered by respondent's products and/or services

Promark acknowledges the NCPA proposal evaluation criteria as outlined above.

## SIGNATURE FORM

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

Prices are guaranteed: **120 days**

Promark Technology, Inc.

Company Name

10900 Pump House Road, Suite B

Address

Annapolis Junction, MD 20701

City

State

Zip

800.634.0255

Telephone Number

301.725.7869

Fax Number

toddh@promarktech.com

Email Address

Stephen T. Hartung

Printed Name

Director

Position



Authorized Signature

**TAB 3**  
**VENDOR QUESTIONNAIRE**

Please provide responses to the following questions that address your company's operations, organization, structure, and processes for providing products and services.

**Locations Covered**

- Bidder must indicate any and all locations where products and services can be offered.

<input checked="" type="checkbox"/> <b>All 50 States &amp; District of Columbia</b> (Selecting this box is equal to checking all boxes below)			
<input type="checkbox"/> Alabama	<input type="checkbox"/> Illinois	<input type="checkbox"/> Montana	<input type="checkbox"/> Rhode Island
<input type="checkbox"/> Alaska	<input type="checkbox"/> Indiana	<input type="checkbox"/> Nebraska	<input type="checkbox"/> South Carolina
<input type="checkbox"/> Arizona	<input type="checkbox"/> Iowa	<input type="checkbox"/> Nevada	<input type="checkbox"/> South Dakota
<input type="checkbox"/> Arkansas	<input type="checkbox"/> Kansas	<input type="checkbox"/> New Hampshire	<input type="checkbox"/> Tennessee
<input type="checkbox"/> California	<input type="checkbox"/> Massachusetts	<input type="checkbox"/> New Jersey	<input type="checkbox"/> Texas
<input type="checkbox"/> Colorado	<input type="checkbox"/> Michigan	<input type="checkbox"/> New Mexico	<input type="checkbox"/> Utah
<input type="checkbox"/> Connecticut	<input type="checkbox"/> Minnesota	<input type="checkbox"/> New York	<input type="checkbox"/> Vermont
<input type="checkbox"/> Delaware	<input type="checkbox"/> Mississippi	<input type="checkbox"/> North Carolina	<input type="checkbox"/> Virginia
<input type="checkbox"/> D.C.	<input type="checkbox"/> Missouri	<input type="checkbox"/> North Dakota	<input type="checkbox"/> Washington
<input type="checkbox"/> Florida	<input type="checkbox"/> Kentucky	<input type="checkbox"/> Ohio	<input type="checkbox"/> West Virginia
<input type="checkbox"/> Georgia	<input type="checkbox"/> Louisiana	<input type="checkbox"/> Oklahoma	<input type="checkbox"/> Wisconsin
<input type="checkbox"/> Hawaii	<input type="checkbox"/> Maine	<input type="checkbox"/> Oregon	<input type="checkbox"/> Wyoming
<input type="checkbox"/> Idaho	<input type="checkbox"/> Maryland	<input type="checkbox"/> Pennsylvania	

<input type="checkbox"/> <b>All U.S. Territories and Outlying Areas</b> (Selecting this box is equal to checking all boxes below)	
<input type="checkbox"/> American Samoa	<input type="checkbox"/> Northern Marina Island
<input type="checkbox"/> Federated States of Micrones	<input type="checkbox"/> Puerto Rico
<input type="checkbox"/> Guam	<input type="checkbox"/> U.S. Virgin Islands
<input type="checkbox"/> Midway Islands	

<input type="checkbox"/> <b>All Canada Provinces and Territories</b> (Selecting this box is equal to checking all boxes below)	
<input type="checkbox"/> Alberta	<input type="checkbox"/> Prince Edward Island
<input type="checkbox"/> British Columbia	<input type="checkbox"/> Quebec
<input type="checkbox"/> Manitoba	<input type="checkbox"/> Saskatchewan
<input type="checkbox"/> New Brunswick	<input type="checkbox"/> Northwest Territories
<input type="checkbox"/> Newfoundland and Labrador	<input type="checkbox"/> Nunavut
<input type="checkbox"/> Nova Scotia	<input type="checkbox"/> Yukon
<input type="checkbox"/> Ontario	

If awarded a Master Agreement, will your company extend the terms offered in your Proposal to public agencies in Canada? If no or maybe, please explain.

- Yes     
  Maybe     
  No     
 We have a Canadian organization that would handle Canada and are restricted from participating in that market.

If awarded a Master Agreement, will your company extend the terms offered in your Proposal to private sector customers?

- Yes     
  Maybe     
  No

**Minority and Women Business Enterprise (MWBE) and (HUB) Participation**

It is the policy of some entities participating in NCPA to involve minority and women business enterprises (MWBE) and historically underutilized businesses (HUB) in the purchase of goods and services. Respondents shall indicate below whether or not they are an M/WBE or HUB certified.

- ~~No~~ Minority/Women Business Enterprise Respondent Certifies that this firm a Minority / Women Business Enterprise     
  ~~No~~ Historically Underutilized Business Respondent Certifies that this firm is a Historically Underutilized Business

**Small Business, MWBE and HUB Growth**

If Proposer is a Large, National or Multinational Organization/Corporation, what programs are in place that partners or supports the growth of small and MWEB and HUB business? If yes, please describe.

- N/A, we are a recognized small, MWEB or HUB organization  
 No, we do not have any programs in place.  
 Yes, we have programs in place. We support Small and Diversity Technology Reseller Partners in several ways. We promote small/diversity partners as authorized resellers on our contracts. We also have a Supplier Diversity Program that helps partners leverage small/diversity resellers to capture required small and diversity spend for contracts.

**Residency**

Responding Company's principal place of business is in the city of Annapolis Junction,  
State of Maryland.

**Felony Conviction Notice**

Please Check Applicable Box (If the 3<sup>rd</sup> box is checked, a detailed explanation of the names and convictions must be attached):

- A publicly held corporation; therefore, this reporting requirement is not applicable.
- Is not owned or operated by anyone who has been convicted of a felony.
- Is owned or operated by the following individual(s) who has/have been convicted of a felony

**Distribution Channel**

Which best describes your company's position in the distribution channel:

- Manufacturer Direct       Certified education/government reseller
- Authorized Distributor       Manufacturer marketing through reseller
- Value-added reseller       Other: \_\_\_\_\_

**Processing Contact Information**

Contact Person	<u>Britteny Collins</u>
Title	<u>Contract Manager</u>
Company	<u>Promark Technology, Inc.</u>
Address	<u>10900 Pump House Road, Suite B</u>
City/State/Zip	<u>Annapolis Junction, MD 20701</u>
Phone	<u>800.634.0255</u>
Email	<u>brittenyc@promarktech.com</u>

**Pricing Information**

In addition to the current typical unit pricing furnished herein, the Vendor agrees to offer all future product introductions at prices that are proportionate to Contract Pricing. If answer is no, attach a statement detailing how pricing for NCPA participants would be calculated for future product introductions.

- Yes       No

Pricing submitted includes the required NCPA administrative fee. The NCPA fee is calculated based on the invoice price to the customer.

Yes       No

**Cooperatives**

List any other cooperative or state contracts currently held or in the process of securing.

<b>Cooperative/State Agency</b>	<b>Discount Offered</b>	<b>Expires</b>	<b>Annual Sales Volume</b>
NCPA - Advanced Technology Solutions Aggregator	2%	July 31, 2024	
GSA Schedule	Varies by line	May 3, 2026	
Ohio STS Contract	Based on GSA	May 3, 2026	
TX DIR Contract	7% - 15%	August 24, 2025	

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## **TAB 4 - VENDOR PROFILE**

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Please provide the following information about your company:

- **Company's official registered name.**

Promark Technology, Inc.

- **Brief history of your company, including the year it was established.**

Promark Technology, Inc., a wholly owned Ingram Micro company, is a value-added distributor of Information Technology products and solutions. Promark is a registered C Corporation formed in the State of Maryland and was formed in 1971. Promark has been engaged as a distributor for the IT Industry for over 40 years. Promark works with its channel partners consisting of IT Manufacturers, Value Added Reseller and System Integrators to offer IT Hardware, Software and solutions to Commercial, Federal, and State and Local accounts throughout the United States. Promark was acquired by Ingram Micro in November of 2012. Promark continues to act as a distributor of IT products but also serves as the Public Sector Contract support arm of Ingram Micro.

**Promark will bring the resources of both Promark and its parent, Ingram Micro, to support the NCPA Contract initiative. Below is a brief history of Ingram Micro.**

Ingram Micro's business beginnings are traced back to 1979, when Ingram Micro began operated as Micro D Inc. In 1989 Micro D merged with Ingram Computer to create the microcomputer industry's first \$1 billion wholesale distribution company, Ingram Micro D. Through a series of acquisitions, mergers and organic growth, we have expanded and strengthened our global footprint and product breadth, and greatly increased our service capabilities. In recent years, we have made major strides in expanding our presence in areas of strategic focus. Our focus is on profitably growing and optimizing our core technology solutions business while leveraging our global infrastructure and world-class partnerships to further broaden the reach of acquired operations, including expanding and enhancing our established services business and continuing to make strategic investments in high-margin services and solutions.

As shown in the table below, Ingram has operations in 52 countries, spanning all global regions, as shown in the table below. We also operate support centers in Bulgaria, Costa Rica, Egypt, India, Philippines and Puerto Rico.

Additionally, we serve many other markets where we do not have an in-country presence through our various export sales offices, including our general tele-sales operations in numerous markets. We sell our products and services to a global customer base of approximately 160,000 customers in more than 200 countries. We are one of the market leaders in technology distribution in North America and Latin America, Europe, and Asia-Pacific.

<p><b>North America</b> Canada United States</p> <p><b>Latin America</b> Argentina Brazil Chile Colombia Ecuador Mexico Peru Uruguay</p>	<p><b>Europe</b> Albania Austria Belgium Croatia Czech Republic Denmark France Finland Germany Hungary Ireland Italy Macedonia</p>	<p>Netherlands Norway Poland Portugal Romania Serbia Slovenia Slovakia Spain Sweden Switzerland United Kingdom</p>	<p><b>Asia Pacific (including Middle East and Africa)</b> Australia People's Republic of China (including HongKong) Egypt India Indonesia Israel Lebanon Malaysia Morocco New Zealand Pakistan</p>	<p>Saudi Arabia Singapore South Africa Thailand Turkey United Arab Emirates</p>
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**Key Metrics**

- 2022 Revenue - \$50.8 Billion
- Sales in 200 countries
- 27,000+ associates worldwide
- 134 logistics centers worldwide
- 160,000 customers
- Over 1,500 vendors
- 1.5B units shipped a year
- 24 million active seats on the Ingram Micro Cloud Marketplace

- **Company's Dun & Bradstreet (D&B) number.**

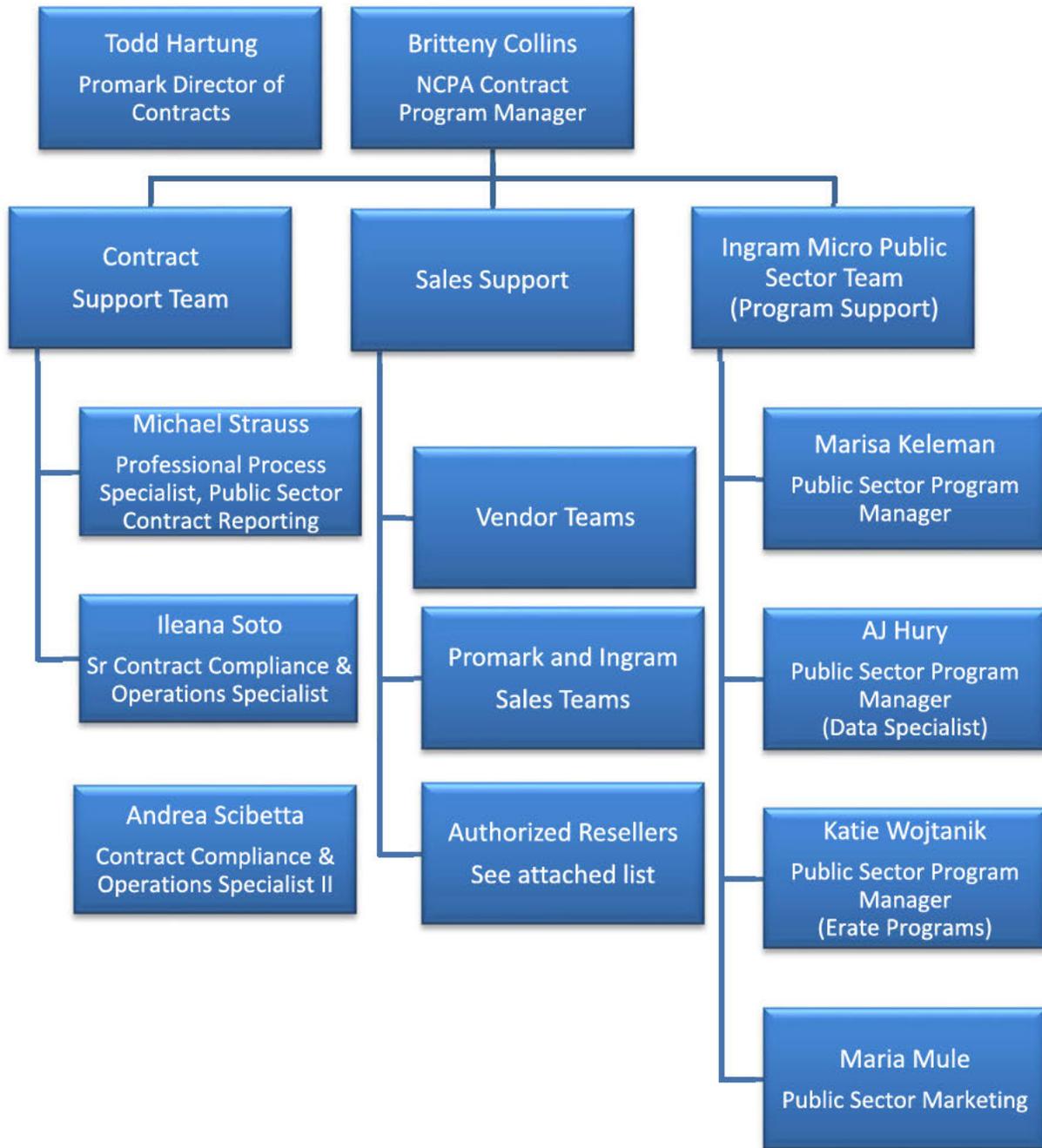
07-4839986 (Promark)

- **Company's organizational chart of those individuals that would be involved in the contract.**

Please refer to the chart on the following page.

- **Corporate office location.**

Promark Technology, Inc.  
10900 Pump House Road, Suite B  
Annapolis Junction, MD 20701



- List the number of sales and services offices for states being bid in solicitation.

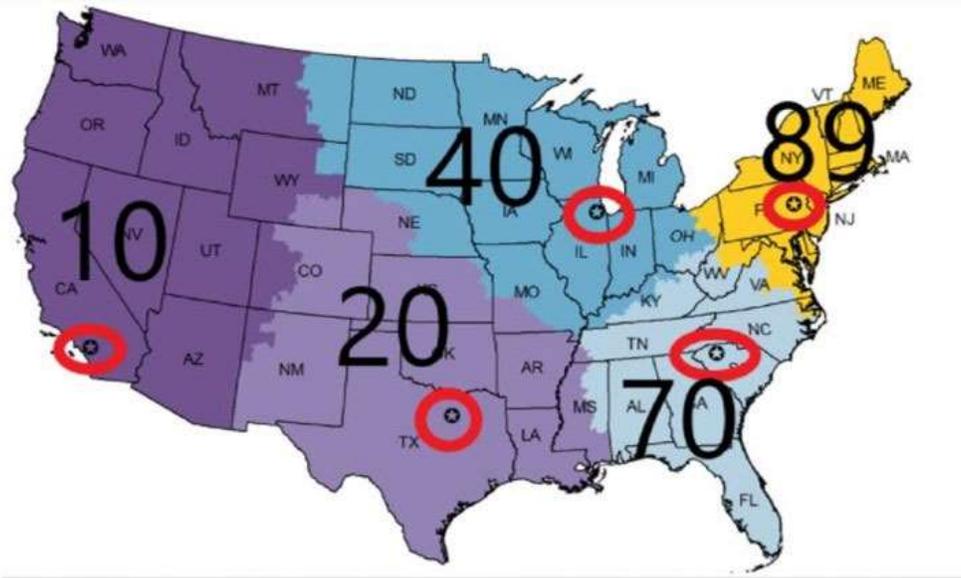
In addition to the Promark sales and vendor business resources, Promark is supported by Ingram Micro Public Sector specialists. Finally, our authorized Value-Added Resellers and systems integrators will provide sales and technical resources to directly to the agencies purchasing under the NCPA contract. The Promark and Ingram Micro resources are included in the following pages.

**Sales and Services Support Through Authorized Reseller Partners** - A listing of Promark and Ingram authorized resellers is included in **Appendix 4 – Promark Authorized NCPA Dealer List**. The list includes resellers that represent many states throughout the country. Each reseller location would equate to a sales location that could provide sales and services to the NCPA Contract customer base. Additionally, several of these resellers, such as ConvergeOne and Connection, support sales throughout the country with multiple locations. Additional resellers can be added during the contract period to provide additional sales support and enhance the coverage area to support NCPA members.

**Promark and Ingram Micro Support for Authorized Resellers** – Promark and Ingram Micro provide technical support, sales, ordering, financial services, warehousing, and transportation support to our authorized reseller partners. In our distribution services model, we buy, hold title to, and sell technology and mobility products and services to reseller partners who, in turn, typically sell directly to end-users or other reseller partners. Our distribution services enable our suppliers to reach a large, diverse, and highly fragmented base of reseller partners. Our distribution services also provide reseller partners with multi-vendor solutions, integration services, electronic commerce tools, marketing, financing, training and enablement, technical support, and inventory management. Our reseller partners are able to cost-effectively grow their businesses and better serve their customers by leveraging our wide array of technical and professional services, vertical market expertise, business intelligence and analytics services, and other elements that they can employ while avoiding the requisite investment.

**Warehouse Operations** - As shown below, Ingram Micro has five U.S. Advanced Logistics Center (ALC) locations. These full-service facilities provide for more localized, faster delivery options.

/ *ntentionally Redacted*



<p>Mira Loma - USMR 12510 Micro Dr Mira Loma CA 91752 1-951-727-3300 Time Zone: PST <a href="mailto:usa@usa@promark@ingrammicro.com">usa@usa@promark@ingrammicro.com</a></p> <p><b>Branch 10</b></p>	<p>Fort Worth - USFW 14500 FAA Blvd Ste 300 Fort Worth TX 76155 1-817-532-3500 Time Zone: CST <a href="mailto:usfw@usa@promark@ingrammicro.com">usfw@usa@promark@ingrammicro.com</a></p> <p><b>Branch 20</b></p>	<p>Carol Stream - USCS 415 East Iles Rd Carol Stream IL 60188 1-630-668-0106 Time Zone: CST <a href="mailto:usa@usa@promark@ingrammicro.com">usa@usa@promark@ingrammicro.com</a></p> <p><b>Branch 40</b></p>	<p>Roebuck 6670 Highway 221 Roebuck SC 29376 Time Zone: EST</p> <p><b>Branch 70</b></p>	<p>Hazleton 101 Commerce Dr Hazle Township PA 18202 Time Zone: EST</p> <p><b>Branch 89</b></p>
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**Transportation** - Transportation management is a core competency for Ingram Micro. As a \$50 billion-dollar company, Ingram Micro offers world-class alliances, exceptional economies of scale, and a solid focus on reducing costs in the supply chain. Ingram Micro’s shared network of distribution centers provides a full set of on-time, error-free, scalable backroom services from order induction through delivery of finished goods. We believe transportation management is a natural and effective extension to fulfillment. Ingram Micro holds our carrier partners to high standards of performance and in line with our ISO 9001:2015 certification. Key Performance Indicators (KPIs) such as on-time service, claims, invoice accuracy and customer experience are reviewed proactively with our largest carrier partners as part of our continuous improvement processes. Due to the strength of our transportation partnerships and the large volume of business conducted,

Ingram Micro has negotiated advantageous rates and services from the tier one carriers in all modes of transportation. Advantageous terms and conditions, which lower the overall cost of transportation and increase service levels, are a direct result of Ingram Micro’s strategic partnership with its carrier providers. Utilizing Ingram Micro’s US network allows 98% of the US population to receive their products after only two (2) days in transit via ground transportation. If specified in the reseller’s order, Ingram Micro can drop ship directly to an NCPA member.

- List the names of key contacts at each with title, address, phone and e-mail address.

Title	Name	Phone	Email
<b>Promark Program Support Team</b>			
Program Manager	Britteny Collins	240-280-8072	<a href="mailto:brittenyc@promarktech.com">brittenyc@promarktech.com</a>
Professional Process Specialist, Public Sector Contract Reporting	Michael Strauss	716-633-3600 Ext 66168	<a href="mailto:Michael.strauss@ingrammicro.com">Michael.strauss@ingrammicro.com</a>
<b>Ingram Public Sector Team</b>			
Public Sector Program Manager	Marisa Keleman	716-633-3600 Ext 66484	<a href="mailto:marisa.keleman@ingrammicro.com">marisa.keleman@ingrammicro.com</a>
Public Sector Program Manager	AJ Hury	716-633-3600 Ext 65326	<a href="mailto:alexander.hury@ingrammicro.com">alexander.hury@ingrammicro.com</a>
Public Sector Program Manager	Katie Wojtanik	716-633-3600 Ext 67696	<a href="mailto:kathleen.wojtanik@ingrammicro.com">kathleen.wojtanik@ingrammicro.com</a>
Public Sector Marketing	Maria Mule	714.382.1851	<a href="mailto:maria.mule@ingrammicro.com">maria.mule@ingrammicro.com</a>
<b>Promark and Ingram Micro Public Sector Management Team</b>			
Exec. Dir / General Manager	Tony Celeste	301.957.9011	<a href="mailto:Tony.celeste@ingrammicro.com">Tony.celeste@ingrammicro.com</a>
Exec. Director Sales	D.True Madish	404.557.8162	<a href="mailto:dtrue.madish@ingrammicro.com">dtrue.madish@ingrammicro.com</a>
Director, Contracts & Programs	Todd Hartung	800.634.0255	<a href="mailto:toddh@promarktech.com">toddh@promarktech.com</a>

In addition to an extensive network of VARs, system integrators, and other reseller partners Promark offers sales, vendor management, and business development resource coverage for the U.S. provided on the following pages. Due to the size of our company and sales organization, we have provided a paired down list of our key resources whose primary focus is on supporting the public sector market. We have also listed contacts for Key Business Unit Executives who have additional resources that also provide additional sales support the SLED market for their reseller partners.

**Public Sector Sales Resources**

**Public Sector Executive Leadership Team**

Title	Name	Email
Executive Director & General Manager	Tony Celeste	<a href="mailto:Tony.Celeste@IngramMicro.com">Tony.Celeste@IngramMicro.com</a>
Executive Director, Sales	D. True Madish	<a href="mailto:DTrue.Madish@IngramMicro.com">DTrue.Madish@IngramMicro.com</a>
Director, Contracts and Programs	Todd Hartung	<a href="mailto:Stephen.Hartung@IngramMicro.com">Stephen.Hartung@IngramMicro.com</a>

**Public Sector Sales Management Team**

Responsible For	Title	Name	Email
Eastern US	Sales Manager	Adam Springer	<a href="mailto:Adam.Springer@IngramMicro.com">Adam.Springer@IngramMicro.com</a>
Western US	Sales Manager	Heather Woodard	<a href="mailto:Heather.Woodard@IngramMicro.com">Heather.Woodard@IngramMicro.com</a>
Sales Support	Manager	Donna Berti	<a href="mailto:Donna.Berti@IngramMicro.com">Donna.Berti@IngramMicro.com</a>

**Dedicated Public Sector Account Executives**

Territory	Title	Name	Email
Southern	Sr. Account Executive	Rich Hendricks	<a href="mailto:Richard.Hendricks@IngramMicro.com">Richard.Hendricks@IngramMicro.com</a>
Continental	Sr. Account Executive	Ed Potoczniak	<a href="mailto:Edward.Potoczniak@IngramMicro.com">Edward.Potoczniak@IngramMicro.com</a>
Western	Sr. Account Executive	Adam Knobloch	<a href="mailto:Adam.Knobloch@IngramMicro.com">Adam.Knobloch@IngramMicro.com</a>
Atlantic	Sr. Account Executive	Jeff Anderson	<a href="mailto:Jeffrey.Anderson@IngramMicro.com">Jeffrey.Anderson@IngramMicro.com</a>
Capital	Sr. Account Executive	Ken Hermann	<a href="mailto:Ken.Hermann@IngramMicro.com">Ken.Hermann@IngramMicro.com</a>
NSP's	Sr. Account Executive	Lisa Brown	<a href="mailto:Lisa.Brown@IngramMicro.com">Lisa.Brown@IngramMicro.com</a>

**Ingram Sales Business Unit Executives (Includes Additional Sales Teams and Resources)**

Territory	Title	Name	Email
Enterprise Accounts	Exec. Director, Sales	Patricia Gorman	<a href="mailto:Richard.Hendricks@IngramMicro.com">Richard.Hendricks@IngramMicro.com</a>
National Solutions Providers	Director, Sales	Tommy Baboulas	<a href="mailto:Edward.Potoczniak@IngramMicro.com">Edward.Potoczniak@IngramMicro.com</a>
SMB Accounts	Director, Sales	Kelly Sander	<a href="mailto:Adam.Knobloch@IngramMicro.com">Adam.Knobloch@IngramMicro.com</a>
Advanced Solutions Accounts	Director, Sales	Michael Deuschle	<a href="mailto:Jeffrey.Anderson@IngramMicro.com">Jeffrey.Anderson@IngramMicro.com</a>

**Public Sector Program Management Team**

Responsible for programs and initiatives related to government processes, procedures, federal documentation, and funding.

Responsible For	Name	Email
GSA Pass Thru & Letter of Supply	Marisa Keleman	<a href="mailto:Marisa.Keleman@IngramMicro.com">Marisa.Keleman@IngramMicro.com</a>
DPAS, GovEd Discount Program	AJ Hury	<a href="mailto:Alexander.Hury@IngramMicro.com">Alexander.Hury@IngramMicro.com</a>
Supply Chain Risk Management (SCRM)	Becky Petrie	<a href="mailto:Rebecca.Petrie@IngramMicro.com">Rebecca.Petrie@IngramMicro.com</a>
E-Rate Support, Supplier Diversity Program	Katie Wojtanik	<a href="mailto:Kathleen.Wojtanik@IngramMicro.com">Kathleen.Wojtanik@IngramMicro.com</a>

**For fastest service, please contact – [PublicSector\\_Programs@IngramMicro.com](mailto:PublicSector_Programs@IngramMicro.com)**

**Public Sector Strategic Alliance Team**

Responsible for creating go-to-market strategies in partnership with our core vendor teams to drive growth within the Federal marketplace and enable our federal partner community.

Responsible For	Title	Name	Email
Cisco	Strategic Alliance Executive	Stephanie Huffman	<a href="mailto:Stephanie.Huffman@ingrammicro.com">Stephanie.Huffman@ingrammicro.com</a>
HPE	Solution Sales Executive	Zach Murez	<a href="mailto:Zachary.Murez@ingrammicro.com">Zachary.Murez@ingrammicro.com</a>
HPI	Solutions Development Executive	Jon Maderer	<a href="mailto:Jonathan.Maderer@ingrammicro.com">Jonathan.Maderer@ingrammicro.com</a>

**For fastest service, please contact - [PublicSector\\_Vendors@ingrammicro.com](mailto:PublicSector_Vendors@ingrammicro.com)**

**Public Sector Inside Sales and Support Teams:  
SOUTH**

Quotes: [pssouthern\\_quotes@ingrammicro.com](mailto:pssouthern_quotes@ingrammicro.com)

Orders: [pssouthern\\_orders@ingrammicro.com](mailto:pssouthern_orders@ingrammicro.com)

Phone: ext. 76859

*Sales Manager: Adam Springer*

First Name	Last Name	Title	Location
Lori	Addeo	Inside Sales, Team Lead	Buffalo, NY
Paul	Athoe	Inside sales	Buffalo, NY
Kevin	Jasen	Inside sales	Buffalo, NY
Philip	Massaker	Inside sales	Buffalo, NY
Mary	Nelles	Inside sales	Buffalo, NY
Aaron	Reggie	Inside sales	Buffalo, NY
Duncan	Trevathan	Inside sales	Greer, SC
Marisa	Ayerst	Support	Field
Sandra	Ferguson	Support	Greer, SC
Donna	Garland	Support	Greer, SC
Samantha	Gioeli	Support	Buffalo, NY
Jeffrey	Jones	Support	Buffalo, NY
Brooke	Marchitello	Support	Buffalo, NY
Waylon	Pastorius	Support	Buffalo, NY
Carmon	Peterson-Arnold	Support	Greer, SC
Terri	Sorce	Support, Team Lead	Buffalo, NY
Santos	Torres	Support	Buffalo, NY
Dominic	Zanelotti	Support	Buffalo, NY

**WEST**

Quotes: [pswestern\\_quotes@ingrammicro.com](mailto:pswestern_quotes@ingrammicro.com) Orders: [pswestern\\_orders@ingrammicro.com](mailto:pswestern_orders@ingrammicro.com)

Phone: ext. 76869

Sales Manager: Heather Woodard

First Name	Last Name	Title	Location
Christopher	Alessi	Inside Sales	Buffalo, NY
Daniel	Bordonaro	Inside Sales, Team Lead	Buffalo, NY
Marcus	Coffey	Inside Sales	Scottsdale, AZ
Raffaele	DiPrado	Inside Sales	Buffalo, NY
Linda	Newcomer	Inside Sales	Irvine, CA
Jordan	Reynolds	Inside Sales, Team Lead	Buffalo, NY
Brandi	Schramm	Inside Sales	Buffalo, NY
Anthony	Tringali	Inside Sales	Buffalo, NY
Sona	Bradshaw	Support	Irvine, CA
Gabrielle	Chandler	Support	Greer, SC
Joseph	Cooley	Support	Buffalo, NY
Daniel	Farrell	Support	Buffalo, NY
Evann	Furlong	Support	Scottsdale, AZ
Joan	Hunter	Support	Scottsdale, AZ
Sydney	Kordasiewicz	Support	Buffalo, NY
Maureen	McCarthy	Support	Buffalo, NY
Amanda	Smith	Support	Scottsdale, AZ
Pamela	Tafelski	Support	Buffalo, NY
Joba	Tasnia	Support	Buffalo, NY
Em	Warrington	Support	Buffalo, NY

**NORTHEAST**

Quotes: [psnortheast\\_quotes@ingrammicro.com](mailto:psnortheast_quotes@ingrammicro.com)

Orders: [psnortheast\\_orders@ingrammicro.com](mailto:psnortheast_orders@ingrammicro.com)

Phone: ext. 76809

Sales Manager: Donna Berti

First Name	Last Name	Title	Location
Jeffrey	Beshore	Solutions Sales	Annapolis Junction, MD
Diane	Buscaglia-Privateer	Inside Sales	Buffalo, NY
Brian	D'Angelo	Inside Sales	Buffalo, NY
Jim	Dominguez	Inside Sales	Buffalo, NY
Sean	Fettes	Inside Sales	Buffalo, NY
Holly	MacFadyen	Inside Sales	Buffalo, NY
William	Nye	Inside Sales	Buffalo, NY
Shundrey	Patterson	Inside Sales	Annapolis Junction, MD
Jack	Putnam	Inside Sales	Buffalo, NY
Sandy	Sallaj	Inside Sales, Team Lead	Buffalo, NY
Daniel	Velich	Inside Sales	Annapolis Junction, MD
Ashley	Adjogah	Support	Buffalo, NY
Jacob	Anderson	Support	Greer, SC
Rodney	Chatmon	Support	Buffalo, NY
James	Chervinsky	Support	Buffalo, NY
Dana	Cruz	Support	Buffalo, NY
Timothy	Flynn	Support	Buffalo, NY
Christopher	Furlong	Support	Buffalo, NY
Patricia	Hall	Support	Buffalo, NY
Chelsea	Jamison	Support	Greer, SC
Kenisha	Johnson	Support	Greer, SC
Ryan	Johnson	Support	Buffalo, NY
James	Maass	Support	Buffalo, NY
Kayla	Milton	Support	Greer, SC
Casey	Prohn	Support	Buffalo, NY
Peter	Waite	Support	Buffalo, NY
Samantha	Wnek	Support	Buffalo, NY

- **Define your standard terms of payment.**

Standard payment terms are net 30. We also offer several alternative financing options to our partners including the following: Multiple Channel Friendly Leasing options, Flooring, Escrow options.

- **Who is your competition in the marketplace?**

Within our Technology Solutions business, Promark / Ingram Micro compete against broad-based IT distributors such as TD SYNEX, and Arrow. There are a number of specialized competitors that focus on one market or product or a particular sector in which we also compete. Examples of such competitor types include Carahsoft in the public sector market; D&H Distributing, ADI, and Petra in consumer electronics; ScanSource and BlueStar in AIDC/POS products and Anixter in physical security products.

- **Provide Annual Sales for last 3 years broken out into the following categories:**

In the table below, please find below the total combined annual Public Sector Sales for Promark Technology and Ingram Micro for each the last three years broken out by Federal, higher education, K-12, state and local government, and non-profit sales.

US Public Sector Sales	FY 2022	FY 2021	FY 2020
Non-Profit	\$ 138,478,311.47	\$ 157,062,000.33	\$ 112,288,817.70
Higher Ed	\$ 588,071,053.85	\$ 553,443,380.99	\$ 512,614,128.27
K12	\$ 618,303,986.66	\$ 780,730,831.73	\$ 673,135,551.33
Federal	\$ 877,277,249.71	\$ 821,472,490.55	\$ 954,216,342.08
Local	\$ 6,539,525.85	\$ 7,443,629.26	\$ 10,229,341.57
State	\$ 788,675,829.56	\$ 697,402,127.97	\$ 792,315,025.41

- **Provide the revenue that your organization anticipates each year for the first three (3) years of this agreement.**

*Intentionally Redacted*

- **What differentiates your company from competitors?**

As an Ingram Micro company, Promark reflects the strengths of our parent company. Ingram Micro's key strengths position it to deliver on its strategy to profitably grow and optimize its core technology solutions business while expanding and investing in higher margin advanced and specialty solutions and high value services. Ingram believes that the current technology industry generally favors large, financially-sound distributors that have broad product portfolios, economies of scale, strong business partner relationships and wide geographic reach. Ingram offers a broad range of products and services, providing a true "one-stop-shop" for its customers. Its breadth of product and solution offerings and wide range of business partners reduce the risks from volatility and demand fluctuations in a single market, vendor or product segment.

Our key strengths include:

- **Strong Working Capital Management and a Solid Financial Position.** Ingram Micro has consistently demonstrated strong working capital management. Maintaining a close relationship with resellers enables Ingram to monitor demand to optimize its investment in inventory, while preserving customer fill rates and service levels.
  - **Commitment to Diversification.** Ingram Micro believes that its ability to execute on new initiatives, adapt to new business models and enter new geographic markets provides a competitive advantage by enabling it to capture opportunities and overcome the risks, volatility and demand fluctuations in a single market, vendor or product segment.
  - **Expanded Product Markets** — In recent years, Ingram has made a number of investments focused on augmenting its IT product distribution business through the global expansion of specialty product offerings and solutions, such as AIDC/POS, CE, data center, mobility, Cloud, and enterprise computing.
  - **Differentiated Service Offerings** — Ingram Micro believes that its service offerings provide a means to diversify our revenue stream while distinguishing us from our competitors. Ingram's logistics services enable it to earn fees from technology and mobility suppliers that choose to bypass distribution and sell directly to resellers and/or end-users. Ingram is focused on building our presence in those product categories and solutions that will benefit from key growth trends, such as the continuing technology shift to mobile devices and the need for enterprise computing solutions to handle the growing data center market.
- **Describe how your company will market this contract if awarded.**

Promark has a vast amount of Public Sector experience working within the IT industry and holding several different Federal and SLED contract vehicles. As a distributor of IT products and services, Promark does not sell directly to end users or the government; therefore, we leverage our reseller and system integrator community to sell our manufacturers' products. As such, we look for contract vehicles, similar to the NCPA contract, which allow us to authorize our resellers to sell through the contract.

Promark will take a three-pronged marketing approach to effectively market this contract with the assistance from the Ingram Micro Public Sector Team:

1. Promark's Contract's Program
2. Internet Marketing, Collateral, and Training
3. Demand and Lead Generation

### **Contracts Program**

Promark will leverage the NCPA Contract as the base vehicle to support our SLED Contract Program. The SLED Contract Program will be designed to help empower our resellers, allowing partners to market and sell opportunities using the NCPA Contract. The

program will be designed to provide everything an Authorized NCPA Contract Partner will need to be successful when leveraging the contract including: training, marketing collateral, targeted customers, targeted events, and much more. We have already identified some of our most responsive and experienced SLED resellers located across the US. These partners who we chose will work with the NCPA Team to become authorized on the contract and will be the initial wave of resellers to leverage the contract. Throughout the course of the contract, Promark will continue to promote the program and identify additional resellers to support the contract across the US.

Promark will leverage the resources of both Promark and Ingram Micro's Marketing Teams to support the remaining two prongs.

### **Internet Marketing, Collateral & Training**

- We have created an internet presence for the NCPA Contract and Promark SLED Contract Program, by continually updating our website with easily identifiable and current contract information on main page.
- We have created Contract and Program collateral to support the promotion of the Contract both internally for sales associates and externally for reseller partners and end customers.
- We have promoted and will continue to promote this contract on our social media outlets such as LinkedIn and Facebook.
- We have created a landing page for our internal team that will have all up-to-date contract information that will be easily accessible. This page will hold all events and material that may be needed for future opportunities.
- We have created a clickable image that will lead customers to our dedicated page and promote that on company email signatures.
- We have held and will continue to hold ongoing reseller, customer, and internal recruitment and training activities.

### **Demand & Lead Generation**

- We have and will continue to participate in end user events to market our contract.
- We have and will continue to push demand generation events to our outside community to raise awareness of our participation on this contract and offer it as an alternative to current solutions.
- We have and will continue to work with the Authorized Reseller partners to create host end user lead generation events.
- We have and will continue to leverage both Promark/Ingram and Reseller Business Intelligence to mine for opportunities.

With a consistent mix of the above actions Promark will continue to market this contract day to day to increase awareness and drive business.

- **Describe how you intend to introduce NCPA to your company.**

As a wholly owned company of Ingram Micro, Promark is equipped with not only its own nationwide sales team, but also a much greater reach through the dedicated SLED teams

within Ingram Micro. Promark will partner with Ingram Micro Public Sector Sales Executives to recruit resellers and advance messaging around the NCPA Contract. Those sales teams with account ownership of our NCPA Dealers will have a more targeted focus, as they will be the primary points of contact for the partners.

Promark has created a dedicated on-boarding process for the NCPA contract. The on-boarding process will include training webinars and on-site meetings to introduce the NCPA contract and provide guidance for internal functionality as it relates to marketing, quoting, and ordering through this contract. Standards will be created, documented and communicated to all sales teams to create a baseline approach to NCPA transactions. The marketing plan described above will also be incorporated into the on-boarding process.

- **Describe your firm’s capabilities and functionality of your on-line catalog / ordering website.**

Ingram Micro Xvantage is an intelligent digital platform built for the IT ecosystem, where you can discover, learn, purchase, and manage technology and cloud solutions in a single pane of glass. Ingram Micro has a robust web-based catalog and ordering tool accessible for our resellers, dealers and systems integrators through Xvantage (ingrammicro.com) in the United States. This site is available 24 hours per day. The resellers, dealers and systems integrators utilizing Xvantage (ingrammicro.com) can expect the following benefits:

- Full catalog of proposed products and pricing.
- Ability to search for real time pricing and availability of products by manufacturer part number, Ingram Micro part number, or keyword search.
- Easy access to complete technical and product notes, as provided by the manufacturer.
- Easy access to add-on products and accessories, as provided by the manufacturer.
- End user specific pricing to include Federal, Local, and State
- View and create quotes.
- Build carts and place orders, or use the Quick Order feature.
- Drop down freight option selections, including pricing information.
- Ability to subscribe to reseller and end-user order status email notifications for requests such as order confirmation, pre-shipment updates, and shipped order details.
- Reporting for shipped and open orders.
- Easy access to PO/order information via order number, reseller PO, SKU attributes, shipment date and a variety of other parameters.
- View and act on renewals and subscriptions
- One-click tracking on most orders (carrier dependent).
- Ability to view serial numbers on shipped orders.
- E-Invoicing functionality allows customers to review, print, and download their invoices.
- Ability to submit and search statuses for RMAs and Claims.
- Learn about available services such as Financial, Licensing, and many more.
- View available solutions for Servers, Storage, Cloud, and others.

- **Describe your company's Customer Service Department (hours of operation, number of service centers, etc.)**

As part of our ISO 9001:2015 certification, the Ingram Micro Customer Service department operates under established and documented policies and procedures to ensure the highest level of service. Our representatives are prepared to assist our reseller customers on all inquiries including:

- Product return requests using vendor return guidelines
- Carrier tracking
- Lost/damaged carrier claim investigations
- Shipping inquiries
- Returns and claims status
- Return discrepancy investigations

To guarantee accurate and timely service, Ingram Micro provides all associates with training programs, automated software tools and quality assurance reviews—things we consider fundamentals, not luxuries. In addition, we perform tracking and quality checks on all internal activities to ensure that we recognize and address opportunities for continuous improvement. We also establish strong carrier relationships and communication channels, including on-site representatives, to streamline the process of resolving shipping issues.

Ingram Micro's Customer Service group provides coverage from 8:00 am to 8:00 pm Eastern Time and our Xvantage Platform allows resellers 24 x 7 access to customer service information including auto returns, ability to start all requests online, shipping label requests for eligible RMAs, and the ability to attach supporting documents.

- **Green Initiatives**

As our business grows, we want to make sure we minimize our impact on the Earth's climate. We are taking every step we can to implement innovative and responsible environmental practices throughout NCPA to reduce our carbon footprint, reduce waste, energy conservation, ensure efficient computing and much more. To that effort we ask respondents to provide their companies environmental policy and/or green initiative.

Since formalizing our global Corporate Social Responsibility (CSR) initiative – of which Environmental Stewardship is an important part - in 2016, our focus has been on raising awareness internally, while building the systems and processes that will allow us to manage the program across hundreds of facilities in 59 countries. We still have work ahead of us to ensure the timeliness and accuracy of our global non-financial performance data, but we have made significant process. Over the past five years, we have increased renewable energy consumption, decreased solid waste generation, reduced greenhouse gas emissions intensity and continued to invest in the repair, refurbishment and recycling of used electronics.

Through 2022, we prioritized the following areas of corporate responsibility:

- Internal programs to expand CSR competency
- Continued focus on climate action and waste reduction
- Alignment with UN Sustainable Development Goals that are relevant to our impacts and activities

**Environmental Stewardship** - With over 27,000 associates and 20 million square feet of building space worldwide, Ingram Micro's operations generate direct environmental impacts from greenhouse gas emissions, material consumption and waste generation, as well as indirect impacts from land use. In addition, our supply chain partners provide everything from energy and freight services to technology hardware and warehousing equipment, causing significant additional impacts.

**Environmental Management Systems** - Ingram Micro's Environmental Stewardship policy requires facilities to implement site-specific environmental management systems (EMS) in alignment with the ISO 14001 framework. (Many of our facilities are ISO- 14001 certified.) Where feasible, and according to business need, facilities are encouraged to pursue EMS certification. Our priority is to develop systems that are effectively minimizing our environmental impact through leadership involvement, risk-based planning, collaboration, operationalizing impact reduction, performance measurement and continuous improvement.

These included:

- Building efficiency projects, including lighting retrofits and installation of water-saving and energy efficient equipment
- Continuous improvement of processes, including the integration of LEAN principles
- Leasing space in certified sustainable buildings, when feasible
- Optimization, reuse, and recycling of packaging materials

Ingram Micro's Green Initiative can be found in **Appendix 5- Ingram Micro Green Initiative & Environmental Reporting**

- **Anti-Discrimination Policy (if applicable)**

Describe your organizations' anti-discrimination policy.

Ingram Micro's Inclusion and Equal Employment Statement can be found in **Appendix 4 - HR Anti-discrimination Statement**

- **Vendor Certifications (if applicable)**

Provide a copy of all current licenses, registrations and certifications issued by federal, state and local agencies, and any other licenses, registrations or certifications from any other governmental entity with jurisdiction, allowing respondent to perform the covered services including, but not limited to, licenses, registrations, or certifications. Certifications can include M/WBE, HUB, and manufacturer certifications for sales and service.

- **Secure Supply Chain Certifications (C-TPAT II and TAPA Certifications)**

As a global distributor of information technology products and an industry leader in supply chain management and logistics, Ingram Micro provides diverse, complete, and precise processes to ship, track, and manage information technology (IT) products. Our ability to manage the supply chain process, protect against counterfeit and tainted goods, and provide the broadest possible spectrum of technology products and services is unmatched by any broad-line distributor in the world today. Ingram Micro understands and tracks various legislative controls which demonstrate the recent trend toward reducing the risks of counterfeit, tainted, unauthorized, substitute or illicit products, and their associated entry into

the technology landscape. The depth of these initiatives shows that the components of supply chain security for information technology systems extends well beyond the processes of acquiring systems from authorized sources and the associated logistics of transporting those systems.

Supply Chain security is a priority at Ingram Micro. Examples of this include our Customs Trade Partnership Against Terrorism (C-TPAT) Tier 2 certification, our security practices at our Advanced Logistics Centers, Master Service Agreements with our carriers stipulating rigorous security measures, Ingram Micro's Information Security ISO 27001 certification, and our participation in TAPA.

**Customs Trade Partnership Against Terrorism (C-TPAT)** is a U.S. Customs and Border Protection (CBP) initiative designed to strengthen and improve the international supply chain and U.S. border security. This joint government-business initiative is designed to build cooperative relationships that strengthen their overall supply chain and border security. C-TPAT certification is issued to participants only after meeting very strict government criteria. Ingram Micro is Tier 2 certified (Level 1 is the lowest certification, 3 is the highest). The supply chain is defined from the point of origin (manufacturer/supplier/vendor) through the point of distribution. C-TPAT Minimum Security Requirements include but are not limited to Business Partner Selection, Container Security, Physical Access Controls, Personnel Security, Procedural Security, Physical Security, Security Training and Threat Awareness and Information Technology (IT) Security. Ingram Micro has passed two re-certification audits by U.S. Customs since achieving Tier 2 status.

Ingram Micro and our vendor partners are engaged in supply chain security at a level that would be expected for technology-related products. Along with our C-TPAT tier 2 certification, 98% of our top 50 vendor partners that supply physical products are C-TPAT certified as well. The Transported Asset Protection Association (TAPA) is another area where Ingram Micro's facilities are either TAPA-certified or are TAPA-compliant and are in the process of being certified. Many of our vendor partners are also either TAPA certified or compliant.

Ingram Micro generally adheres to, and often exceeds, the various best practices and standards as outlined and published by the National Institute of Standards and Technology (NIST), the Customs-Trade Partnership Against Terrorism (C-TPAT), the National Defense Authorization Act (NDAA), Defense Information Systems Agency (DISA) Security Technical Implementation Guides (STIGs), National Security Agency (NSA) Systems and Network Analysis Center (SNAC) guides, and various other domestic and international standards. The processes, methodologies, procedures, and corporate policies which protect the integrity of the supply chain have become an integral part of our operations, and span organizationally through the following integrated business divisions:

- Logistics, Transportation and Warehouse Management
- Risk Management
- Operations Management
- Information Security
- Vendor Management
- Sales Management
- Human Resources

These groups are collectively responsible for Ingram Micro's conformance with industry best practices, certifications, audits, and the application of supply chain security models. These best practices are a part of ISO/IEC Standards, certifications, internal audits, third-party audits and other certifications. Ingram Micro's Supply Chain Risk Management process includes evaluating, understanding, reducing, and mitigating risks in each element of the supply chain. Using the NIST IR 7622 as a frame of reference, Ingram Micro adheres to the following industry best practices:

- Uniquely identifies the Supply Chain Elements, Processes, and Participants.
- Limits Access and Exposure within the Supply Chain.
- Establishes and Maintains the Provenance of Elements, Processes, Tools, and Data.
- Shares Information within Strict Limits.
- Performs Supply Chain Risk Management Awareness and Training.
- Uses Defensive Design for Systems, Elements, and Processes.
- Performs Continuous Integrator Review.
- Strengthens Delivery Mechanisms.
- Assures Sustainment Activities and Processes.
- Manages Disposal and Final Disposition Activities throughout the System or Element Life Cycle.

To manage risks, Ingram Micro maintains our own Risk Management Information System which tracks, manages, and reports on business, operations, security, information, transportation, logistics, and claims associated with supply chain risks. This Risk Management Information System is one component of the management of risk and the associated policies and procedures that are implemented globally by Ingram Micro. The management of risk is reviewed regularly and is formally a part of our annual strategic planning process conducted at the executive level. Ingram Micro's strategic risks are reviewed by our executive committee. Of the various parts of our supply chain management initiative, risk activities are tracked and monitored throughout the incumbent audited processes.

**Transported Asset Protection Association (TAPA)** is a consortium of international manufacturers, logistics providers, carriers, law enforcement authorities and other stakeholders with the common goal of reducing losses in the supply chain. TAPA has more than 600 members in the Americas, Europe, the Middle East, Africa, and Asia. Ingram Micro is either TAPA certified or TAPA compliant in all of our North American Advanced Logistics Centers. The security requirements of TAPA have been approved worldwide as the industry standard for cargo operations and transportation security. TAPA is the industry leader in protection against high-value theft targeted (HVTT) and risk reduction of criminal activity in the supply chain.

TAPA certification includes, but is not limited to, perimeter security, electronic security, process controls, background checks, documented security standards, and documented training programs. Ingram Micro Global Security Strategy, in partnership with TAPA, includes TAPA certifications that drive standardized behaviors across all regions. TAPA is a key element for the development of standardized global Security Education and Awareness training. TAPA certifications/audits provide business leaders with roadmaps leading to changes that strengthen existing security profiles. TAPA certification further solidifies Ingram Micro's competitive advantage for winning and maintaining business.

Among the attributes or contractual obligations that Ingram Micro requires from our carrier

partners in their Master Service Agreement are gated yards, closed circuit TV monitors, employee.

### **ISO Certifications**

**ISO 9001-2015** – Both Ingram Micro and Promark are ISO 9001 certified. Given Ingram Micro brought in over \$50 billion U.S. dollars in sales globally in 2022, our Advanced Logistics Centers (ALCs) are designed to protect our inventory, facilities, and associates. These measures include, but are not limited to, 24x7 security personnel coverage, digitally recorded camera systems (interior and exterior as well as 360-degree dock and floor cameras), 24x7 alarm and detection systems, and a dock-lock system that secures trailers to the building. Ingram Micro also employs appropriate integration with operational processes including Clean In / Clean Out Procedure at Metal Detectors, carrier driver check-in and escort and dock door controls. As both Promark and Ingram are ISO 9001-2015-certified, process and product audits are also part of our controls.

**ISO/IEC 27001** - Ingram Micro is the only global broad-line distributor which holds the ISO/IEC 27001 certification. This standard covers the information Security Management System for the critical Federal capabilities information systems in our Santa Ana California Worldwide Headquarters; North American Advanced Logistics Centers; Ingram Micro offices in Europe, the Middle East and Africa (EMEA); and world-wide distribution centers of Ingram Micro Inc. ISO/IEC 27001 formally specifies a management system that is intended to bring information security under explicit management control. Being a formal specification means that it mandates specific requirements. Organizations that have adopted ISO/IEC 27001 can therefore be formally audited and certified compliant with the standard.

Ingram Micro's ISO/IEC 27001 certification applies to the following components of our business:

1. Security policy - management direction
2. Organization of information security - governance of information security
3. Asset management - inventory and classification of information assets
4. Human resources security - security aspects for employees joining, moving and leaving an organization
5. Physical and environmental security - protection of the computer facilities
6. Communications and operations management - management of technical security controls in systems and networks
7. Access control - restriction of access rights to networks, systems, applications, functions and data
8. Information systems acquisition, development and maintenance - building security into applications
9. Information security incident management - anticipating and responding appropriately to information security breaches
10. Business continuity management - protecting, maintaining and recovering business-critical processes and systems
11. Compliance - ensuring conformance with information security policies, standards, laws and regulations

- Additional Agreements (if applicable)  
Provide a copy of additional agreements.

Ingram Micro's Vendor Warranty and License Agreements can be found in **Appendix 6 - Promark/Ingram and Manufacturer Warranty and License Agreements**

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## TAB 5 - PRODUCTS AND SERVICES

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- Respondent shall perform and provide these products and/or services under the terms of this agreement. The supplier shall assist the end user with making a determination of their individual needs.

Promark will perform and provide the required products and / or services under the terms of the agreement.

- **Warranty**

Proposal should address the following warranty information:

- Applicable warranty and/or guarantees of equipment and installations including any conditions and response time for repair and/or replacement of any components during the warranty period.
- Availability of replacement parts
- Life expectancy of equipment under normal use
- Detailed information as to proposed return policy on all equipment

Promark will provide the required warranty information. Vendor warranties for the initial set of vendors is provided in **Appendix 6 - Promark/Ingram and Manufacturer Warranty and License Agreements.**

- **Products**

Vendor shall provide equipment, materials and products that are new unless otherwise specified, of good quality and free of defects.

Acknowledged and affirmed.

- **Construction**

Vendor shall perform services in a good and workmanlike manner and in accordance with industry standards for the service provided.

Acknowledged and affirmed.

The following is a list of suggested (but not limited to) Advanced Technology Solutions Aggregator categories. List all categories along with manufacturer that you are responding with:

- Data Center
- Data Storage
- Cyber Security
- Cloud Services
- Networking
- Telecommunication
- Mobility
- IOT
- Laptops / Notebooks / PDA's

- Desktop Computers
  - Servers
  - Software
  - Accessories
  - Battery Back-up / Power / Surge
  - Cables
  - Data Storage / Drives
  - Digital Imaging – Cameras / Scanner Keyboard / Mice / Input Devices
  - Memory / System Components
  - Office Equipment
  - Printers
  - Sound / Multimedia
  - Telecommunications Products
  - Video – Monitors / Cards / Projector
  - Interactive Whiteboards
  - DVD / Books / Music / Video
  - Services
  - Installs
  - Asset Management
  - Managed Services
  - Telecommunications
  - Product Configurations
  - Product Support
  - Warranty
  - Insurance
- 
- **Manufacturer’s Authorized Distributor letters should accompany each manufacturersproducts submitted on the proposal.**

The following pages contain manufacturers’ authorized distributor letters for Promark for each of the initial manufacturers being proposed herein. These include:, Arctic Wolf, Cradlepoint, Jabra, Lenovo, Nutanix, Rubrik, Scale Computing, Schneider Electric – APC, VMware.

This list is the initial wave of manufacturers that Promark has proposed to add to this contract. Once awarded the contract, Promark would work with NCPA to continue to add additional manufacturers from the broad line card of over 1,200 vendors from Promark and Ingram Micro. Our current NCPA Aggregator Contract has over 65 vendors currently on contract and our intention is to have them added to a new contract award.



11/6/2023

Region 14 Education Service Center  
1850 Highway 351  
Abilene, Texas 79601

RE: SOL # 14-23 ADVANCED TECHNOLOGY SOLUTIONS AGGREGATOR  
NATIONAL COOPERATIVE PURCHASING ALLIANCE

To whom it may concern:

Please let this letter serve as proof that Promark Technology, Inc., a wholly owned Ingram Micro company, is recognized by Arctic Wolf Networks, Inc. ("Arctic Wolf") as an Authorized Distributor of our products and solutions.

We also authorized Promark to pursue the Region 14 Education Service Center Solicitation# 14-23 for the Advanced Technology Solutions Aggregator Contract.

If you have any questions, feel free to contact me.

Sincerely,

DocuSigned by:  
  
A776DE3E5E1MAC  
**Steve Craig**  
Chief Sales Officer





## AUTHORIZED RESELLER LETTER

Effective: November 8, 2023

To whom it may concern,

This letter is to **CERTIFY**, that **Promark Technology Inc. a wholly owned Ingram Micro company** is an **AUTHORIZED RESELLER** of Cradlepoint products and services for the United States.

For any assistance please contact:

Contact: Britteny Collins

Address: 1850 Highway 351 Abilene, Texas 79601

E-mail: [brittenyc@promarktech.com](mailto:brittenyc@promarktech.com)

Web: [www.promarktech.com](http://www.promarktech.com)

Phone: 240-280-8030

**Promark Technology Inc. a wholly owned Ingram Micro company** has the responsibility to promote, sell, relabel and offer technical assistance for the data communications & telecommunications networking equipment products offered by Cradlepoint. Authorized Resellers are not agents of Cradlepoint and are subject to change without advance notice.

If you have any questions, please do not hesitate to contact me.

Regards,

DocuSigned by:  
*Chris Cook*  
49D2619C40A64F8...

**Christopher Cook | Global Partner & Distribution Operations Manager | Cradlepoint**

1100 W. Idaho Street, Suite 8 | Boise, ID 83702

[chris.cook@cradlepoint.com](mailto:chris.cook@cradlepoint.com) | <http://www.cradlepoint.com>





Region 14 Education Service Center  
1850 Highway 351  
Abilene, Texas 79601

RE: SOL # 14-23 ADVANCED TECHNOLOGY SOLUTIONS AGGREGATOR  
NATIONAL COOPERATIVE PURCHASING ALLIANCE

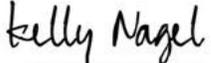
To whom it may concern:

Please let this letter serve as proof that Promark Technology, Inc., a wholly owned Ingram Micro company, is recognized by GN Audio USA Inc. d/b/a Jabra as an Authorized Distributor of our products and solutions.

We also authorized Promark to pursue the Region 14 Education Service Center Solicitation# 14-23 for the Advanced Technology Solutions Aggregator Contract.

If you have any questions, feel free to contact me.

Sincerely,

DocuSigned by:  
  
126D815B22024F1...  
keTly Nagel

President

**Lenovo  
360**

**Lenovo**



03 November 2023

Brenda Cortes  
Promark Technology Inc.Ingram Micro Inc.  
10900 Pump House Rd  
20701-1207  
United States

1213384612/52-0940687

This notification is to confirm Promark Technology Inc.Ingram Micro Inc. is an authorized Lenovo Distributor located in United States. This authorization letter is valid until 31 March 2024. As a member of the Lenovo Partner Engage Program, Promark Technology Inc.Ingram Micro Inc. has earned:

Infrastructure Solutions Distribution Partner and is authorized to distribute all Infrastructure Solutions products, including but not limited to ThinkSystem and ThinkAgile server and storage, associated options, software, and services.

Please note that your status will be reviewed regularly, and any changes will be communicated with you by your local Channel Account Manager. If you have any questions, please feel free to contact us.

Yours sincerely

A handwritten signature in black ink, appearing to read "Rob Cato".

Rob Cato

Vice President, NA Channel  
Lenovo North America ISO

November 6, 2023

Subject: Distributor Authorization Letter

To Whom It May Concern:

Nutanix is a global leader in cloud software and a pioneer in hyperconverged infrastructure solutions, making computing invisible anywhere. Organizations around the world use Nutanix software to leverage a single platform to manage any app at any location at any scale for their private, hybrid and multi-cloud environments. Nutanix sells its products through distributors and resellers.

This letter serves to confirm that as of the date of this letter, **Ingram Micro US**, is a **Champion Distributor** in the Nutanix Elevate Distributor Partner Program and is an authorized distributor for Nutanix in the **United States**. As such, **Ingram Micro US**, is approved to resell Nutanix products and services.

Sincerely,



**Michelle Lamoreaux**  
Global Director of Partner Experience, Nutanix, Inc.

Letter of Authorization for Solicitation 14-23 Advanced Technology  
Solutions Aggregator



3495 Deer Creek Road  
Palo Alto, CA 94304

November 15, 2023

RE: NCPA Advanced Technology Solutions Aggregator Contract 14-23

To Whom It May Concern,

The purpose of this letter is to confirm that Promark Technology, Inc. A wholly owned Ingram Micro Company (0018Y00002yRMhdQAG) is an authorized distributor of Rubrik products and services in the United States to private and public companies and government agencies. As such, Promark Technology, Inc. A wholly owned Ingram Micro Company is authorized to respond to the Solicitation 14-23 Advanced Technology Solutions Aggregator contract request.

Should you have any questions regarding this matter, please do not hesitate to contact [GoForward@Rubrik.com](mailto:GoForward@Rubrik.com).

Sincerely,

A handwritten signature in black ink, appearing to read "Ghazal Asif".

Ghazal Asif  
VP Global Channels & Alliances at Rubrik



Scale Computing  
525 S. Meridian - Suite 3E  
Indianapolis, IN 46225  
Tuesday, March 14, 2023

Region 14 Education Service Center  
1850 Highway 351  
Abilene, Texas 79601

RE: SOL # 14-23 ADVANCED TECHNOLOGY SOLUTIONS AGGREGATOR NATIONAL COOPERATIVE PURCHASING ALLIANCE

### **Letter of Authorization**

To Whom It May Concern,

This letter is to certify that Promark Technology, Inc., a wholly owned Ingram Micro company is an authorized Scale Computing Distributor. Promark Technology, Inc., a wholly owned Ingram Micro company is authorized to Distribute the entire Scale Computing product and services portfolio to customers throughout North America.

**Authorized Reseller:**

Promark Technology, Inc., a wholly owned Ingram Micro company  
1759 Wehrle Drive  
Williamsville, NY 14221  
United States

If you have any questions in relation to this matter, please feel free to contact me.

Sincerely,

A handwritten signature in black ink that reads "Kyle Fenske". The signature is written in a cursive, flowing style.

Kyle Fenske  
Director of North American Channel  
kfenske@scalecomputing.com  
716.785.4877

**Schneider Electric IT USA, Inc.  
70 Mechanic Street  
Foxboro, MA 02035  
Tel: 508-543-8750**

**Promark  
10900 Pump House Rd. Suite B  
Annapolis Junction, MD 20701  
USA**

**11/6/2023**

**To whom it may concern:**

**Schneider Electric IT USA, Inc. “formerly known as APC by Schneider Electric”, confirms that Promark is an authorized reseller of APC products. This authorization demonstrates their knowledge of APC products and validates their expertise to design, deploy and maintain customer networks. Promark is not authorized to perform services on behalf of APC.**

**Please contact me with any questions regarding this authorization.**

Regards,



**Samantha DeMagistris  
Channel Programs Manager**



November 8, 2023

Region 14 Education Service Center  
1850 Highway 351  
Abilene, Texas 79601

RE: SOL # 14-23 ADVANCED TECHNOLOGY SOLUTIONS AGGREGATOR  
NATIONAL COOPERATIVE PURCHASING ALLIANCE

To whom it may concern:

Please let this letter serve as proof that Promark Technology, Inc., a wholly owned Ingram Micro company, is recognized by VMware, Inc. as an Authorized Distributor of our products and solutions.

We also authorized Promark to pursue the Region 14 Education Service Center Solicitation# 14-23 for the Advanced Technology Solutions Aggregator Contract.

If you have any questions, feel free to contact me.

Sincerely,

Melani Powell  
Sr. Contracts Manager  
mpowell@vmware.com

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## **TAB 8 - VALUE ADDED PRODUCTS AND SERVICES**

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Include any additional products and/or services available that vendor currently performs in their normal course of business that is not included in the scope of the solicitation that you think will enhance and add value to this contract for Region 14 ESC and all NCPA participating entities.

### **Value Added Products and Services**

Promark and Ingram Micro offer a wide array of channel enablement and professional services to our reseller customers, as illustrated and described in greater detail below.



**Technology Practice Resources** include resources that can assist in developing the knowledge base and capabilities of our reseller partners in the latest technology areas including:

- Networking
- Data Center
- Virtualization
- Storage
- Network Security
- Physical Security
- Mobility and Lifecycle Services
- UCC
- Data Capture/Point of Sale
- Digital Signage/PRO-AV
- Business & Consumer Solutions
- Cloud
- Internet of Things (IOT)
- Sourcing Solutions
- Emerging Vendor Initiative

**Technical Support Services** include:

- Pre-Sales Support
- Solution Design
- Technical Solution Engineers
- Technical Account Managers
- Business Transformation Center
- Partner Training/Boot Camps

**Field Deployable Resources** include:

- Sales Account Executives
- Business Development Executives
- Category Leader Executives
- Technical Solution Engineers
- Field Credit Managers
- Technology Solution Experts

**Marketing Services** include:

- Business Intelligence
- Agency Express
- Demand/Lead Generation
- Event Management
- Creative Services
- Call Campaigns
- Channel Communities

**Financing Options** include:

- Net and Extended Terms
- Flooring Programs
- Leasing and Rental Programs
- End User Financing
- White Label Options
- TaaS

**Logistical and Operational Support** includes:

- Order and Project Management
- Custom Logistics/Warehousing
- Express Warehousing
- Global Fulfillment
- Partners Licensing Desk
- eCommerce Tools
- Government Contract Services
- RenewVue (Renewal Management)
- Xvantage Platform for quotes, orders, RMA's, tracking

**Professional and Training Services**

includes:

- Assess | Design | Deploy | Manage | Dispose
- IM Link Partner Network
- IM Expert Services
- Ingram Micro Deployment Services
- Ingram Micro IT Asset Disposition
- Partner Technical Enablement
- Configuration and Integration Services
- Certification Road-mapping
- Training Services

Our partner communities and partner advisory boards foster loyalty to Promark and Ingram Micro. These communities and advisory boards include:

**Trust X Alliance Affinity Groups:** Affinity groups are peer groups (up to 20 companies) that are structured based on shared interests and business models to provide exclusive, high-value business meetings.

**Trust X Alliance Mastermind Groups:** Mastermind creates the opportunity for business owners and c-suite executives from organizations to have their business and personal goals reviewed in a trusted advisor / board of director like environment – leveraging the cumulative knowledge, education, peer accountability and experience of successful business leaders to help grow and scale your business.

**SMB Alliance:** SMB Alliance offers members access to valuable benefits and business-building resources that allow them to successfully compete without taking on additional overhead.

**Advisory Council:** The Trust X Alliance Advisory Council represents our three community stakeholders: members, vendors and Ingram Micro. Each region is represented by its Ingram Micro Trust X Alliance Leader, their Country President, as well as Ingram Micro executives. Members of the Ingram Micro Trust X Alliance Team also participate to give their input, hear feedback, create new programs and implement ideas to progress our community.

**Ingram Micro Public-Sector Value-Add**

In support of Promark and Ingram Micro public sector opportunities, Ingram Micro has a dedicated public-sector division, focusing on the coverage, growth and development of our public sector focused solution and manufacturer partners. Partners range from the top system integrators and prime contractors to VARs holding strategic public-sector end-user relationships and designations. We are always recruiting new public-sector partners based on manufacturer input and requests, contract awards, relationships with key public-sector end users, clearances, and technology specialists to broaden our full solution offering to the public-sector markets. We have a very seasoned team of publicsector field sales executives, inside sales representatives, Program Managers, Business Development Executives and Sales leadership that bring a wealth of knowledge to this very important segment to Ingram Micro. Our experience allows us to help our manufacturer partners identify opportunity in the public-sector markets we serve and develop a strategy to succeed in this space.

Please refer to the information on the following pages about Ingram Micro's Public-Sector programs supporting Federal, State and Local Government business. Further information

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about Ingram Micro's public-sector programs can also be found in our federal and state and local playbooks.

**Federal Playbook Link:**

[Federal\\_Public Sector Playbook\\_FINAL\\_230303.pdf](#)

**State/ Local Playbook Link:**

[Public Sector Education Playbook\\_Final\\_Updated.pdf](#)

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## **TAB 9 - REQUIRED DOCUMENTS**

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- Federal Funds Certifications
- Clean Air and Water Act & Debarment Notice
- Contractors Requirements
- Required Clauses for Federal Assistance by FTA
- Federal Required Signatures
- Antitrust Certification Statements Texas Government Code § 2155.005
- State Notice Addendum

Promark acknowledges and accepts responsibility for the requirements addressed in each of the documents listed above.

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## **FEDERAL FUNDS CERTIFICATIONS**

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Participating Agencies may elect to use federal funds to purchase under the Master Agreement. The following certifications and provisions may be required and apply when a Participating Agency expends federal funds for any purchase resulting from this procurement process. Pursuant to 2 C.F.R. § 200.326, all contracts, including small purchases, awarded by the Participating Agency and the Participating Agency's subcontractors shall contain the procurement provisions of Appendix II to Part 200, as applicable.

### **APPENDIX II TO 2 CFR PART 200**

(A) Contracts for more than the simplified acquisition threshold currently set at \$250,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

- Pursuant to Federal Rule (A) above, when a Participating Agency expends federal funds, the Participating Agency and Offeror reserves all rights and privileges under the applicable laws and regulations with respect to this procurement in the event of breach of contract by either party.

(B) Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of \$10,000)

- Pursuant to Federal Rule (B) above, when a Participating Agency expends federal funds, the Participating Agency reserves the right to terminate any agreement in excess of \$10,000 resulting from this procurement process in the event of a breach or default of the agreement by Offeror as detailed in the terms of the contract

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

- Pursuant to Federal Rule I above, when a Participating Agency expends federal funds on any federally assisted construction contract, the equal opportunity clause is incorporated by reference herein.

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay

wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

- Pursuant to Federal Rule (D) above, when a Participating Agency expends federal funds during the term of an award for all contracts and subgrants for construction or repair, offeror will be in compliance with all applicable Davis-Bacon Act provisions
- Any Participating Agency will include any current and applicable prevailing wage determination in each issued solicitation and provide Offeror with any required documentation and/or forms that must be completed by Offeror to remain in compliance the applicable Davis-Bacon Act provisions.

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

- Pursuant to Federal Rule I above, when a Participating Agency expends federal funds, offeror certifies that offeror will be in compliance with all applicable provisions of the Contract Work Hours and Safety Standards Act during the term of an award for all contracts by Participating Agency resulting from this procurement process.

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

- Pursuant to Federal Rule (F) above, when federal funds are expended by Participating Agency, the offeror certifies that during the term of an award for all contracts by Participating Agency resulting from this procurement process, the offeror agrees to comply with all applicable requirements as referenced in Federal Rule (F) above

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

- Pursuant to Federal Rule (G) above, when federal funds are expended by Participating Agency, the offeror certifies that during the term of an award for all contracts by Participating Agency member resulting from this procurement process, the offeror agrees to comply with all applicable requirements as referenced in Federal Rule (G) above

(H) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

- Pursuant to Federal Rule (H) above, when federal funds are expended by Participating Agency, the offeror certifies that during the term of an award for all contracts by Participating Agency resulting from this procurement process, the offeror certifies that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any federal department or agency. If at any time during the term of an award the offeror or its principals becomes debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any federal department or agency, the offeror will notify the Participating Agency

(I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

- Pursuant to Federal Rule (I) above, when federal funds are expended by Participating Agency, the offeror certifies that during the term and after the awarded term of an award for all contracts by Participating Agency resulting from this procurement process, the

offeror certifies that it is in compliance with all applicable provisions of the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). The undersigned further certifies that:

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

#### **RECORD RETENTION REQUIREMENTS FOR CONTRACTS INVOLVING FEDERAL FUNDS**

When federal funds are expended by Participating Agency for any contract resulting from this procurement process, offeror certifies that it will comply with the record retention requirements detailed in 2 CFR § 200.334. The offeror further certifies that offeror will retain all records as required by 2 CFR § 200.334 for a period of three years after grantees or subgrantees submit final expenditure reports or quarterly or annual financial reports, as applicable, and all other pending matters are closed.

#### **CERTIFICATION OF COMPLIANCE WITH THE ENERGY POLICY AND CONSERVATION ACT**

When Participating Agency expends federal funds for any contract resulting from this procurement process, offeror certifies that it will comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6321 et seq.; 49 C.F.R. Part 18).

#### **CERTIFICATION OF COMPLIANCE WITH BUY AMERICA PROVISIONS**

To the extent purchases are made with Federal Highway Administration, Federal Railroad Administration, or Federal Transit Administration funds, offeror certifies that its products comply with all applicable provisions of the Buy America Act and agrees to provide such certification or applicable waiver with respect to specific products to any Participating Agency upon request. Participating Agencies will clearly identify whether Buy America Provisions apply in any issued solicitation. Purchases made in accordance with the Buy America Act must still follow the applicable procurement rules calling for free and open competition.

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**CERTIFICATION OF ACCESS TO RECORDS**

Offeror agrees that the Inspector General of the Agency or any of their duly authorized representatives shall have access to any non-financial documents, papers, or other records of offeror that are pertinent to offeror's discharge of its obligations under the Contract for the purpose of making audits, examinations, excerpts, and transcriptions. The right also includes timely and reasonable access to offeror's personnel for the purpose of interview and discussion relating to such documents. This right of access will last only as long as the records are retained.

**CERTIFICATION OF APPLICABILITY TO SUBCONTRACTORS**

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

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## **CLEAN AIR AND WATER ACT AND DEBARMENT NOTICE**

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

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

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## **CONTRACTOR REQUIREMENTS**

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### **Contractor Certification**

#### **Contractor's Employment Eligibility**

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

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

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

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

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

### **Fingerprint & Background Checks**

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

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

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

### **Business Operations in Sudan, Iran**

In accordance with A.R.S. 35-391 and A.R.S. 35-393, the Contractor hereby certifies that the contractor does not have scrutinized business operations in Sudan and/or Iran.

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## REQUIRED CLAUSES FOR FEDERAL ASSISTANCE PROVIDED BY FTA

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### ACCESS TO RECORDS AND REPORTS

Contractor agrees to:

- a) Maintain all non-financial books, records, accounts and reports required under this Contract for a period of not less than two (2) years after the date of termination or expiration of this Contract or any extensions thereof except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case Contractor agrees to maintain same until the FTA Administrator, the U.S. DOT Office of the Inspector General, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.
- b) Permit any of the foregoing parties to inspect all non-financial work, materials, and other data and records that pertain to the Project, and to audit the non-financial books, records, and accounts that pertain to the Project and to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed for the purpose of audit and examination. The right of access detailed in this section continues only as long as the records are retained.

*FTA does not require the inclusion of these requirements of Article 1.01 in subcontracts.*

### CIVIL RIGHTS / TITLE VI REQUIREMENTS

- 1) Non-discrimination. In accordance with Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d, Section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, Section 202 of the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12132, and Federal Transit Law at 49 U.S.C. § 5332, Contractor or subcontractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, marital status age, or disability. In addition, Contractor agrees to comply with applicable Federal implementing regulations and other applicable implementing requirements FTA may issue that are flowed to Contractor from Awarding Participating Agency.
- 2) Equal Employment Opportunity. The following Equal Employment Opportunity requirements apply to this Contract:
  - a. Race, Color, Creed, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal Transit Law at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable Equal Employment Opportunity requirements of U.S. Dept. of Labor regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor, 41 CFR, Parts 60 et seq., and with any applicable Federal

statutes, executive orders, regulations, and Federal policies that may affect construction activities undertaken in the course of this Project. Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, marital status, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, Contractor agrees to comply with any implementing requirements FTA may issue that are flowed to Contractor from Awarding Participating Agency.

- b. Age. In accordance with the Age Discrimination in Employment Act (ADEA) of 1967, as amended, 29 U.S.C. Sections 621 through 634, and Equal Employment Opportunity Commission (EEOC) implementing regulations, "Age Discrimination in Employment Act", 29 CFR Part 1625, prohibit employment discrimination by Contractor against individuals on the basis of age, including present and prospective employees. In addition, Contractor agrees to comply with any implementing requirements FTA may issue that are flowed to Contractor from Awarding Participating Agency.
  - c. Disabilities. In accordance with Section 102 of the Americans with Disabilities Act of 1990, as amended (ADA), 42 U.S.C. Sections 12101 *et seq.*, prohibits discrimination against qualified individuals with disabilities in programs, activities, and services, and imposes specific requirements on public and private entities. Contractor agrees that it will comply with the requirements of the Equal Employment Opportunity Commission (EEOC), "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR, Part 1630, pertaining to employment of persons with disabilities and with their responsibilities under Titles I through V of the ADA in employment, public services, public accommodations, telecommunications, and other provisions.
  - d. Segregated Facilities. Contractor certifies that their company does not and will not maintain or provide for their employees any segregated facilities at any of their establishments, and that they do not and will not permit their employees to perform their services at any location under the Contractor's control where segregated facilities are maintained. As used in this certification the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion or national origin because of habit, local custom, or otherwise. Contractor agrees that a breach of this certification will be a violation of this Civil Rights clause.
- 3) Solicitations for Subcontracts, Including Procurements of Materials and Equipment. In all solicitations, either by competitive bidding or negotiation, made by Contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by Contractor of Contractor's obligations under this Contract and the regulations relative

to non-discrimination on the grounds of race, color, creed, sex, disability, age or national origin.

- 4) **Sanctions of Non-Compliance.** In the event of Contractor's non-compliance with the non-discrimination provisions of this Contract, Public Agency shall impose such Contract sanctions as it or the FTA may determine to be appropriate, including, but not limited to: 1) Withholding of payments to Contractor under the Contract until Contractor complies, and/or; 2) Cancellation, termination or suspension of the Contract, in whole or in part.

*Contractor agrees to include the requirements of this clause in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.*

### **DISADVANTAGED BUSINESS PARTICIPATION**

This Contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs", therefore, it is the policy of the Department of Transportation (DOT) to ensure that Disadvantaged Business Enterprises (DBEs), as defined in 49 CFR Part 26, have an equal opportunity to receive and participate in the performance of DOT-assisted contracts.

- 1) **Non-Discrimination Assurances.** Contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. Contractor shall carry out all applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or other such remedy as public agency deems appropriate. Each subcontract Contractor signs with a subcontractor must include the assurance in this paragraph. (See 49 CFR 26.13(b)).
- 2) **Prompt Payment.** Contractor is required to pay each subcontractor performing Work under this prime Contract for satisfactory performance of that work no later than thirty (30) days after Contractor's receipt of payment for that Work from public agency. In addition, Contractor is required to return any retainage payments to those subcontractors within thirty (30) days after the subcontractor's work related to this Contract is satisfactorily completed and any liens have been secured. Any delay or postponement of payment from the above time frames may occur only for good cause following written approval of public agency. This clause applies to both DBE and non-DBE subcontractors. Contractor must promptly notify public agency whenever a DBE subcontractor performing Work related to this Contract is terminated or fails to complete its Work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. Contractor may not terminate any DBE subcontractor and perform that Work through its own forces, or those of an affiliate, without prior written consent of public agency.
- 3) **DBE Program.** In connection with the performance of this Contract, Contractor will cooperate with public agency in meeting its commitments and goals to ensure that DBEs shall have the maximum practicable opportunity to compete for subcontract

work, regardless of whether a contract goal is set for this Contract. Contractor agrees to use good faith efforts to carry out a policy in the award of its subcontracts, agent agreements, and procurement contracts which will, to the fullest extent, utilize DBEs consistent with the efficient performance of the Contract.

### **ENERGY CONSERVATION REQUIREMENTS**

Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plans issued under the Energy Policy and Conservation Act, as amended, 42 U.S.C. Sections 6321 *et seq.* and 41 CFR Part 301-10.

### **FEDERAL CHANGES**

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, listed directly or by reference in the Contract between Public Agency and the FTA, and those applicable regulatory and procedural updates that are communicated to Contractor by Public Agency, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this Contract.

### **INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS**

The provisions include, in part, certain Standard Terms and Conditions required by the U.S. Department of Transportation (DOT), whether or not expressly set forth in the preceding Contract provisions. All contractual provisions required by the DOT and applicable to the scope of a particular Contract awarded to Contractor by a Public Agency as a result of solicitation, as set forth in the most current FTA Circular 4220.1F, published February 8<sup>th</sup>, 2016, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. Contractor agrees not to knowingly perform any act, knowingly fail to perform any act, or refuse to comply with any reasonable public agency requests that would directly cause public agency to be in violation of the FTA terms and conditions.

### **NO FEDERAL GOVERNMENT OBLIGATIONS TO THIRD PARTIES**

Agency and Contractor acknowledge and agree that, absent the Federal Government's express written consent and notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Contract, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to agency, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying Contract.

*Contractor agrees to include the above clause in each subcontract financed in whole or in part with federal assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.*

### **PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS**

Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to this Contract. Upon execution of the underlying Contract, Contractor certifies or affirms, to the best of its knowledge, the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying Contract or the FTA assisted project for which this Contract Work is being performed.

In addition to other penalties that may be applicable, Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on Contractor to the extent the Federal Government deems appropriate.

Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307 (n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

*Contractor agrees to include the above clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.*

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## FEDERAL REQUIRED SIGNATURES

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Offeror certifies compliance with all provisions, laws, acts, regulations, etc. as specifically noted in the pages above. It is further acknowledged that offeror agrees to comply with all federal, state, and local laws, rules, regulations and ordinances as applicable.

Offeror Promark Technology, Inc.

Address 10900 Pump House Road, Suite B

City/State/Zip Annapolis Junction, MD 20701

Authorized Signature 

Date November 14, 2023

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**ANTITRUST CERTIFICATION STATEMENTS  
TEXAS GOVERNMENT CODE § 2155.005**

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I affirm under penalty of perjury of the laws of the State of Texas that:

- (1) I am duly authorized to execute this contract on my own behalf or on behalf of the company, corporation, firm, partnership or individual (Company) listed below;
- (2) In connection with this bid, neither I nor any representative of the Company has violated any provision of the Texas Free Enterprise and Antitrust Act, Tex. Bus. & Comm. Code Chapter 15;
- (3) In connection with this bid, neither I nor any representative of the Company has violated any federal antitrust law; and
- (4) Neither I nor any representative of the Company has directly or indirectly communicated any of the contents of this bid to a competitor of the Company or any other company, corporation, firm, partnership or individual engaged in the same line of business as the Company.

Company Name Promark Technology, Inc.

Address 10900 Pump House Road, Suite B

City/State/Zip Annapolis Junction, MD 20701

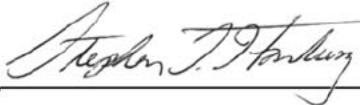
Telephone Number 800.634.0255

Fax Number 301.725.7869

Email Address toddh@promarktech.com

Printed Name Stephen T. Hartung

Title Director

Authorized Signature 

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## **STATE NOTICE ADDENDUM**

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The National Cooperative Purchasing Alliance (NCPA), on behalf of NCPA and its current and potential participants to include all county, city, special district, local government, school district, private K-12 school, higher education institution, state, tribal government, other government agency, healthcare organization, nonprofit organization and all other Public Agencies located nationally in all fifty states, issues this Request for Proposal (RFP) to result in a national contract.

For your reference, the links below include some, but not all, of the entities included in this proposal:

[http://www.usa.gov/Agencies/State\\_and\\_Territories.shtml](http://www.usa.gov/Agencies/State_and_Territories.shtml)

<https://www.usa.gov/local-governments>

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## **APPENDICES**

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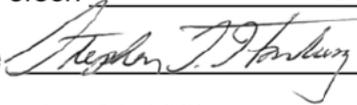
### **Appendix 1 – Signed Contract Addendum 1**

## RECEIPT OF ADDENDUM NO. 1 ACKNOWLEDGEMENT

Offeror shall acknowledge this addendum by signing below and include it in their response.

Company Name Promark Technology, Inc.

Contact Person Stephen T. Hartung

Signature 

Date November 14, 2023

**Appendix 2 – Exception List for contract Terms and Conditions & Privilege Confidential Information Request**

Promark requests the following Exceptions to the Terms and Conditions of the Contract:

**Agreed**

- Page 3 Funding out modification requested  
Any/all contracts exceeding one (1) year shall include a “funding out”/“non-appropriation” clause as mutually agreed to by the parties. A contract for the acquisition of real or personal property is a commitment of the entity’s current revenue only, provided the contract contains either or both of the following provisions:

If (a) sufficient funds are not budgeted or appropriated and budgeted by Public Agency’s governing body in any fiscal period for payment amounts or other costs and fees and (b) Public Agency has exhausted all funds legally available for such payment amounts or other costs and fees due under the contract, then the Public Agency, upon reasonable written notice to the vendor or its affiliate, retains the right to terminate the contract as of the last day of the Public Agency’s fiscal period for which funds for the payment amounts are available at the expiration of each budget period during the term of the contract and is conditioned on a best efforts attempt by the Public Agency to obtain appropriate funds for payment of the contract and to only place orders for which funding is available and to pay vendor for products delivered and services performed.

**Agreed**

- Page 3 Shipments request following modification - The awarded vendor shall ship ordered products within seven (7) working days for goods available and within four (4) to six (6) weeks for specialty items after the receipt of the order unless modified. If a product cannot be shipped within that time, the awarded vendor shall notify the entity placing the order as to why the product has not shipped and shall provide an estimated shipping date.

**Agreed**

- Page 4 Payments Section – Request for authorized resellers to be able to receive payments from end customers.

**Agreed**

- Page 5 Deliveries – Request that Expedited, special handling requirements/requests will be allowed to incur a shipping fee. Large/Oversized products are subject to Freight charges.

### Appendix 3 – Promark Authorized NCPA Dealer List

Company Name	Address	City	State	ZIP
2UTEC LLC	428 S MAIN ST STE 107	N SYRACUSE	NY	13212-2896
5S Technologies	121 Edinburgh South Drive, Suite 205	Cary	NC	54301
ACP Creativit	529 North Monroe	Green Bay	WI	54301
Accudata Systems, Inc.	10713 W SAM HOUSTON PKWY N STE 600	Houston	TX	77064
ACE SOLUTIONS LLC	12000 BLACKBERRY TER	NORTH POTOMAC	MD	20878
Acture Solutions, Inc.	1462 ERIE BLVD STE 207A	SCHENECTADY	NY	12305
ADVANCED NETWORK SYSTEMS INC	355 RIO RD W STE 201	CHARLOTTESVLE	VA	22906
ADVIZEX TECHNOLOGIES LLC	6480 ROCKSIDE WOODS BLVD S	INDEPENDENCE	OH	44131
AllConnected, Inc.	4514 Ish Drive	Simi Valley	CA	93063
All Covered a Konica Minolta Company	1051 E. Hillsdale Blvd., Ste. 510	Foster City	CA	94404
Alliance Technology Group LLC	7010 Hi Tech Drive	Hanover	MD	21076
Altuma-Tech	2300 Glades Road, Suite 302E	BocaRaton	FL	33431
Applied Technology Services	11615 CROSSROADS CIR STE J	MIDDLE RIVER	MD	21220-2866
ARRAYA SOLUTIONS INC	518 TOWNSHIP LINE RD STE 250	BLUE BELL	PA	19422
Aspire Technology Partners LLC	25 James Way	Eatontown	NJ	7724
Avalon Technologies, Inc.	39533 WOODWARD AVE STE 125	BLOOMFLD HLS	MI	48304
CHOICE TECHNOLOGIES, LLC	45-225 WILLIAM HENRY RD	KANEOHE	HI	96744
CorTech, Inc dba B12 Government Solutions	13800 Coppermine Rd STE112	Herdon	VA	20171
B2 LLC	2533 SANTA ANA AVE	COSTA MESA	CA	92627
Baum Control Systems Inc. D/B/A The Computing Center	15 Thornwood Drive	Ithaca	NY	14850
BCTI	5112 Bobby Hicks Hwy.	Gray	TN	37615
Beck Computer Systems, Inc.	4067 HARDWICK ST # 540	LAKEWOOD	CA	90712
Better Direct	2425 E UNIVERSITY DR	Tempe	AZ	85281
BlueAlly Technology Solutions LLC	1255 Crescent Green Ste 300	Cary	NC	27518
Blue Chip Tek, Inc.	675 Campbell Technology Pky, Suite 100,	Campbell	CA	10058
Bluenet Technologies	13355 Noel Rd	Dallas	TX	75240
Broadway Typewriter dba AREY JONES EDUCATIONAL Solutio	1055 Sixth Ave Suite #101	San Diego	CA	92101
BUCKEYE TECHNOLOGY SOLUTIONS	20212 HEMPSTEAD RD BLDG 1	HOUSTON	TX	77065
Callian Corp	5355 W. Sam Houston Pkwy. N., Suite 390	Houston	TX	77041
Candoris Technologies	9 E. Main Street	Annville	PA	
Cambridge Computer	271 Waverley Oaks Rd Ste 301	Waltham	MA	
Carolina Advanced Digital, Inc.	1010 High House Rd., Ste. 300,	Cary	NC	27513
Carr Business Systems	500 COMMACK RD UNIT 110	COMMACK	NY	11725
Cherbonnier Mayer & Associates Inc. CMA	8180 YMCA PLAZA DR	BATON ROUGE	LA	70810
Chicksaw Telecom Inc.	5 N MCCORMICK ST	OKLAHOMA CITY	OK	73127
Choice Solutions LLC	7015 COLLEGE BLVD STE 300	OVERLAND PARK	KS	66211
Cloud Logic LLC	6539 Harrison Ave, #139	Cincinnati	OH	45247
Clutch Solutions	2152 S Vineyard Ave, Bld. 1, Ste 102	Mesa	AZ	85210
CNP Technologies, LLC	806 TYVOLA RD STE 102	CHARLOTTE	NC	28217
CodeBlue Technology LLC	5000 Monument Avenue	Richmond	VA	23230
ComDoc Inc.	8247 Pittsburg Ave BW	North Canton	OH	44720
COMMUNICATIONS CONSULTING INC	120 MOUNT PLEASANT RD	WARRENDALE	PA	15086
Compulink Technologies, Inc.	260 West 39th St, Suite 302	New York	NY	10018
Computer Design & Integration LLC	500 Fifth Avenue, Suite 1500	New York	NY	10110
Computer System Integrators	1401 Rte 52 Suite 100B	Fishkill	NY	12524
Computer Transition Services Inc (CTSI)	3223 S LOOP 289 STE 556	Lubbock	TX	79423
ComSource, Inc.	500 Plum Street, Suite 400	Syracuse	NY	13204
ConvergeOne	4290 E Brickell St	Ontario	CA	91761
Converged Communications dba Convergent Communications	116 RESEARCH DR STE 3363	BETHLEHEM	PA	18015
Converge Technology Solutions, LLC	130 Technology Parkway	Norcross	GA	30092
CONNECTED SOLUTIONS GROUP LLC	8529 MEADOWBRIDGE RD STE 300	MECHANICSVLLE	VA	23116
Connecticut Business Systems LLC	100 Great Meadow Rd. 3rd Fl,	Wethersfield	CT	6109
Conway Technology Group LLC,	10 Capital Street	NASHUA	NH	3063
Copper River Information Technology LLC	4501 SINGER CT STE 300	CHANTILLY	VA	20151
CoreBTS	10201 N Illinois St Suite 240	Indianapolis	IN	46290
CORPORATE COMPUTER SOLUTIONS INC	55 HALSTEAD AVE	HARRISON	NY	10528
Countertrade Products	7585 W 66th Ave	Arvada	CO	80003
CrossConnect Engineering	1155 KELLY JOHNSON BLVD STE 460	COLORADO SPGS	CO	80920
Cumberland Group, LLC	300 Galleria Parkway, Suite 1600	Atlanta	GA	30339
Custom Storage dva CSTOR	7975 N Dayden Rd A-105	Scottsdale	AZ	858058
Data Center Warehouse	23041 Avenida De La Carlota #200	Laguna Hills	CA	92653
Data Networks of America, Inc	216 Schilling Circle, Suite 104	Hunt Valley	MD	21031
Datec, Inc.	364 UPLAND DR	TUKWILA	WA	98188
DH Technologies, LLC	161 Fort Evans Drive,NE, Suite250	Leesburg	VA	20176
DOF Creation	12604 RIVER BIRCH DR	RIVERVIEW	FL	33669
DIRSEC LLC	PO BOX 6247	BROOMFIELD	CO	80021
Distributed Technology Group, LLC	499 S WARREN ST STE 501	SYRACUSE	NY	13202
DPE Systems Inc.	120 LAKESIDE AVE STE 230	SEATTLE	WA	98122
Eagle Software, Inc. dba Eagle Technologies	124 Indiana Ave.	Salina	KS	67401
EDGE SOLUTIONS LLC	131 ROSWELL ST STE C101	ALPHARETTA	GA	30009
eGroup Holding Company	482 WANDO PARK BLVD	MT PLEASANT	SC	29464

Company Name	Address	City	State	ZIP
Encore Technology Group	141 Grace Drive	Easley	SC	2960
Enterprise Networking Solutions, Inc	2860 Gold Tailings Court	RanchoCordova	Ca	95670
EOS Systems	800 Boylston Street	BOSTON	MA	2199
ePlus (formerly Innovative Systems & Solutions, Inc.)	2809 S. Lynnhaven Rd. Suite 250	Virginia Beach	VA	23452
Flagler Technologies	5295 Town Center Road Suite 201	BocaRaton	FL	33486
FirstLight Fiber Inc.	41 State Street	Albany	NY	12207
First Light Technologies	75 State Street, Suite 100 02109	Boston	MA	2109
Five Rivers IT Inc.	114 ESSEX ST STE 300	ROCHELLE PARK	NJ	7662
The Fruth Group Inc.	3220 E HARBOUR DR	PHOENIX	AZ	85034
FOCUS TECHNOLOGY SOLUTIONS INC	75 STATE ST STE 100	BOSTON	MA	2109
Fusion Digital	300 Main Street	East Rochester	NY	14445
GHA Associates	8998 E RAINTREE DR	Scottsdale	AZ	85260
Golden Star Technology	12881 166th Street	Cerritos	CA	90703
Granite				
Granville Associates dba Vision Business Products	600 Logan St	Carnegie	PA	15106
GreenPages Inc.	33 Badgers Island W	Kittery	ME	3904
Groupware Technology, Inc.	541 Division Street,	Campbell	CA	95008
GuidePoint Security LLC	2201 Cooperative Way Suite 225	Herndon	VA	2017
Holmans USA	6201 JEFFERSON ST NE	ALBUQUERQUE	NM	87109
High Point Networks LLC	728 E Beaton Dr Suite 200	West Fargo	ND	58078
IT1SOURCE LLC	1860 W UNIVERSITY DR STE 100	TEMPE	AZ	85281
iCopy dba IBE Digital	11266 Monarch St Suite B	Garden Grove	CA	92841
IMPEX Technologies, Inc.	880 Apollo #315	EI Segundo	CA	90245
InCare K12 Incare Technologies	600 LAKESHORE PKWY	BIRMINGHAM	AL	35209
INSPIRED TECHNOLOGIES	3058 HIGHLAND OAKS TER	TALLAHASSEE	FL	32301
In-Telecom Consulting	573 JF SMITH AVENUE	SLIDELL	LA	70460
InterDev, LLC	900 Holcomb Woods Pkwy	Roswell	GA	30076
Integra Business Center, Inc., d/b/a IntegraONE	7248 Tilghman Street, Suite 120	Allentown	PA	18106
Internetwork Services Inc. dba Internetwork Engineering	13777 Ballantyne Corporate Place, Suite 305	Charlotte	NC	28227
JNM DATA SOLUTIONS INC	5944 CORAL RIDGE DR # 244	Coral Springs	FL	33076
JRC Technologies LLC	304 Scottholm Ter,	Syracuse	NY	13224
Katalyst Network Group LLC	PO BOX 1443	HICKORY	NC	28603
Itsavvy LLC	313 South Rohlwing Road	Addison	IL	60101
Kelley Connect	2040 Milligan Way, Suite 304	Medford	OR	97030
KELLER SCHROEDER & ASSOC INC	4920 CARRIAGE DR	EVANSVILLE	IA	47715
KIS	48383 Fremont Blvd #122	Fremont	CA	94538
Kopesky Enterprises DBA Surelock	111 W CROGAN ST STE A	LAWRENCEVILLE	GA	30046
Layer 3 Communication	1528 FAIR RD	SIDNEY	OH	45365
Leslie Digital Imaging, LLC	50 Jericho Quadrangle	Jericho	NY	11753
Lewan and Associates	8530 Concord Center Dr #400	Englewood	CO	80112
Logicworks Systems Corp	155 AVENUE OF AMERICAS	NEW YORK	NY	10013
Lyon Micro	302 Eastern Blvd Ste 1077	Canandaigua	NY	14424
M.A. Polce Consulting Inc.	401 Phoenix Drive	Rome	NY	13441
Main Street Technologies	POBox4000(allmail), 954 Bret Harte Road	Angels Camp	CA	95221
Mainline Information Systems	1700 SUMMIT LAKE DR	TALLAHASSEE	FL	32317
Marcum Technology LLC	10 Melville Park Road	Melville	NY	11747
MCNUTT CONSULTING SERVICES INC	104 JORDAN DR	GIBSON CITY	IL	60936
Mercury Networks of New York LLC	182 HILLRISE DR	PENFIELD	NY	14526
Mission Critical Systems	1347 E SAMPLE RD STE 3	POMPANO BEACH	FL	33064
Mobile Integrate Inc	1400 16TH ST STE 400	DENVER	CO	80202
Modal Networks, Inc.	5410 Del Rio Road	Sacramento	CA	95822
More Power Technology Group	1870 St Helens Street	St. Helens	OR	97051
MOVING ON IT SOLUTIONS LLC	3312 COBBS CT	PALM HARBOR	FL	34684
MVATION WORLDWIDE INC	70 GLEN ST STE 260	GLENCOVE	NY	11542
NE SYSTEMS INC	2655 1ST ST STE 250	Simi Valley	CA	93065
NetGain Technologies	2031 Georgetown Rd,	Lexington	KY	40511
Network Center Inc.	3487 UNIVERSITY DR S	FARGO	ND	58104
Network Performance	6605 Uptown BLVD., Suite #370	Albuquerque	NM	87110
Network Technologies LLC	3910 Caughey Rd., Ste 120	ERIE	PA	16506
NETWAY COMMUNICATIONS INC.	PO BOX 25472	ROCHESTER	NY	14625
NIC Partners	11981 Jack Benny Drive, Suite 103	Rancho Cucamonga	CA	91739
Nordisk Systems Inc a Converge Company	6400 SE Lake Road, STE 450	Portland	OR	97222
Nth Generation Computing	17055 CAMINO SAN BERNARDO	San Diego	CA	
Ocean Computer	90 MATAWAN RD STE 105	MATAWAN	NJ	07747-2624
OmniPro	5086 DIAMOND HEIGHTS BLVD	SAN FRANCISCO	CA	94131
Opkalla Inc.	4108 PARK RD STE 305	CHARLOTTE	NC	28209-2261
Optimal Technologies	1120 CORPORATE DR	AUBURN	NY	13021
opsZero	425 LIBERTY SHIP WAY APT 301	ALBANY	CA	94706
Pasack Data Services	200 Central Ave	Hawthorne	NJ	7506
PC SOLUTIONS & INTEGRATION	4937 SW 75 AVE,	Miami	FL	33155
PC University Distributors Inc.	99 W HAWTHORNE AVE STE 521	VALLEY STREAM	NY	11580

Company Name	Address	City	State	ZIP
People Driven Technology Inc.	6300 Venture Hills Blvd SW	Byron Center	MI	49315
PHILOTEK LLC	6000 LAKE FORREST DR STE 400	ATLANTA	GA	30328
Pillar Communications Inc.	3145 E CHANDLER BLVD STE 110	PHOENIX	AZ	85048
Pinnacle Business Solutions, Inc.	192 Richmond Hill Avenue, Suite 18	Stamford	CT	06902
Pinnacle Business Systems, Inc.	3824 S. Boulevard, Suite 200	Edmond	OK	73013
Pinnacle Networx LLC	73888 Tallassee Highway	Wetumpka	AL	36092
Pivotalogic	6900 Wedgwood Rd N ste 460	Maple Grove	MN	55311
PNW Security, LLC	3925 NE Skidmore St	Portland	OR	97211
Presidio	8161 Maple Lawn Blvd., Suite 150	Fulton	MD	20759
PROACTIVE SOLUTIONS INC	5625 FOXRIDGE DR	MISSION	KS	66202
Procellis Technology, Inc.	1330 LAGOON AVE FL 4	MINNEAPOLIS	MN	55408
PROLOGIC ITS, LLC	106 NORTHPOINT PKWY BLDG 2	ACWORTH	GA	30102
R2 Unified Technologies, LLC	980 N Federal Hwy. STE 410	Boca Raton	FL	33066
Racom Business Inc.	250 Parkway Drive	Lincolnshire	IL	60069
Ramsys Storage Solutions	9853 Spruce Grove Way	South Jordan	UT	84095
Red River Technology LLC	21 Water Street Suite 500	Claremont	NH	3743
RMM	210 MCCLELLAN ST STE 100	WAUSAU	WI	
Right! Systems Inc.	2600 Willamette Drive NE Ste C	Lacey	WA	98516
Safari Micro	2185 W. Pecos Rd. Ste 9	Chandler	AZ	85224
Sanity Solutions	1720 S Bellaire St Suite #550	Denver	CO	80210
Saitech	42640 CHRISTY ST	FREMONT	CA	94538
Saxon Business Systems	14025 NW 60TH AVE	MIAMI LAKES	FL	33014
Sentinel Technologies	2550 WARRENVILLE RD	DOWNERS GROVE	IL	60515
SingleSource IT, LLC	4889 Sinclair Rd, Suite 103	Columbus	OH	43229
SMP	1020 John Street	West Henrietta	NY	
SJN Data Center LLC dba Encore Tech	4620 Wesley Ave	Cincinnati	OH	45212
SOCCOUR SOLUTIONS	2745 DALLAS PKWY STE 450	PLANO	TX	75093
Softchoice	314 W Superior St Suite 400	Chicago	IL	60654
Softnet Solutions	940 Hamlin Court	Sunnyvale	CA	94089
Solid Border, Inc.	1806 TURNMILL ST	SAN ANTONIO	TX	78248
Spinecube	264 CENTRAL AVE STE 2	JERSEY CITY	NJ	7307
Starlight Technology	15940 Austin St	Ham Lake	MN	55304
Sterling Computers	303 Centennial Drive 57049	North Sioux City	SD	57049
Stewart a Xerox Company	6000 Irwin Road	Mount Royal	NJ	8054
STRUCTURED COMMUNICATION SYS INC	2901 SE 97th Avenue, Suite 400	Clackamas	OR	
Synergy IT Solutions	7871 Lehigh Crossing #1	Victor	NY	14564
TEC COMMUNICATIONS INC	20234 DETROIT RD	ROCKY RIVER	OH	44116
Technology Integration Group	10620 Treena Street	San Diego	CA	92131
Tec-Refresh, Inc.	800 North Haven Avenue, Suite 250	Ontario	CA	91764
Tech Orchard LLC	5110 W 164TH TER STE 100	OVERLAND PARK	KS	66085
Tego Data Systems LLC	1801 Glenwood Ave., #3,	Raleigh	NC	27608
TekLinks dba C Spire Business	201 Summit Parkway	Birmingham	AL	35209
TELETRONICS SERVICES, INC.dba TTX	22550 ASCOA CT	STRONGSVILLE	OH	44149
Tensus Technology	7521 PAULA DR # 260056	TAMPA	FL	33685
Thomas Consultants, Inc.	4140 E. Raines Road	Memphis	TN	38118
TOTAL COMMUNICATIONS INC	333 BURNHAM ST	EAST HARTFORD	CT	6108
Trinity 3	650 PELHAM BLVD STE 600	SAINT PAUL	MN	55114
TSG Server & Storage, Inc	855 Village Center Drive #344, St.	St. Paul	MN	55127-3016
Unique Digital	5151 Belt Line Road Ste. #510	Dallas	TX	75254
Unistar-Sparco Computers, Inc.	7089 Ryburn Drive,	Millington	TN	38053
Valcom Salt Lake City LLC	3520 South 300 West	Salt Lake City	UT	84115
vCore Technology Partners LLC	1355 N Scottsdale Road #140	Scottsdale	AZ	85
VDA LABS LLC	5020 E BELTLINE AVE NE STE 205	GRAND RAPIDS	MI	49525
VectorUSA	20917 HIGGINS CT	TORRANCE	CA	90501
verCloud	1017 El Camino Real	Redwood	CA	94063
Vertikal6, Inc.	30 Service Ave	Warwick	RI	2860
Vision Business Product	8540 Cinderbed Rd., Suite 100,	Newington	VA	22122
Vivacity Tech	641 FAIRVIEW AVE N STE 150	SAINT PAUL	MN	55104
VPLS Solutions, LLC	1744 W Katella Ave Ste 250	Orange	CA	92867
Wachter Technology Solutions	9000 Commerce Parkway	MT. Laurel	NJ	8054
Waypoint Business Solutions, LLC	2113 Woodston Drive	Round Rock	TX	78681
Waypoint Government Solutions LLC	2114 Woodston Drive	Round Rock	TX	78681
Winslow Technology Group, LLC	303 Wyman Street, Suite 210	Waltham	MA	2451
WrightCore	725 Cool Springs Blvd, Suite 420	Franklin	TN	37067
XBS a Xerox Company	10690 John Knight	Montgomery	AL	36117
XTEK	1721 Westbelt Dr	Columbus	OH	43778
Y & S TECHNOLOGIES INC	383 KINGSTON AVE STE 357	BROOKLYN	NY	11213
Yeo & Yeo Computer Consulting, LLC	5300 BAY RD STE 200	SAGINAW	MI	48604-3652
Zeno Office Solutions, Inc.	8701 FLORIDA MINING BLVD	TAMPA	FL	33634
ZIVARO INC	3900 E MEXICO AVE STE 1000	DENVER	CO	80210

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**Appendix 4- HR Anti-discrimination Statement**

Ingram Micro **Associate Guide**

# Inclusion and equal employment opportunity

**You, along with every other Ingram Micro associate, represent a talented and diverse workforce. Along with diversity, inclusion is a concept that is fundamental to our competitive success. A key element to realizing our full potential is our long-standing commitment to equal employment opportunity.**

The company's leadership demonstrates our commitment to equal employment opportunity through various ways, including but not limited to signing onto the United Nations Universal Declaration of Human Rights, maintenance of Affirmative Action programs and by organizing company-wide and local diversity and inclusion programs at our workplaces around the world and in communities in which we operate and serve.

The company will accord equal employment opportunities to qualified individuals in all personnel practices, including, but not limited to, recruitment, selection, promotion, training, tuition assistance,

compensation, benefits, transfer, social and recreational programs, and termination. Our policies and practices prohibit unlawful discrimination based upon race, color, ethnicity, religion, creed, sex (including pregnancy, childbirth or related medical conditions), national origin, immigration status, ancestry, age, marital status, protected veteran status, military service, disability, medical condition, genetic information, sexual orientation, gender identity, gender expression, parental status, political affiliation or any other basis prohibited under federal, state or local laws. Applicants, associates, independent contractors, vendors and others with whom we do business will not be subjected to harassment,



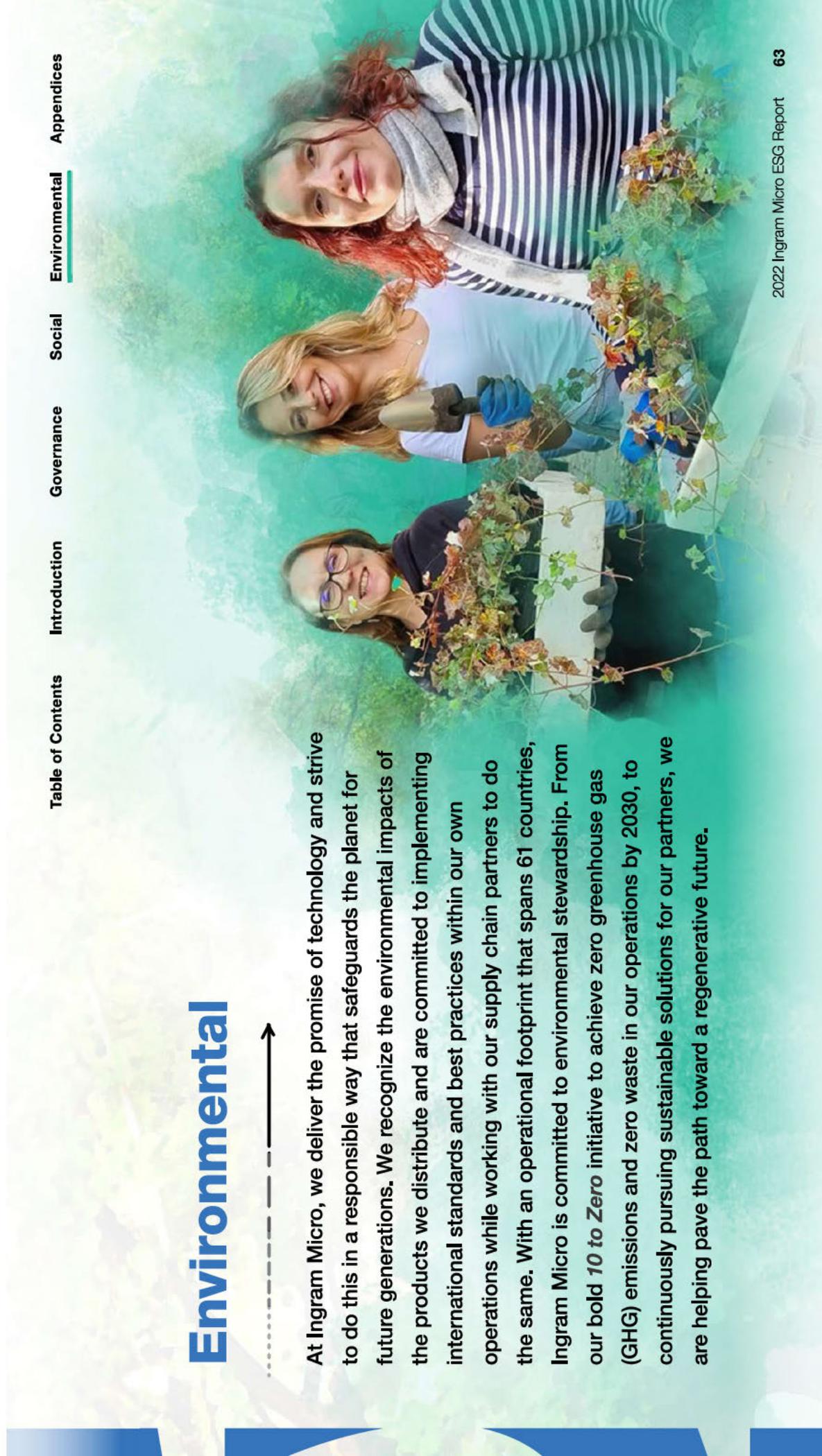
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**Appendix 5 – Ingram Micro Green Initiative & Environmental Reporting**

# Environmental



At Ingram Micro, we deliver the promise of technology and strive to do this in a responsible way that safeguards the planet for future generations. We recognize the environmental impacts of the products we distribute and are committed to implementing international standards and best practices within our own operations while working with our supply chain partners to do the same. With an operational footprint that spans 61 countries, Ingram Micro is committed to environmental stewardship. From our bold *10 to Zero* initiative to achieve zero greenhouse gas (GHG) emissions and zero waste in our operations by 2030, to continuously pursuing sustainable solutions for our partners, we are helping pave the path toward a regenerative future.



## Our Approach

At Ingram Micro, we strive to reduce our environmental footprint by monitoring and tracking our environmental impact, setting context-and-risk-based goals, optimizing our operations, and driving and recognizing outstanding environmental stewardship.

In this report, we have included the most recent annual data showing our emissions, energy use, transportation activities, waste generation, materials use, and water use, as well as our progress toward our updated environmental goals. We also highlight key initiatives and examples of how we are working toward more sustainable ways of doing business.

Our approach to environmental stewardship matured significantly in 2022 as we began a transition from our historical method for collecting environmental data, which relied on monthly manual data entry from dozens of global associates, to an automated process that pulls environmental data directly from utility and service

provider invoices, providing faster and more accurate results. Our environmental sustainability team has also been working to gain full visibility to all operations, confirm associated environmental data sources, and solidify the process for ongoing measurement. As a result, we believe our 2022 data set is the most complete in company history. A large majority of 2022 data is from direct sources, such as utility invoices.

Where such data was missing, or incomplete, Ingram Micro used global standards, such as the GHG Protocol to make good-faith estimates to close data gaps. Please note also that our data verification and validation for calendar year 2022 is still ongoing as of the publication of this report.

It is also important to note that Ingram Micro's operational portfolio changed significantly during 2022, with a large divestiture and several real estate optimization projects taking place during the year. At the start of 2022, Ingram Micro's real estate portfolio included 23.5 million square feet of warehouse and office space. At the end of 2022, Ingram Micro's portfolio was 13.2 million square feet; 11.1 million of which was at its 134 logistics and service centers and 2.1 million at office locations. The significant footprint reduction of more than 10 million square feet led to changes in our environmental data, making it difficult to compare our previously reported data for calendar year 2021 to our 2022 data.

## 2022 Highlights

- Launched *IngramMicroPlanetary*, our dedicated program for environmental sustainability, and our 10 to Zero goals to achieve zero greenhouse gas emissions and zero waste in our operations by 2030.
- Completed our first full Scope 3 inventory as part of our 2021 reporting and identified that Scope 3 emissions make up more than 99% of our total emissions.
- Submitted a commitment letter to set company-wide emissions reductions targets in line with climate science through the Science Based Targets initiative within the next two years.
- Updated our Environmental Stewardship Policy;
- Enhanced U.S. Waste Compliance Program and launched "Know Where to Throw" campaign and training for all U.S. associates.
- Began phase-out of plastic mailers and committed to complete this transition by the end of 2023.
- Implemented a new process to improve global environmental data collection.

## Environmental Stewardship

In 2022, we announced ambitious goals to achieve two major environmental operational milestones—zero GHG emissions and zero waste by 2030. As part of our zero GHG emissions goal, we made the commitment to set company-wide emission reductions as part of the SBTi, which helps businesses set targets that align with the latest climate science. We submitted our letter of commitment in 2022 and will be working to submit our targets in 2023, with the expectation that they will be confirmed by the SBTi in 2024.

In April 2022, we updated our [Environmental Stewardship Policy](#) to simplify and clarify our policy and expectations to our global associate community and other stakeholders. Our new policy was crafted to align our commitments to the United Nations (UN) Sustainable Development Goals and the UN Intergovernmental Panel on Climate Change, as well as with our core business principles within our [Code of Conduct](#), [Supplier Code of Conduct](#), [Corporate Vision](#), and [Tenets of Our Success](#). Specifically, we commit to:

- Complying with applicable laws and regulations in the countries in which we operate;



At Ingram Micro, we have spent many years supporting, promoting, and complying with sustainable practices, such as waste separation, LED lighting, changes in the fleet of company vehicles, collection of old equipment and delivery to approved recycling and treatment points, and reduction of emissions and waste in storage and logistics processes, among others. Now, the ISO 14001 seal endorses us as an environmentally responsible company. It is our responsibility and our commitment.

**Jaime Seler**, Vice President and Country Chief Executive of Ingram Micro for Spain and Portugal

- Tracking our performance and regularly reporting on progress against measurable, context-based targets, by employing globally recognized standards and protocols;
  - Minimizing our environmental impact directly where we have control and indirectly where we have influence;
  - Engaging with our upstream and downstream supply chain partners to share our policy and expectations with regard to their environmental stewardship programs; and
  - Communicating and engaging with our stakeholders on the material environmental stewardship issues associated with our operations and business.
- Our policy applies to all lines of business and entities worldwide and signifies to our stakeholders that we take responsibility across all areas of our business to implement environmentally responsible practices.
- One of the ways we operationalize our commitment to environmental stewardship is by pursuing and maintaining ISO 14001 certification to formalize and certify our environmental manage systems. In 2022, we had three additional sites in Spain certified under this standard.

## Launch of IngramMicroPlanetary Program

We launched *IngramMicroPlanetary*, our dedicated sustainability program for environmental data collection, management, and goal setting, on Earth Day 2022. With this launch, we now have a coordinated company-wide approach to managing environmental sustainability issues and projects.

*IngramMicroPlanetary* is a catalyst and center of excellence to help the company achieve our zero GHG emissions and zero waste goals under our 10

to Zero initiative. *IngramMicroPlanetary* helps us more effectively embed impactful sustainability principles, strategies, and tactics across our operations by creating awareness and engagement within our associate community and our business partners.

Since the program's launch, our continued focus has been to grow our communications and engagement efforts with associates around the world, create and enhance environmental sustainability-related external communications, and encourage participation and recognition of global and local events, such as International E-Waste Day and California Clean Air Day.



## Project Together

In February 2022, Ingram Micro Austria launched “Project Together” in collaboration with partners in the tech industry. For each purchase of eligible products, a tree is planted. Through “Project Together,” we planted over 1,600 trees in Lower Austria’s Waldviertel. The planting of the first 150 trees under the initiative was done as an effort to embed a culture of sustainability among our people during a teambuilding exercise for Ingram Micro.

# Greenhouse Gas Emissions

As a foundational step towards meeting our goal to have zero GHG emissions in our operations by 2030, we are improving the quality of our data and pursuing strategic opportunities for decarbonization. We continue to calculate, and where necessary, estimate our emissions according to the GHG Protocol framework, including our Scope 1 and 2 emissions resulting from our operations, as well as Scope 3 value chain emissions from activities in relevant categories, such as emissions from purchased goods and services and use of sold products. In 2022, Ingram Micro's estimated total emissions across all scopes were 93.7 million MT CO<sub>2</sub>e with over 99% of our total emissions coming from

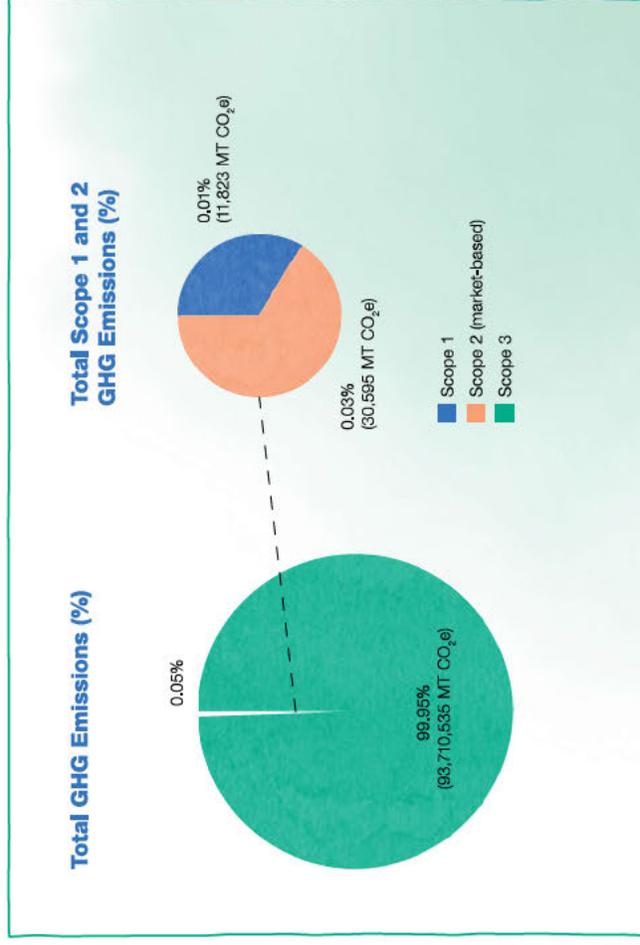


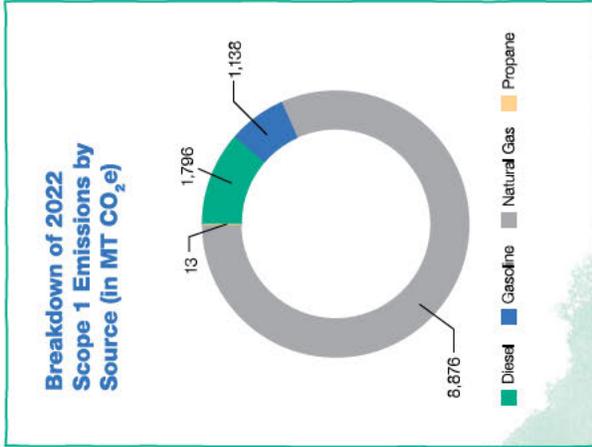
Being good environmental stewards is the right thing for companies to do, even beyond the efficiencies and good business practices these programs deliver.

John Marler, Director of Global ESG

Scope 3 sources. This represents a decrease of 5.3% from 2021.

Ingram Micro has calculated intensity metrics— Scope 1 and Scope 2 GHG emissions and energy consumption against revenue—to show whether our business is becoming more energy- and carbon-efficient. In 2022, this figure is 0.83, compared to 1.17 in 2021 for CO<sub>2</sub>e metric tons of per million dollars of revenue. One of the major contributions to this decline is the significant reduction in real estate portfolio, including the Commerce & Lifecycle Services (CLS) divestiture. Moving forward, we expect that our continuing efforts in the areas of energy efficiency and renewable energy will further reduce operational energy and emissions intensity. For more details on the emissions intensity, see the [Data Appendix](#) for Environmental.





## GHG Scope Inventory Detail

### Scope 1

Our Scope 1 emissions are primarily related to our use of natural gas for heating at our facilities. Other Scope 1 sources included fuels, such as diesel to power mechanical equipment and generators, diesel and gasoline to fuel company-owned and leased vehicles, and propane for generators. In 2022, our total global Scope 1 emissions were 11,823 MT CO<sub>2</sub>e.

The very significant decline in global aggregate Scope 1 emissions (approximately 39%) can be attributed largely to the reduction in real estate footprint during the year. The reduction is an encouraging development but likely difficult to replicate on a go-forward basis.

In order to achieve our 10 to Zero goal, we must eliminate Scope 1 emissions. We plan to continue our efforts to use natural gas more efficiently in our buildings and to switch from fossil fuels to electric options where possible and feasible. Although fuel-related Scope 1 emissions are relatively small, vehicle electrification technology is advancing, and we expect this will help reduce our use of fossil fuels for vehicular



### Moving the Industry

The Global Technology Distribution Council (GTDC) comprises the technology industry's top wholesale distributors who drive more than \$150 billion in annual worldwide sales and face similar challenges. In 2022, Ingram Micro joined a committee focused on environmental sustainability within the distribution channel and shared insights for GTDC's Environmental Sustainability Report.

For example, in 2022, we ordered an electric yard truck for our largest warehouse in Mira Loma, California. As of the publication of this report that truck is now operational and has replaced its diesel-powered predecessor. Our service center in Fairfield, New Jersey, signed a lease for a new electric 26-foot box truck that will go into service in 2023.

## Scope 2

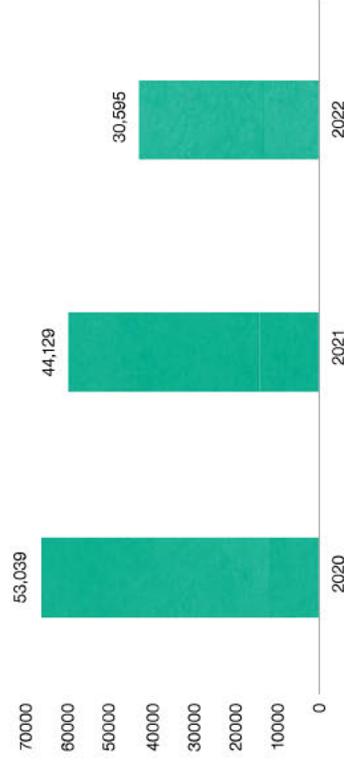
Ingram Micro's Scope 2 emissions are almost exclusively the result of grid electricity consumption at our advanced logistics centers, service centers, and offices. In 2022, our Scope 2 market-based emissions were 30,594.74 MT CO<sub>2</sub>e, a 31% decrease from our 2021 emissions of 44,129 MT CO<sub>2</sub>e.

As with our Scope 1 emissions, this significant decline in Scope 2 emissions can be attributed largely to the reduction in our real estate footprint during the year. In 2022, we reduced our real estate footprint by more than 10 million square feet. Much of this was the result of the sale of a majority of our CLS business, but we have also

worked to examine the best use of space and needs across our network and the opportunities that hybrid work models create. We plan to continue to right-size our real estate space across our countries of operation.

Our key strategies to reduce our Scope 2 emissions include using energy more efficiently and increasing our procurement of renewable energy, either through supplier options or onsite energy generation. One example of our renewable energy developments was the installation of a rooftop solar array on our warehouse in Bhiwandi, India. For more information about our renewable energy strategies, see [Energy](#).

**Year-Over-Year Scope 2 Market-based Emissions (MT CO<sub>2</sub>e)**



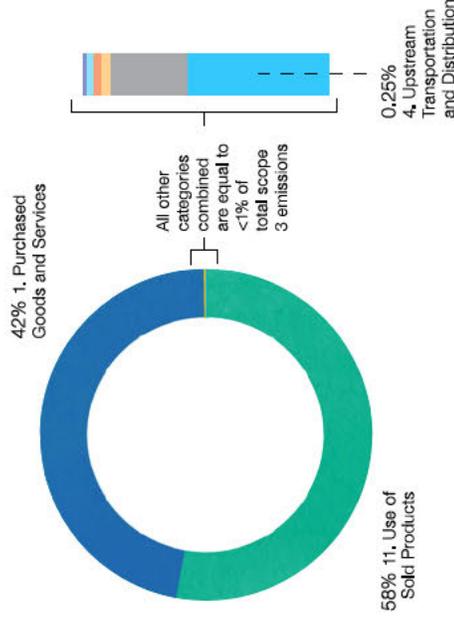
**Scope 3**

Ingram Micro calculated our Scope 3 emissions in 2022 to be 93.7 million MT CO<sub>2</sub>e; 58% of which was from Category 11 (Use of Sold Products) and 42% of which was from Category 1 (Purchased Goods and Services). We are also working in conjunction with our partners to identify new opportunities within each category to reduce Scope 3 emissions.

Compared to our first Scope 3 inventory in 2021, we improved data collection methods to capture data across all our lines of business in 2022 under relevant Scope 3 categories, which has resulted in better data quality and comparability. In our original 2021 analysis of purchased goods and services, only 55% of our goods were tracked by item type so we reported emissions for those tracked categories only. In 2022, with improved data quality, 88% of items were categorized. To improve comparability, 2021 inventory has been recalculated, taking an average emissions approach from the known categories to cover all purchased goods and services for our merchandise sales. As such, our adjusted 2021 emissions increased substantially. To see our full inventory for both 2021 and 2022 see [Data Appendix](#) for Environmental.

Scope 3 Category	2022 GHG Emissions (MT CO <sub>2</sub> e)
1. Purchased Goods and Services	39,407,876
2. Capital Goods	18,432
3. Fuel- and Energy-related Activities	3,917
4. Upstream Transportation and Distribution	233,676
5. Waste Generated in Operations	4,170
6. Business Travel	5,998
7. Employee Commuting	17,476
8. Upstream Leased Assets	Included in scope 1 and 2
9. Downstream Transportation and Distribution	27,829
10. Processing of Sold Products	Not relevant - excluded
11. Use of Sold Products	53,892,360
12. End of Life Treatment of Sold Products	100,805
13. Downstream Leased Assets	Not relevant - excluded
14. Franchises	Not relevant - excluded
15. Investments	Not relevant - excluded
<b>Total</b>	<b>93,710,535</b>

**Proportion of Scope 3 Emissions by Category**



Another example of better data quality is this year's expansion of the scope of evaluation to include our Lifecycle business and the equipment that we process for refurbishment, repair, and remarketing. We also have included analysis of our packaging usage.

These efforts are in line with our goal to improve the completeness and accuracy of our inventory over time in accordance with the GHG Protocol Corporate Value Chain Accounting and Reporting Standard on Scope 3 Emissions.

Our current strategy includes focusing on areas of the business where we have more direct influence, including reducing packaging and optimizing transportation in our upstream and downstream operations.

### Employee Commuting

Employee commuting is a source of Scope 3 emissions where we have a greater degree of influence to drive toward lower emissions. We continue to utilize a hybrid working model for office-based associates across our U.S. offices and several of our international offices.

In the U.S., we expanded our commuter benefits package to allow associates to set aside pretax funds to pay for eligible transit and parking expenses. We have several office locations that have electric vehicles charging stations, and in 2022, we installed new EV charging stations our facilities in Flensburg, Germany and Mississauga, Canada. Finally, as electric biking has

emerged as a growing method of transport, we rolled out an e-bike leasing program and e-bike charging at our Flensburg, Germany facility and interest-free loans for e-bikes for associates at our facility in Tilburg, Netherlands.

### Value Chain Engagement

As we better understand emissions related to activities in our value chain, we also aim to find opportunities for collaboration with our internal stakeholders and supply chain partners to streamline data collection and inform decision-making to address Scope 3 emissions.

We believe that addressing Scope 3 emissions entails extensive engagement with all our stakeholders, from our suppliers to our customers. Given different measures of control, it carries with it unique challenges compared to managing our Scope 1 and 2 emissions. We may not yet have a clear path toward the decarbonization of our Scope 3 footprint; however, we are committed to continuous improvement in this area.

One example of this type of partnership comes from our work in the Spanish market with our customer Atos who shares our commitment to decarbonization. Ingram Micro was the recipient of the Most Innovative Initiative in 2022 in the Atos Trip2Zero Contest. Ingram Micro found that when using a certain class of

box, in 47% of the cases only 28% of its cubic capacity was being used (the rest was air). In addition, a high percentage of the shipments were destined for the same customer. A study was carried out on the type of product that was influencing this ratio, and another type of box with a smaller volume was proposed to reduce cardboard consumption and optimize the cubic capacity of the box. Additionally, this also resulted in a reduction of the cubic capacity of the trucks transporting them and consequently reduced the number of trucks needed for the same shipments, thus resulting in the overall reduction of carbon footprint.



E-bike charging station in Flensburg, Germany

# Energy

Our ambition toward achieving more sustainable ways of business is closely tied to how we address our energy needs. We currently use energy to power our sites, where we consume electricity in our buildings for lighting, climate control, and equipment use. We use natural gas to heat many of our buildings and other fuels are used in company-owned or leased vehicles and generators. In 2022, we used 158,452 MWh of energy, 62% of which was purchased electricity and 31% was natural gas with the remaining from diesel, gasoline, and propane.

More than 95% of the square footage we occupy is leased, so we work closely with our landlords to explore the use of solar power, natural light, and upgrades for more efficient energy usage. These upgrades include converting lighting fixtures to light-emitting diodes (LED) and using motion sensors at our facilities to better control electricity consumption. We also continue to seek ways to optimize our operational systems to achieve more with less energy. These are all contributing factors to changes in our consumption of electricity.

## Renewable Energy

Renewable energy continues to play an important role in our approach to decarbonization and a critical consideration when sourcing electricity. We are also starting to look beyond energy usage, to what the local energy grid looks like and where our emissions are concentrated. Our approach to this challenge is based on the results of a renewable energy roadmapping exercise we completed in 2021. As part of this exercise, each region was assessed for scalability, cost and complexity of renewable energy options, including on-site solar, green retail supply, virtual power purchase agreements, and energy attribute certificates. In line with our 10 to Zero goal to reach zero GHG emissions in our operations by 2030, we continue to look for ways where we can optimize electricity tariff and contract terms, identify and implement energy efficiency projects, and execute our network strategy and investments in automation.

Where the option is possible, we work to consider options for renewable energy through retail markets. In 2022, we procured 11.1 million kWh of electricity from renewable sources, which constitutes 11% of our total consumption of electricity, excluding



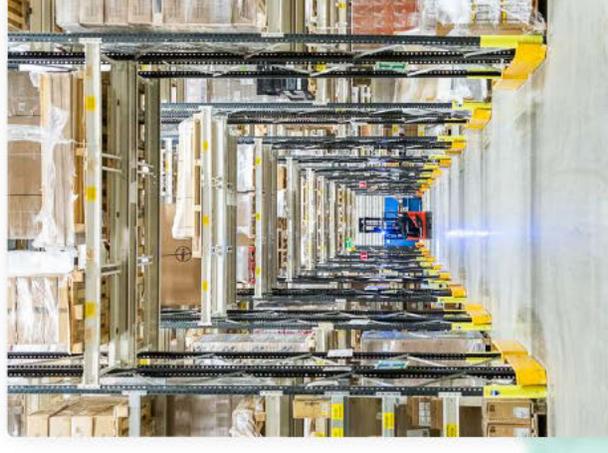
Photo of solar panels in Bhiwandi

**renewable electricity already present in our consumption of grid electricity.** Our reporting efforts were marked by a shift in working to verify renewable energy contracts and reassessing our options as our real estate portfolio decreased.



### Improving Energy Efficiency, Embracing Renewable Energy: Highlights from Around the Globe

- Our largest warehouse in **Mira Loma, California** was upgraded with the installation of more than 1,200 new LED fixtures and a new heating, ventilation, and air conditioning system to improve environmental performance. Brighter, safer, and with Bluetooth controlled modules and drive aisle sensors, the LED project is projected to save more than 1,400 MWh of electricity annually
- Our site in **Bhiwandi, India** installed solar panels in April 2022. The site serves as a pilot facility to share best practices that may be applied to our other warehouses in the country. Additionally, our offices in India have enabled a “sleep mode” for all systems to reduce electricity consumption
- Our site in **Lomme, France** reduced electricity usage by 30% over the last three years and in 2022, this location entered into a renewable electricity contract
- Our operational team in **Crick, U.K.** installed LED lights and more energy-efficient conveyor systems. LED lights were also installed in our office in **Mexico**, and we have also collaborated with our landlord to install LED lights in our **Hungary** warehouse





## Transportation

As a global distributor of technology equipment, we partner with third-party carriers around the world to deliver products safely and efficiently. We recognize the importance of reducing our transportation footprint and continually work with vendors and customers to identify opportunities for optimization, such as reducing the total number of trips needed to move products and improving shipment routes from our vendors to our global distribution centers and customers.

In 2022, we made significant investments in our network strategy to get closer to the customers, including building new warehouses in key markets. This strategy has been designed to take miles out of the transportation journey. For example, in the U.S., we expect to be able to make 95% of our carrier shipments within two days.

We also increased intermodal transportation in the U.S., which uses less fuel than trucking alone. By planning in advance, our team in India converted many air freight shipments to sea freight, reducing overall emissions associated with these shipments.

Consolidating shipments has proven to be an impactful strategy. For example, we worked with one of our largest national solution providers in the U.S. to reduce



### EPA SmartWay Program

We entered our fourth year as a SmartWay Shipper Partner with the U.S. Environmental Protection Agency (EPA) SmartWay Program, which allows us to assess the environmental impact of our transportation, as well as measure our fuel efficiency and benchmark our performance in the U.S. Using SmartWay Carrier Partners allows us to track our performance and determine ways to better optimize our carbon footprint efficiency despite volume increases in the products we ship. Our submission in 2022 showed 98.8% of ton-miles were with SmartWay Carrier Partners and we reduced total miles by 37% in the 2021 reporting year.

the number of individual deliveries from our facilities to theirs by 60%. We also consolidated deliveries in our operations in Germany with two customers, which we estimate will avoid 50,000 kilometers of truck transportation in 2023. Another strategy used in Australia was to double the number of pallets that could fit on an outbound truck by using a double-deck truck,

## Waste

In 2022, Ingram Micro established an ambitious goal to achieve zero waste in our operations by 2030 as part of our 10 to Zero initiative. To achieve this goal we are assessing the waste streams we generate and determining how we can reduce, reuse, or recycle materials and properly dispose of any hazardous materials in line with local regulations. We realize there are different challenges and opportunities in each of the markets we operate, and will be taking a systematic approach to identifying and sharing best practices across our locations and finding partners who can help us reduce waste and increase diversion. In 2022, we estimated that we generated 21,766 metric tons of non-hazardous waste and 324 metric tons of hazardous waste.

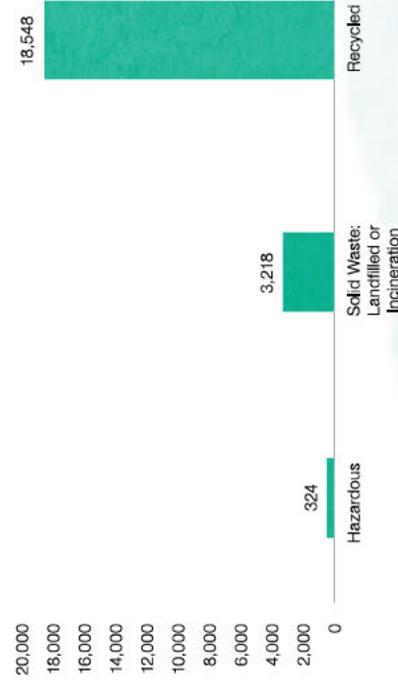
One example of our efforts to reduce waste includes switching to electronic records from paper records. Our Straubing, Germany location calculated that they were printing 1.9 million delivery notes for customers and started the process of working with customers to make the switch to digital. One of the first partners to agree to a digital solution helped save approximately 300,000 pieces of paper annually. In our distribution center in Constanti, Spain, we have likewise reduced paper use by forgoing packing slips in our orders

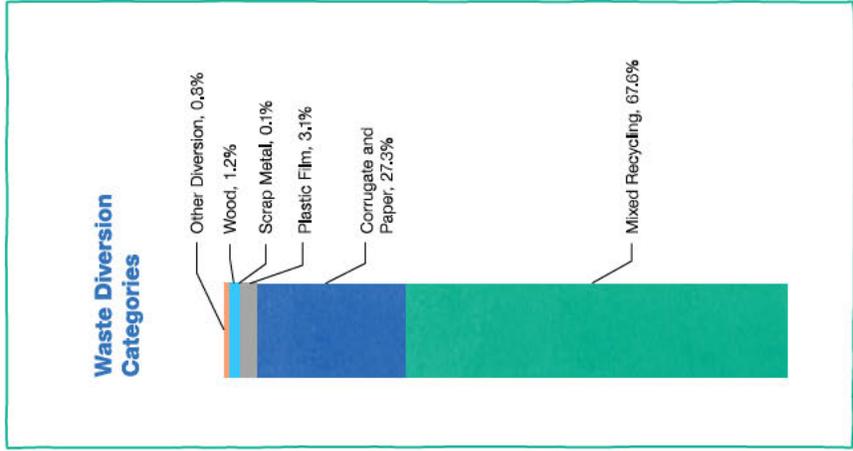
or reducing paper size. In India, we have initiated paperless clearance of import shipments with a digital tool developed in-house to submit documents, such as custom checklists, packing lists, and airway bills.

Our teams have also demonstrated commitment to waste reduction in unique circumstances. For example, in their move to a new office, our teams in Sweden worked to reuse existing furniture and supplemented this with the purchase of refurbished furniture. In our Budapest office, we donated our old furniture, thereby extending the usability of the furniture. Our team in Colombia also worked to reduce waste by finding new homes for our used furniture as part of our relocation process.

While the focus of our goal is on diversion of waste generated in our offices and warehouses, transitioning to a circular economy for information technology equipment and reducing e-waste is of critical importance. With our Ingram Micro Lifecycle business, we work to address the return, refurbishment, repair, and remarketing of technology products, all to help customers enable a circular economy. See **E-Waste and Circular Economy** for more details.

### Operational Waste (MT)





### Waste Diversion

As a global distributor, most of the waste we generate within our operations relates to shipping materials, including:

- Corrugated boxes
- Plastic film
- Paper
- Pallets
- Scrap metal

We also generate waste from offices, facility maintenance, and furniture/equipment disposal. As such, we primarily focus on reducing non-hazardous waste in our direct operations.

Some of the strategies we have implemented to minimize waste include right-sizing cartons, reusing supplies from incoming shipments, donating excess inventory, and diverting recyclable materials. Our warehouse in Straubing, Germany transitioned to reusable containers within Pan-European shipments, for example.

In 2022, we calculated that we diverted 85% of non-hazardous waste. As part of our efforts to improve data collection and accuracy, we are working to measure the specific recycling diversion streams and for the first time have reported tonnage of recycled corrugate and paper, plastic film, wood, and scrap metal. Over time, we expect the categorization to improve and mixed recycling to be a smaller category.

In general, hazardous waste generated in our operations and logistics centers is minimal. It includes materials, such as used oil, spent solvents, batteries, and residue in non-empty aerosol and paint cans.





### Waste Compliance Program: U.S. Waste Stream Management

In 2022, we dedicated significant effort to better drive waste stream compliance in the U.S. and enhanced associate training and engagement with a campaign called “Know Where to Throw.” The Waste Compliance Program contains a detailed set of requirements for U.S. Ingram Micro facilities, including:

- Ingram Micro Waste Playbooks for Office and Warehouse Environments
- Waste Program Guidelines
- Facility Waste Compliance Control Plans
- Waste Bin and Signage Standardization
- Localized Waste Stream Training
- “Know Where to Throw” Marketing Campaign



Bringing in marketing and design expertise to create our ‘Know Where to Throw’

Campaign helped pull together the messaging to make it memorable for associates. We wanted to show people the right way to dispose of their waste and make them think twice about which bin they chose. It has certainly been impactful and well-received.

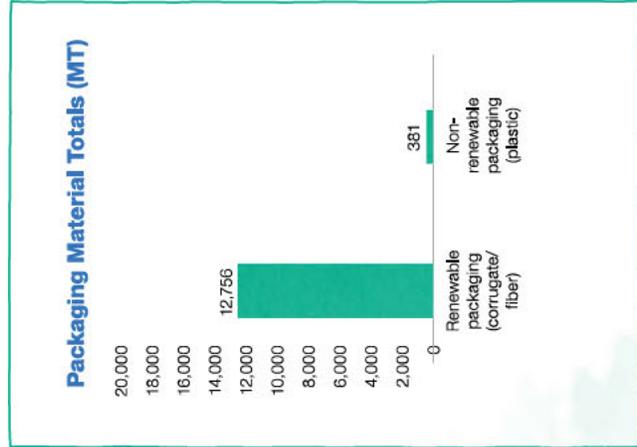
Dean Edwards, Vice President, Global Strategic Sourcing

In addition to training and signage that provided guidance on the types of materials to dispose of in each bin or receptacle, posters and other digital signage were used to draw awareness to the campaign and importance of knowing where to throw waste. More than 6,000 U.S.-based associates completed the 2022 online waste training. Likewise, each warehouse submitted logs of their training attendance.

In our warehouses and offices, we also outlined important standards in waste operations and hauler services in compliance with waste regulations, which includes information on the proper handling and storage of different kinds of waste.

To monitor the effectiveness of this training and ongoing compliance, an audit program was developed with protocols for weekly regularly scheduled audits at every U.S. site.





## Packaging

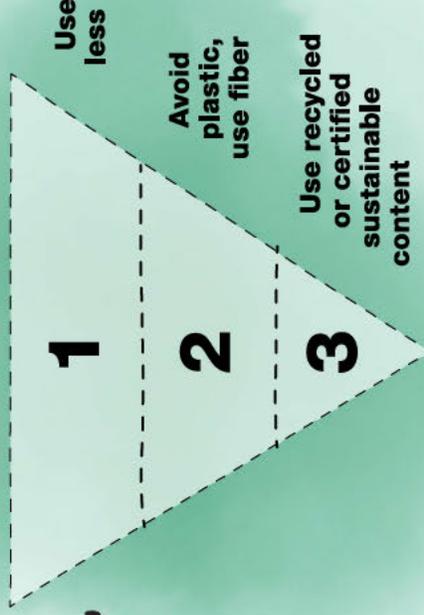
Adequate packaging is an essential part of delivering products safely to our customers. In 2022, we estimated that we used 13,137 MT of packaging, 97% of which was from renewable materials. We estimated that 60% of our packaging material was from recycled content. We seek ways to reduce material use and waste in our supply chain alongside moving our products as efficiently as possible. This is in line with our **LEAN Program** for increasing operational efficiency and reducing waste.

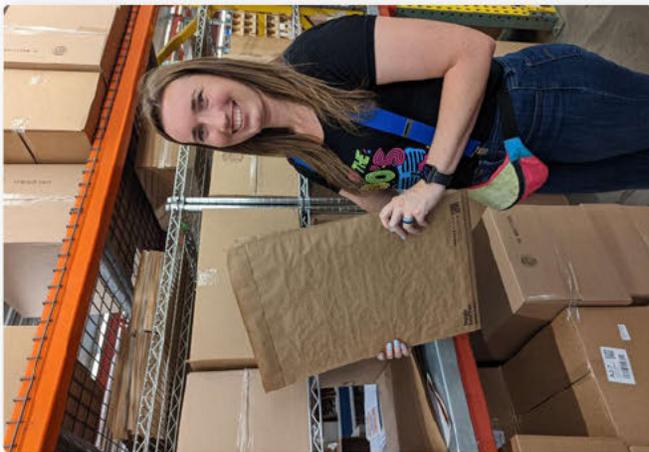
In 2022, we established a cross-functional Packaging Steering Committee to assess opportunities for packaging innovation across our global operations with leaders and project managers from Engineering, Procurement, Operational Excellence, and Environmental Sustainability. This project continues to be one of our major priorities in 2023 and our goal is to complete the conversion of all plastic mailers to fiber-based mailers by the end of the year.

The packaging we use includes corrugated cardboard, void fill, pallets, edge and corner protectors, mixed packaging media, film, and labels. While most of these supplies are sourced externally, we reuse some materials in operations, such as incoming cartons, pallets, or edge protectors applied to outgoing shipments.



## Our Packaging Principles





In our operations in Crick, U.K., we expedited our pallet recovery program to prolong their usability by providing an in-place repair process. In India, we have also reduced our consumption of plastic by switching to wood pallets.

To reduce our material use, we have adopted right-sizing solutions in our facilities. Products that can be transported in the original vendor packaging are transported without additional secondary packaging. We also make use of a packaging algorithm that consolidates products within an order to the minimum amount of packaging required, which reduces the number of cartons required to fulfill an order. By reducing package dimensions, we are likewise able to utilize space on pallets and in freight vehicles more efficiently.

As part of our investments in right-sizing, we have deployed Packsize® technology, which provides cartons sized to fit specific products using the smallest dimensions possible without sacrificing integrity. This reduces the use of corrugate, void fill materials, and tape. With this solution, our Fort Worth, Texas facility now requires 50% less void fill. In 2022, we introduced the technology in our facilities in Mexico.

We are likewise working toward tracking the consumption of void fill and resin and polymer-based products used in the preparation of shipments. Where

possible, we avoid the use of plastic and prioritize renewable materials, such as fiber in our packaging. Our goal is to set meaningful targets related to other packaging materials used in our operations. We are fully committed to increasing the amount of packaging that comes from sustainable materials and working closely with our packaging vendors to identify and procure the solutions required to accelerate our progress.

When considering alternate packaging materials, we look at the sustainability impacts of the shipping materials (e.g., recycled content, recyclability, certified sustainable), as well as the ability of the materials to protect the product during transit. Extensive research and testing are completed at our warehouse facilities to ensure both quality and environmental responsibility standards are met.



### Paper Mailer Rollout

**We are continuously exploring avenues to minimize environmental impacts by opting for more sustainable alternatives. In a step to reduce our plastic footprint, we tested the use of recyclable paper mailers and rolled this out to three of our U.S. warehouses in 2022. Since the conversion, we estimate that we avoided 63,800 pounds of plastic in 2022.**

## E-Waste and Circular Economy

As a technology distributor, we sell and distribute billions of electronic devices globally. According to the United Nations Environment Programme, e-waste is the largest growing waste stream in the world, with approximately 50 million tons generated each year. To better serve our communities and reduce environmental impacts, we recognize the importance of minimizing e-waste and following best practices for the proper disposal and recycling of obsolete devices.

Our goal is to be a leader in the transition to a circular economy in the information technology (IT) industry. We pursue this directly through our Ingram Micro Lifecycle business, which provides customers with IT Asset Disposition (ITAD) and Reverse Logistics services. In 2022, we operated **33 service centers, where we repaired or refurbished more than 9.9 million units**, including notebooks, monitors, mobile phones, and other assets.

Each device we receive is evaluated to determine its potential for reuse within the customer's organization or for the company to recover the residual value through resale on the secondary market. For example,

in partnership with O2 Recycle, we saved more than 250,000 devices from landfill in 2022, with more than 92% of the handsets refurbished and resold.

Devices that have reached end of life are responsibly recycled according to local, national, and international regulations surrounding e-waste handling. In 2022, we sent **approximately 13,800 metric tons of obsolete or inoperable devices** to our partners for responsible downstream recycling. We proudly maintain a wide range of industry-critical certifications and accreditations, including e-Stewards, R2, and ElektroG. These certifications are built upon high standards for responsible electronics recycling and reuse.

To further foster a collaborative industry, we are modernizing processes in the wholesale buying and selling of IT products on a global scale through our company Renugo. By providing a platform for buyers and sellers, coupled with software solutions, we are building a network to address market needs for used, refurbished, obsolete, and obsolete inventory.



We have also partnered with Inrego, which has more than 25 years of experience in IT product circularity and reducing resource utilization, to prolong the lifespan of IT products. Through our engagement, we can distribute refurbished items to customers in our Nordic Market.

### International E-Waste Day

We actively engage our associates to participate in our waste reduction initiatives and, together, we celebrated International E-Waste Day on October 14, 2022, to raise awareness on the topic and collect e-waste across the organization for processing at our ITAD facilities. In total, 13 sites participated globally, and, in the U.S., we collected close to 8,000 pounds of e-waste.



## Water

Ingram Micro uses water for domestic purposes in our offices and warehouses, so our overall water use is relatively low and strongly dependent on the number of associates working on-site at our facilities. Water is also used for cooling and humidity control, landscape irrigation, and maintenance activities, such as testing our fire protection systems.

In 2022, water withdrawals totaled approximately 181 megaliters of water from district or municipal water systems, the majority of which was returned to local wastewater systems for treatment. We estimate that about 10% of the water withdrawn is not discharged into the local sewage system and is most likely consumed through landscaping and employee consumption. Therefore, we estimate total 2022 water consumption to be 18.1 megaliters. The balance would equate to a total discharge of 162.9 megaliters.

While traditionally not identified as a material topic in our sector, we acknowledge the inherent value of water as a resource for survival. We understand that we have facilities that operate in water-stressed areas; therefore, we have associates who may be impacted by drought

or water quality issues. We also acknowledge that water is a vital resource in some industrial processes for our supply chain partners, and more directly, in certain technologies that rely on water for cooling solutions.

We have also begun to assess water risk across our sites using World Resources Institute (WRI) Aqueduct tools and the WWF Water Risk Filter 5.0. Using this methodology, we have assessed risks based on basin physical risk metrics, namely water scarcity, flooding, and water quality, which represent both natural and human-induced conditions of river basins.

As we look at countries and sites where water scarcity and security are salient issues, we intend to formulate plans that proactively contribute to ensuring access to usable water, especially for our associates around the world. The visual to the right shows a summary of our initial assessment using the WRI methodology.

We also recognize that fresh water supplies may be a potential significant long-term risk. At many of our sites most impacted by drought, our teams have worked with our landlords to consider water-saving strategies, including low-flow fixtures, drought-tolerant landscaping, and rainwater catchment tanks.

### Preliminary Water Risk Assessment Findings



Approximately

**14%**

of our sites were identified as having "Extremely High" overall water risk



In business-as-usual conditions, around

**60%**

of Ingram Micro facilities are in areas projected to have an extremely high water stress risk in 2030 and 2040



Approximately

**8%**

of our sites were identified as having "Very High" risk on water scarcity



Approximately

**45%**

of our sites were identified as having "Very High" risk for water quality

## Environmental

Greenhouse Gas Emissions		
	2021	2022
<b>Scope 1 &amp; 2 (MT CO<sub>2</sub>e)</b>		
Scope 1 emissions—unadjusted	19,507	11,823
Carbon Offsets	Not reported	857
Scope 2 emissions, market-based	44,129	30,595
Scope 2 emissions, location-based	Not reported	30,190
Scope 1 and 2 combined emissions	63,636	42,418
GHG emissions intensity for Scope 1 and Scope 2 (per million revenue USD)	1.17	0.83

## Greenhouse Gas Emissions

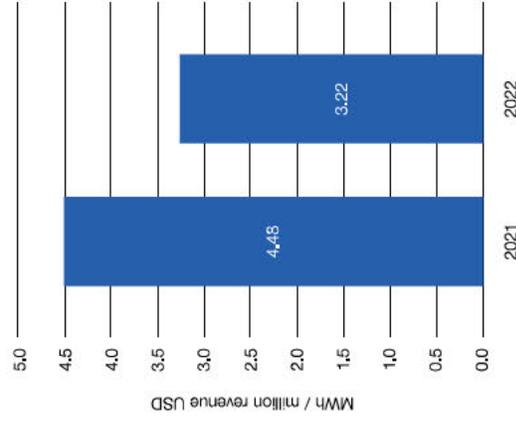
Scope 3 Category (MT CO <sub>2</sub> e)	2021	2022
1. Purchased goods and services	50,249,203	39,407,875
2. Capital goods	39,011	16,432
3. Fuel- and energy-related activities	8,179	3,817
4. Upstream transportation and distribution	445,874	233,676
5. Waste generated in operations	13,165	4,170
6. Business travel	1,631	5,996
7. Employee commuting	17,640	17,476
8. Upstream leased assets	Included in Scope 1 and 2	Included in Scope 1 and 2
9. Downstream transportation and distribution	38,793	27,829
10. Processing of sold products	Not relevant, excluded	Not relevant, excluded
11. Use of sold products	45,310,185	53,892,360
12. End of life treatment of sold products	72,040	100,805
13. Downstream leased assets	Not relevant, excluded	Not relevant, excluded
14. Franchises	Not relevant, excluded	Not relevant, excluded
15. Investments	Not relevant, excluded	Not relevant, excluded
<b>Total</b>	<b>96,195,723</b>	<b>93,710,535</b>

A number of updates were made to the Scope 3 Greenhouse Gas (GHG) Emissions calculations in 2022 to reflect improved methodology, emissions coverage, and the divestiture of the Commerce & Lifecycle Services (CLS) business. These updates were applied to the 2021 Scope 3 inventory to offer a comparable baseline. Updates included:

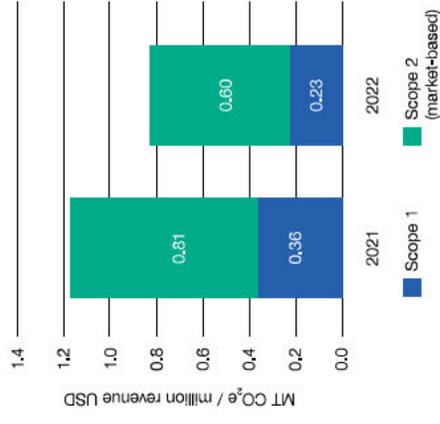
- **Category 1: Purchased goods and services:**
  - Widened the scope of products calculated. In 2021, a large portion (47%) of spend was not categorized and was excluded from calculations. Updated data increased the share of products categorized and assumptions were used to estimate the average emission intensity of uncategorized products.
  - Only emitters from the Technology Services (TS) business were included in 2021. Packaging emitters as well as products purchased by the IT Asset Disposition (ITAD) business were added for 2022.
- **Category 7: Employee commuting**
  - The average number of days spent in the workplace was reevaluated to better account for lockdown and new working conditions post-COVID-19.
- **Category 8: Downstream transportation and distribution**
  - Methods were corrected to only account for freight tracked by Ingram Micro and paid for by third-parties.

Greenhouse Gas Emissions Intensities by Source and Revenue

Energy Intensity per Revenue



GHG Emissions Intensity per Revenue



Energy		
	2021	2022
Total energy use (MWh)	243,744	158,452
Diesel Fuel (MWh)	Not reported	6,622
Gasoline (MWh)	Not reported	4,241
Natural Gas (MWh)	Not reported	48,975
Propane (MWh)	Not reported	56
District Heating (MWh)	Not reported	913
Electricity (MWh)	Not reported	97,645
Percent of total energy that is purchased electricity (%)	48%	62%
Percent of total electricity directly procured from renewable sources	17.50%	11.34%
Energy intensity (MWh per million revenue USD)	4.48	3.12

In 2022, the shift in percent of total electricity procured from renewable sources was due to the change in real estate portfolio, particularly our CLO divestiture, as well as an updated approach to verify energy contract terms.

Packaging		
	2021	2022
Packaging Materials Total* (MT)	37,043	13,137
Renewable packaging** (corrugate/fiber)	37,043	12,756
Non-renewable packaging*** (plastic)	Not tracked	361
% Renewable	Not tracked	97%
% Recycled Content****	Not tracked	60%

\*The estimate for total packaging materials in 2022 includes usage of main shipping components of boxes and mailers but excludes other materials, such as void or tape.  
 \*\* The estimate of renewable packaging (corrugate/fiber) in 2022 was from utilizing our Warehouse Management System data for shipment dimensions and estimating the weight per square inch. For some locations, sites provided weight for the materials they used. This is a change in methodology from the past, which was exclusively collected via site surveys.  
 \*\*\* Non-renewable estimates in 2022 include plastics from mailers.  
 \*\*\*\* Recycled content is defined as the total amount of recycled content across Ingram Micro packaging, including corrugate and plastic, where applicable. In the past, Ingram Micro tracked whether recycled content was present in its corrugate packaging and therefore the total tonnage of packaging that included some amount of recycled content. With the methodology change, the previous reported numbers for recycled content are not comparable.

Waste Generation		
Lifecycle Business	2021	2022
Used electronics refurbished/repaired (MT)	5,171	8,504
Used electronics recycled (MT)	11,413	13,816
<b>Hazardous/Regulated Waste</b>		
General operations (MT)	Not reported	324
<b>Non-Hazardous Waste</b>		
Solid Waste: Landfilled or Incineration (MT)	9,208	3,318
Recycled Total (MT)	43,683	18,548
Mixed Recycling	Not reported	12,538
Corrugate and Paper	Not reported	5,057
Plastic Film	Not reported	589
Scrap Metal	Not reported	24
Wood	Not reported	221
Other Diversion	Not reported	140
Total Non-Hazardous Waste (MT)	52,901	21,788
Diversion %	83%	85%

Water		
	2021 megaliters	2022 megaliters
Water Withdrawal*	312	181
Water Consumption**	31	18
Water Discharge***	281	163

\* Total water withdrawal includes measured water withdrawal in which Ingram Micro is directly responsible for procuring water services. It also includes estimates where information could not be verified or other estimates self-reported from Ingram Micro sites.  
 \*\* Ingram Micro estimates that 70% of the water withdrawn is consumed through irrigation or employee use, and not discharged back to the municipal wastewater system directly.  
 \*\*\* We estimate that about 80% percent of the water withdrawn is discharged into the local sewage system for treatment. Ingram Micro does not treat wastewater directly.

**Appendix 6– Promark/Ingram and Manufacturer Warranty and License Agreements**

## **Warranty and License Agreements**

Promark Technology/ Ingram Micro Warranty statement and/or License Agreement Policy for Direct Held Contracts are based on the rights offered by the specific manufacturer. Please find below the warranty and or license agreements for the vendors we have included in our proposal.

ARCTIC WOLF

**Solutions Agreement**

**SOLUTIONS AGREEMENT**  
(online)

This Solutions Agreement (the “**Agreement**”) is a legal agreement entered into by and between Arctic Wolf Networks, Inc. (“**Arctic Wolf**”) and the Customer identified on an order form (“**Customer**”) and governs any order forms, quotes, or other similarly intended ordering document (however named) executed or accepted by Customer (“**Order Form**”) that reference this Agreement or pertains to purchases of an Arctic Wolf subscription. The Order Form will be issued to Customer by Arctic Wolf or an authorized partner, as applicable (“**Authorized Partner**”). This Agreement is effective on the date Customer executes the Order Form, accepts the Order Form by submitting a matching purchase order to Arctic Wolf or the Authorized Partner, or otherwise accepts delivery or receives the benefit of the Solutions from Arctic Wolf (the “**Effective Date**”). This Agreement permits Customer to purchase subscriptions to the Solutions, as defined below, identified in the Order Form, and sets forth the terms and conditions under which those Solutions will be delivered. The Agreement consists of the terms and conditions set forth below, any attachments or exhibits identified herein and any Order Forms that reference this Agreement. If there is a conflict between the terms below, the Order Form, or the terms set forth in an URL referenced herein (such URL terms, the “**Terms**”), the documents will control in the following order: the Order Form, this Agreement, and the Terms.

BY EXECUTING, WHETHER MANUALLY OR ELECTRONICALLY, AN ORDER FORM, DELIVERING A PURCHASE ORDER OR OTHER CONFIRMATION TO ARCTIC WOLF OR THE AUTHORIZED PARTNER DOCUMENTING ACCEPTANCE OF AN ORDER FORM, OR OPERATING, DOWNLOADING, INSTALLING, REGISTERING OR OTHERWISE USING THE SOLUTIONS, OR CLICKING AN “I ACCEPT” OR “CONTINUE” BUTTON ASSOCIATED WITH THIS AGREEMENT, CUSTOMER (OR ITS AUTHORIZED AGENT, IF APPLICABLE) EXPRESSLY AND EXPLICITLY ACKNOWLEDGES AND AGREES THAT THIS IS A BINDING AGREEMENT AND CUSTOMER HEREBY AGREES TO THE TERMS OF THIS AGREEMENT AND ACCEPTS THE OFFER TO SUBSCRIBE TO THE SOLUTIONS PURSUANT TO THE TERMS HEREIN. IF YOU ARE AN EMPLOYEE OR OTHER REPRESENTATIVE ACCEPTING THIS AGREEMENT ON BEHALF OF CUSTOMER, YOU HEREBY REPRESENT AND WARRANT TO ARCTIC WOLF THAT YOU ARE (A) AUTHORIZED TO ENTER INTO THIS AGREEMENT ON BEHALF OF CUSTOMER; AND (B) YOU ARE OVER 18 YEARS OLD. IF CUSTOMER DOES NOT ACCEPT ALL THE TERMS AND CONDITIONS IN THIS AGREEMENT OR IS NOT AUTHORIZED TO ENTER INTO THIS AGREEMENT, DO NOT ACCEPT THE ORDER FORM, ISSUE A PURCHASE ORDER OR OTHER CONFIRMATION, OR OTHERWISE USE THE SOLUTIONS.

In consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**1. Scope.**

**1.1 Solutions.** Customer will purchase and Arctic Wolf, together with its Affiliates, will provide the specific products and services (each a “**Solution**” or collectively, “**Solutions**”) as specified in the applicable Order Form. For purposes of this Agreement, “**Affiliate**” means any company or other entity, which directly or indirectly controls, is controlled by or is under joint control with a party.

A Solution will be comprised of the following components:

	<b>Managed Detection &amp; Response Solution</b>	<b>Managed Risk Solution</b>	<b>Managed Security Awareness / Managed Security Awareness+ Solution</b>
<b>Software</b>	The object form of any software, including any operating system software included in the Equipment, and add-ons offering enhanced features and functionality made generally available to Arctic Wolf customers from time-to-time	The object form of any software, including any related to virtual Equipment, if applicable, any operating system software included in the Equipment, and add-ons offering enhanced features and functionality made generally available to Arctic Wolf customers from time-to-time	Phishtel Reporting Engine and Arctic Wolf Report Email Button, as set forth in the Solutions Terms
<b>Equipment</b>	Virtual appliances or physical sensors	Virtual appliances or physical scanners	N/A
<b>Content</b>	N/A	N/A	Online access and download rights, if licensed by Customer and as more fully described in the Solutions Terms, to Customer learning content and Content Compliance Pack within the Administrator Dashboard and/or Content Library
<b>Content Management Hosting Environment</b>	N/A	N/A	Access to and use of a cloud-based learning management tool (the “Administrator Dashboard”) and metrics related to the use of the Content by Customer’s users
<b>Services</b>	Support, onboarding services, and services provided by Security	Support, onboarding services, and services provided by Security	Support, onboarding services, and Content modification

	Services, all as described in the Solutions Terms (defined below)	Services, all as described in the Solutions Terms (defined below)	services, all as described in the Solutions Terms (defined below)
<b>Professional Services</b>	As agreed by the parties in accordance with Section 3	As agreed by the parties in accordance with Section 3	As agreed by the parties in accordance with Section 3
<b>Platform</b>	One (1) vSensor 100 series Unlimited data ingestion Access to the Customer Portal Use of the Arctic Wolf Agent ITSM Ticketing Integrations (if elected by Customer) 90-day Log Retention (unless another retention period is purchased by Customer and set forth on an Order Form)	Unlimited data ingestion Access to the Customer Portal Use of the Arctic Wolf Agent ITSM Ticketing Integrations (if elected by Customer)	N/A

**1.2 License Grant.** The Solutions are provided on a subscription basis for a set term designated on the Order Form (each, a “**Subscription Term**”) for the one-time costs and subscription fees set forth therein (the “**Fees**”). Provided Customer is compliant with the terms of this Agreement, including payment of Fees, Arctic Wolf grants to Customer a limited, non-transferable, non-sublicensable, non-exclusive right and/or license during the Subscription Term, to the extent a component of the Solutions being licensed by Customer as set forth in Section 1.1 above, to:

- (i) Install, use, and access the Software,
- (ii) Use the Equipment for purposes of the use of the Solutions,
- (iii) Obtain and use the Services in conjunction with Customer’s use of the Solutions,
- (iv) Load Customer’s users and associated information for delivery of Content and use of the Administrator Dashboard,
- (v) Access the Customer Portal and/or Administrator Dashboard, as applicable, subject to the Privacy Notice located at <https://arcticwolf.com/privacy-policy-for-customer-portal-users/>, as may be updated from time-to-time in accordance with Section 13 below (the “**Privacy Notice**”),
- (vi) Access and use the Platform features and functionality,
- (vii) Use Arctic Wolf Trademarks included in the Content in accordance with the Solutions Terms, and
- (viii) Distribute, display, transmit, and, if licensed by Customer, download certain Content in electronic format.

Customer may access and use the Solutions, and any Documentation associated therewith, solely for its own and its Affiliates’ internal business purposes and in accordance with the terms and conditions of this Agreement, such associated Documentation, any scope of use restrictions and license counts, including by server, user, or such other licensing metric designated in the applicable Order Form, and the Solutions Terms found at <https://arcticwolf.com/terms/solutionsterms/>, as may be updated from time to time by Arctic Wolf in accordance with Section 13 herein (the “**Solutions Terms**”). “**Documentation**” means user manuals, training materials, product descriptions and specifications, and other printed information relating to the Solution, as in effect and generally available from Arctic Wolf, but expressly excluding marketing and sales collateral and materials.

**1.3 Future Functionality.** Subject to the warranties set forth in Section 10, Customer agrees that it has not relied on the promise of availability of any future functionality of the Solutions or any other future product or service in executing this Agreement or any Order Form. Customer acknowledges that information provided by Arctic Wolf regarding future functionality should not be relied upon to make a purchase decision. Should Arctic Wolf offer additional optional functionality in the future that complement the Solutions, Customer may elect to subscribe to and obtain a license to the optional functionality for an additional fee.

**1.4** Except as otherwise provided herein, Customer understands and agrees that the Authorized Partner may not modify this Agreement or make any commitments related to the delivery or performance of the Solutions on Arctic Wolf’s behalf.

**1.5 Beta Solutions.**

1.5.1 From time-to-time Arctic Wolf may invite Customer to try, at no charge, Arctic Wolf products, features, or functionality that are not generally available to Arctic Wolf’s customers (“Beta Solutions”). Customer may accept or decline any such trial in its sole discretion. Any Beta Solutions will be clearly designated as beta, pilot, limited release, developer preview, non-production or by a description of similar import.

1.5.2 Restrictions and Disclaimers. Beta Solutions are provided for evaluation purposes and not for production use, are not supported, may contain bugs or errors, and may be subject to additional terms. To the full extent permitted by applicable U.S. and foreign consumer protection laws, Beta Solutions are not considered Solutions hereunder and are provided solely and exclusively “AS IS” with no express or implied warranty of any kind. TO THE FULL EXTENT PERMITTED BY APPLICABLE U.S. AND FOREIGN CONSUMER PROTECTION LAWS, (THE “CONSUMER PROTECTION LAWS”), CUSTOMER ASSUMES AND UNCONDITIONALLY RELEASES ARCTIC WOLF FROM ALL RISKS ASSOCIATED WITH THE USE OF ANY BETA SOLUTIONS. Arctic Wolf may discontinue the Beta Solutions at any time in its sole discretion and Arctic Wolf will make reasonable efforts to provide Customer with advanced notice of any such discontinuance. Arctic Wolf does not promise or represent that Beta Solutions will be made generally available.

1.5.3 NO DATA RETENTION. ANY DATA ENTERED INTO THE BETA SOLUTIONS MAY BE PERMANENTLY LOST UNLESS CUSTOMER: (i) PURCHASES A SUBSCRIPTION TO THE COMMERCIALY AVAILABLE VERSION OF THE BETA SOLUTIONS AS MAY BE MADE AVAILABLE BY ARCTIC WOLF; OR (ii) TO THE EXTENT POSSIBLE, EXPORTS SUCH DATA PRIOR TO TERMINATION OF THE BETA SOLUTIONS.

1.5.4 LIMITED LIABILITY. TO THE FULL EXTENT PERMITTED BY LAW, INCLUDING THE CONSUMER PROTECTION LAWS, ARCTIC WOLF'S ENTIRE LIABILITY IN CONNECTION WITH ANY USE OF THE BETA SOLUTIONS WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, WILL NOT, AS TO ANY INDIVIDUAL CLAIM OR IN THE AGGREGATE, EXCEED \$50. IF CUSTOMER DOES NOT AGREE TO THE ALLOCATION OF RISK IN THIS SECTION, ITS SOLE RECOURSE IS TO IMMEDIATELY DISCONTINUE THE USE OF THE BETA SOLUTIONS.

1.5.5. Despite anything to the contrary in this Agreement, Customer acknowledges that (a) Beta Solutions may not be supported and may be changed at any time, including in a manner that reduces functionality, (b) Beta Solutions may not be available or reliable, and (c) Beta Solutions may not be subject to the same security or audits as the Solutions.

**1.6 IR JumpStart Retainer.** In the event Customer's Order Form includes the license of IR JumpStart Retainer, Customer agrees that the IR JumpStart Retainer Agreement located at <https://arcticwolf.com/terms/> shall apply. If Customer is a managed service provider plus Authorized Partner ("MSPP"), MSPP, as Customer, understands that the IR JumpStart Retainer Agreement is an agreement between Arctic Wolf and MSPP's end user and MSPP is reselling IR JumpStart Retainer to its end user. If Customer is a managed service provider ("MSP") Authorized Partner and has licensed IR Jumpstart Retainer for use with an end user, MSP is Arctic Wolf's Customer in accordance with the terms of the IR JumpStart Retainer Agreement for Managed Service Providers located at <https://arcticwolf.com/terms/>.

**2. Equipment.** If the Order Form specifies that Customer will receive Equipment, then Customer is responsible for installing the Equipment at the location(s) specified by Arctic Wolf and for the implementation of appropriate data protection practices related to the protection of any information included on such Equipment while the Equipment is located within Customer's environment. The Equipment is a part of the Solutions and included with the subscription to the Solutions for use by Customer during the Subscription Term. If Customer attempts to install or use the Equipment at a location other than the location determined by Customer and communicated to Arctic Wolf during onboarding or at any time thereafter, the Solutions may fail to function or may function improperly. In the event Customer installs, uses, or relocates the Equipment, Customer will promptly notify Arctic Wolf so that Equipment deployment information can be updated within Customer's account. Other than normal wear and tear, Customer is directly responsible for the replacement cost of the Equipment associated with any loss, repair, or replacement, including any other costs, damages, fees, and charges to repair the Equipment. If applicable, Arctic Wolf will ship Equipment to Customer and will pay the freight costs associated with shipping the Equipment to Customer's designated locations. Customer is responsible for all additional costs and expenses associated with shipping the Equipment to its designated locations and for the return of the Equipment to Arctic Wolf. Such additional costs and expenses may be reflected on an Order Form, from time-to-time following shipment of the Equipment and will be invoiced by Arctic Wolf or the Authorized Partner. Customer understands and agrees if the Equipment is shipped outside of the United States or Canada (or such other locations identified by Arctic Wolf), Customer is responsible for acting as the importer of record.

**3. Professional Services.** In the event Arctic Wolf and Customer agree on the delivery of Professional Services, any such Professional Services shall be specified on an Order Form and described in a statement of work which shall reference this Agreement.

**4. Reservation of Rights and Ownership.** Arctic Wolf owns or has the right to license the Solutions and any associated Documentation ("**Arctic Wolf Technology**"). Customer acknowledges and agrees that: (a) the Arctic Wolf Technology is protected by United States and international copyright, trademark, patent, trade secret and other intellectual property or proprietary rights laws; (b) Arctic Wolf retains all right, title and interest (including, without limitation, all patent, copyright, trade secret and other intellectual property rights) in and to the Arctic Wolf Technology, excluding any rights, title, and interest in any Third Party Products (as defined in Section 10.3 below) which shall be retained by its third party licensor(s), Threat Intelligence Data (as defined in Section 7.3), and any other deliverables, know-how, databases, developed programs, and registered or unregistered intangible property rights related to the foregoing; (c) there are no implied licenses and any rights not expressly granted to Customer hereunder are reserved by Arctic Wolf; (d) the Solutions, excluding Professional Services, is licensed on a subscription basis, not sold, and Customer acquires no ownership or other interest (other than the license rights expressly stated herein); and (e) the Solution is offered as an on-line, hosted solution, and Customer has no right to obtain a copy of the Software.

## **5. Restrictions, Responsibilities, and Prohibited Use.**

**5.1 Restrictions.** Customer agrees not to, directly or indirectly: (i) modify, translate, copy or create derivative works of the Arctic Wolf Technology except as otherwise expressly permitted under applicable U.S. and foreign copyright laws ("Copyright Laws") which may not be excluded by agreement between the parties; (ii) reverse engineer, decompile, disassemble, or otherwise seek to obtain the intellectual property contained within Solutions, except as otherwise expressly permitted under the Copyright Laws which may not be excluded by agreement between the parties; (iii) interfere with or disrupt the integrity or performance of the Solutions or the data and information contained therein or block or disrupt any use or enjoyment of the Solutions by any third party; (iv) attempt to gain unauthorized access to the Arctic Wolf Technology or related systems or networks; (v) remove or obscure any proprietary or other notice contained in the Arctic Wolf Technology, including on any reports or data printed from the Arctic Wolf Technology; (vi) unless Customer is an Authorized MSP Partner of Arctic Wolf, use the Solutions in connection with a service bureau, service provider or like activity whereby Customer operates or uses the Solutions for the benefit of a third party (excluding use with Customer's Affiliates); (vii) use the Solutions to monitor or scan any environments for which Customer has not received consent; or (viii) with respect to Customer's subscription to the Managed Security Awareness Solution, include material or information that is obscene, defamatory, libelous, slanderous, that violates any person's right of publicity, privacy or personality, or otherwise results in any tort, injury, damage or harm to any person. Customer agrees to abide by the terms of the Acceptable Use Policy at <https://arcticwolf.com/terms/acceptable-user-policy/>, as may be updated from time-to-time in accordance with Section 13 below. If Arctic Wolf, in its reasonable discretion, determines that Customer's use of or access to the Solutions imposes an actual or imminent threat to the security or stability of Arctic Wolf's infrastructure or that Customer is abusing its use of the Solutions in contravention with the terms of this Agreement, Arctic Wolf may, in addition to any other right herein, temporarily suspend Customer's access to the Solutions, without liability except as otherwise provided by Consumer Protection Laws, until such activity is rectified. If commercially practicable, Arctic Wolf shall provide Customer with notice prior to any such suspension and shall work with Customer in good faith to reinstate the Solutions promptly.

**5.2 Arctic Wolf Responsibilities.** Arctic Wolf shall provide the Solutions Customer subscribes to as set forth on an Order Form in accordance with the terms of this Agreement, as further described in the Solutions Terms. The Solutions provided under this Agreement shall include any updates, upgrades, bug fixes, version upgrades or any similar changes that are made generally available to Arctic Wolf's customers free of charge from time to time during the Subscription Term.

**5.3. Customer Responsibilities.** Customer must identify the administrative users for its account which may include Customer's and its Affiliates' authorized (email authorization sufficient) third party service providers and agents ("**Administrators**"). Each Administrator will receive an administrator ID and password and will need to register with Arctic Wolf. Customer is responsible for registering and updating its Administrators, or notifying Arctic Wolf, as applicable, about changes to Administrators, including but not limited to termination, change of authority, and the addition of Administrators. Customer acknowledges and agrees that (i) Administrators will be able to view all Solutions Data and other traffic and activities that occur on Customer's network and that Customer is responsible for all activities that occur under Administrator accounts, and (ii) Administrators may communicate with Arctic Wolf using chat features within the Solution dashboards and such communications may be monitored and recorded by Arctic Wolf and the third party tool provider for purposes of customer service, quality assurance, and other business purposes set forth in the Privacy Notice and Customer consents to such activity. Administrator IDs are granted to individual, named persons and cannot be shared or used by more than one Administrator but may be reassigned from time-to-time to new Administrators. Notwithstanding anything contrary herein, Customer understands and agrees that transmission of Solutions Data to Arctic Wolf may be impacted by in-country technical issues and requirements. Arctic Wolf will provide reasonable assistance to Customer in such instances but is not liable if the Solutions Data cannot be transmitted outside of such country. Customer is responsible for implementing appropriate internal procedures and oversight to the extent it utilizes the configuration of workflows and processes, including but not limited to containment actions, and similar functionalities in conjunction with the Services. Arctic Wolf may recommend Customer, depending on the scope of the deployment, implement software and services to enable features of the Solutions or to permit increased visibility into Customer's environment. Customer is responsible for making such determinations in its discretion and Arctic Wolf has no liability for Customer's decisions related thereto. Customer acknowledges that any changes Customer makes to its code, infrastructure, or configuration of the Solutions after initial deployment may cause the Solutions to cease working or function improperly or could prevent Arctic Wolf from delivering the Solutions and Arctic Wolf will have no responsibility for the impact of any such Customer changes. Customer understands that depending on the Solution deployed, a Solution may consume additional CPU and memory in Customer's environment while running in production.

**5.4 Anti-corruption.** In no event shall Arctic Wolf be obligated to take any action (including the shipping of any product or the provision of any service) or omit to take any action that Arctic Wolf believes in good faith would cause it to be in violation of any U.S. or foreign laws or regulations, including, without limitation, the U.S. Foreign Corrupt Practices Act (the "**FCPA**"). Neither party will (i) attempt to, directly or indirectly, improperly influence the sale or purchase of products by payments or other actions contrary to law or regulation, or (ii) take any action or permit or authorize any action that would violate or cause a party to violate the FCPA, the UK Bribery Act, or other applicable anti-corruption laws or regulations. Neither party will, for the purpose of influencing any act or decision to obtain or retain business or direct business to any person, pay, offer or promise to pay, or authorize the payment of, directly or indirectly, any money or anything of value to or for the use or benefit of any of the following: (a) any government official (including any person holding an executive, legislative, judicial or administrative office, whether elected or appointed, or any representative of any public international organization, or any person acting in any official capacity for or on behalf of any government, state-owned business or public organization); (b) any political party, official thereof, or candidate for political office; or (c) any other person if a party or any respective partner, officer, director, employee, agent, representative or shareholder of such party knows or has reason to suspect or know that any part of such money or thing of value will be offered, given, or promised, directly or indirectly, to any of the above-identified persons or organizations. Each party acknowledges and agrees that none of its officers, directors, employees, agents or representatives is a government official or employee or an official or employee of any department or instrumentality of any government, nor is any of them an officer of a political party or candidate for political office, who will share directly or indirectly any part of the sums that may be paid pursuant to performance of this Agreement; and each party agrees to immediately notify the other party should the foregoing change during the term of this Agreement. Each party represents and warrants that neither this Agreement nor the performance of or exercise of rights under this Agreement is restricted by, in conflict with, requires registration or approval or tax withholding under, or will require any termination or expiration, compensation, or any compulsory licensing under, any applicable law or regulation of any country or other governmental entity, and each party will not make any claim to the contrary (each party is relying on this representation and warranty, among other provisions of this Agreement, in entering this Agreement and would not enter this Agreement in its absence).

**5.5 Trade Controls.** Customer understands that the Solutions may be subject to the export control, economic sanctions, customs, import, and anti-boycott laws, regulations, and orders promulgated or enforced by Canada, the United States, Customer's jurisdictions of incorporation and operations, and any other country or governmental body having jurisdiction over the parties to this Agreement ("Trade Controls"). Customer shall ensure that the Solutions are not re-exported, provided or transferred to any person or entity listed on any restricted or prohibited persons list issued by Canada, the United States, Germany, or any governmental authority of any applicable jurisdiction, including but not limited to the Bureau of Industry and Security's Denied Persons, Entity, or Unverified List or the Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List, Foreign Sanctions Evaders List, or Sectoral Sanctions Identifications List (collectively, the "Restricted Persons Lists"). Customer represents and warrants that it and its shareholders, members, partners, or other owners are not listed on, or owned 50% or more, collectively or individually, by anyone on a Restricted Persons List. Customer shall not use the Solutions (a) for a military application, wherever located; or (b) with knowledge or reason to know that the Solutions will be used for nuclear, chemical, or biological weapons proliferation or (c) for any other end use or by any end user otherwise prohibited by applicable Trade Controls. Upon request by Arctic Wolf, Customer will complete and provide an end use certificate in the form requested by Arctic Wolf. Arctic Wolf may suspend and/or cancel the export, delivery, and or servicing of the Solutions, if: (i) Arctic Wolf has not received requested end-user certifications; (ii) Arctic Wolf has not received any government approvals required to comply with Trade Controls, or (iii) Arctic Wolf believes that such activity may violate any Trade Controls. If the Solutions are resold or transferred in violation of any Trade Controls or the provision of this Agreement, Arctic Wolf shall not be obligated to provide any warranty service or technical support for such Items.

**5.6 Public Entity Customers.** If Customer is a public entity, Customer acknowledges and agrees this Agreement is the sole set of terms governing the delivery of the Solutions to Customer and for the avoidance of doubt, terms related to acceptance related to any services or work product shall not apply. The terms of any request for proposal(s), request for information, invitation to qualify, purchasing agreement or cooperative contract, or similar agreement Customer is using to purchase the Solutions (as defined below) from an Authorized Partner do not apply to Arctic Wolf. Further, Customer understands, and hereby consents, that Solutions Data may be accessed and processed by Arctic Wolf and its non-US Affiliates and their non-US citizen employees and Arctic Wolf's authorized third-party service providers in the United States, Europe, or other locations around the world. Notwithstanding anything contrary in any other agreement or purchasing contract, Customer understands and agrees

that during the Subscription Term, Arctic Wolf will maintain security controls and processes no less restrictive than those set forth in its SOC 2 Type II report and ISO 27001 certification. Customer is responsible for determining if Arctic Wolf's controls and processes comply with Customer's data handling and security policies.

Customer represents that in purchasing the Solutions, (i) Customer is not relying on Arctic Wolf for performance of a federal prime contract or subcontract and (ii) Customer is not receiving federal funds to purchase the Solutions. If Customer does intend to rely on Arctic Wolf Solutions to fulfill its obligations under a federal prime contract or subcontract or utilize federal funds to purchase the Solutions, Customer agrees to provide Arctic Wolf advance written notice of that intention, and Arctic Wolf shall have the option to terminate this Agreement.

Arctic Wolf Technology is a "commercial item", "commercial computer software" and "commercial computer software documentation," pursuant to DFARS Section 227.7202 and FAR Sections 12.211-12.212, as applicable. All Arctic Wolf Technology is and was developed solely at private expense and the use of Arctic Wolf Technology by the United States Government are governed solely by this Agreement and are prohibited except to the extent expressly permitted by this Agreement.

Customer represents it has the requisite authority to enter into and perform under this Agreement.

## **6. Fees, Payment, Taxes, and Audit.** Pricing for the Solutions will be specified on an Order Form.

**6.1 Order Forms and Invoices Issued by Arctic Wolf.** If an Order Form is issued to Customer by Arctic Wolf, or in limited circumstances, Arctic Wolf invoices Customer directly for any fees, including but not limited to renewal subscription fees, incidental charges, such as international shipping costs Section 6.2 does not apply and the following terms apply:

All fees are payable in the currency set forth in the Order Form (or applicable invoice) and are non-cancelable and non-refundable EXCEPT AS REQUIRED BY CONSUMER PROTECTION LAWS, ARCTIC WOLF IS NOT OBLIGATED TO REFUND ANY FEES OR OTHER PAYMENTS ALREADY PAID, AND ANY CANCELLATION BY CUSTOMER WILL TAKE PLACE AT THE END OF THE APPLICABLE SUBSCRIPTION TERM, UNLESS ARCTIC WOLF OTHERWISE AGREES IN WRITING. Delinquent amounts shall bear interest at a rate equal to the lesser of one and one-half percent (1.5%) per month (eighteen percent (18%) per year) or the maximum rate permitted by law, whichever is less. If Customer fails to make any payments due under this Agreement or an applicable Order Form, Arctic Wolf shall notify Customer of such nonpayment. If a payment that is due remains unpaid for ten (10) days after Arctic Wolf provides Customer with notice of such nonpayment, Arctic Wolf may cease providing the Solutions without any liability to Arctic Wolf. The amounts payable to Arctic Wolf are exclusive of any sales tax, use tax, excise tax, VAT, GST, HST, or similar taxes ("**Indirect Taxes**"). Customer is solely responsible for payment of all Indirect Taxes. If Customer is required to pay any Indirect Taxes, Customer shall pay such Indirect Taxes with no reduction or offset in the amounts payable to Arctic Wolf hereunder and Customer will pay and bear such additional amount as shall be necessary such that Arctic Wolf receives the full amount of the payment required as if no such reduction or offset were required. If Arctic Wolf has the legal obligation to pay or collect Indirect Taxes for which Customer is responsible, Customer authorizes Arctic Wolf to charge Customer for such amount. If Customer believes that Arctic Wolf has billed Customer incorrectly, Customer must contact Arctic Wolf no later than thirty (30) days after the closing date on the first billing statement in which the error or problem appeared to receive an adjustment or credit. Inquiries should be directed to Arctic Wolf's customer support department.

**6.2 Order Forms Issued by Authorized Partner.** If an Order Form and/or invoice is issued to Customer by an Authorized Partner, Section 6.1 does not apply, and the following terms apply: Customer is purchasing the Solutions through the Authorized Partner. The Order Form containing terms related to fees, payment, taxes, audit, and any other related terms shall be between Customer and the Authorized Partner. Customer will pay any owed amounts to the Authorized Partner, as agreed between Customer and Authorized Partner. Customer agrees that Arctic Wolf may suspend or terminate Customer's use of the Solutions upon ten (10) days' written notice to Customer if Arctic Wolf does not receive payment of Fees from the Authorized Partner. The amounts paid by Authorized Partner to Arctic Wolf for Customer's use of the Solutions under this Agreement will be deemed the amount actually paid or payable under this Agreement for purposes of calculating Arctic Wolf's liability under Section 11. Customer's renewal pricing will be communicated to Customer by the Authorized Partner in accordance with the terms Customer has with the Authorized Partner or by Arctic Wolf prior to the renewal Subscription Term.

**6.3 Audit.** During the term of this Agreement and for one year thereafter, Customer shall provide Arctic Wolf, or its designated representative, promptly upon request with appropriate records requested by Arctic Wolf to verify Customer's compliance with the Agreement, including specifically its license counts as set forth on an Order Form. Arctic Wolf, at its option, may require that an executive officer of Customer certify in writing to Customer's compliance with this Agreement and disclose the scope of use of the Solutions by Customer. If, because of such audit, Arctic Wolf determines that Customer has exceeded the number of licenses subscribed to by Customer on an Order Form, Arctic Wolf will notify Customer of the number of additional licenses, along with the associated Subscription Fees prorated through the end of the then-current Subscription Term, and Customer will remit payment for such Subscription Fees in accordance with this Section 6.

## **7. Confidentiality; Data.**

**7.1 Confidentiality.** Either party (as a "**Discloser**") may disclose confidential and proprietary information, orally or in writing ("**Confidential Information**") to the other party (as a "**Recipient**"). Confidential Information (a) shall be marked with a restrictive legend of the Discloser or, (b) if orally or visually disclosed to Recipient by Discloser, or disclosed in writing without an appropriate letter, proprietary stamp, or legend, shall be confidential if it would be apparent to a reasonable person that such information is confidential or proprietary. Confidential Information of Arctic Wolf includes the following: any pricing, trade secrets, know-how, inventions (whether or not patentable), techniques, ideas, or processes related to the Arctic Wolf Technology; the design and architecture of the Arctic Wolf Technology; the computer code, internal documentation, and design and functional specifications of the Arctic Wolf Technology; Arctic Wolf's security and privacy due diligence material such as SOC2 reports, security and privacy questionnaire responses & memos; and any intellectual property and know-how included in the problem reports, analysis, and performance information related to the Arctic Wolf Technology, and Threat Intelligence Data. Confidential Information of Customer may include the following:

(i) If the MA or MA+ Solution is deployed: First name, last name, corporate email address, phone number, job title, address, and organization hierarchy (collectively, "**Point of Contact information**"); User setup details (User email, work title, and name), Solution metrics

related to such Users, including your Users' learning status, training scores, and Phishing results associated with such Users' use of the Solution (collectively "**Learner Data**"); if the Arctic Wolf Email Report Button is deployed by Customer, information pertaining to phishing email(s) self-reported by a User and includes or may include name of User, email address of User, json web token, full content of email, and version data (collectively, "**Phishtel Data**"); and Customer created and owned content, if any; and

(ii) If MDR and/or MR Solutions are deployed: Points of Contact Information and Solutions Data (as defined in Section 7.2 below).

Each party agrees to hold the other party's Confidential Information in strict confidence, not to disclose such Confidential Information to third parties not authorized by the Discloser to receive such Confidential Information, and not to use such Confidential Information for any purpose except as expressly permitted hereunder and as described in the Privacy Notice. Each party agrees to take commercially reasonable steps to protect the other party's Confidential Information and to ensure that such Confidential Information is not disclosed, distributed, or used in violation of the provisions of this Agreement. The Recipient may disclose Confidential Information only: (a) with the Discloser's prior written consent; or (b) to those employees, officers, directors, agents, consultants, third party service providers, and advisors with a clear and well-defined "need to know" purpose who are informed of and bound by confidentiality obligations no less restrictive than those set forth in this Section 7. Notwithstanding the foregoing, the Recipient may disclose Confidential Information to the extent required by law; however, the Recipient will give, to the extent legally permissible and reasonably practical, the Discloser prompt notice to allow the Discloser a reasonable opportunity to obtain a protective order and such Confidential Information disclosed to the extent required by law shall otherwise remain confidential and subject to the protections and obligations of this Agreement. For the avoidance of doubt, Arctic Wolf may share Customer's name with Customer's services providers to assist Customer in the resolution of technical issues pertaining to the Solutions. To the extent legally required, Arctic Wolf may report any violations of law pertaining to Customer's use of the Solutions. The Discloser agrees that the foregoing confidentiality obligations shall not apply with respect to any information that the Recipient can document is: (i) rightfully in its possession or known to it prior to receipt from the Discloser without an obligation of confidentiality; (ii) or has become public knowledge through no fault of the Recipient; (iii) rightfully obtained by the Recipient from a third party without breach of any confidentiality obligation; or (iv) independently developed by employees of the Recipient who had no access to Discloser's Confidential Information. Upon expiration or termination of this Agreement for any reason, and except as otherwise provided in Section 14 below, each party shall promptly destroy all copies of the other party's Confidential Information and copies, notes or other derivative material relating to the Confidential Information. Notwithstanding the foregoing, and subject to the Privacy Notice, Arctic Wolf may retain Contract Account Information which may include Customer name, contact first name and last name, corporate email address, phone number, job title, address, and organization hierarchy following termination of this Agreement for its internal business purposes.

**7.2 Solutions Data.** "**Solutions Data**" means, depending on the Solution deployed, the operational system log data and any other information provided by Customer in furtherance of its use of the Solutions and which Customer may elect to submit to Arctic Wolf through the Solutions, including, but not limited to operational values, event logs, and network data such as flow, HTTPS, TLS, DNS metadata, cursory inventory data, operating systems and versions, users and groups from Active Directory, system level inventory, event data, and network vulnerability data, but excluding Threat Intelligence Data (as defined below). As between the parties, Customer shall retain all right, title, and interest (including any and all intellectual property rights) in and to the Solutions Data (excluding any Arctic Wolf Technology used with the Solutions Data). Customer hereby grants Arctic Wolf, during the term of the Agreement, a non-exclusive, worldwide, royalty-free right to collect, use, copy, store, transmit, modify, and create derivative works of the Solutions Data solely to the extent necessary to provide the Solutions to Customer. The location of the storage of raw Solutions Data within Arctic Wolf's third-party service providers' data centers will be as set forth in the Solutions Terms.

**7.3 Threat Intelligence Data.** "**Threat Intelligence Data**" means any malware, spyware, virus, worm, trojan, or other potentially malicious or harmful code or files, URLs, DNS data, public IP addresses, network telemetry, commands, processes or techniques, tradecraft used by threat actors, metadata, or other information or data, in each case that is potentially related to unauthorized third parties associated therewith and that: (i) Customer provides to Arctic Wolf in connection with this Agreement, or (ii) is collected or discovered during the course of Arctic Wolf providing Solutions, excluding any such information or data that identifies Customer or to the extent that it includes Personal Data (as defined below) of the data subjects of Customer (but including personal information of threat actors).

## **8. Data Privacy.**

**8.1 Personal Information.** Point of Contact Information, Solutions Data, Learner Data, and Phishtel Data (or any other Confidential Information provided by Customer) may include information that identifies, relates to, describes, is reasonably capable of being associated with or linked to a particular individual, whether directly or indirectly ("**Personal Information**"). Customer is responsible for the lawfulness of any such Personal Information and the receipt, use, and processing of it under the Agreement. Customer represents and warrants that, where it provides Personal Information to Arctic Wolf or requests Arctic Wolf collect or process such information, it (1) has complied with any applicable laws relating to the collection or provision of such information, (2) possesses any consents, authorizations, rights and authority, and has given all required notices to individual data subjects as are required to transfer or permit Arctic Wolf to collect, receive, or access any Personal Information for the Solutions, and (3) to the extent required by applicable law, informed the individuals of the possibility of Arctic Wolf processing their Personal Information on Customer's behalf and in accordance with its instructions.

**8.2 European Union and United Kingdom General Data Protection Regulation.** If and to the extent Customer submits to Arctic Wolf personal data (as that term is defined under the General Data Protection Regulation ("**GDPR**") of individuals located in the European Economic Area or United Kingdom, the Arctic Wolf Data Processing Agreement available at <https://arcticwolf.com/terms/dpa/>, as may be updated by Arctic Wolf from time-to-time in accordance with its terms (the "**DPA**"), may be executed by Customer and upon execution and return to Arctic Wolf in accordance with its terms will be incorporated into this Agreement. It is Customer's sole responsibility to notify Arctic Wolf of requests from data subjects related to the modification, deletion, restriction and/or objection of personal data. Customer represents and warrants that any processing of personal data in accordance with its instructions is lawful.

**8.3 California Consumer Privacy Act.** The parties acknowledge and agree that Arctic Wolf is a service provider for the purposes of the California Consumer Privacy Act, as supplemented by the California Privacy Rights Act (collectively, the "**CCPA**") and may receive personal information (as defined by the CCPA) from Customer pursuant to this Agreement for a business purpose. The parties agree to always comply with the applicable provisions of the CCPA in respect to the collection, transmission, and processing of all personal information (as defined by

the CCPA) exchanged or shared pursuant to the Agreement. Arctic Wolf shall not (i) sell any such personal information; (ii) retain, use or disclose any personal information provided by Customer pursuant to this Agreement except as necessary for the specific purpose of performing the Solutions for Customer pursuant to this Agreement or as permitted by the CCPA; (iii) retain, use, or disclose such personal information for a commercial purpose other than providing the Solutions unless otherwise explicitly permitted under the Agreement; (iv) retain, use, or disclose such personal information outside of the direct business relationship between Customer and Arctic Wolf unless otherwise permitted under the Agreement; or (v) combine any such personal information with personal information that it receives from or on behalf of any other person(s) or collects from its own interaction with the consumer, provided that Arctic Wolf may combine personal information to perform any business purpose as defined in and as permitted under the CCPA. The terms "personal information," "service provider," "sale," "share," and "sell" are as defined in Section 1798.140 of the CCPA. Arctic Wolf certifies that it understands the restrictions of this Section 8.3 and will notify Customer if Arctic Wolf decides that it can no longer meet its obligations under the CCPA. It is Customer's sole responsibility to notify Arctic Wolf of any requests from consumers (as defined in the CCPA) seeking to exercise rights afforded in the CCPA regarding personal information received or processed in connection with the Solutions. Arctic Wolf agrees to provide reasonable cooperation to Customer in connection with such requests.

**8.4 Canadian Privacy Laws.** If and to the extent Customer submits to Arctic Wolf personal information (as that term is defined under applicable Canadian privacy laws, being all applicable federal, and provincial laws and regulations relating to the processing, protection or privacy of personal information ("**Privacy Laws**")), of individuals located in Canada, Customer agrees that it is solely responsible for and shall obtain from all such individuals, all required consents and/or provide all required notifications, regarding the collection, use, disclosure, and processing of their personal information by Arctic Wolf/Arctic Wolf's subcontractors/third party service providers (which may be located outside of Canada), and/or the transfer by Customer of such individual's personal information to Arctic Wolf/Arctic Wolf's subcontractors/third party service providers (which may be located outside of Canada). Upon request of Customer, Arctic Wolf will inform Customers of the locations to which the personal information is transferred and processed by Arctic Wolf and/or its subcontractors/third party service providers.

Customer retains control of the personal information and remains solely responsible for its compliance with Privacy Laws and for the processing instructions it gives to Arctic Wolf. The parties agree that this Agreement, together with Customer's use of the Solution in accordance with this Agreement, constitutes Customer's instructions to Arctic Wolf in relation to the processing of such personal information. Subject to Section 8.1 of this Agreement, Arctic Wolf will only process the personal information to the extent, and in such a manner, as is necessary for the performance of the Solutions. Arctic Wolf will reasonably assist Customer with meeting the Customer's compliance obligations under applicable Privacy Laws, considering the nature of Arctic Wolf's processing and the information available to Arctic Wolf.

Arctic Wolf shall:

- Comply with its obligations as a third-party service provider/mandatory under applicable Privacy Laws, including by implementing appropriate technical, physical and organizational measures to safeguard the personal information;
- Periodically conduct audits of its information security controls for facilities and systems used to deliver the Solutions and make relevant audit reports available to Customer for review. The Customer will treat such audit reports as Arctic Wolf's Confidential Information;
- Within seventy-two (72) hours of discovery notify Customer of any unauthorized or unlawful access to or processing of the personal information;
- Limit access to those employees who require the personal information access to meet Arctic Wolf's obligations under this Agreement and ensure that all employees are informed of the personal information's confidential nature;
- Notify Customer if it receives any complaint, notice, or communication that directly or indirectly relates to the personal information processing or to either party's compliance with Privacy Laws, and provide its full co-operation and assistance in responding to such complaint, notice or communication; and
- Upon Customer's request, provide the Customer a copy of or access to all or part of the Customer's personal information in its possession or control in the format reasonably agreed to by the parties.

**8.5 Australian Privacy Laws.** If and to the extent Customer submits to Arctic Wolf personal information (as that term is defined in the *Australian Privacy Act 1988* (Cth)) on your behalf, as agent for you, Arctic Wolf will only handle your personal information for the purpose of performing the Solutions, in accordance with the Privacy Notice or as required by applicable law, and ensuring you have access to your Solutions Data in accordance with this Agreement. Customer will maintain effective control of how Solutions Data is handled by retaining the right to access, changing and retrieving Solutions Data, limiting others' use of Solutions Data and specifying security measures that are used in relation to Solutions Data as set forth in this Agreement, including the Privacy Notice.

**8.6 South African Privacy Laws.** If and to the extent Customer submits to Arctic Wolf personal information (as that term is defined in the Protection of Personal Information Act, 4 of 2013) of individuals located in South Africa, Customer agrees that it is solely responsible for and shall obtain from all such individuals, all required consents and/or provide all required notifications, regarding the collection, use, disclosure, and processing of their personal information by Arctic Wolf/Arctic Wolf's subcontractors/third party service providers (which may be located outside of South Africa, and/or the transfer by Customer of such individual's personal information to Arctic Wolf/Arctic Wolf's subcontractors/third party service providers (which may be located outside of South Africa). Upon request of Customer, Arctic Wolf will inform Customers of the locations to which the personal information is transferred and processed by Arctic Wolf and/or its subcontractors/third party service providers. Arctic Wolf will only handle personal information for the purpose of performing the Solutions and ensuring Customer has access to its Solutions Data in accordance with this Agreement. Customer will maintain effective control of how Solutions Data is handled by retaining the right to access, changing, and retrieving Solutions Data, limiting others' use of Solutions Data. Arctic Wolf shall take appropriate, reasonable technical and organizational security measures to prevent the loss of, damage to or unauthorized destruction of personal information, and the unlawful access to or processing of personal information.

## **9. Indemnity.**

**9.1 Arctic Wolf's Indemnity.** Subject to Section 9.3, Arctic Wolf will defend and indemnify Customer from any unaffiliated third party claim or action to the extent based on the allegation that the Solutions infringe any intellectual property right (patents, utility models, design rights, copyrights and trademarks or any other intellectual property right) having effect in the United States, Canada, Australia, United Kingdom, Switzerland, and the European Union. Arctic Wolf will pay any settlements that Arctic Wolf agrees to in a writing signed by an authorized officer

of Arctic Wolf or final judgments awarded to the third-party claimant by a court of competent jurisdiction. The foregoing obligations do not apply with respect to the Solutions, or portions or components thereof, that are: (a) not provided by Arctic Wolf; (b) combined with other products, processes or materials that are not reasonably contemplated by the Documentation where the alleged infringement relates to such combination; (c) modified other than with Arctic Wolf's express consent; (d) used after Arctic Wolf's notice to Customer of such activity's alleged or actual infringement; or (e) not used by Customer in strict accordance with this Agreement or the published Documentation. The indemnification obligations set forth in this Section 9.1 are Arctic Wolf's sole and exclusive obligations, and Customer's sole and exclusive remedies, with respect to infringement or misappropriation of third-party intellectual property rights of any kind.

**9.2 Customer Indemnity.** Subject to Section 9.3, Customer agrees to defend and indemnify Arctic Wolf from any third-party claim or action brought against Arctic Wolf to the extent based on Customer's alleged breach of Sections 5 or 8. Customer agrees to pay any settlements that Customer agrees to in a writing signed by an authorized officer of Customer or final judgments awarded to the third-party claimant by a court of competent jurisdiction.

**9.3 Procedures.** Each party's indemnification obligations are conditioned on the indemnified party: (a) providing the indemnifying party with prompt written notice of any claim, provided that the failure to provide such notice shall only limit the indemnifying party's obligation to indemnify to the extent that the failure prejudices the indemnifying party in its defense of the claim; (b) granting the indemnifying party the sole control of the defense or settlement of the claim; and (c) providing reasonable information and assistance to the indemnifying party in the defense or settlement of the claim at the indemnifying party's expense. Notwithstanding the foregoing, the indemnifying party (i) may not make an admission of fault on behalf of the other party without written consent, (ii) any settlement requiring the party seeking indemnification to admit liability requires prior written consent, not to be unreasonably withheld or delayed, and (iii) the other party may join in the defense with its own counsel at its own expense.

**9.4 Options.** If Customer's use of the Solutions has become, or in Arctic Wolf's opinion is likely to become, the subject of any claim of infringement, Arctic Wolf may at its option and expense: (a) procure for Customer the right to continue using and receiving the Solutions as set forth hereunder; (b) replace or modify the Solutions to make them non-infringing; (c) substitute an equivalent for the Solutions; or (d) if Arctic Wolf, in its sole discretion, determines that options (a)-(c) are not reasonably practicable, terminate this Agreement and refund any pre-paid unused Fees as of the effective date of termination.

## **10. Warranty and Warranty Disclaimer.**

**10.1 Solutions Warranty.** ARCTIC WOLF WARRANTS THAT DURING THE SUBSCRIPTION TERM AND PROVIDED THAT CUSTOMER IS NOT IN BREACH OF THIS AGREEMENT OR AS OTHERWISE PROHIBITED BY CONSUMER PROTECTION LAWS INCLUDING ANY CUSTOMER RIGHTS UNDER SUCH CONSUMER PROTECTION LAWS THAT: (I) THE SOLUTIONS PROVIDED UNDER THIS AGREEMENT DO NOT INFRINGE OR MISAPPROPRIATE ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY; (II) THE SOLUTIONS SHALL SUBSTANTIALLY PERFORM AS DESCRIBED IN THE DOCUMENTATION; AND (III) IT WILL COMPLY WITH ALL FOREIGN, PROVINCIAL, FEDERAL, STATE AND LOCAL STATUTES, LAWS, ORDERS, RULES, REGULATIONS AND REQUIREMENTS, INCLUDING THOSE OF ANY GOVERNMENTAL (INCLUDING ANY REGULATORY OR QUASI-REGULATORY) AGENCY APPLICABLE TO ARCTIC WOLF AS IT PERTAINS TO ITS OBLIGATIONS AND THE DATA REQUIRED FOR THE PERFORMANCE OF THE SOLUTIONS DESCRIBED HEREIN. IN THE EVENT OF ANY BREACH OF THIS SECTION 10.1, ARCTIC WOLF SHALL, AS ITS SOLE LIABILITY AND CUSTOMER'S SOLE REMEDY (OTHER THAN ARCTIC WOLF'S INDEMNIFICATION OBLIGATIONS IN SECTION 9.1 ABOVE, OR OTHERWISE PROHIBITED BY CONSUMER PROTECTION LAWS OR PROVIDED IN SECTION 10.3 OF THIS AGREEMENT), REPAIR OR REPLACE THE SOLUTIONS THAT ARE SUBJECT TO THE WARRANTY CLAIM AT NO COST TO CUSTOMER OR IF ARCTIC WOLF IS UNABLE TO REPAIR OR REPLACE, THEN ARCTIC WOLF WILL REFUND ANY PRE-PAID FEES FOR THE SOLUTIONS, OR PARTS THEREOF, SUBJECT TO THE WARRANTY CLAIM. EXCEPT FOR THE WARRANTIES DESCRIBED IN THIS SECTION, THE SOLUTIONS ARE PROVIDED WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF DESIGN, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES OF TITLE. CUSTOMER ACKNOWLEDGES THAT THE SOLUTIONS ARE PROVIDED "AS IS" AND FURTHER ACKNOWLEDGES THAT ARCTIC WOLF DOES NOT WARRANT: (A) THE OPERATION OF THE SOLUTIONS WILL BE UNINTERRUPTED, OR ERROR FREE; AND (B) THE SOLUTIONS ARE NOT VULNERABLE TO FRAUD OR UNAUTHORIZED USE. CUSTOMER IS RESPONSIBLE AND ARCTIC WOLF SHALL HAVE NO RESPONSIBILITY FOR DETERMINING THAT THE USE OF THE SOLUTIONS COMPLIES WITH APPLICABLE LAWS IN THE JURISDICTION(S) IN WHICH CUSTOMER MAY DEPLOY AND USE THE SOLUTIONS.

**10.2 No Guarantee.** CUSTOMER ACKNOWLEDGES, UNDERSTANDS, AND AGREES THAT ARCTIC WOLF DOES NOT GUARANTEE OR WARRANT THAT IT WILL FIND, LOCATE, OR DISCOVER ALL OF CUSTOMER'S SYSTEM THREATS, VULNERABILITIES, MALWARE, AND MALICIOUS SOFTWARE, OR THAT ALL SUCH SYSTEM THREATS, VULNERABILITIES, MALWARE, AND MALICIOUS SOFTWARE CAN OR WILL BE CONTAINED OR UNCONTAINED IN THE DELIVERY OF THE SOLUTIONS. CUSTOMER ACKNOWLEDGES THAT CERTAIN FEATURES AND ACTIVITIES PERFORMED BY ARCTIC WOLF AND MORE FULLY DESCRIBED IN THE SOLUTIONS TERMS COULD POSSIBLY RESULT IN INTERRUPTIONS OR DEGRADATION TO CUSTOMER'S SYSTEMS AND ENVIRONMENT AND ACCEPTS THOSE RISKS AND CONSEQUENCES. CUSTOMER ASSUMES ALL RISKS IN USING THIRD-PARTY SYSTEMS OR SERVICES IN CONNECTION WITH THE DELIVERY OF THE SOLUTIONS.

**10.3 Open Source Warranty.** The Software may include Open Source Software. To the extent included in the Software, Open Source Software is governed solely by the applicable open source licensing terms, if any, and is provided "AS IS", and Arctic Wolf hereby disclaims all copyright interest in such Open Source Software. Arctic Wolf provides no warranty specifically related to any Open Source Software or any applicable Open Source Software licensing terms. Any fees paid by Customer to Arctic Wolf are for Arctic Wolf's proprietary Software only, and not for any Open Source Software components of the Software. Any license associated with an Open Source Software component applies only to that component and not to Arctic Wolf's proprietary Software or any other third-party licensed software. The foregoing language is not intended to limit Arctic Wolf's warranty obligation for the Solutions set forth in Section 10.1. "Open Source Software" means software with its source code made available pursuant to a license by which, at a minimum, the copyright holder provides anyone the rights to study, change, and/or distribute the software to anyone and for any purpose.

**10.4 Third-Party Product.** Third-Party Product (as defined in this Section 10.4) may carry a limited warranty from the third-party publisher, provider, or original manufacturer of such Third-Party Products. To the extent required or allowed, Arctic Wolf will pass through to Customer or directly manage for the benefit of Customer's use of the Third-Party Products as part of the Solutions (such decision to be made in Arctic Wolf's discretion), the manufacturer warranties related to such Third-Party Products. "Third-Party Product" means any non-Arctic Wolf branded products and services (including Equipment, and any operating system software included therewith) and non-Arctic Wolf-licensed software products, including Open Source Software.

**10.5 Customer Warranties.** Customer represents and warrants that it shall: (i) be responsible for ensuring the security and confidentiality of all Administrator IDs and passwords; (ii) use commercially reasonable efforts to prevent unauthorized access to, or use of, the Solutions; (iii) notify Arctic Wolf promptly upon discovery of any unauthorized use of the Solutions or any breach, or attempted breach, of security of the Solutions; (iv) not violate any foreign, provincial, federal, state and local statutes, laws, orders, rules, regulations and requirements applicable to Customer's performance of its obligations herein, including those of any governmental (including any regulatory or quasi-regulatory) agency, Trade Control laws, and regulations and the U.S. Foreign Corrupt Practices Act (the "**FCPA**"); (v) not use the Solutions and transfer any Solutions Data to Arctic Wolf for any fraudulent purposes; and (vi) implement safeguards within Customer's environment to protect the Solutions, including specifically, the Equipment, from the introduction, whether intentional or unintentional, of: (1) any virus or other code, program, or sub-program that damages or interferes with the operation of the Equipment or halts, disables, or interferes with the operation of the Solutions; or (2) any device, method, or token whose knowing or intended purpose is to permit any person to circumvent the normal security of the Solutions. Customer authorizes Arctic Wolf to perform Services (and all such tasks and tests reasonably contemplated by or reasonably necessary to perform the Services) on network resources with the internet protocol addresses or other designated identifiers identified by Customer. Customer represents that, if Customer does not own such network resources, it will have obtained consent and authorization from the applicable third party to permit Arctic Wolf to provide the Services on such third party's network resources.

## **11. Limitation of Liability.**

**11.1** TO THE FULL EXTENT PERMITTED BY LAW AND SUBJECT TO SECTION 11.2 BELOW, FOR ANY CAUSE RELATED TO OR ARISING OUT OF THIS AGREEMENT, WHETHER IN AN ACTION BASED ON A CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR ANY OTHER LEGAL THEORY, HOWEVER ARISING, ARCTIC WOLF WILL IN NO EVENT BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR: (A) DAMAGES BASED ON USE OR ACCESS, INTERRUPTION, DELAY OR INABILITY TO USE THE SOLUTIONS, LOST REVENUES OR PROFITS, LOSS OF SOLUTIONS, BUSINESS OR GOODWILL, LOSS OR CORRUPTION OF DATA, LOSS RESULTING FROM SYSTEM FAILURE, MALFUNCTION OR SHUTDOWN, FAILURE TO ACCURATELY TRANSFER, READ OR TRANSMIT INFORMATION, FAILURE TO UPDATE OR PROVIDE CORRECT INFORMATION, SYSTEM INCOMPATIBILITY OR PROVISION OF INCORRECT COMPATIBILITY INFORMATION, BREACHES BY AN AUTHORIZED PARTNER, OR BREACHES IN CUSTOMER'S SYSTEM SECURITY; OR (B) ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES; OR (C) ANY AMOUNTS THAT EXCEED THE TOTAL FEES PAID OR PAYABLE BY CUSTOMER FOR THE SOLUTIONS THAT ARE THE SUBJECT OF THE CLAIM DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRIOR TO THE EVENT WHICH GIVES RISE TO SUCH DAMAGES. THESE LIMITATIONS SHALL APPLY WHETHER OR NOT ARCTIC WOLF HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. BOTH PARTIES UNDERSTAND AND AGREE THAT THE LIMITATIONS OF LIABILITIES FOR EACH PARTY SET FORTH IN THIS AGREEMENT ARE REASONABLE AND THEY WOULD NOT HAVE ENTERED INTO THE AGREEMENT WITHOUT SUCH LIMITATIONS. THE FOREGOING LIMITATIONS OF LIABILITY IN THIS SECTION 11, WITH RESPECT TO ARCTIC WOLF AUSTRALIAN CUSTOMERS, ARE SUBJECT TO THE *COMPETITION AND CONSUMER ACT 2010 (CTH) SCH 2* AND SECTION 11.2 OF THIS AGREEMENT.

**11.2** FOR CUSTOMERS DEEMED "CONSUMERS" AS DEFINED BY THE *COMPETITION AND CONSUMER ACT 2010 (CTH) SCH 2*, SECTION 11.1 IS REPLACED IN ITS ENTIRETY WITH THE FOLLOWING:

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW ARCTIC WOLF SHALL NOT BE LIABLE TO CUSTOMER (UNDER ANY THEORY OF LIABILITY, WHETHER IN CONTRACT, STATUTE, TORT OR OTHERWISE) FOR: (A) ANY LOST PROFITS, REVENUE, OR SAVINGS, LOST BUSINESS OPPORTUNITIES, LOST DATA, OR SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, EVEN IF ARCTIC WOLF HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES OR SUCH DAMAGES OR LOSSES WERE REASONABLY FORESEEABLE; OR (B) AN AMOUNT THAT EXCEEDS THE TOTAL FEES PAID OR PAYABLE BY CUSTOMER FOR THE SOLUTIONS THAT ARE THE SUBJECT OF THE CLAIM DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRIOR TO THE EVENT WHICH GIVES RISE TO SUCH DAMAGES. THESE LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY SPECIFIED IN THESE TERMS. MULTIPLE CLAIMS SHALL NOT EXPAND THE LIMITATIONS SPECIFIED IN THIS SECTION 11.2. THIS SECTION 11.2 DOES NOT SEEK TO LIMIT OR EXCLUDE THE LIABILITY OF ARCTIC WOLF OR ITS AFFILIATES IN THE EVENT OF DEATH OR PERSONAL INJURY CAUSED BY ITS NEGLIGENCE OR FOR FRAUD OR FOR ANY OTHER LIABILITY FOR WHICH IT IS NOT PERMITTED BY LAW TO EXCLUDE. TO THE EXTENT APPLICABLE, THIS PROVISION MUST BE READ SUBJECT TO THE *COMPETITION AND CONSUMER ACT 2010 (CTH) SCH 2*.

**12. Term and Renewal.** This Agreement shall be in effect for the Subscription Term specified in the Order Form. Unless otherwise set forth on the Order Form, the Subscription Term for the Solutions, in its entirety, will automatically renew at the end of the initial Subscription Term for the same period of time as the initial Subscription Term, but in no event more than a twelve (12) month term, and subject to the then-current terms and price at the time of renewal; provided however, if either party would like to opt out of automatic renewal of the Subscription of the Solutions or reduce Subscription scope, then such party must notify the other party no less than sixty (60) days prior to the expiration of the then-current Subscription Term.

**13. Updates.** Arctic Wolf reserves the right to modify this Agreement, the Terms, and the Documentation in Arctic Wolf's sole discretion provided that changes shall not materially decrease the Solutions features and functionalities that Customer has subscribed to during the then-current Subscription Term. Should Arctic Wolf make any modifications to the Agreement, the Terms, or Documentation, Arctic Wolf will post the amended terms on the applicable URL links and will update the "**Last Updated Date**" within such documents and notify Customer via email, the Customer newsletter or such other written communication method implemented by Arctic Wolf from time-to-time. Customer may notify Arctic Wolf within 30 days after the effective date of the change of its rejection of such change. If Customer notifies Arctic Wolf of its rejection during

such thirty (30) day period, then Customer will remain governed by the terms in effect immediately prior to the change until the end of Customer's then-current Subscription Term. However, any subsequent renewal of the Subscription Term will be renewed under the then-current terms, unless otherwise agreed in writing by the parties.

**14. Termination.** Either party may terminate this Agreement for cause if the other party commits a material breach of this Agreement, provided that such terminating party has given the other party ten (10) days advance notice to try and remediate the breach. Upon termination, Customer agrees to cease all use of the Arctic Wolf Technology, installed or otherwise, and permanently erase or destroy all copies of any Arctic Wolf Technology, including all Content and virtual Equipment, that are in its possession or under its control and promptly remove and return all physical Equipment to Arctic Wolf. Except as otherwise required by law, Arctic Wolf will remove, delete, or otherwise destroy all copies of Confidential Information in its possession upon the earlier of (i) the return of the Equipment, if applicable, to Arctic Wolf, or (ii) one hundred-twenty (120) days following termination. Notwithstanding anything contrary in this Agreement, should Customer fail to return any Equipment within ninety (90) days following discontinuation of use of the Equipment or termination or expiration of this Agreement, Customer will be liable for the replacement cost of the Equipment, which shall be due and owing upon receipt of the invoice from Arctic Wolf or the Authorized Partner, and Customer shall be liable for any breach of the Confidential Information and Arctic Wolf Technology contained within the unreturned Equipment. Sections 6 through 13, 14, and 15 will survive the non-renewal or termination of this Agreement.

**15. Miscellaneous.**

**15.1** Except as otherwise provided herein, all notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given: (a) when delivered by hand (with written confirmation of receipt); (b) on the next business day after the date sent, if sent for overnight delivery by a generally recognized international courier (e.g., FedEx, UPS, DHL, etc.) (receipt requested); or (c) on the date sent by e-mail (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient. For contractual purposes, Customer (1) consents to receive communications in an electronic form via the email address it provides via the Customer Portal; and (2) agrees that all agreements, notices, disclosures, and other communications that Arctic Wolf provides electronically satisfies any legal requirement that those communications would satisfy if they were on paper. This Section does not affect Customer's non-waivable rights. Arctic Wolf's address for notification purposes shall be: PO Box 46390, Eden Prairie, MN 55344, [legal@arcticwolf.com](mailto:legal@arcticwolf.com). Customer's address for notification purposes shall be as set forth on the Order Form. Either party may update its notice address upon written notice to the other party.

**15.2** Notwithstanding any other terms to the contrary contained herein, Customer grants Arctic Wolf the right to use Customer's name or logo in customer lists, marketing materials, and verbal discussions with prospective customers to communicate that Customer uses the Solutions. If Arctic Wolf intends to disclose information about Customer's purchase(s) (such as dollar amount of sale or project objectives) in conjunction with the use of Customer's name or logo, Arctic Wolf will obtain Customer's prior written or email approval.

**15.3** The parties to this Agreement are independent contractors. Neither party has the authority to bind the other party without the express written authorization of the other party. Nothing herein may be construed to create an employer-employee, franchisor-franchisee, agency, partnership, or joint venture relationship between the parties. Arctic Wolf shall be primarily liable for the obligations of its Affiliates and any subcontractors used in the delivery of the Solutions.

**15.4** This Agreement shall inure to the benefit of and be binding upon the respective permitted successors and assigns of the parties. Customer shall not be entitled to assign, subcontract, delegate or otherwise transfer any of its rights and/or duties arising out of this Agreement and/or parts thereof to third parties, voluntarily or involuntarily, including by change of control, operation of law or any other manner, without Arctic Wolf's express prior written consent. Any purported assignment, subcontract, delegation, or other transfer in violation of the foregoing shall be null and void. No such assignment, subcontract, delegation, or other transfer shall relieve the assigning party of any of its obligations hereunder.

**15.5** The rights and obligations of the parties under this Agreement shall not be governed by the provisions of the 1980 U.N. Convention on Contracts for the International Sale of Goods or the United Nations Convention on the Limitation Period in the International Sale of Goods, as amended. This Agreement shall be governed by the laws of the State of California without regard to the conflicts of law provisions thereof. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration in Santa Clara County, California in English and in accordance with the JAMS International Arbitration Rules then in effect. Any judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Notwithstanding the foregoing, each party shall have the right to institute an action in a court of proper jurisdiction for preliminary injunctive relief pending a final decision by the arbitrator(s), provided that a permanent injunction and damages shall only be awarded by the arbitrator(s). In any action or proceeding to enforce rights under this Agreement, the prevailing party shall be entitled to recover costs and attorneys' fees.

**15.6** Each party acknowledges and agrees that any dispute or claim that may arise out of or relate to this Agreement is likely to involve complicated and difficult issues and, therefore, each such party irrevocably and unconditionally waives any right it may have to a trial by jury in respect of any legal action arising out of or relating to this Agreement or the transactions contemplated hereby. Further, each party agrees that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to this Agreement must be filed within one year after such claim or cause of action arose.

**15.7** No failure or delay by any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies under this Agreement are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise.

**15.8** If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable. The parties agree to replace such void or unenforceable provision of this Agreement with a valid and enforceable provision that will achieve, to the extent possible, the economic, business, and other purpose of such void or unenforceable provision. Arctic Wolf does not accept, expressly or impliedly, and rejects and deems deleted any additional or different

terms or conditions that Customer presents, including, but not limited to, any terms or conditions contained Customer's purchase order, or other such document, or established by trade usage or prior course of dealing.

**15.9** This Agreement (including the exhibits hereto, if any, and any BAA (as defined in Section 15.10 below)) constitutes the parties' entire agreement by and between the parties with respect to the subject matter hereof and supersedes any prior or contemporaneous agreement or understanding by and among the parties with respect to such subject matter. Except as otherwise provided herein, this Agreement may be amended, modified, or supplemented only by an agreement in writing signed by each party.

**15.10** In the event that Arctic Wolf receives personal healthcare information in the delivery of the Solutions, the parties agree to comply with the Business Associate Addendum ("**BAA**") located at <https://arcticwolf.com/terms/business-associate-addendum/> or such other equivalent agreement/addendum as required under applicable health information/privacy laws. In the event the parties have entered into a BAA or equivalent agreement in relation to protected health information, the parties intend for both this Agreement and BAA or equivalent agreement to be binding upon them and the BAA or equivalent agreement is incorporated into this Agreement by reference.

**15.11** The parties have participated mutually in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement will be construed as if drafted mutually by the parties and no presumption or burden of proof will arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

**15.12** The parties have agreed that this Agreement as well as any notice, document or instrument relating to it be drawn up in English only; *les parties aux présentes ont convenu que la présente convention ainsi que tous autres avis, actes ou documents s'y rattachant soient rédigés en anglais seulement.*

CRADLEPOINT

**Warranty Statement**

March 2023

## **Cradlepoint Warranty Statement**

Cradlepoint Netcloud Package Limited Lifetime Hardware Warranty as described below and within this web link <https://customer.cradlepoint.com/s/article/cradlepoint-warranty>.

All hardware products sold as components of Cradlepoint NetCloud Packages (including MC400 modems and docks) include a limited warranty against defects in materials and workmanship through Last Date of Support when used in accordance with Cradlepoint's product documentation and provided the hardware products are under a continuous, fully paid-up subscription license to NetCloud Manager services. Cradlepoint's limited hardware product warranty is non-transferable and extends only to the original purchaser of the products from an Authorized Cradlepoint Partner.

Notwithstanding the foregoing, antennas, batteries and power supplies include a limited warranty against defects in materials and workmanship to the original purchaser for a period of one (1) year from the date of shipment, regardless of whether it is sold as a component of a NetCloud Package.

Cradlepoint's warranty is limited to a repair or replacement of the hardware product, at Cradlepoint's discretion, as original purchaser's sole and exclusive remedy. Cradlepoint does not warrant that the operation of the hardware product will meet original purchaser's requirements or be error free. This warranty does not cover any failure of the product due to normal wear and tear, misuse (including but not limited to use in other than a normal and customary manner in accordance with Cradlepoint's instructions for use and maintenance of the product), accident, modification or adjustment, acts of God, improper ventilation, or damage resulting from liquid.

The specific written warranties set forth in this warranty statement are in lieu of any other warranties whatsoever. Except as set forth herein, Cradlepoint disclaims all other representations, warranties, and conditions, whether expressed or implied, with respect to the hardware products, including any warranties of title, non-infringement, merchantability and fitness for a particular purpose, and any warranties arising from a course of dealing, usage or trade practice. To obtain warranty service, the original purchaser must first call Cradlepoint for a Return Materials Authorization ("RMA") number, then return the properly packaged product to Cradlepoint for repair or replacement as required.

### **Disclaimer and Limitation of Liability**

The remedies provided herein are the purchaser's sole and exclusive remedies. Cradlepoint and its affiliates hereby specifically disclaim liability for any and all: (a) direct, indirect, special, general, incidental, consequential, punitive or exemplary damages, including without limitation for loss of profits or revenue or of anticipated profits or revenue arising out of the use or inability to use the product, even if Cradlepoint and/or its affiliates have been advised of the possibility of such damages, and even if such damages are foreseeable; or (b) claims by any third party. notwithstanding the foregoing, in no event shall the aggregate liability of cradlepoint and/or its affiliates arising under or in connection with the product, however arising, regardless of the number of events, occurrences, or claims giving rise to liability, exceed the price paid by the original purchaser of the product. the limitations of liability set forth herein shall

remain in full force and effect regardless of whether the remedies hereunder are determined to have failed of their essential purpose.

Cradlepoint's warranty is subject to change without notice and does not represent any commitment on the part of Cradlepoint or its affiliates. This warranty shall be governed by the laws of the State of Idaho and the parties irrevocably submit to the exclusive jurisdiction of the courts of the State of Idaho.

Published Date: October 2020

### **Process and procedures of obtaining customer support**

Cradlepoint technical support and customer service technicians are located at our global headquarters in Boise, Idaho. Cradlepoint's support team has direct access to the R&D team that builds the NetCloud Service and Devices. These enterprise support engineers, and technical specialists have their own certifications, deep experience, and skills in solving network issue in organizations like yours.

### **Customer Support Team**

Cradlepoint Technical Support and Customer Service technicians work together, our Customer Service technicians are required to escalate to Technical Support Engineers when a technical issue is identified.

### **Monitoring**

Cradlepoint provides Support Service Level Targets. Cradlepoint Global Support offers world-class resources and expertise to keep your network secure, simple, and efficient. With Cradlepoint Support, you have access to our team for assistance with any technical issues. Cradlepoint tracks questions and assistance requests for customers with Cradlepoint products covered by Warranty or a NetCloud Solution Package through a service request process. This is typically done by contacting the Cradlepoint Global Support team or by opening a support case through the Connect portal. As cases are opened, information about the customer site and technical details about the product, service and environment will be collected. A "Case Severity" will be assigned for each case. The Case Severity is defined by the impact to the customer and the type of problem. It helps define the response time, communication cadence, and acts as a guide to further escalations. Setting these levels allows Cradlepoint to resolve issues in a timely manner for more customers.

### **Expected Response Times**

Cradlepoint provides customer service and technical support 24/7/365 via phone, chat or customer portal. We hold ourselves to a high standard which is proven time and again by our industry leading averages on problem close rates and resolutions. Hold times on phone support averages 2-minutes. Cradlepoint tracks customer support requests through a mature, enterprise grade case management system. As cases are opened, information about the customer site and technical details about the product, service and environment will be collected. Cradlepoint provides free firmware and software updates for the life of the services and Cradlepoint's warranty is limited to a repair or replacement of the hardware product.

JABRA

**Warranty & Service Information**

# WARRANTY & SERVICE INFORMATION

## BUSINESS PRODUCTS

### Limited One (1), Two (2) or Three (3) Year Warranty

GN Netcom, Inc. ("GN") warrants to the first end-user purchasing the product from a distributor or reseller ("GN Partner"), that the product shall be free from defects in materials and workmanship subject to the terms set forth below ("Warranty") for a period of ("Warranty Period"):

- **Cordless products:** one (1) year from the date the products have been purchased
- **Corded products:** two (2) years from the date the products have been purchased
- **BIZ 2400:** three (3) years from the date the products have been purchased

If the product is sold or otherwise transferred to another party, the Warranty will automatically terminate prior to expiration. Furthermore, the Warranty will terminate immediately if the product is (a) altered, repaired, or maintained by anyone other than GN or a GN Partner which is authorized to do GN warranty work, whether or not successful, or (b) being used together with non-GN branded or certified accessories or other peripheral equipment.

During the Warranty Period, GN will, at GN's sole discretion (a) repair the product using new or refurbished parts, (b) replace the product with a new or refurbished product, or (b) refund the purchase price paid ("Warranty Service"). The Warranty sets forth the extent and limit of GN's obligations towards the end-user except as modified by applicable law.

Warranty on replaced or repaired products is twelve (12) months, OR the rest of the original Warranty Period, whatever is longest.

As part of GN's efforts to reduce environmental waste the product may consist of reconditioned equipment that contain used components, some of which may have been reworked. The used components meet GN's high quality standards and comply with GN's product performance and reliability specifications. Defective parts or products replaced by or returned to GN during the Warranty Period become the property of GN.

**How to Obtain Warranty Service** To obtain Warranty Service, please contact the GN Partner from which the product was purchased.

The product must be returned in its original packaging, if possible, or packaging affording an equal degree of protection. During the Warranty Period, except where prohibited by applicable law, the end-user will bear the cost of shipping the product to GN or such other place as GN may direct. If the product is covered by the Warranty, GN will bear the cost of return shipping after service has been completed. Return shipping will be charged to the end-user for products not covered by the Warranty or requiring no warranty repair. Damage occurred during shipment is deemed the responsibility of the carrier, and any claim should be

made directly to said carrier.

The following information must be presented to obtain Warranty Service:

1. The defective product,
2. The end-user's name, company name if applicable, address, Email address and telephone number,
3. A description of the problem, and
4. Proof of purchase which clearly indicates the name and address of the GN Partner, date of purchase, product type and model number. Without proof of purchase, the Warranty Period will commence on the date labeled on the product.

**Consumable Components and Accessories Exempt From Warranty** Limited-life consumable components and accessories subject to normal wear and tear are exempt from Warranty, unless they are found to be defective or broken upon purchase of the product. This includes among others:

- Basic QD to modular plug cords
- Basic QD to device specific plug cords
- Basic USB cords
- Adapter plugs
- LINK Mobile cords
- Modular RJ9 to RJ9 cords
- Busylight
- Headbands
- Neckbands
- Ear cushions
- Ear tips
- Ear hooks
- Headset stands
- Microphone windscreens
- Decorative finishes
- Foam products
- Removable batteries

Consumable components and accessories that malfunction within fourteen (14) days after they have been purchased are deemed to have been defective or broken upon purchase.

**Limitations of Warranty** This Warranty only applies to products purchased for use, not for resale. This Warranty is invalid if the factory-applied serial number, date code label, and/or product label has been altered or removed from the product.

This Warranty only applies to defective factory material and factory workmanship and does not cover defects or damages caused by or attributable to (a) improper storage or faulty installation and operation;

misuse or abuse; accident or neglect, (b) contact with any liquid, (c) use of the product or accessories for commercial purposes, or subjecting the product or accessories to improper or abnormal usage or conditions, or (d) other acts which are not the fault of GN, including matters attributable to a GN Partner.

This Warranty does not apply to products which have not been charged for six (6) months. If the battery in a product has not been charged for a period of six (6) months, the product might not function or regain its full potential and long-term performance. GN does not offer any warranty for such performance.

It is the end-user's responsibility to operate and care for the product in accordance with the instructions and specifications supplied with the product. Repairs resulting from failure to do so are not covered by the Warranty.

REPAIRS, REPLACEMENTS OR REFUNDING AS PROVIDED UNDER THIS WARRANTY ARE THE EXCLUSIVE REMEDY OF THE END-USER. NEITHER GN NOR YOUR GN PARTNER SHALL BE LIABLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES FOR BREACH OF ANY EXPRESS OR IMPLIED WARRANTY ON THE PRODUCT, INCLUDING WITHOUT LIMITATION COMMERCIAL LOSS, INCIDENTAL EXPENSES, LOSS OF TIME, OR INCONVENIENCE. EXCEPT TO THE EXTENT PROHIBITED BY LAW, THIS WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER EXPRESS AND IMPLIED WARRANTIES WHATSOEVER, INCLUDING BUT NOT LIMITED TO THE WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PRACTICAL PURPOSE.

**NOTE!**The Warranty gives the end-user specific legal rights. The end-user may also have other rights which vary from state to state or country to country. Some jurisdictions do not allow the exclusion or limitation of incidental or consequential damages or implied warranties, so the above exclusions may not apply. The Warranty does not affect statutory legal rights under applicable national or local laws.

LENOVO

**Warranty Statement**

# Lenovo Statement of Limited Warranty

## Part 1 - General Terms

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*This Statement of Limited Warranty includes Part 1 - General Terms, Part 2 - Country-unique Terms, and Part 3 - Warranty Information. The terms of Part 2 replace or modify those of Part 1. The warranties provided by Lenovo Group Limited or one of its subsidiaries (called "Lenovo") in this Statement of Limited Warranty apply only to Machines you purchase for your use, and not for resale. The term "Machine" means a Lenovo machine, its options, features, conversions, upgrades or peripheral products, or any combination of them. The term "Machine" does not include any software programs, whether pre-loaded with the Machine, installed subsequently or otherwise. **Nothing in this Statement of Limited Warranty affects any statutory rights of consumers that cannot be waived or limited by contract.***

### **What this Warranty Covers**

Lenovo warrants that each Machine 1) is free from defects in materials and workmanship and 2) conforms to Lenovo's Official Published Specifications ("Specifications") which are available on request. The warranty period for the Machine starts on the original date of installation and is specified in Part 3 - Warranty Information. The date on your invoice or sales receipt is the date of installation unless Lenovo or your reseller informs you otherwise. Unless Lenovo specifies otherwise, these warranties apply only in the country or region in which you purchased the Machine.

**THESE WARRANTIES ARE YOUR EXCLUSIVE WARRANTIES AND REPLACE ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. SOME STATES OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF EXPRESS OR IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO YOU. IN THAT EVENT, SUCH WARRANTIES ARE LIMITED IN DURATION TO THE WARRANTY PERIOD. NO WARRANTIES APPLY AFTER THAT PERIOD. SOME STATES OR JURISDICTIONS DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO THE ABOVE LIMITATION MAY NOT APPLY TO YOU.**

### **What this Warranty Does not Cover**

This warranty does not cover the following:

- any software programs, whether pre-loaded or shipped with the Machine, or installed subsequently;
- failure resulting from misuse, accident, modification, unsuitable physical or operating environment, or improper maintenance by you;
- failure caused by a product for which Lenovo is not responsible; and
- any non-Lenovo products, including those that Lenovo may procure and provide with or integrate into a Lenovo Machine at your request.

The warranty is voided by removal or alteration of identification labels on the Machine or its parts.

Lenovo does not warrant uninterrupted or error-free operation of a Machine.

Any technical or other support provided for a Machine under warranty, such as assistance with "how-to" questions and those regarding Machine set-up and installation, is provided **WITHOUT WARRANTIES OF ANY KIND**.

### **How to Obtain Warranty Service**

Warranty service may be provided by Lenovo, IBM, your reseller if authorized to perform warranty service, or an authorized warranty service provider. Each of them is referred to as a "Service Provider."

If the Machine does not function as warranted during the warranty period, contact a Service Provider. If you do not register the Machine with Lenovo, you may be required to present proof of purchase as evidence of your entitlement to warranty service.

### **What Lenovo Will Do to Correct Problems**

When you contact a Service Provider for service, you must follow the problem determination and resolution procedures that we specify. An initial diagnosis of your problem can be made either by a technician over the telephone or electronically by access to a support website.

The type of warranty service applicable to your Machine is specified in Part 3 - Warranty Information.

You are responsible for downloading and installing designated software updates from a support web site or from other electronic media, and following the instructions that your Service Provider provides. Software updates may include basic input/output system code (called "BIOS"), utility programs, device drivers, and other software updates.

If your problem can be resolved with a Customer Replaceable Unit ("CRU") (e.g., keyboard, mouse, speaker, memory, hard disk drive), your Service Provider will ship the CRU to you for you to install.

If the Machine does not function as warranted during the warranty period and your problem cannot be resolved over the telephone or electronically, through your application of software updates, or with a CRU, your Service Provider, will either, at its discretion, 1) repair it to make it function as warranted, or 2) replace it with one that is at least functionally equivalent. If your Service Provider is unable to do either, you may return the Machine to your place of purchase and your money will be refunded.

As part of the warranty service, your Service Provider may also install selected engineering changes that apply to the Machine.

### **Exchange of a Machine or Part**

When the warranty service involves the exchange of a Machine or part, the item your Service Provider replaces becomes Lenovo's property and the replacement becomes yours. You represent that all removed items are genuine and unaltered. The replacement may not be new, but will be in good working order and at least functionally equivalent to the item replaced. The replacement assumes the warranty service status of the replaced item.

### **Your Additional Responsibilities**

Before your Service Provider exchanges a Machine or part, you agree to remove all features, parts, options, alterations, and attachments not under warranty service.

You also agree to:

1. ensure that the Machine is free of any legal obligations or restrictions that prevent its exchange;
2. obtain authorization from the owner to have your Service Provider service a Machine that you do not own; and
3. where applicable, before service is provided:
  - a. follow the service request procedures that your Service Provider provides;
  - b. backup or secure all programs, data, and funds contained in the Machine; and

- c. provide your Service Provider with sufficient, free, and safe access to your facilities to permit Lenovo to fulfill its obligations.
4. (a) ensure all information about identified or identifiable individuals (Personal Data) is deleted from the Machine (to the extent technically possible), (b) allow your Service Provider or a supplier to process on your behalf any remaining Personal Data as your Service Provider considers necessary to fulfill its obligations under this Statement of Limited Warranty (which may include shipping the Machine for such processing to other service locations around the world), and (c) ensure that such processing complies with any laws applicable to such Personal Data.

#### **Limitation of Liability**

Lenovo is responsible for loss of, or damage to, your Machine only while it is 1) in your Service Provider's possession or 2) in transit in those cases where Lenovo is responsible for the transportation charges.

Neither Lenovo nor your Service Provider are responsible for any of your confidential, proprietary or personal information contained in a Machine which you return for any reason. You should remove all such information from the Machine prior to its return.

Circumstances may arise where, because of a default on Lenovo's part or other liability, you are entitled to recover damages from Lenovo. In each such instance, regardless of the basis on which you are entitled to claim damages from Lenovo (including fundamental breach, negligence, misrepresentation, or other contract or tort claim), except for any liability that cannot be waived or limited by applicable laws, Lenovo is liable for no more than

1. damages for bodily injury (including death) and damage to real property and tangible personal property for which Lenovo is legally liable; and
2. the amount of any other actual direct damages, up to the charges for the Machine that is subject of the claim.

This limit also applies to Lenovo's suppliers, resellers and your Service Provider. It is the maximum for which Lenovo, its suppliers, resellers, and your Service Provider are collectively responsible.

**UNDER NO CIRCUMSTANCES IS LENOVO, ITS SUPPLIERS, RESELLERS OR SERVICE PROVIDERS LIABLE FOR ANY OF THE FOLLOWING EVEN IF INFORMED OF THEIR POSSIBILITY: 1) THIRD PARTY CLAIMS AGAINST YOU FOR DAMAGES (OTHER THAN THOSE UNDER THE FIRST ITEM LISTED ABOVE); 2) LOSS OF, OR DAMAGE TO, DATA; 3) SPECIAL, INCIDENTAL, OR INDIRECT DAMAGES OR FOR ANY ECONOMIC CONSEQUENTIAL DAMAGES; OR 4) LOST PROFITS, BUSINESS REVENUE, GOODWILL OR ANTICIPATED SAVINGS. SOME STATES OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU.**

#### **Governing Law**

Both you and Lenovo consent to the application of the laws of the country in which you acquired the Machine to govern, interpret, and enforce all of your and Lenovo's rights, duties, and obligations arising from, or relating in any manner to, the subject matter of this Statement of Limited Warranty, without regard to conflict of law principles.

**THESE WARRANTIES GIVE YOU SPECIFIC LEGAL RIGHTS AND YOU MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM STATE TO STATE OR JURISDICTION TO JURISDICTION.**

#### **Jurisdiction**

All of our rights, duties, and obligations are subject to the courts of the country in which you acquired the Machine.

## **Part 2 - Country-unique Terms**

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### **AMERICAS**

#### **ARGENTINA**

**Jurisdiction:** *The following is added after the first sentence:*

Any litigation arising from this Statement of Limited Warranty will be settled exclusively by the Ordinary Commercial Court of the city of Buenos Aires.

#### **BOLIVIA**

**Jurisdiction:** *The following is added after the first sentence:*

Any litigation arising from this Statement of Limited Warranty will be settled exclusively by the courts of the city of La Paz.

#### **BRAZIL**

**Jurisdiction:** *The following is added after the first sentence:*

Any litigation arising from this Statement of Limited Warranty will be settled exclusively by the court of Rio de Janeiro, RJ.

#### **CHILE**

**Jurisdiction:** *The following is added after the first sentence:*

Any litigation arising from this Statement of Limited Warranty will be settled exclusively by the Civil Courts of Justice of Santiago.

#### **COLOMBIA**

**Jurisdiction:** *The following is added after the first sentence:*

Any litigation arising from this Statement of Limited Warranty will be settled exclusively by the Judges of the Republic of Colombia.

#### **ECUADOR**

**Jurisdiction:** *The following is added after the first sentence:*

Any litigation arising from this Statement of Limited Warranty will be settled exclusively by the Judges of Quito.

#### **MEXICO**

**Jurisdiction:** *The following is added after the first sentence:*

Any litigation arising from this Statement of Limited Warranty will be settled exclusively by the Federal Courts of Mexico City, Federal District.

#### **PARAGUAY**

**Jurisdiction:** *The following is added after the first sentence:*

Any litigation arising from this Statement of Limited Warranty will be settled exclusively by the courts of the city of Asuncion.

## **PERU**

**Jurisdiction:** *The following is added after the first sentence:*

Any litigation arising from this Statement of Limited Warranty will be settled exclusively by the Judges and Tribunals of the Judicial District of Lima, Cercado.

**Limitation of Liability:** *The following is added at the end of this section:*

In accordance with Article 1328 of the Peruvian Civil Code the limitations and exclusions specified in this section will not apply to damages caused by Lenovo's willful misconduct ("dolo") or gross negligence ("culpa inexcusable").

## **URUGUAY**

**Jurisdiction:** *The following is added after the first sentence:*

Any litigation arising from this Statement of Limited Warranty will be settled exclusively by the City of Montevideo Court's Jurisdiction.

## **VENEZUELA**

**Jurisdiction:** *The following is added after the first sentence:*

Any litigation arising from this Statement of Limited Warranty will be settled exclusively by the Courts of the Metropolitan Area Of the City of Caracas.

## **NORTH AMERICA**

**How to Obtain Warranty Service:** *The following is added to this Section:*

To obtain warranty service from IBM service in Canada or the United States, call 1-800-IBM-SERV (426-7378).

## **CANADA**

**Limitation of Liability:** *The following replaces item 1 of this section:*

1. damages for bodily injury (including death) or physical harm to real property and tangible personal property caused by Lenovo's negligence; and

**Governing Law:** *The following replaces "laws of the country in which you acquired the Machine" in the first sentence:*

laws in the Province of Ontario.

## **UNITED STATES**

**Governing Law:** *The following replaces "laws of the country in which you acquired the Machine" in the first sentence:*

laws of the State of New York.

## **ASIA PACIFIC**

### **AUSTRALIA**

**What this Warranty Covers:** *The following paragraph is added to this section:*

The warranties specified in this Section are in addition to any rights you may have under the Trade Practices Act 1974 or other similar legislation and are only limited to the extent permitted by the applicable legislation.

**Limitation of Liability:** *The following is added to this section:*

Where Lenovo is in breach of a condition or warranty implied by the Trade Practices Act 1974 or other similar legislation, Lenovo's liability is limited to the repair or replacement of the goods or the supply of equivalent goods. Where that condition or warranty relates to right to sell, quiet possession or clear title, or the goods are of a kind ordinarily acquired for personal, domestic or household use or consumption, then none of the limitations in this paragraph apply.

**Governing Law:** *The following replaces "laws of the country in which you acquired the Machine" in the first sentence:*

laws of the State or Territory

### **CAMBODIA AND LAOS**

**Governing Law:** *The following replaces "laws of the country in which you acquired the Machine" in the first sentence:*

laws of the State of New York, United States of America.

### **CAMBODIA, INDONESIA AND LAOS**

**Arbitration:** *The following is added under this heading:*

Disputes arising out of or in connection with this Statement of Limited Warranty shall be finally settled by arbitration which shall be held in Singapore in accordance with the Arbitration Rules of Singapore International Arbitration Center ("SIAC Rules") then in effect. The arbitration award shall be final and binding for the parties without appeal and shall be in writing and set forth the findings of fact and the conclusions of law.

The number of arbitrators shall be three, with each side to the dispute being entitled to appoint one arbitrator. The two arbitrators appointed by the parties shall appoint a third arbitrator who shall act as chairman of the proceedings. Vacancies in the post of chairman shall be filled by the president of the SIAC. Other vacancies shall be filled by the respective nominating party. Proceedings shall continue from the stage they were at when the vacancy occurred.

If one of the parties refuses or otherwise fails to appoint an arbitrator within 30 days of the date the other party appoints its, the first appointed arbitrator shall be the sole arbitrator, provided that the arbitrator was validly and properly appointed.

All proceedings shall be conducted, including all documents presented in such proceedings, in the English language. The English language version of this Statement of Limited Warranty prevails over any other language version.

## HONG KONG S.A.R. OF CHINA AND MACAU S.A.R. OF CHINA

**Governing Law:** *The following replaces "laws of the country in which you acquired the Machine" in the first sentence:*  
laws of Hong Kong Special Administrative Region of China.

## INDIA

**Limitation of Liability:** *The following replaces items 1 and 2 of this section:*

1. liability for bodily injury (including death) or damage to real property and tangible personal property will be limited to that caused by Lenovo's negligence; and
2. as to any other actual damage arising in any situation involving nonperformance by Lenovo pursuant to, or in any way related to the subject of this Statement of Limited Warranty, the charge paid by you for the individual Machine that is the subject of the claim.

**Arbitration:** *The following is added under this heading*

Disputes arising out of or in connection with this Statement of Limited Warranty shall be finally settled by arbitration which shall be held in Bangalore, India in accordance with the laws of India then in effect. The arbitration award shall be final and binding for the parties without appeal and shall be in writing and set forth the findings of fact and the conclusions of law.

The number of arbitrators shall be three, with each side to the dispute being entitled to appoint one arbitrator. The two arbitrators appointed by the parties shall appoint a third arbitrator who shall act as chairman of the proceedings. Vacancies in the post of chairman shall be filled by the president of the Bar Council of India. Other vacancies shall be filled by the respective nominating party. Proceedings shall continue from the stage they were at when the vacancy occurred.

If one of the parties refuses or otherwise fails to appoint an arbitrator within 30 days of the date the other party appoints its, the first appointed arbitrator shall be the sole arbitrator, provided that the arbitrator was validly and properly appointed.

All proceedings shall be conducted, including all documents presented in such proceedings, in the English language. The English language version of this Statement of Limited Warranty prevails over any other language version.

## JAPAN

**Governing Law:** *The following sentence is added to this section:*

Any doubts concerning this Statement of Limited Warranty will be initially resolved between us in good faith and in accordance with the principle of mutual trust.

## MALAYSIA

**Limitation of Liability:** *The word "SPECIAL" in item 3 of the fifth paragraph is deleted.*

## NEW ZEALAND

**What this Warranty Covers:** *The following paragraph is added to this section:*

The warranties specified in this section are in addition to any rights you may have under the Consumer Guarantees Act 1993 or other legislation which cannot be excluded or limited. The Consumer Guarantees Act 1993 will not apply in respect of any goods which Lenovo provides, if you require the goods for the purposes of a business as defined in that Act.

**Limitation of Liability:** *The following is added to this section:*

Where Machines are not acquired for the purposes of a business as defined in the Consumer Guarantees Act 1993, the limitations in this Section are subject to the limitations in that Act.

## PEOPLE'S REPUBLIC OF CHINA (PRC)

**Governing Law:** *The following replaces "laws of the country in which you acquired the Machine" in the first sentence:*  
laws of the State of New York, United States of America (except when local law requires otherwise).

## PHILIPPINES

**Limitation of Liability:** *Item 3 in the fifth paragraph is replaced by the following:*

**SPECIAL (INCLUDING NOMINAL AND EXEMPLARY DAMAGES), MORAL, INCIDENTAL, OR INDIRECT DAMAGES FOR ANY ECONOMIC CONSEQUENTIAL DAMAGES; OR**

**Arbitration:** The following is added: under this heading

Disputes arising out of or in connection with this Statement of Limited Warranty shall be finally settled by arbitration which shall be held in Metro Manila, Philippines in accordance with the laws of the Philippines then in effect. The arbitration award shall be final and binding for the parties without appeal and shall be in writing and set forth the findings of fact and the conclusions of law.

The number of arbitrators shall be three, with each side to the dispute being entitled to appoint one arbitrator. The two arbitrators appointed by the parties shall appoint a third arbitrator who shall act as chairman of the proceedings. Vacancies in the post of chairman shall be filled by the president of the Philippine Dispute Resolution Center, Inc.. Other vacancies shall be filled by the respective nominating party. Proceedings shall continue from the stage they were at when the vacancy occurred.

If one of the parties refuses or otherwise fails to appoint an arbitrator within 30 days of the date the other party appoints its, the first appointed arbitrator shall be the sole arbitrator, provided that the arbitrator was validly and properly appointed.

All proceedings shall be conducted, including all documents presented in such proceedings, in the English language. The English language version of this Statement of Limited Warranty prevails over any other language version.

## SINGAPORE

**Limitation of Liability:** *The words "SPECIAL" and "ECONOMIC" in item 3 in the fifth paragraph are deleted.*

## EUROPE, MIDDLE EAST, AFRICA (EMEA)

**THE FOLLOWING TERMS APPLY TO ALL EMEA COUNTRIES:**

The terms of this Statement of Limited Warranty apply to Machines purchased from Lenovo or a Lenovo reseller.

**How to Obtain Warranty Service:**

Add the following paragraph in **Western Europe** (Andorra, Austria, Belgium, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Monaco, Netherlands, Norway, Poland,

Portugal, San Marino, Slovakia, Slovenia, Spain, Sweden, Switzerland, United Kingdom, Vatican State, and any country subsequently added to the European Union, as from the date of accession):

The warranty for Machines acquired in Western Europe shall be valid and applicable in all Western Europe countries provided the Machines have been announced and made available in such countries.

If you purchase a Machine in one of the Western European countries, as defined above, you may obtain warranty service for that Machine in any of those countries from a Service Provider, provided the Machine has been announced and made available by Lenovo in the country in which you wish to obtain service.

If you purchased a Personal Computer Machine in Albania, Armenia, Belarus, Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, Georgia, Hungary, Kazakhstan, Kyrgyzstan, Federal Republic of Yugoslavia, Former Yugoslav Republic of Macedonia (FYROM), Moldova, Poland, Romania, Russia, Slovak Republic, Slovenia, or Ukraine, you may obtain warranty service for that Machine in any of those countries from a Service Provider, provided the Machine has been announced and made available by Lenovo in the country in which you wish to obtain service..

If you purchase a Machine in a Middle Eastern or African country, you may obtain warranty service for that Machine from a Service Provider within the country of purchase, provided the Machine has been announced and made available by Lenovo in that country.. Warranty service in Africa is available within 50 kilometers of a Service Provider. You are responsible for transportation costs for Machines located outside 50 kilometers of a Service Provider.

#### **Governing Law:**

*The phrase "the laws of the country in which you acquired the Machine" is replaced by:*

1) "the laws of Austria" in **Albania, Armenia, Azerbaijan, Belarus, Bosnia-Herzegovina, Bulgaria, Croatia, Georgia, Hungary, Kazakhstan, Kyrgyzstan, FYR Macedonia, Moldova, Poland, Romania, Russia, Slovakia, Slovenia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan, and FR Yugoslavia**; 2) "the laws of France" in **Algeria, Benin, Burkina Faso, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Congo Republic, Djibouti, Democratic Republic of Congo, Equatorial Guinea, French Guiana, French Polynesia, Gabon, Gambia, Guinea, Guinea-Bissau, Ivory Coast, Lebanon, Madagascar, Mali, Mauritania, Mauritius, Mayotte, Morocco, New Caledonia, Niger, Reunion, Senegal, Seychelles, Togo, Tunisia, Vanuatu, and Wallis & Futuna**; 3) "the laws of Finland" in **Estonia, Latvia, and Lithuania**; 4) "the laws of England" in **Angola, Bahrain, Botswana, Burundi, Egypt, Eritrea, Ethiopia, Ghana, Jordan, Kenya, Kuwait, Liberia, Malawi, Malta, Mozambique, Nigeria, Oman, Pakistan, Qatar, Rwanda, Sao Tome, Saudi Arabia, Sierra Leone, Somalia, Tanzania, Uganda, United Arab Emirates, the United Kingdom, West Bank/Gaza, Yemen, Zambia, and Zimbabwe**; and 5) "the laws of South Africa" in **South Africa, Namibia, Lesotho and Swaziland**.

*Jurisdiction: The following exceptions are added to this section:*

1) **In Austria** the choice of jurisdiction for all disputes arising out of this Statement of Limited Warranty and relating thereto, including its existence, will be the competent court of law in Vienna, Austria (Inner-City); 2) **In Angola, Bahrain, Botswana, Burundi, Egypt, Eritrea, Ethiopia, Ghana, Jordan, Kenya, Kuwait, Liberia, Malawi, Malta, Mozambique, Nigeria, Oman, Pakistan, Qatar, Rwanda, Sao Tome, Saudi Arabia, Sierra Leone, Somalia, Tanzania, Uganda, United Arab Emirates, West Bank/Gaza, Yemen, Zambia, and Zimbabwe** all disputes arising out of this Statement of Limited Warranty or related to its execution, including summary proceedings, will be submitted to the exclusive jurisdiction of the English courts; 3) in **Belgium and Luxembourg**, all disputes arising out of this Statement of Limited Warranty or related to its interpretation or its execution, the law, and the courts of the capital city, of the country of your registered office and/or commercial site location only are competent; 4) in **France, Algeria, Benin, Burkina Faso, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Congo Republic, Djibouti, Democratic Republic of Congo, Equatorial Guinea, French Guiana, French Polynesia, Gabon, Gambia, Guinea, Guinea-Bissau, Ivory Coast, Lebanon, Madagascar, Mali, Mauritania, Mauritius, Mayotte, Morocco, New Caledonia, Niger, Reunion, Senegal, Seychelles, Togo, Tunisia, Vanuatu, and Wallis & Futuna** all disputes arising out of this Statement of Limited Warranty or related to its violation or execution, including summary proceedings, will be settled exclusively by the Commercial Court of Paris; 5) in **Russia**, all disputes arising out of or in relation to the interpretation, the violation, the termination, the nullity of the execution of this Statement of Limited Warranty shall be settled by Arbitration Court of Moscow; 6) in **South Africa, Namibia, Lesotho and Swaziland**, both of us agree to submit all disputes relating to this Statement of Limited Warranty to the jurisdiction of the High Court in Johannesburg; 7) in **Turkey** all disputes arising out of or in connection with this Statement of Limited Warranty shall be resolved by the Istanbul Central (Sultanahmet) Courts and Execution Directorates of Istanbul, the Republic of Turkey; 8) in each of the following specified countries, any legal claim arising out of this Statement of Limited Warranty will be brought before, and settled exclusively by, the competent court of a) Athens for **Greece**, b) Tel Aviv-Jaffa for **Israel**, c) Milan for **Italy**, d) Lisbon for **Portugal**, and e) Madrid for **Spain**; and 9) in the **United Kingdom**, both of us agree to submit all disputes relating to this Statement of Limited Warranty to the jurisdiction of the English courts.

*Arbitration: The following is added under this heading:*

**In Albania, Armenia, Azerbaijan, Belarus, Bosnia-Herzegovina, Bulgaria, Croatia, Georgia, Hungary, Kazakhstan, Kyrgyzstan, FYR Macedonia, Moldova, Poland, Romania, Russia, Slovakia, Slovenia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan, and FR Yugoslavia** all disputes arising out of this Statement of Limited Warranty or related to its violation, termination or nullity will be finally settled under the Rules of Arbitration and Conciliation of the International Arbitral Center of the Federal Economic Chamber in Vienna (Vienna Rules) by three arbitrators appointed in accordance with these rules. The arbitration will be held in Vienna, Austria, and the official language of the proceedings will be English. The decision of the arbitrators will be final and binding upon both parties. Therefore, pursuant to paragraph 598 (2) of the Austrian Code of Civil Procedure, the parties expressly waive the application of paragraph 595 (1) figure 7 of the Code. Lenovo may, however, institute proceedings in a competent court in the country of installation.

**In Estonia, Latvia and Lithuania** all disputes arising in connection with this Statement of Limited Warranty will be finally settled in arbitration that will be held in Helsinki, Finland in accordance with the arbitration laws of Finland then in effect. Each party will appoint one arbitrator. The arbitrators will then jointly appoint the chairman. If arbitrators cannot agree on the chairman, then the Central Chamber of Commerce in Helsinki will appoint the chairman.

#### **EUROPEAN UNION (EU)**

##### **THE FOLLOWING TERMS APPLY TO ALL EU COUNTRIES:**

The warranty for Machines acquired in EU countries is valid and applicable in all EU countries provided the Machines have been announced and made available in such countries.

**How to Obtain Warranty Service:** *The following is added to this section:*

To obtain warranty service from IBM service in EU countries, see the telephone listing in Part 3 - Warranty Information.

You may contact IBM service at the following address:

IBM Warranty & Service Quality Dept.  
PO Box 30  
Spango Valley  
Greenock  
Scotland PA16 0AH

## CONSUMERS

Consumers have legal rights under applicable national legislation governing the sale of consumer goods. Such rights are not affected by the warranties provided in this Statement of Limited Warranty.

## AUSTRIA, DENMARK, FINLAND, GREECE, ITALY, NETHERLANDS, NORWAY, PORTUGAL, SPAIN, SWEDEN AND SWITZERLAND

**Limitation of Liability:** *The following replaces the terms of this section in its entirety:*

Except as otherwise provided by mandatory law:

1. Lenovo's liability for any damages and losses that may arise as a consequence of the fulfillment of its obligations under or in connection with this Statement of Limited Warranty or due to any other cause related to this Statement of Limited Warranty is limited to the compensation of only those damages and losses proved and actually arising as an immediate and direct consequence of the non-fulfillment of such obligations (if Lenovo is at fault) or of such cause, for a maximum amount equal to the charges you paid for the Machine.  
The above limitation shall not apply to damages for bodily injuries (including death) and damages to real property and tangible personal property for which Lenovo is legally liable.
2. **UNDER NO CIRCUMSTANCES IS LENOVO, ITS SUPPLIERS, RESELLERS OR SERVICE PROVIDERS LIABLE FOR ANY OF THE FOLLOWING, EVEN IF INFORMED OF THEIR POSSIBILITY: 1) LOSS OF, OR DAMAGE TO, DATA; 2) INCIDENTAL OR INDIRECT DAMAGES, OR FOR ANY ECONOMIC CONSEQUENTIAL DAMAGES; 3) LOST PROFITS, EVEN IF THEY ARISE AS AN IMMEDIATE CONSEQUENCE OF THE EVENT THAT GENERATED THE DAMAGES; OR 4) LOSS OF BUSINESS, REVENUE, GOODWILL, OR ANTICIPATED SAVINGS.**

## FRANCE AND BELGIUM

**Limitation of Liability:** *The following replaces the terms of this section in its entirety:*

Except as otherwise provided by mandatory law:

1. Lenovo's liability for any damages and losses that may arise as a consequence of the fulfillment of its obligations under or in connection with this Statement of Limited Warranty is limited to the compensation of only those damages and losses proved and actually arising as an immediate and direct consequence of the non-fulfillment of such obligations (if Lenovo is at fault), for a maximum amount equal to the charges you paid for the Machine that has caused the damages.  
The above limitation shall not apply to damages for bodily injuries (including death) and damages to real property and tangible personal property for which Lenovo is legally liable.
2. **UNDER NO CIRCUMSTANCES IS LENOVO, ITS SUPPLIERS, RESELLERS OR SERVICE PROVIDERS LIABLE FOR ANY OF THE FOLLOWING, EVEN IF INFORMED OF THEIR POSSIBILITY: 1) LOSS OF, OR DAMAGE TO, DATA; 2) INCIDENTAL OR INDIRECT DAMAGES, OR FOR ANY ECONOMIC CONSEQUENTIAL DAMAGES; 3) LOST PROFITS, EVEN IF THEY ARISE AS AN IMMEDIATE CONSEQUENCE OF THE EVENT THAT GENERATED THE DAMAGES; OR 4) LOSS OF BUSINESS, REVENUE, GOODWILL, OR ANTICIPATED SAVINGS.**

## THE FOLLOWING TERMS APPLY TO THE COUNTRY SPECIFIED:

### AUSTRIA

**The provisions of this Statement of Limited Warranty replace any applicable statutory warranties.**

**What this Warranty Covers:** *The following replaces the first sentence of the first paragraph of this section:*

The warranty for a Lenovo Machine covers the functionality of the Machine for its normal use and the Machine's conformity to its Specifications.

*The following paragraphs are added to this section:*

The limitation period for consumers in action for breach of warranty is the statutory period as a minimum. In case your Service Provider is unable to repair a Lenovo Machine, you can alternatively ask for a partial refund as far as justified by the reduced value of the unrepaired Machine or ask for a cancellation of the respective agreement for such Machine and get your money refunded.

*The second paragraph does not apply.*

**What Lenovo Will Do to Correct Problems:** *The following is added to this section:*

During the warranty period, Lenovo will reimburse you for the transportation charges for the delivery of the failing Machine to IBM Service.

**Limitation of Liability:** *The following paragraph is added to this section:*

The limitations and exclusions specified in the Statement of Limited Warranty will not apply to damages caused by Lenovo with fraud or gross negligence and for express warranty.

*The following sentence is added to the end of item 2:*

Lenovo's liability under this item is limited to the violation of essential contractual terms in cases of ordinary negligence.

### EGYPT

**Limitation of Liability:** *The following replaces item 2 in this section:*

as to any other actual direct damages, Lenovo's liability will be limited to the total amount you paid for the Machine that is the subject of the claim.

*Applicability of suppliers, resellers and Service Providers (unchanged).*

### FRANCE

**Limitation of Liability:** *The following replaces the second sentence of the first paragraph of this section:*

In such instances, regardless of the basis on which you are entitled to claim damages from Lenovo, Lenovo is liable for no more than: (items 1 and 2 unchanged).

## GERMANY

**What this Warranty Covers:** *The following replaces the first sentence of the first paragraph of this section:*

The warranty for a Lenovo Machine covers the functionality of the Machine for its normal use and the Machine's conformity to its Specifications. *The following paragraphs are added to this section:*

The minimum warranty period for Machines is twelve months. In case your Service Provider is unable to repair a Lenovo Machine, you can alternatively ask for a partial refund as far as justified by the reduced value of the unrepaired Machine or ask for a cancellation of the respective agreement for such Machine and get your money refunded.

*The second paragraph does not apply.*

**What Lenovo Will Do to Correct Problems:** *The following is added to this section:*

During the warranty period, transportation for delivery of the failing Machine to Lenovo or IBM service will be at Lenovo's expense.

**Limitation of Liability:** *The following paragraph is added to this section:*

The limitations and exclusions specified in the Statement of Limited Warranty will not apply to damages caused by Lenovo with fraud or gross negligence and for express warranty.

*The following sentence is added to the end of item 2:*

Lenovo's liability under this item is limited to the violation of essential contractual terms in cases of ordinary negligence.

## HUNGARY

**Limitation of Liability:** *The following is added at the end of this section:*

The limitation and exclusion specified herein shall not apply to liability for a breach of contract damaging life, physical well-being, or health that has been caused intentionally, by gross negligence, or by a criminal act.

The parties accept the limitations of liability as valid provisions and state that the Section 314.(2) of the Hungarian Civil Code applies as the acquisition price as well as other advantages arising out of the present Statement of Limited Warranty balance this limitation of liability.

## IRELAND

**What this Warranty Covers:** *The following is added to this section:*

Except as expressly provided in these terms and conditions, all statutory conditions, including all warranties implied, but without prejudice to the generality of the foregoing all warranties implied by the Sale of Goods Act 1893 or the Sale of Goods and Supply of Services Act 1980 are hereby excluded.

**Limitation of Liability:** *The following replaces the terms of section in its entirety:*

For the purposes of this section, a "Default" means any act, statement, omission, or negligence on the part of Lenovo in connection with, or in relation to, the subject matter of this Statement of Limited Warranty in respect of which Lenovo is legally liable to you, whether in contract or tort. A number of Defaults which together result in, or contribute to, substantially the same loss or damage will be treated as one Default occurring on the date of occurrence of the last such Default.

Circumstances may arise where, because of a Default, you are entitled to recover damages from Lenovo.

This section sets out the extent of Lenovo's liability and your sole remedy.

1. Lenovo will accept unlimited liability for death or personal injury caused by the negligence of Lenovo.
2. Subject always to the **Items for Which Lenovo is Not Liable** below, Lenovo will accept unlimited liability for physical damage to your tangible property resulting from the negligence of Lenovo.
3. Except as provided in items 1 and 2 above, Lenovo's entire liability for actual damages for any one Default will not in any event exceed 125% of the amount you paid for the Machine directly relating to the Default.

### **Items for Which Lenovo is Not Liable**

Save with respect to any liability referred to in item 1 above, under no circumstances is Lenovo, its suppliers, resellers or Service Providers liable for any of the following, even if Lenovo or they were informed of the possibility of such losses:

1. loss of, or damage to, data;
2. special, indirect, or consequential loss; or
3. loss of profits, business, revenue, goodwill, or anticipated savings.

## SLOVAKIA

**Limitation of Liability:** *The following is added to the end of the last paragraph:*

The limitations apply to the extent they are not prohibited under §§ 373-386 of the Slovak Commercial Code.

## SOUTH AFRICA, NAMIBIA, BOTSWANA, LESOTHO AND SWAZILAND

**Limitation of Liability:** *The following is added to this section:*

Lenovo's entire liability to you for actual damages arising in all situations involving nonperformance by Lenovo in respect of the subject matter of this Statement of Warranty will be limited to the charge paid by you for the individual Machine that is the subject of your claim from Lenovo.

## UNITED KINGDOM

**Limitation of Liability:** *The following replaces the terms of this section in its entirety:*

For the purposes of this section, a "Default" means any act, statement, omission, or negligence on the part of Lenovo in connection with, or in relation to, the subject matter of this Statement of Limited Warranty in respect of which Lenovo is legally liable to you, whether in contract or tort. A number of Defaults which together result in, or contribute to, substantially the same loss or damage will be treated as one Default.

Circumstances may arise where, because of a Default, you are entitled to recover damages from Lenovo.

This section sets out the extent of Lenovo's liability and your sole remedy.

1. Lenovo will accept unlimited liability for:

- a) death or personal injury caused by the negligence of Lenovo; and
  - b) any breach of its obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982, or any statutory modification or re-enactment of either such Section.
2. Lenovo will accept unlimited liability, subject always to the **Items for Which Lenovo is Not Liable** below, for physical damage to your tangible property resulting from the negligence of Lenovo.
  3. Lenovo's entire liability for actual damages for any one Default will not in any event, except as provided in items 1 and 2 above, exceed 125% of the total purchase price payable or the charges for the Machine directly relating to the Default.
- These limits also apply to Lenovo's suppliers, resellers and Service Providers. They state the maximum for which Lenovo and such suppliers, resellers and Service Providers are collectively responsible.

#### **Items for Which Lenovo is Not Liable**

Save with respect to any liability referred to in item 1 above, under no circumstances is Lenovo or any of its suppliers, resellers or Service Providers liable for any of the following, even if Lenovo or they were informed of the possibility of such losses:

1. loss of, or damage to, data;
2. special, indirect, or consequential loss; or
3. loss of profits, business, revenue, goodwill, or anticipated savings.

## **Part 3 - Warranty Information**

This Part 3 provides information regarding the warranty applicable to your Machine, including the warranty period and type of warranty service Lenovo provides.

### **Warranty Period**

The warranty period may vary by country or region and is specified in the table below. NOTE: "Region" means either Hong Kong or Macau Special Administrative Region of China.

A warranty period of 3 years on parts and 1 year on labor means that Lenovo provides warranty service without charge for:

- a. parts and labor during the first year of the warranty period; and
- b. parts only, on an exchange basis, in the second and third years of the warranty period. Your Service Provider will charge you for any labor provided in performance of the repair or replacement(s) in the second and third year of warranty period.

### **Machine type XXXX**

Country or Region of Purchase	Warranty Period	Type of Warranty Service

### **Types of Warranty Service**

If required, your Service Provider will provide repair or exchange service depending on the type of warranty service specified for your Machine in the above table and as described below. Scheduling of service will depend upon the time of your call and is subject to parts availability. Service levels are response time objectives and are not guaranteed. The specified level of warranty service may not be available in all worldwide locations, additional charges may apply outside your Service Provider's normal service area, contact your local Service Provider representative or your reseller for country and location specific information.

#### **1. Customer Replaceable Unit ("CRU") Service**

Lenovo will ship CRUs to you for you to install, Tier 1 CRUs are easy to install whereas Tier 2 CRUs require some technical skill and tools. CRU information and replacement instructions are shipped with your Machine and are available from Lenovo at any time on your request. You may request that a Service Provider install CRUs, at no additional charge, under the type of warranty service designated for your Machine. Lenovo specifies in the materials shipped with a replacement CRU whether a defective CRU must be returned. When return is required, 1) return instructions and a container are shipped with the replacement CRU, and 2) you may be charged for the replacement CRU if Lenovo does not receive the defective CRU within 30 days of your receipt of the replacement.

#### **2. On-site Service**

Your Service Provider will either repair or exchange the failing Machine at your location and verify its operation. You must provide suitable working area to allow disassembly and reassembly of the Lenovo Machine. The area must be clean, well lit and suitable for the purpose. For some Machines, certain repairs may require sending the Machine to a designated service center.

#### **3. Courier or Depot Service\***

You will disconnect the failing Machine for collection arranged by your Service Provider. A shipping container will be provided to you for you to return your Machine to a designated service center. A courier will pick up your Machine and deliver it to the designated service center. Following its repair or exchange, the service center will arrange the return delivery of the Machine to your location. You are responsible for its installation and verification.

#### **4. Customer Carry-In or Mail-In Service**

You will deliver or mail as your Service Provider specifies (prepaid unless specified otherwise) the failing Machine suitably packaged to a designated location. After the Machine has been repaired or exchanged, it will be made available for your collection or, for Mail-in Service, the Machine will be returned to you at Lenovo's expense, unless your Service Provider specifies otherwise. You are responsible for the subsequent installation and verification of the Machine.

#### **5. CRU and On-site Service**

This type of Warranty Service is a combination of Type 1 and Type 2 (see above)

#### 6. CRU and Courier or Depot Service

This type of Warranty Service is a combination of Type 1 and Type 3 (see above)

#### 7. CRU and Customer Carry-in or Mail-in Service

This type of Warranty Service is a combination of Type 1 and Type 4 (see above)

**When a 5, 6 or 7 type of warranty service is listed, your Service Provider will determine which type of warranty service is appropriate for the repair.**

\* This type of service is called ThinkPad EasyServ or EasyServ in some countries.

To obtain warranty service contact a Service Provider. In Canada or the United States, call 1-800-IBM-SERV (426-7378). In other countries, see the telephone numbers below.

#### **Worldwide Telephone List**

Phone numbers are subject to change without notice. For the warranty service contact telephone number in a country subsequently added to the EU, or any other country, and not yet reflected in the list below, contact Lenovo, IBM service or your reseller in that country..

Country or Region	Telephone Number	Country or Region	Telephone Number
Africa	Africa:	Latvia	+386-61-1796-699
	+44 (0)1475 555 055		
	South Africa:		
	+27 11 3028888 and		
	0800110756		
	Central Africa: Contact		
	the nearest IBM		
	Business Partner		
Argentina	0800-666-0011	Lithuania	+386-61-1796-699
Australia	131-426	Luxembourg	+352-298-977-5063
Austria	+43-1-24592-5901	Malaysia	1800-88-8558
Belgium	Dutch: 02-210 9820	Malta	+356-23-4175
	French: 02-210 9800		
Bolivia	0800-0189	Mexico	001-866-434-2080
Brazil	55-11-3889-8986	Middle East	+44 (0)1475-555-055
Canada	English: 1-800-565-3344	Netherlands	+31-20-514-5770
	French: 1-800-565-3344		
	In Toronto only call:		
	416-383-3344		
Chile	800-224-488	New Zealand	0800-446-149
China (PRC)	800-810-1818	Nicaragua	255-6658
China	Home PC:	Norway	NetVista and
(Hong Kong	852 2825 7799		ThinkCentre:
S.A.R.)			+47 6699 8960
	Commercial PC:		All products:
	852 8205 0333		+47 815 21550
Columbia	1-800-912-3021	Panama	206-6047
Costa Rica	284-3911	Peru	0-800-50-866
Cyprus	+357-22-841100	Philippines	1800-1888-1426
Czech Republic	+420-2-7213-1316	Poland	+48-22-878-6999
Denmark	4520-8200	Portugal	+351-21-892-7147
Dominican	566-4755	Russia Federation	+7-095-940-2000
Republic			

	566-5161 ext. 8201		
	Toll Free within the		
	Dominican Republic:		
	1-200-1929		
Ecuador	1-800-426911	Singapore	1800-3172-888
El Salvador	250-5696	Slovakia	+421-2-4954-1217
Estonia	+386-61-1796-699	Slovenia	+386-1-5830-050
Finland	+358-9-459-6960	Spain	+34-91-714-7983
France	+33-238-557-450	Sri Lanka	+94-11-2448-442
			+94-11-2421-066
			+94-11-2493-500
Germany	+49-7032-15-49201	Sweden	+46-8-477-4420
Greece	+30-210-680-1700	Switzerland	+41-58-333-0971
Guatemala	335-8490	Taiwan	886-2-8723-9799
Honduras	Tegucigalpa & San	Thailand	1-800-299-229
	Pedro Sula: 232-4222		
	San Pedro Sula:		
	552-2234		
Hungary	+36-1-382-5720	Turkey	00800-211-4032
			+90-212-317-1760
India	1600-44-6666	United Kingdom	+44-1475-555-055
Indonesia	800-140-3555	United States	1-800-IBM-SERV
			(1-800-426-7378)
Ireland	+353-(0)1-815-9200	Uruguay	000-411-005-6649
Italy	+39-02-7031-6101	Venezuela	0-800-100-2011
Japan	Toll free: 0120-887-870;	Vietnam	Ho Chi Minh:
	For International:		(848) 824-1474
	+81-46-266-4724		
			Hanoi:
Korea	1588-5801		(844) 842-6316

NUTANIX

**License and Services Agreement**

This Nutanix License and Services Agreement ("Agreement") governs Your receipt and use of any Products (as defined below) and becomes effective when you (a) issue a purchase order for the Products; (b) accept this Agreement, including by signature, clickthrough, or other acceptance mechanisms; or (c) access, download, install, or use the Software or Cloud Services. This Agreement is entered into between Nutanix Inc., located at 1740 Technology Dr. Ste. 150, San Jose, CA 95110, United States, if You are contracting in the Americas, or Nutanix Netherlands B.V., located at Mercuriusplein 1, 2132 HA Hoofddorp, The Netherlands, if You are contracting anywhere else in the world, or both if you are contracting globally ("Us", "We" or "Our") and your organization ("You or "Your"). You represent and warrant that you have the authority to enter into this Agreement on behalf of Your organization.

**1. Definitions.**

- 1.1. **"Affiliates"** means any corporation or other business entity which controls, is controlled by or is under common control with You through the ownership of more than fifty percent (50%) of the outstanding voting stock of the controlled corporation or more than fifty percent (50%) of the equity interest of a non-corporate entity. If You are a public sector entity, an Affiliate is an organization over which You exercise administrative control by applicable laws, regulations or governmental decree.
- 1.2. **"Certified Hardware"** means computer equipment that has been approved and certified by Us as interoperable with Our Software or Cloud Services. A list of that hardware can be found at <https://www.nutanix.com/products/hardware-platforms>. Other hardware may be submitted for general or limited certification.
- 1.3. **"Cloud Services"** means Our internet-based or hosted offerings.
- 1.4. **"Documentation"** means the information provided by Nutanix about Our Products found in the documentation section of the Portal (<https://portal.nutanix.com/page/documents/list?type=software>).
- 1.5. **"Delivery"** means the date on which We make the license key for the applicable Software available to You or when We make the Software or Cloud Services otherwise available to You for use.
- 1.6. **"Entitlement"** means Our statement of the SKUs, types, quantities or other metrics for Our Products provided to You. We will supply You with a copy of each Entitlement and make it available in the Portal.
- 1.7. **"Error"** means any reproducible failure of the Software or Cloud Services to substantially perform any material function as set forth in the Documentation.
- 1.8. **"FlexCredits"** means the pre-paid credits which can be redeemed against Professional Services.
- 1.9. **"Partner"** means any entity that is authorized by Us to distribute, resell, act as a Service Provider or otherwise provide Our Products to You.
- 1.10. **"Portal"** means Our website for the receipt by You of Support Services, management of Entitlements, download of Software etc. which can be found at <https://portal.nutanix.com>.
- 1.11. **"Previews"** means Products provided for preview, evaluation, demonstration or trial purposes, or early access (e.g. alpha, beta, pre-release) versions of the Products. Previews also include Products that are provided free of charge ("No-Charge Products").
- 1.12. **"Products"** means Our Software, Cloud Services, Support Services, Professional Services and applicable Documentation.
- 1.13. **"Professional Services"** means consulting, implementation, optimization, training, certification or other services related to the Software and Cloud Services.
- 1.14. **"Service Levels"** means the availability and uptime warranties applicable to the Cloud Services which can be found at <https://www.nutanix.com/support-services/product-support/policies> subject to planned downtime and any unscheduled emergency maintenance.
- 1.15. **"Service Provider"** means a Nutanix Partner who has entered into a valid agreement with Nutanix to act as a provider of a service which employs the Software or Cloud Services.
- 1.16. **"Software"** means the Nutanix-branded computer programs specified in the Entitlement, Updates and Upgrades provided as part of Support Services, and APIs, libraries, utilities, tools, add-ons, license keys and other executables related to the Software or Cloud Services.
- 1.17. **"SOW"** means a document issued by Us that describes the Professional Services.
- 1.18. **"Subscription Term"** means the duration of Your subscription to the applicable Software, Support Services and/or Cloud Services as specified in the Entitlement.
- 1.19. **"Support Guide"** means the Nutanix Worldwide Support Program Guide which can be found at <https://www.nutanix.com/content/dam/nutanix/resources/support/nutanix-support-guide.pdf>.
- 1.20. **"Support Policies"** means Our Software End of Life (EOL) Policy, Our Versioning & Compatibility Matrix, Our Extended Support Policy, Our Third Party Hardware and Software Policy and Our Return Material Authorization Policy, which can be found at <https://www.nutanix.com/support-services/product-support/policies>.
- 1.21. **"Support Services"** means Our Software support and maintenance offerings described in the Support Guide.
- 1.22. **"Update"** means either a Minor Release, Maintenance Release or Patch Release as defined in the Support Guide.
- 1.23. **"Upgrade"** means a Major Release as defined in the Support Guide.
- 1.24. **"Usage Capacity"** means the maximum permitted usage of the i) Software based on certain licensing metrics such as the number of raw CPU cores, raw total flash drive capacity in tebibytes, cores managed, used tebibytes, named users or concurrent users, VMs or VM packs, per node or configured node, percentage of cloud spend, vCPU of each managed database server, per cluster or per vCPU, GB RAM and DR characteristic, per edge instance, or any other applicable licensing metrics; or ii) Cloud Services based on certain metrics, as specified in the Entitlement and described in the applicable Documentation.
- 1.25. **"Your Content"** means any data, software, applications, content, platforms and services that You introduce into the Products.

**2. Software.**

- 2.1. **License Grant.** We grant You a limited, non-exclusive, non-transferable, worldwide license to download, install and use the Software (in object code form only) and its Documentation for Your internal business purposes only. The Software is licensed either: (a) independently of hardware nodes, portable between hardware nodes and for a fixed Subscription Term (a "Term Based License"); or (b) for use solely on the hardware node on which it was initially installed and supplied for the life of that hardware node (a "Life of Device License"), or as may be otherwise indicated in Your Entitlement. Subject to Section 13 "Term and Termination", the licenses for the Software and its Documentation expire when the: (a) Subscription Term ends in the case of Term Based Licenses; or (b) original hardware node is decommissioned in the case of Life of Device Licenses. Both Term Based Licenses and Life of Device Licenses are subject to the Usage Capacity.
- 2.2. **License Restrictions.** You agree not to: (a) exceed the Usage Capacity or otherwise use the Software or its Documentation in breach of the Entitlement or this Agreement; (b) transfer, resell, rent, lease, distribute, sublicense or otherwise use Software or its Documentation in a service bureau, commercial hosting service or any similar capacity unless: (i) as agreed with Nutanix in Your capacity as a Service Provider; or (ii) as otherwise explicitly permitted in the Entitlement; (c) disclose the results of any Software benchmark tests or competitive analysis; (d) decompile, disassemble or reverse-engineer any Software, or determine or attempt to determine any source code, algorithms, methods or techniques embodied in the Software, except to the extent expressly permitted by applicable law; (e) install or use the Software on (i) any hardware other than Certified Hardware and Nutanix authorized public cloud-based service offerings; or (ii) grey-market hardware or components; (f) transfer or use any Life of Device Licenses on the hardware node other than that on which it was initially installed and supplied; (g) modify, adapt or create a derivative work of the Software or Documentation; (h) remove, conceal or alter any product identification, copyright or other proprietary notices in the Software or Documentation; (i) assist or encourage any third party to do any of the foregoing or; (j) use the Products after the expiration of a Subscription Term.
- 2.3. **License Conversion.** Subject to placing a valid purchase order for the same with a Partner, You may convert legacy Life of Device Licenses into Term Based Licenses, in which case, We will alter Your Entitlement to reflect the different usage model.
- 2.4. **Previews License Grant.** Subject to Your compliance with this Agreement, and the licenses granted hereunder, We grant You a license to Previews, for the purposes of evaluation, or as applicable, to Previews specifically identified as alpha, beta, pre-release, demonstration or preview and its Documentation for Your internal business purposes within the Usage Capacity or other licensing metrics as applicable. Previews may only be used in non-production environments and not for commercial purposes or the processing of any production data. Non-public information provided by Nutanix in connection with Previews may not be disclosed to third parties without prior Nutanix authorization. Notwithstanding the foregoing within this section 2.4, and subject to Your compliance with the rest of this Agreement, We grant You a non-exclusive, non-transferable, non-sublicensable, terminable (in accordance with Section 13 herein) license to Use the No-Charge Products solely for internal purposes on Licensee's own premises. Previews are likely to be under development, and might not ever be generally released.

**3. Support Services.**

- 3.1. **General.** Depending on the Software or Cloud Services license type You purchase, Support Services are either included in the subscription or available separately for a fee. We will provide to You the level of Support Services specified in the Entitlement. Unless otherwise specified in writing, the Support Services will be provided in the English language.

- 3.2. Scope of Support Services.** Under a valid Support Services Entitlement, We shall: (a) provide You with access to the Portal; (b) provide telephone and web-based Support 24x7 in accordance with the Support Guide and the Support Policies; (c) respond to reported issues within the applicable timeframes in accordance with the mutually agreed priority level ascribed to the Error; (d) address Errors in the form of Updates or Upgrades, workarounds, procedural solutions, correction of Documentation errors, or other remedial measures as We may reasonably determine to be appropriate; and (e) provide You with access to the current versions of released Software, including bug fixes, patches and any generally available Updates and Upgrades.
- 3.3. Out of Scope Support Services.** Support Services exclude: (a) Software installation; (b) education, training, consulting and Professional Services; (c) support services relating to integrations with third-party products, modifications or customizations; and (d) Software or Cloud Services that are end-of-life and no longer supported as outlined in Our Support Policies.
- 3.4. Exclusions.** We shall have no obligation to provide Support Services for: (a) Software or Cloud Services that are not registered and validly licensed; (b) any Errors which are attributable to third party products or modifications, alterations or repairs to the Software made by a party other than Us or a party authorized by Us; (c) any Errors which are attributable to the installation, operation or maintenance of the Software or Cloud Services on hardware other than Certified Hardware or otherwise not in accordance with the Documentation; or (d) for Software which is installed on hardware which is not currently covered under a valid support contract or if such hardware has grey market or second-hand parts installed. We do not guarantee that Software will be compatible with the hardware You purchased except for Certified Hardware in accordance with Our Support Policies.
- 3.5. Your Responsibilities.** It is Your responsibility to: (a) register an account with Us at Our Portal, to keep Your account profile up to date and to designate, in accordance with the Support Guide, a number of authorized persons who have completed the Nutanix NP certification class ("Technical Personnel") which will be the preferred contacts for the receipt of Support Services from Us; (b) provide Us with access to Your systems, network and personnel and make available to Us data, information and other materials necessary to perform the Support Services; (c) install Updates as reasonably directed by Us, ensure that licenses have been obtained for all Software and adhere to all licensing terms and conditions; (d) cooperate with Us to perform any maintenance activities related to the Cloud Services; (e) swiftly notify Us of any Error; and (f) screen first-line technical inquiries and escalate to Us only issues that Technical Personnel have not been able to resolve.
- 3.6. Reinstatement of Support.** In the event that You wish to reinstate Support Services for Life of Device Licenses after a lapsed period, following expiration or termination of the original Support Services term, the applicable support fee for reinstated Support Services will be calculated as follows: (i) the pro rata Support Services fees that would have been payable at Nutanix's then applicable annual rate of Support Services for the lapsed Support Services period; and (ii) the Support Services fees for the future period commencing upon the reinstatement of Support Services.
- 3.7. Support Services for NX Branded Hardware.** If You purchase hardware Support Services for Your NX branded hardware, it will be governed by the Hardware Support Services Appendix attached to this Agreement as Appendix 1, including parts replacement for NX.
- 4. Professional Services.**  
You have the option to purchase Professional Services which We will deliver in accordance with the terms of this Agreement and as specified in the Entitlement and an SOW. We do not do any custom development work. You shall provide Us with any equipment, software, information, timely decisions, directions and facilities necessary for Us to perform the Professional Services. You grant Us a non-exclusive, worldwide, royalty-free license to use Your intellectual property solely for the purpose of performing the Professional Services. We grant You a license to use any deliverables provided as part of the Professional Services on the terms specified in Section 2 above. Any FlexCredits or prepaid Professional Services must be used within twelve (12) months from the purchase date, after which they will automatically expire and are non-refundable.
- 5. Cloud Services.**
- 5.1. General.** If You purchase Cloud Services, We will make the Cloud Services available to You during the Subscription Term in accordance with the terms of this Agreement, the applicable Entitlement and Documentation.
- 5.2. Service Levels.** The Service Levels will apply to the Cloud Services. If We fail to meet these Service Levels, Your sole and exclusive remedy will be the service credits specified therein.
- 5.3. Access Right and Right to Use.** Subject to the terms of this Agreement, We grant You a limited, non-exclusive, non-transferable and revocable right to (a) access and use the Cloud Services and its Documentation for Your internal business purposes only in accordance with this Agreement and the Entitlement for the Usage Capacity and Subscription Term only; and (b) use any applicable Software made available to You in connection with the Cloud Services and in accordance with the Documentation on the terms specified in Section 2 above.
- 5.4. Usage Restrictions.** Except as expressly permitted by this Agreement, You will not and have no rights to: (a) use the Cloud Services in excess of the Usage Capacity or otherwise in breach of the Entitlement or this Agreement; (b) use the Cloud Services, the APIs or the Software for service bureau or managed service purposes, or otherwise commercially exploit the Cloud Services unless (i) as agreed with Nutanix in Your capacity as a Service Provider; or (ii) as otherwise explicitly permitted in the Entitlement; (c) publicly communicate, transform, or sublicense the Cloud Services or otherwise assign any rights to the Cloud Services in whole or in part to any third party unless explicitly permitted in the Entitlement; (d) decompile, disassemble or reverse-engineer or determine or attempt to determine any source code, algorithms, methods or techniques embodied in the Cloud Services, the APIs or the Software, except to the extent expressly permitted by applicable law; (e) access or use disabled functions; (f) disclose the results of any Cloud Services benchmark tests or competitive analysis; (g) modify, adapt or create a derivative work based on the Cloud Services; (h) use the Cloud Services for any illegal or fraudulent purposes (i) circumvent any security features; (j) use the Cloud Services in any way that poses security threats or otherwise introduces security or performance vulnerabilities into the Cloud Services; or (k) assist or encourage any third party to do any of the foregoing.
- 5.5. Security and Protection of Your Content.** If the Cloud Services include the transmission and processing of Your Content by Us, then We will maintain administrative, physical and technical safeguards to protect the security, confidentiality and integrity of Your Content as specified in the Documentation. You are responsible for using and configuring the Cloud Services in such a manner that it will provide an appropriate level of security and protection from unauthorized access to Your Content.
- 5.6. License to use Your Content.** By making Your Content available, You grant Us a worldwide, royalty free, non-exclusive license to use Your Content solely to provide the Cloud Services to You.
- 5.7. Your Obligations.** You are solely responsible for ensuring that the use of the Cloud Services and the use of Your Content by its users is in compliance with this Agreement and all applicable laws. You represent and warrant that Your use of Your Content in connection with the Products will not violate any third-party rights or Your obligations to any third party. You are responsible for the lawfulness and accuracy of Your Content processed under or in connection with the Agreement. You represent and warrant that You have provided and will continue to provide all notices and obtain any necessary consents under applicable law for Us to lawfully process Your Content for the purposes contemplated by the Agreement. It is Your sole responsibility to provision and control the credentials of Your employees, agents, contractors and other users of the Products ("User(s)").
- 5.8. Transmission of Your Content.** If the applicable Cloud Services involves the transmission of Your Content, including to a third-party platform, then You are responsible for the transmission of and the security of Your Content to and from the Cloud Services.
- 5.9. Acceptable Use.** You shall not use the Cloud Services to: (a) transmit or store any content that may pose threats or otherwise engage in any conduct that may disrupt or damage the operation of the Cloud Services or interfere with any third-party; (b) manage specifically regulated data, including, but not limited to data subject to the Health Insurance Portability and Accountability Act, Basel II, Gramm Leach Bliley Act and Payment Card Industry regulations; (c) conduct any abusive, harassing, slanderous, fraudulent, illegal, or defamatory activity; (d) violate any laws or third-party rights, including any intellectual property rights, personal data and privacy rights; or (e) conduct, directly or indirectly, any activities associated with cryptocurrency mining or similar endeavors.
- 5.10. Temporary Suspension.** We may temporarily suspend Your rights to access the Cloud Services if You use the Cloud Services outside the scope of this Section 5.
- 6. Proprietary Rights.**
- 6.1. Our Products.** We and Our licensors own all worldwide right, title and interest in the Products including all related copyrights, trademarks, service marks, patents, trade secrets, know-how, moral rights and all other proprietary rights, including registrations, applications, renewals and extensions of such rights existing anywhere in the world, whether registered or unregistered ("Intellectual Property Rights"). The Products are Our valuable trade secrets and constitute Our Confidential Information. Except for the rights explicitly granted to You in this Agreement, all right, title and interest in the Products are reserved and retained by Us, Our Affiliates, and/or Our licensors. You do not acquire any intellectual property or other rights in the Products as a result of downloading, installing, accessing or using the Products except as specified in this Agreement.
- 6.2. Your Content.** You or Your licensors shall own all right, title and interest in and to all of Your Content and You shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all Your Content.
- 6.3. Feedback.** If You choose to give Us any ideas, suggestions, enhancement requests, recommendations or any other materials in connection with this Agreement or Our Products (collectively, "Feedback"), You grant Us a royalty-free, fully paid-up, worldwide, transferable, sub-licensable,

irrevocable and perpetual license to implement, use, modify, and/or incorporate the Feedback into Our Products or otherwise commercially exploit such Feedback.

#### 7. Warranties and Disclaimer.

- 7.1. Software Warranty.** We warrant to You that for a period of ninety (90) days from the date of first Delivery of the Software ("Software Warranty Period"), the Software will perform the functions described in the Documentation when used in accordance with that Documentation. The Software is not warranted to be Error free. In the event of a breach of this warranty that is reported to Us during the Software Warranty Period, We shall at Our election either (i) repair or replace the Software so that it conforms to the foregoing warranty or (ii) terminate the license with respect to the non-conforming Software and refund the license fees paid by You for the non-conforming Software. This warranty excludes defects resulting from accidents, abuse, unauthorized repair, modifications, misapplication, or use of the Software in a manner that is inconsistent with the Documentation. If You use the Software in excess of the Usage Capacity or the scope of this Agreement, this warranty becomes void. We warrant that at Delivery, the Software contains no known virus, malware, spyware, trojan horse or other disabling code.
- 7.2. Support Services Warranty.** We warrant to You that for the duration of the Support term, Support Services will be performed with industry standard care and skill and in a professional and workmanlike manner. Should You believe that Support Services have not been performed in accordance with this warranty, You must provide Us with a reasonably detailed written notice within thirty (30) days of occurrence of the nonconformance. We will re-perform any non conforming Support Services.
- 7.3. Professional Services Warranty.** We warrant to You that Professional Services will be provided in a professional and workmanlike manner in accordance with good industry practice. Your sole and exclusive remedy for a breach of this warranty is reperformance of the Professional Services or at Our discretion a refund of the fees paid by You, provided that You notify Us of any non-conformity within thirty (30) days of the provision of the non-conforming Professional Services.
- 7.4. Cloud Services Warranty.** We warrant that the Cloud Services will perform substantially in accordance with the Documentation during the Subscription Term. We do not warrant that the Cloud Services will be uninterrupted or Error free. This warranty shall not apply to the extent of any non-conformance which is (i) caused by use of the Cloud Services contrary to the Documentation or Our instructions, or modification or alteration of the Cloud Services by any party other than Us or Our duly authorized contractors or agents; or (ii) due to Your Content. If the Cloud Services do not conform with this warranty, We will, at Our expense, use all reasonable commercial endeavors to correct any such non-conformance promptly. Subject to Section 7.2 above, if a correction of such non-conformance is impossible, then We will terminate the Cloud Services and refund any prepaid subscription fees for the affected Cloud Service covering the remainder of the applicable Subscription Term after the date You notified Us of any non-conformance.
- 7.5. Disclaimer.** TO THE EXTENT PERMITTED BY APPLICABLE LAWS, THE WARRANTIES IN THIS SECTION 7 ARE YOUR SOLE AND EXCLUSIVE WARRANTY AND REMEDY. EXCEPT FOR THE WARRANTIES SPECIFICALLY DESCRIBED ABOVE, ALL PRODUCTS ARE PROVIDED "AS-IS" AND ALL OTHER WARRANTIES INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, ACCEPTABLE QUALITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT ARE EXPRESSLY DISCLAIMED.
- 7.6. Previews Disclaimer.** THE WARRANTIES IN THIS SECTION 7 DO NOT APPLY TO PREVIEWS. PREVIEWS ARE PROVIDED "AS-IS", "WITH ALL FAULTS" AND "AS AVAILABLE". NUTANIX MAY CHANGE OR DISCONTINUE PREVIEWS AT ANY TIME WITHOUT NOTICE. WE DISCLAIM ALL LIABILITIES TO THE MAXIMUM EXTENT PERMITTED BY LAW.

#### 8. Indemnification.

- 8.1. Indemnification by Us.** Subject to the limitations in this Section 8, We will (a) defend and indemnify You against any third-party claim alleging that the Products infringe or misappropriate a third-party intellectual property right; and (b) pay any settlement amount or the damages and losses finally awarded against You by a court of competent jurisdiction as a result of the claim.
- 8.2. Exclusion.** We have no obligation to indemnify You and accept no responsibility or liability for any third party infringement claims arising out of: (a) any use of the Products in a manner that is not permitted under this Agreement or the applicable Documentation; (b) any modification of the Products by anyone other than Us, except a third party acting on Our behalf; (c) the combination or use of the Products, as applicable, with any other product, service, software, data, content or method; (d) Your continued use of Products that are no longer supported by Us; or (e) any failure by You to implement Updates or Upgrades provided under Support Services ("Excluded Claims").
- 8.3. Indemnification Claims.** If an infringement claim is made or appears likely to be made, We may, at Our own expense and discretion, do any of the following: (a) modify the Products so that it is no longer infringing without substantially limiting its functionality; (b) obtain a license for You to continue to use the Products; or (c) terminate this Agreement and refund the fees paid for the infringing Products. For Term Based Licenses, associated Support Services or Cloud Services, the refund will be calculated on a straightline amortization basis over the subscription term. For Life of Device Licenses and associated Support Services, the refund will be calculated on a straightline amortization basis over five (5) years. For Professional Services, the refund will be the total fees for those services.
- 8.4. Indemnification by You.** You will defend and indemnify Us against any claim brought against Us by a third party arising out of or relating to any Excluded Claim or Your Content including any third-party claim alleging that any of Your Content infringes or misappropriates that third-party intellectual property or violates Your obligations to any third party and You agree to pay any settlement amount, or the damages and losses finally awarded against Us by a court of competent jurisdiction as a result of the claim.
- 8.5. Process.** Each party's defense and indemnity obligations in this Section 8 will apply only if the party seeking defense or indemnity: (a) gives the other party prompt written notice of the claim; (b) permits the other party to control the defense and settlement of the claim; and (c) reasonably cooperates with the other party in the defense and settlement of the claim. In no event will a party agree to any settlement of any claim that involves any admission of wrongdoing or acceptance of a material obligation by the other party without the prior written consent of the other party.
- 8.6. Entire liability and remedies.** The remedies in this Section 8 represent Our entire liability and obligation and Your sole and exclusive remedy with respect to third-party intellectual property rights infringement claims related to the Products.

#### 9. Limitation of Liability.

- 9.1. Liability Exclusions.** Regardless of the basis of the claim or theory of liability, neither You nor We will be liable for: (a) any special, indirect, incidental, consequential, or punitive damages, (b) damages arising from the loss of use, loss or corruption of data, lost profits, lost revenue, business interruption or cost of procuring substitute Products, or (c) unavailability of the Cloud Services.
- 9.2. Damages Cap.** Neither Your nor Our aggregate liability shall exceed the greater of five hundred thousand United States dollars (US\$ 500,000) or the amount received by Us for the applicable Products in the twelve (12) months prior to the event giving rise to this liability.
- 9.3. Exceptions.** Sections 9.1 and 9.2 do not apply to usage in excess of an Entitlement, a breach of Our intellectual property rights or restrictions on the use of Our Products as detailed in this Agreement, an indemnification claim under Section 8, in case of gross negligence, willful misconduct, fraud, personal injury, or to any liability pursuant to any applicable legislation that does not permit a party to limit or exclude any liability.

#### 10. Confidential Information.

- 10.1. Confidential Information.** Confidential Information means any non-public information disclosed by one party to the other party in connection with this Agreement and any information that is marked "confidential" or "proprietary" at the time of disclosure; if disclosed orally or visually, is designated "confidential" or "proprietary" at the time of disclosure or would be deemed to be confidential or proprietary to a reasonable recipient. Confidential Information includes copies of such information, but excludes information that: (a) is or becomes a part of the public domain through no action or omission of the receiving party ("Recipient"); (b) was in the receiving party's lawful possession prior to the disclosure and had not been obtained by the receiving party from the disclosing party ("Discloser"); (c) is lawfully disclosed to the receiving party by a third-party without restriction on the disclosure; or (d) is independently developed by the receiving party without reference to Confidential Information. Subject to applicable law, Confidential Information includes, but is not limited to, this Agreement, Our Products, trade secrets, know-how, product roadmap, source code, software, product and technology-related information, customer lists, financial information, sales, pricing information, marketing and business plans.
- 10.2. Treatment.** Confidential Information shall remain the property of the Discloser. Each party shall have the right to use the other's Confidential Information solely for the purpose of fulfilling its obligations under this Agreement. Each party agrees: (a) to hold the other party's Confidential Information in confidence for a period of three (3) years from the date of disclosure, except confidentiality obligations will continue indefinitely regarding Confidential Information considered as trade secrets under applicable law to the extent such Confidential Information remains a trade secret; and (b) to disclose the other party's Confidential Information only to those employees or agents or the Affiliates' employees or agents on a need to know basis provided that they are required to protect such Confidential Information against unauthorized disclosure under terms no less restrictive than those specified herein. Recipient shall protect the Confidential Information from unauthorized use, access or disclosure in the same manner as it protects its own confidential or proprietary information of a similar nature, and in any event with at least a reasonable degree of care. Recipient may disclose the other party's Confidential Information to the extent that such disclosure is required pursuant to a judicial or administrative proceeding, provided that, prior to such disclosure, Recipient gives Discloser prompt written notice thereof and the opportunity to seek a protective order or other legal remedies.

- 10.3. Return or Destruction.** Upon termination of this Agreement or Discloser's written request, all Confidential Information (including all copies thereof) of Discloser shall be returned or destroyed and provide written certification of this destruction, unless Recipient is required to retain such information by law, and the receiving party shall certify its compliance with this Section 10.3.
- 10.4. Injunctive Relief.** Recipient agrees that, due to the unique nature of the Confidential Information, the unauthorized disclosure or use of the Confidential Information may cause irreparable harm to the disclosing party, the extent of which will be difficult to ascertain and for which there will be no adequate remedy at law. Accordingly, Recipient agrees that Discloser, in addition to any other available remedies, will have the right to an immediate injunction and other equitable relief enjoining any breach or threatened breach of this Section 10, without the necessity of posting any security. Recipient will notify Discloser in writing upon the receiving party becoming aware of any unauthorized use or disclosure of Confidential Information.

**11. Data Processing.**

- 11.1. Usage Data.** Notwithstanding anything to the contrary in the Agreement (including the DPA, where applicable), Nutanix collects and uses data pertaining to the use of the Products, support and/or operation of the Products ("Usage Data"), for Our legitimate business purposes, such as billing, account management, security and support. We may also collect and use Usage Data to develop and improve Our Products, and to sell and market Our Products to You. You may opt out of such collection in your Product settings, except for those Products that require the collection of Usage Data to operate in accordance with Our Documentation.
- 11.2. Data Privacy.** We will process any personal data provided to Us in accordance with Applicable Privacy Law (as defined in the Data Processing Addendum <https://www.nutanix.com/legal/data-processing-addendum> ("DPA")) and our data privacy statement which can be found at <https://www.nutanix.com/legal/privacy-statement>.

**12. Compliance.**

- 12.1. Compliance with Documentation.** You agree that You will comply with all instructions and requirements in any Product specification sheets, user guides, security best practices and policies, and other documentation that We provide or make available to You in connection with the use of the Products.
- 12.2. Compliance with Laws; Anti-Corruption.** We and You shall comply with all applicable laws and regulations including but not limited to those relating to anti-corruption or anti-bribery e.g. the U.S. Foreign Corrupt Practices Act, as amended, the U.K. Bribery Act and legislation implementing the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.
- 12.3. Export Control.** The Products are subject to export restriction in the U.S. and other jurisdictions. You shall fully comply with all applicable export laws and regulations that apply to the download, installation and use of the Products in Your jurisdiction. You represent and warrant that You are not subject to sanctions or otherwise designated on any list of prohibited or restricted parties, or owned or controlled by such a party, including but not limited to the lists maintained by the United Nations Security Council, the U.S. Government (e.g., the U.S. Department of Treasury's Specially Designated Nationals list and Foreign Sanctions Evaders list, and the U.S. Department of Commerce's Entity List), the European Union or its member states, or other applicable government authority.
- 12.4. US Government Restrictions.** You acknowledge that the Products were developed entirely at private expense and no part of the Products were first produced in the context of a government contract. The Products are provided to the U.S. Government as "commercial items," "commercial computer software," "commercial computer software documentation," and "technical data" with the same rights and restrictions generally applicable to the Products. If You are using the Products on behalf of the U.S. Government and these terms fail to meet the U.S. Government's needs or are inconsistent in any respect with federal law, You will immediately discontinue Your use of the Products. The terms "commercial item" "commercial computer software," "commercial computer software documentation," and "technical data" are defined in the Federal Acquisition Regulation and the Defense Federal Acquisition Regulation Supplement.

**13. Term and Termination.**

- 13.1. Term.** This Agreement will remain effective until terminated in accordance with this Section 13.
- 13.2. Subscription Renewal.** Your subscription for the Software, Support Services and Cloud Services will automatically renew for a term equal to the previous Subscription Term, or such other term agreed by the parties in writing. You may cancel the automatic renewal by providing Us with ninety (90) days written notice prior to the end of Your Subscription Term. Unless You have provided notice of cancellation, You agree to raise a valid purchase order prior to the commencement of the renewal Subscription Term and We or Our Partner will be entitled to invoice You for the applicable fees. If you fail to renew Your subscription for the Software, Support Services and Cloud Services in a timely manner, backdated fees will be due for the continued use of the same, calculated from the end of preceding Subscription Term in addition to any fees due for future periods.
- 13.3. Termination.** Either party has the right to suspend or terminate this Agreement upon written notice to the other party if the other party: (a) is in default of any material obligation and the default has not been cured within thirty (30) days of receipt of written notice specifying the default; or (b) becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets, becomes subject to any proceeding under any bankruptcy or insolvency law domestic or foreign, or has been liquidated.
- 13.4. Effect of Termination or Expiration of Entitlement.** Upon any termination of this Agreement or the expiration of any Entitlement issued hereunder, the rights and licenses granted to You will automatically terminate, and You agree to immediately cease using the Products, return or destroy all copies of the Products, Documentation and other Confidential Information in Your possession and certify to Us in writing completion of the return or destruction. Upon termination, except as otherwise set forth herein, We will have no obligation to refund any fees or other amount received from You during the Term and You shall be required to pay immediately all outstanding amounts. All Product fees and fees paid or owed or expenses incurred as of the date of termination are non-cancellable, non-contingent and non-refundable.
- 13.5. Return of Your Content.** If the applicable Cloud Services involves the transmission of Your Content, then You may retrieve and remove Your Content in accordance with the Documentation. We shall have no obligation to provide access to Your Content thirty (30) days following the Subscription Term or termination date.
- 13.6. Previews Term and Expiration.** Unless otherwise specified in the Entitlement, Previews, except for No-Charge Products, may be used for a period not exceeding thirty (30) days from Delivery or access being granted ("Evaluation Period"). You agree to uninstall, delete and cease using such Previews at the end of the Evaluation Period. No-Charge Products may be used in accordance with this Section 13.

**14. Authorized Partners.**

The terms of the agreement between You and a Partner for the procurement of the Products applies solely between You and that Partner.

**15. Governing Law and Jurisdiction.**

- 15.1. Governing Law and Jurisdiction.** This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation shall be governed and construed in accordance with the laws and under the exclusive jurisdiction of the competent courts as follows:

You are domiciled in	Nutanix contracting entity	Governing law	Courts with exclusive jurisdiction
The Americas	Nutanix Inc.	State of California and controlling United States law	Federal or state courts located in San Francisco
U.S. Federal Government	Nutanix, Inc.	Federal Law	US District Court or the US Court of Federal Claims
France	Nutanix Netherlands B.V.	French law	Paris
Germany	Nutanix Netherlands B.V.	German law	Munich
United Kingdom	Nutanix Netherlands B.V.	English law	England and Wales
Australia, New Zealand, Hong Kong, Korea and Taiwan	Nutanix Netherlands B.V.	State of New South Wales	Sydney
Japan	Nutanix Netherlands B.V.	Japan	District Court of Tokyo
Malaysia, Philippines, Singapore and Thailand	Nutanix Netherlands B.V.	Singapore	Singapore
China	Nutanix Netherlands B.V.	China	CIETAC Beijing
Any other country	Nutanix Netherlands B.V.	The Netherlands	Amsterdam

- 15.2 Exclusion.** The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

**16. Certification and Audit.**

You agree to maintain accurate records as necessary to verify Your compliance with this Agreement. Upon Our request, no more than once every twelve (12) months, You agree to furnish Us with a written certification signed by one Your authorized representatives verifying that the Products are being used in accordance with this Agreement and the Entitlement. We or Our independent third-party accountant may examine and audit Your books and records relating to this Agreement and Your access, use, and deployment of the Products to the extent necessary to verify Your compliance with this Agreement and the Entitlement. Any audit will be conducted during regular business hours at Your facilities, will not unreasonably interfere with Your business and will comply with Your reasonable security procedures. If an audit reveals that You have exceeded the Usage Capacity, Usage Limits, other licensing metrics or the scope of Your license granted during the period audited, additional fees for Your excess usage are payable net thirty (30) days.

**17. General.**

- 17.1. Affiliates and Contractors.** You may permit Your Affiliates and/or any contractor acting on Your behalf to use the Products within the Usage Capacity as specified in the Entitlement provided that they comply with the terms of this Agreement. You will be jointly and severally liable for any breach of this Agreement by any of the foregoing users.
- 17.2. Assignment.** You may not assign this Agreement or any rights that We have given You under it unless We provide written consent, which We shall not unreasonably withhold. Either party can assign this Agreement to a successor in interest in the context of a change of control. Any purported assignment in violation of this section shall be null and void.
- 17.3. Third-Party and Open Source Software.** The Products may contain components of copyrighted third-party software or open source software. Third party and open source software that is delivered as part of the Software is included in the warranty, support and indemnification provisions applicable to the Software provided it is not removed or used separately from the Software. Your internal use of open source software included in the Products without modification and in compliance with this Agreement will not result in the imposition of "copyleft" obligations with respect to Your intellectual property.
- 17.4. No Third-Party Beneficiaries.** This Agreement does not confer any rights on any person or party other than the parties to this Agreement except as set forth in Section 1.3., 2, 3, and 9.
- 17.5. Relationship of the Parties.** We perform Support Services as an independent contractor, and not as an employee, agent, joint venturer or partner of You, and neither You or We have the authority to bind the other by contract or otherwise.
- 17.6. Waiver.** Failure to enforce any provision of this Agreement will not constitute a waiver. Any waiver must be in writing and signed by the waiving party.
- 17.7. Subcontractors.** We may use subcontractors, but We shall remain liable to You for all of Our obligations under this Agreement.
- 17.8. Force Majeure.** We will not be liable for performance delays during the performance of Support Services or Professional Services or for nonperformance, due to causes beyond Our reasonable control.
- 17.9. Severability.** If any provision in this Agreement is found to be unenforceable by a court of competent jurisdiction, the remainder of this Agreement will remain in full force and effect.
- 17.10. Notices.** Our notice address is: Nutanix, Inc., 1740 Technology Drive, Suite 150, San Jose, CA 95110, Attn: Chief Legal Officer.
- 17.11. Survival.** Sections 2.2, 5.4, 6, 8, 9, 10, 12, 15, 16 and 17.9 shall survive the expiration or termination of this Agreement.
- 17.12. Entire Agreement.** This Agreement, together with any additional terms incorporated by reference, including the Entitlement and the Appendices hereto, constitute the complete and exclusive understanding and agreement between You and Us and supersedes any written or oral prior or contemporaneous agreements, communications and understandings.
- 17.13. Modifications.** This Agreement cannot be modified except by mutual written agreement or as required by law. Any other terms and conditions contained or referenced by either party in a quote, purchase order, acceptance, invoice or any similar document purporting to modify the terms and conditions contained in this Agreement are void and will have no effect unless otherwise expressly agreed to by You and Us.

#### Appendix 1: Hardware Support for NX Branded Hardware

1. **Scope of Hardware Support Services.** We will only provide Hardware Support Services for NX branded hardware ("Hardware") under a valid Entitlement. If We determine that replacement parts are required for Hardware Support Services, then We will replace any failed part with a functional equivalent that will have equal or higher specifications. Replacement parts may be new or refurbished, at Our option. All defective parts must be returned following Nutanix's return material authorization policy ("RMA Policy") which can be found at <https://www.nutanix.com/support-services/product-support/policies> and <https://www.nutanix.com/legal/privacy-statement/data-privacy-policy>. If You have purchased a Nutanix non-return media option, all defective parts except the relevant media must be returned following the Nutanix RMA Policy. If You do not follow Nutanix's RMA Policy, Nutanix may invoice You (directly or through Our Partners) for the full cost of the replacement part(s). All returned parts become the property of Nutanix.
2. **Reinstatement of Support.** The terms and conditions in Section 3.6 of the Agreement ("Reinstatement of Support") apply to reinstatement of Hardware Support.
3. **Exclusions.** We shall have no obligation to provide Support Services for Hardware (a) that has been mishandled, altered or damaged due to willful or negligent acts or omissions or force majeure, or operation of the Hardware other than as specified in the documentation accompanying the Hardware; (b) modified, altered or repaired by a party other than Us or a party authorized by Us; (c) that was subjected to fire suppression discharge or a power failure; (d) that was subjected to abnormal physical or electrical stress, abnormal environmental conditions or environmental and storage conditions (including temperature and/or humidity ranges) which are not in accordance with the documentation accompanying the Hardware; or (e) that has installed Software which is subject to Nutanix's Software End of Life Policies which can be found at <https://www.nutanix.com/support-services/product-support/policies>.

## Appendix 2: Direct Purchase Terms

The following terms apply only if You purchase Products directly from Us.

### 1. Definitions

- 1.1. "Delivery" means the date when We make the license key for the applicable Software available to You or when We make the Software otherwise available to You or when We render the Professional, Support and Cloud Services.
- 1.2. "Flexcredits" means the pre-paid credits which can be redeemed against Professional Services.
- 1.3. "Price List" means Our the-current list of Products and their associated prices as amended from time to time.
- 1.4. "Purchase Orders" means the electronic or written order issued by You directly to Nutanix consistent with the corresponding price quotation for the purchase of the Products.

### 2. Orders & Acceptance

- 2.1. Purchase Orders. You shall issue binding, non-contingent, written or electronic Purchase Orders consistent with the corresponding price quote for the purchase of the Products. Your Purchase Orders shall refer exclusively to these Terms and the NLSA or any version thereof negotiated between You and Us.
- 2.2. Acceptance. Acceptance by You of the Software occurs upon Delivery. Acceptance of Professional, Support and Cloud Services occurs when such services are rendered unless otherwise agreed between You and Us in a separate document.

### 3. Pricing & Payments

- 3.1. Pricing. We may change in Our sole discretion the prices specified in Our price list and add or remove items at any time. A Purchase Order received after the effective date of a price change, but pursuant to a valid and unexpired quote shall be invoiced at the price stated on that quote.
- 3.2. Payment Terms. You shall make full payment in the currency specified in the invoice not later than thirty (30) days from the date of Our invoice. The rights to use the Software and Documentation, access the Cloud Services, receive the Support Services and Professional Services are subject to payment in accordance with this Section 3.2. All fees are non-refundable, non-contingent and non-cancellable.
- 3.3. Credit Cards. Cloud Services may also be purchased via a credit card through the Nutanix billing center available in the MyNutanix portal which may be found at <https://my.nutanix.com>.

### 4. Flexcredits

You may use FlexCredits, as specified below, to purchase Professional Services. FlexCredits, identified by SKU FLEX-CST-CR on Our price list, or such other SKU as We may determine from time to time, may only be used for packaged or custom Professional Services, technical account manager or resident consultant resources, education offerings, including certifications or any additional services as We may determine at Our discretion. Additional information on Professional Services against which FlexCredits may be utilized is available at <https://www.nutanix.com/support-services/consulting-services> for consulting services and for education and certification. The cost of FlexCredits is as per the then current price list. FlexCredits expire twelve (12) months from the purchase date, are non-refundable and can be applied to any Professional Services made available by Us at the time of redemption. Balances can be pooled toward a single redemption and FlexCredits may be purchased upfront. You don't have to select in advance the Professional Services against which FlexCredits are to be redeemed.

### 5. Taxes & Duties

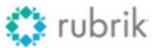
You are solely responsible for the payment of taxes, fees, withholding, duties and charges and all related penalties and interest that arise from utilization of or provision of the Software, Cloud Services, Support Services and Professional Services including any taxes that arise on the provision of products to Your Affiliates. Taxes include, without limitation, VAT, Service tax, GST, excise taxes, sales and transaction taxes or any other like taxes that are owed with respect to any order placed under this agreement. If You are tax-exempt, provide us with tax exemption certificates or other documentation acceptable to the taxing authorities not later than thirty (30) days from the date you give us an Order. If You don't, We may include such taxes in the invoice and you are obligated to pay them. All payments pursuant to this Agreement shall be made without any withholding or deduction of any withholding tax or other tax or mandatory payment to government agencies. If you are legally required to make any such withholding or deduction from any payment due to us under this Agreement, the sum payable by you upon which such withholding or deduction is based shall be increased to the extent necessary to ensure that, after such withholding or deduction, We receive and retain, free from liability for such withholding or deduction, a net amount equal to the amount We would have received and retained in the absence of such required withholding or deduction. A valid Tax registration number is required for all Non-US orders.

### 6. Conflicting Terms.

The above terms prevail over any conflicting or additional terms referred to in any Purchase Order, quote or similar communication between You and Us. Purchase Orders issued by You shall be deemed to incorporate these Terms except where You and Us have expressly agreed in writing to variations thereto.

RUBRIK

**Hardware Support Policy and Manufacturer Warranty  
End User License Agreement**



## RUBRIK, INC. HARDWARE SUPPORT POLICY AND MANUFACTURER WARRANTY

This Rubrik Hardware Support Policy (“**Policy**”) and Manufacturer Warranty contains the applicable terms and conditions of the Manufacturer Warranty and Support Services (defined below) under an active post-sale Support Services Plan, and forms part of the agreement between Rubrik and Customer governing Customer’s use of the Rubrik Service or Software and Hardware (“**Agreement**”). All capitalized terms not defined herein are as defined in the Agreement.

### 1. DEFINITIONS.

- 1.1. “**Defect**” means a failure of the Hardware to conform in all material respects to the applicable Documentation.
- 1.2. “**Hardware**” means only hardware which is branded with the Rubrik logo and excludes all other hardware.
- 1.3. “**Remote Support Request**” means a service request Customer may submit to Rubrik via the web, telephone or email.
- 1.4. “**Support Services Effective Date**” means the date that the Support Services was made available to the Customer.
- 1.5. “**Spare(s)**” means a replacement component for any Hardware, which is provided in accordance with Rubrik’s written instructions or return materials authorization procedure (“**RMA Procedures**”) including field replaceable units and replacement parts.
- 1.6. “**Support Services**” means the support services for the Hardware as more fully described in Section 4 below and which are provided by Rubrik or its subcontractor(s) or are available on Rubrik’s support website.
- 1.7. “**Support Services Plan**” means the level of Support Services as more fully described in Section 7 of this Policy for which Customer has paid the applicable Support Services fee(s).

2. **SCOPE.** This Policy applies, and Rubrik will provide Support Services and facilitate Customer’s manufacturer warranty claims for Hardware, as described in Section 3 (Manufacturer Warranty), only if Customer has purchased a post-sale Support Services Plan for the Hardware. If Customer has not purchased a post-sale Support Services Plan for the Hardware, Customer will not receive any Support Services described in this Policy from Rubrik and Rubrik will not facilitate any hardware warranty claims and instead Customer must contact the applicable reseller or hardware manufacturer for all support and warranty claims.

### 3. MANUFACTURER WARRANTY.

- 3.1 The Rubrik brand is licensed by Rubrik to certain third-party hardware manufacturers who manufacture and sell Hardware (“**Manufacturer**”). Rubrik does not own, manufacture, sell, lease, license, supply, indemnify, warrant, or support Hardware. If Customer purchases a post-sale Support Services entitlement from Rubrik (or its authorized reseller) for the Hardware, then Support Services for the Hardware will be provided by Rubrik in accordance with this Policy and Rubrik will facilitate Customer’s warranty claim under the Manufacturer warranty described in this Section 3. If Customer does not purchase a post-sale Support Services entitlement for the Hardware, the following warranty will be provided by Manufacturer rather than Rubrik and Customer must contact its applicable reseller to facilitate any warranty claims.
- 3.2 **Hardware Warranty.** Manufacturer warrants to Customer, for one (1) year from the date of shipment of the Hardware (“**Hardware Warranty Period**”), that the Hardware will conform in all material respects to the applicable Documentation (“**Hardware Warranty**”). The foregoing warranty only applies if Customer has purchased Hardware (and excludes all third-party hardware).
- 3.3 **Remedy.** Manufacturer’s sole obligation under the Hardware Warranty, and Customer’s exclusive remedy, is to use commercially reasonable efforts to repair or replace non-conforming Hardware, provided that Customer promptly notifies Rubrik or Manufacturer of such non-conformance during the applicable Hardware Warranty Period. Prior to returning any Hardware for warranty-related claims, Customer must obtain Rubrik or Manufacturer’s prior written authorization and comply with Manufacturer or Rubrik’s RMA Procedures and instructions. Any Hardware that is repaired or replaced under this Hardware Warranty shall be covered for the remaining unexpired term of the Hardware Warranty Period for the original Hardware, or thirty (30) calendar days after re-delivery, whichever is longer.

- 3.4 **Hardware Warranty Support Services Availability.** During the Hardware Warranty Period, Customer may submit service requests via web, telephone or email 24x7. Rubrik or Manufacturer will use commercially reasonable efforts to respond to Customer's service requests within the response times in the Response Time Targets table in Section 9 of this Policy.
- 3.5 **Terms and Exclusions.** The Hardware Warranty does not apply to any Hardware: (i) returned without Rubrik's or Manufacturer's prior written authorization pursuant to Section 3.3 of this Policy; (ii) handled, transported, installed, operated, maintained, stored or used improperly, or in any manner not in accordance with the Documentation, the Policy, or Rubrik's or Manufacturer's written instructions or recommendations; (iii) repaired, altered or modified other than by Manufacturer, Rubrik, or its authorized service provider; or (iv) where the Hardware Warranty Period has expired. Additional charges may apply for support provided outside the applicable Hardware Warranty Period or for excluded repairs or error corrections to the extent not otherwise covered under the Hardware Warranty or, if applicable, the Support Services Plan purchased for such Hardware.
- 3.6 Hardware Warranty claims must be made within the Hardware Warranty Period. "Dead on Arrival" Hardware ("**DOA Hardware**") must be reported to Rubrik or Manufacturer within thirty (30) calendar days of delivery of the Hardware. Rubrik or Manufacturer will ship a replacement for DOA Hardware on the same business day pursuant to Section 7.2 of this Policy. Customer will return the DOA Hardware to Rubrik or Manufacturer, as instructed, within fourteen (14) calendar days of receipt of the replacement Hardware or will pay the purchase price for the replacement Hardware and all associated duties, taxes, and shipment costs.
- 3.7 For Hardware Defects that require a Spare or replacement Hardware, return and replacement terms are as set forth in the applicable Support Services Plan.
4. **SUPPORT SERVICES.** Rubrik will provide the Support Services to Customer in accordance with this Policy, provided Customer: (i) is in compliance with the terms of this Policy; (ii) has paid all applicable fees due; (iii) has a current Support Services Plan; and (iv) Customer's use of the Hardware is in conformance with the Documentation. This Policy governs in the event of any conflict with other terms, conditions or agreements relating to its subject matter. This Policy, and the Support Services Plans may change from time to time or certain Support Services may be discontinued; however, such changes will not result in a material reduction in the level of the Support Services provided to Customer during the then-current Support Term. Rubrik will use reasonable efforts to notify Customer of any changes to this Policy at least thirty (30) calendar days prior to the effective date of such change. Customer is deemed to have accepted the changes specified in such notice, unless Customer objects to any material changes in the notice, in which case Customer has ten (10) days to notify Rubrik of Customer's objection. If Customer objects to the changes in the notice, the prior version of this Policy shall apply through expiration of the then-current Support Term. Support Services are provided in English only.
5. **PRODUCT LIFE CYCLE.** This Policy is subject to the Product Life Cycle Policy available at <https://www.rubrik.com/en/legal>.
6. **SUPPORT SERVICES TERMS AND CONDITIONS.**
- 6.1. **Support Term.** The Support Services commence on the Support Services Effective Date and remain in effect for the initial term of Support Services as specified in an applicable Order, including any renewal thereof ("**Support Term**").
- 6.2. **Renewal of Support Services Plan; Reinstatement.** Subject to payment of the applicable fees under a renewal Order, the Support Services Plan shall renew for the period set forth in the Order. If Customer does not renew the Support Services Plan prior to the expiration of the Support Term ("**Lapse**"), Support Services may subsequently be renewed by Customer in Rubrik's sole discretion. If Rubrik permits renewal of the Support Services Plan after a Lapse: (i) the renewal Support Term shall commence on the date of expiration or termination of the prior Support Term; and (ii) Rubrik reserves the right, in its sole discretion, to charge a reinstatement fee to bring the Hardware to a supportable state, as determined by the Service Quality Assurance Check described in Section 6.9 below. For the avoidance of doubt, no Support Services Plan may be purchased if: (i) Customer did not initially purchase a Support Services Plan and more than twelve (12) months have elapsed since the purchase date of the Hardware; or (ii) more than twelve (12) months have elapsed since the prior Support Services Plan expired or was terminated in accordance with Section 6.3 of this Policy.
- 6.3. **Termination.** Rubrik may suspend or terminate a Support Services Plan if the Agreement is terminated in accordance with its terms, or for Customer's material breach of this Policy, including but not limited to non-payment of applicable fees.

- 6.4. **Notification of Defects.** If Customer believes that there is a Defect in the Hardware, Customer will: (i) promptly notify Rubrik, providing sufficient detail for Rubrik to identify the Defect; (ii) upon request, provide Rubrik with remote access, all relevant and necessary data files, software or any other relevant material; and (iii) to the extent Rubrik cannot reproduce the Defect remotely, provide on-site access, if reasonably believed necessary by Rubrik for it to reproduce, analyze or remedy the Defect.
- 6.5. **Information and Cooperation.** To receive Support Services, Customer must provide Rubrik with the location and configuration of the applicable Hardware, and such other information, cooperation, and assistance as is reasonably required by Rubrik in order to provide the Support Services. Customer is solely responsible for providing a stable environment for all systems and networks designed to ensure successful backups (and all software, data and other information contained therein).
- 6.6. **Excluded Services.** Notwithstanding anything to the contrary in this Policy, Rubrik shall have no obligation to provide: (i) Support Services or replacement(s) for Defects or resolution of problems caused by accident, abuse, misuse, third-party product(s), a power surge, power failure or other Force Majeure event, any unauthorized disassembly, repair or modification, or any failure to maintain and use the Hardware in a manner consistent with the Documentation and written instructions from Rubrik; (ii) support or replacement of Hardware that Rubrik determines in its reasonable discretion does not have a Defect; (iii) third-party products required to operate the Hardware; (iv) delivery of any on-site Support Services, including but not limited to situations where, in Rubrik's reasonable opinion, a condition exists that represents a hazard to the safety of its employees or agents; (v) Support for or replacement of any Hardware in which the Hardware or parts have been replaced with any third-party product; or (vi) consumable parts (e.g. batteries, bulbs). Customer will be responsible for charges on a time and materials basis for Support Services provided as a result of any of the foregoing.
- 6.7. **Spare(s).** Customer shall only use Spares provided by Rubrik or the Manufacturer (as applicable). For Hardware Defects that require Spare or replacement Hardware, Customer will return the defective Hardware or Hardware component in accordance with Rubrik's instructions and RMA Procedures. Customer shall package and ship the parts replaced with the Spare(s) to Rubrik within fourteen (14) calendar days from the date of receipt of the Spare(s) or replacement Hardware, and Rubrik or its authorized reseller may invoice Customer for such parts that are not promptly returned within such timeframe.
- 6.8. Where Customer has purchased a Support Services Plan for Hardware that is to be installed or relocated outside of Rubrik's then-current geographic Support Services territory ("**Territory**"), Customer will contact Rubrik to discuss Rubrik's then-current Spares coverage model, to assess whether such Hardware will be supported outside of the Territory. If the Hardware (for which Support Services have been purchased) is relocated to a geographic location in which the Support Services Plan is available at a different level of service, Customer's Support Services Plan may need to be adjusted (which may include associated fees) based on local availability. Response time targets, Spares delivery times, and availability of a field service technician may be affected. Regardless of whether the Hardware is relocated inside or outside of the Territory, if Customer moves the installation location and does not notify Rubrik of such change at least sixty (60) days prior to a request for service, delivery of Spares and replacements and availability of a technician may be affected and Rubrik shall be excused from its performance under this Policy to the extent such performance has been affected by the relocation.
- 6.9. **Service Quality Assurance Check.** "**Service Quality Assurance Check**" means Rubrik's examination of Hardware to confirm that its condition is eligible to receive Support Services. Rubrik reserves the right to perform a Service Quality Assurance Check if: (i) a Support Service Plan is not purchased at the time the Hardware is purchased; (ii) there is a lapse in Support Service(s) of more than thirty (30) days; (iii) the Hardware is relocated by any party other than Rubrik; or (iv) as otherwise required by Rubrik or its third-party service provider if there is reason to believe the Hardware has been damaged. Customer agrees to permit access for the Service Quality Assurance Check and to pay the reasonable fees for the Service Quality Assurance Check.

## 7. SUPPORT SERVICES PLANS.

- 7.1. **Premium Support Services Plan.** The Premium Support Services Plan includes 24x7 Remote Technical Support. Customer may submit Remote Support Requests at any time, 24x7. Rubrik will respond to Customer's Remote Support Requests pursuant to the Response Time Targets table in Section 9 below. For Defects requiring Spare replacement, Rubrik will ship Spare(s) to Customer the same business day if the Defect is diagnosed and ordered before the Cut-off Time (as defined below), or the following business day if diagnosed and ordered after the Cut-off Time. For Hardware for which an End of Sale announcement has been made, additional time may be required for Spare(s)

delivery. Arrival of Spare(s) at Customer's location is subject to transit and customs processing. At Rubrik's expense, Customer will return the defective part within fourteen (14) days of receipt of the Spare(s) in accordance with Rubrik's instructions and RMA Procedures. Customer will pay Rubrik's invoice for defective parts that are not returned in a timely manner. The cut-off time for same business day shipment of Spares is 3:00 p.m. in Customer's local time zone Monday through Friday, excluding major local holidays ("**Cut-off Time**").

7.2. **Basic Support Services Plan.** The Basic Support Services Plan includes all elements of the Premium Support Services Plan as set out at Section 7.1 above, except that: (i) Rubrik will respond to Remote Support Requests during Customer's business hours (meaning Monday to Friday between the hours of 8:00am and 8:00pm in Customer's local time zone) pursuant to the 'Basic Support' column in the Response Time Targets table in Section 9 below; and (ii) Rubrik will respond to up to three (3) Remote Support Requests per year outside of Customer's business hours.

**8. SUPPORT SERVICES PLAN ADD-ONS.**

Each of the following Support Services Plan Add-Ons may be purchased for a separate fee:

- i. Customer Experience Manager.
- ii. Non-returnable Drive Service ("**NRD**"). NRD is available for purchase on all Hardware either (i) at initial Hardware purchase; or (ii) upon the expiration of the Hardware Warranty Period provided that Customer has an active Support Services Plan for the Hardware. The NRD permits Customer to keep or dispose of the failed hard disk drives and/or failed solid state drives. There is an annual fee per Hardware appliance for the NRD which applies regardless of the number of replacement drives that are requested. For the avoidance of doubt, the Hardware Warranty, as well as the Premium Support Services Plan includes complimentary exchange of a failed drive, provided that the failed drive is returned to Rubrik.

**9. RESPONSE TIME TARGETS.**

Severity Description	PREMIUM SUPPORT Initial Target Response Time (24x7)	BASIC SUPPORT Initial Target Response Time (only during Customer Business Hours)	Status Updates Target	Fix/Workaround Target
<b>P1:</b> Down system	30 mins	30 mins	Daily until fixed or a workaround in place	Continuous effort until workaround provided
<b>P2:</b> System working with reduced functionality (e.g. node offline)	2 hours	2 hours	Daily until fixed or a workaround in place	To be determined based upon the problem/request
<b>P3:</b> Operational but system has experienced a minor issue (e.g. snapshot failure)	8 hours or next business day <i>(if the issue is raised after 6pm Customer's local time)</i>	8 hours or next business day <i>(if the issue is raised after 6pm Customer's local time)</i>	Every 3 days	To be determined based upon the problem/request
<b>P4:</b> General question	Next business day	Next business day	To be determined based upon the problem/request	To be determined based upon the problem/request

Response Time Targets and Fix/Workaround Targets are subject to the exclusions listed in Section 6.6 above.



## RUBRIK, INC. END USER LICENSE AGREEMENT

**IMPORTANT: READ THIS END USER LICENSE AGREEMENT (“AGREEMENT”) BEFORE INSTALLING OR USING THE RUBRIK PRODUCTS (AS DEFINED BELOW). THIS IS A LEGAL AGREEMENT BETWEEN RUBRIK, INC. (“RUBRIK”) AND YOU OR THE ENTITY THAT YOU REPRESENT (“CUSTOMER”). THIS AGREEMENT GOVERNS CUSTOMER’S USE, INCLUDING ANY FREE TRIAL USE, OF RUBRIK’S PRODUCTS AND SERVICES. BY ACCEPTING THIS AGREEMENT, EITHER BY CLICKING A BOX OR BUTTON INDICATING YOUR ACCEPTANCE, BY EXECUTING AN ORDER THAT REFERENCES THIS AGREEMENT, OR BY DOWNLOADING, INSTALLING, USING OR ACCESSING THE RUBRIK PRODUCTS, YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THIS AGREEMENT. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT COPY, INSTALL, USE OR ACCESS THE RUBRIK PRODUCTS.**

### 1. DEFINITIONS.

- 1.1 **“Affiliate”** means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. For purposes of this definition, “control” means direct or indirect ownership or control of more than fifty percent (50%) of the voting interests of the subject entity.
- 1.2 **“Effective Date”** means the date Customer accepts the terms of this Agreement.
- 1.3 **“Business Contact Data”** means the names, email addresses, phone numbers and all other business-related information of each Party’s personnel, that may be collected or exchanged between the Parties in the ordinary course of maintaining the business relationship, such as contract management, sales and ordering, and business development as further described in Section 16.2 (Use of Business Contact Data).
- 1.4 **“Customer Personal Data”** means Personal Data (defined below) that is owned or controlled by Customer and which Rubrik, a Rubrik Affiliate or subcontractor may process in the course of providing the Products, Support Services and Professional Services under the Agreement.
- 1.5 **“Documentation”** means the Rubrik licensing guide available to Customer at <https://www.rubrik.com/en/legal> and the Rubrik user guides available to Customer on the Rubrik support portal.
- 1.6 **“Hardware”** means Rubrik hardware purchased by Customer.
- 1.7 **“Order”** means the purchase order or other agreed upon legally binding document placed by Customer which specifies the applicable term, quantities and description of the Products, Support Services and Professional Services purchased by Customer from a Rubrik authorized reseller.
- 1.8 **“Personal Data”** means (i) any information relating to an identified or identifiable natural person, and/or (ii) any information that identifies, relates to, describes, or could reasonably be linked, directly or indirectly, with a particular consumer or household. Unless prohibited or specifically governed by applicable Data Protection Laws, Personal Data shall not include information or data that is anonymized, de-identified and/or compiled on a generic basis and which does not name or identify a specific person.
- 1.9 **“Product(s)”** means, collectively, Rubrik Hardware, Software and SaaS Services.
- 1.10 **“SaaS Services”** means a Rubrik cloud-based software-as-a-service offering purchased by Customer as specified in the applicable Order.
- 1.11 **“Professional Services”** means the implementation, configuration and training services as specified in an applicable Order.
- 1.12 **“Software”** means, collectively, Rubrik’s software and embedded firmware downloaded or accessed by Customer in object code form, as set out in the applicable Order. Software also includes all Updates, Upgrades, copies and alterations, modifications and derivative works thereof.
- 1.13 **“Term”** means the period of time from the Effective Date until the end of the applicable license term as set forth on the Order(s), including any renewal thereof.
- 1.14 **“Updates”** means patch releases, “bug” fixes, and maintenance updates for the Software or the SaaS Services.

1.15 “**Upgrades**” means new features included in Software or SaaS Services which Customer may purchase during the Term and which are subject to an additional charge. For clarity, if Customer purchases an Upgrade of Software, the entitlement to use the original Software terminates.

## 2. SOFTWARE LICENSE.

2.1 **Software License.** Subject to Customer’s compliance with the terms and conditions of this Agreement and Customer’s payment of all fees due, Rubrik grants Customer a limited, non-exclusive, non-sublicensable, non-transferable (except as may be expressly permitted herein) license to use the Software and Documentation, only for Customer’s internal business purposes on Hardware or Rubrik-approved third-party hardware, in accordance with the Documentation and limited to the quantities and any other limitations set forth in the applicable Order. Customer may use the Products for the benefit of its Affiliates, and Affiliates may use the Products for their own benefit, but only in the quantities and capacity as set out in the applicable Order and subject to compliance with all terms of this Agreement. Customer guarantees that each Affiliate will fully perform its obligations hereunder, and Customer is responsible for any breach of this Agreement by its Affiliates.

2.2 **Term of License.** Software is licensed for the time period set forth in the applicable Order and either: (i) on a device basis, meaning Customer’s right to use the Software is tied to the life of the Hardware on which it was originally installed (for clarity, the Software is not portable to new Hardware or third-party hardware) (“**Life of Device License**”); or (ii) on a subscription basis, meaning Customer has the right to use the Software or SaaS Services for the period of time set forth in the applicable Order and any renewals thereof (“**Subscription License**”).

2.3 **SaaS Services Additional Terms.** If Customer acquires SaaS Services, subject to Customer’s compliance with this Agreement and payment of all fees due, Rubrik grants Customer the limited, non-exclusive, non-transferable right to access and use the SaaS Services for the Term, solely for Customer’s internal business purposes and for the number of users and/or the capacity specified in the applicable Order. Customer is solely responsible for maintaining the confidentiality of all usernames and passwords required for use of the SaaS Services and for all activities conducted in connection with the use of such passwords or access to the SaaS Services. Rubrik will use commercially reasonable efforts to provide consistent site availability for the SaaS Services during the Term (excluding scheduled maintenance and downtime, connectivity problems, Customer actions or misuse, or other matters outside Rubrik’s reasonable control). Rubrik does not warrant or guarantee uninterrupted availability. Customer’s use of the SaaS Services is subject to the Acceptable Use Policy (“**AUP**”) at <https://www.rubrik.com/en/legal>. Rubrik reserves the right to suspend or terminate Customer’s use of the SaaS Services if Rubrik becomes aware that Customer or any of its users use the SaaS Services in violation of the AUP, a material term of this Agreement, or any applicable law or regulations. Rubrik may also impose temporary limits on certain features and services or temporarily restrict Customer’s access to parts of the SaaS Services for maintenance, support or system administration purposes without notice or liability. Rubrik agrees to provide commercially reasonable notice under the circumstances of any such suspension before its implementation. Customer is solely responsible for the accuracy, quality, integrity, and legality, of all Customer data stored or uploaded to the SaaS Services. Upon the termination of this Agreement or expiration of the Term, Customer will have no further rights to access the SaaS Services hereunder. For a period of thirty (30) days after such termination or expiration, upon Customer’s prior written request, Rubrik will allow Customer limited access to retrieve any Customer data remaining on the SaaS Services. After such thirty (30) day period, Customer will have no further rights to access the SaaS Services.

2.4 **Open Source.** The Software may contain or be provided with components subject to the terms and conditions of open source software licenses (“**Open Source Software**”). Nothing in this Agreement limits Customer’s rights under, or grants Customer rights that supersede, the terms and conditions of any applicable Open Source Software end user license; however, the license to the Software in Section 2.1 (Software License) includes the right to use the Open Source Software incorporated in the Software in the same manner and to the same extent as the Software.

3. **USE RESTRICTIONS.** Customer will not, nor will Customer encourage or assist others to:

- i. Copy, modify, encumber or distribute the Software, SaaS Services or Documentation (except for a reasonable number of copies of the Documentation for internal use);
- ii. Reverse engineer, disassemble, decompile or otherwise attempt to discover the source code or structure, sequence and organization of the Products or create any derivative works including, without limitation, customization, translation or localization;
- iii. Sell, license, sublicense, rent, lease, lend or transfer the Software or SaaS Services or use the Software or SaaS Services for the benefit of any third party, including but not limited to timesharing or service bureau purposes;
- iv. Remove or obscure any proprietary notices on the Products or Documentation;
- v. Publish or disclose to any third party any technical features, performance or benchmark tests, or comparative or competitive analyses relating to the Software or SaaS Services and Trial Products unless authorized in writing by Rubrik;
- vi. Use any software without first purchasing the applicable license; or

- vii. Use the Software or the SaaS Services for any purpose or in any manner not authorized by this Agreement (including, without limitation, for any purpose competitive with Rubrik).

**4. PROPRIETARY RIGHTS.** Software, SaaS Services and Documentation are licensed to Customer and not sold. Rubrik and its licensors retain all title, ownership rights, and intellectual property rights in and to the Software, SaaS Services and Documentation, in any form or format, along with all copies, and all tools, routines, programs and other technology used or provided in the provision of Support Services. The Software, SaaS Services and Documentation are protected by copyright and other intellectual property laws and by international treaties. This Agreement does not grant Customer any rights not expressly granted herein. All trademarks used in connection with the Software, Documentation and SaaS Services are owned by Rubrik, its affiliates, licensors and other suppliers, and no license to use any such trademarks is provided hereunder. Customer may elect to provide suggestions, comments for enhancements or functionality, or other feedback to Rubrik with respect to the Products (including Trial Products), Support Services, and Professional Services ("**Feedback**"). Customer is not required to provide Feedback to Rubrik, but if Customer in its sole discretion provides Feedback, Customer hereby grants Rubrik a royalty-free, worldwide, transferable, sublicensable, irrevocable, perpetual license to use or incorporate into its products and services any Feedback as it sees fit without obligation or restriction of any kind. Customer will not provide any Feedback subject to any terms that would impose any obligation on or require attribution by Rubrik.

**5. ORDERS; FEES.** Customer will purchase Products from a Rubrik authorized reseller pursuant to a separate agreement between Customer and such reseller ("**Partner Agreement**"). Customer shall pay the reseller all amounts due and owing under an Order (along with all taxes, tariffs, and duties) in accordance with the Partner Agreement. The Partner Agreement is between Customer and the reseller and is not binding on Rubrik. In the event Customer places an Order in a third-party cloud marketplace in which Rubrik has agreed to participate: (i) Customer is responsible for payment of all fees (along with all taxes, tariffs, and duties) in accordance with the terms of the Order placed in such cloud marketplace; and (ii) Hardware title will transfer upon delivery to Customer, FCA Origin (Rubrik or Rubrik's manufacturing facility), for shipment to the location specified in the Order.

**6. AUDIT.** During the Term and for a period of one (1) year thereafter, Rubrik (or its independent third-party auditors) has the right to reasonably audit Customer's relevant facilities, systems, and records to confirm Customer's compliance with this Agreement. Rubrik may conduct no more than one (1) audit per twelve (12) month period and Customer shall reasonably cooperate with Rubrik (or its independent third-party auditors) for such audit. If an audit discloses Customer has installed, accessed, used, or otherwise permitted use and access to the Software or SaaS Services in a manner that is not permitted expressly by this Agreement, Customer agrees to reimburse the applicable channel partner, or Rubrik, promptly for any unpaid fees (if applicable). In addition, if such audit reveals underpayment or non-compliance in excess of 10% of fees payable by Customer, Customer agrees to reimburse Rubrik for all of Rubrik's reasonable expenses related to such audit.

## **7. TRIAL PRODUCTS.**

**7.1 Trial Product Use.** Rubrik may provide certain Software, SaaS or Hardware products to Customer at no charge specifically for trial purposes ("**Trial Products**"). Subject to Customer's compliance with this Section 7 (Trial Products), Rubrik grants Customer a limited, personal, non-exclusive, non-transferable, non-assignable, revocable right to install and use the Trial Products solely for internal, non-commercial evaluation purposes for thirty (30) days from Customer's receipt of the Trial Products, unless otherwise extended by Rubrik in writing in its sole discretion ("**Trial Term**"). In the event the Trial Products are not yet generally available and provided to Customer in an beta or other pre-release format, Customer acknowledges, as a condition of their use: (i) such Trial Products are under development and not at the level of performance or compatibility of generally available products; (ii) may not operate correctly, may contain errors, bugs, and design flaws; (iii) may be modified by Rubrik prior to being made generally available; (iv) may not be made available for general release; and (v) do not include Support Services. Customer agrees to use reasonable efforts to notify Rubrik of any bugs or problems in the Trial Products.

**7.2 Restrictions.** Customer will not upload or store Customer Personal Data or Customer Confidential Information into any Trial Product, and Customer will only use the Trial Products with non-production data in a non-production environment. If Customer elects to upload or store production data, Customer assumes all risk in doing so, and Rubrik shall have no liability with regard thereto, including for any loss or corruption of Customer data. Upon expiration or termination of the Trial Term, Customer's right to use the Trial Product ends, and Customer's access to SaaS Services Trial Products will cease. Customer will email [returns@rubrik.com](mailto:returns@rubrik.com) for Trial Product return instructions. Customer shall securely delete all Customer data from the Trial Products upon termination or expiry of the Trial Term. Notwithstanding the foregoing, Customer is responsible for the Trial Products (except for reasonable wear and tear), until the Trial Products are back within Rubrik's possession and control. Customer acknowledges that any data remaining on any Trial Product returned to Rubrik may be disposed of or destroyed by Rubrik without any liability to Rubrik. At all times, Rubrik retains title and ownership to the Trial Products. RUBRIK, ITS SUPPLIERS, AND LICENSORS SHALL HAVE NO LIABILITY UNDER ANY LEGAL OR EQUITABLE THEORY IN RELATION TO TRIAL PRODUCTS FOR LOSSES, COSTS, OR DAMAGES OF ANY KIND IN EXCESS OF ONE THOUSAND DOLLARS (\$1000).

**8. CONFIDENTIALITY.** Customer and Rubrik may disclose Confidential Information to each other during the Term. “**Confidential Information**” means all proprietary business and technical information disclosed by one Party (“**Disclosing Party**”) to the other Party (“**Receiving Party**”) which is in tangible form and labeled “confidential” or the like, or that reasonably should be understood to be confidential given the circumstances of disclosure and the nature of the information. Confidential Information includes, but is not limited to, the Products, Trial Products, Documentation, strategic roadmaps, product plans, product designs and architecture, technology and technical information, security processes, security audit reviews and business and marketing plans. Confidential Information will not include information that: (i) was already in Receiving Party’s possession without confidentiality obligations; (ii) is rightfully received by Receiving Party without confidentiality obligations; (iii) is independently developed by the Receiving Party without use of or reference to the Disclosing Party’s Confidential Information; or (iv) is publicly disclosed by the Disclosing Party. The Receiving Party will protect Confidential Information received from the Disclosing Party using the same degree of care as it uses to protect its own similar confidential materials, but in no event using less than reasonable care. The Receiving Party will disclose Confidential Information only to its employees, alliance partners or contractors who have a need to know for purposes of this Agreement and who are under a written obligation of confidentiality no less protective than this Agreement. Confidential Information may be disclosed in response to a subpoena or order of a court or governmental agency, provided however, that if not otherwise prohibited, the Receiving Party will notify the Disclosing Party promptly of such disclosure to enable the Disclosing Party to seek an appropriate protective order. The Parties’ obligations with respect to Customer Personal Data are set forth in Section 9 (Security; Protection of Personal Data) rather than in this Section 8 (Confidentiality). Upon expiration or termination of this Agreement for any reason, the Receiving Party will, upon request, return or destroy the Disclosing Party’s Confidential Information. Notwithstanding the foregoing, the Receiving Party may retain such copies of Disclosing Party’s Confidential Information stored electronically on data archives or back-up systems or to comply with the laws or regulations applicable to the Receiving Party, provided that such copies shall at all times be subject to the terms of this Agreement while in Receiving Party’s possession or control.

**9. SECURITY; PROTECTION OF PERSONAL DATA.** During the Term of this Agreement, Rubrik will implement and maintain commercially reasonable administrative, physical and technical safeguards and measures designed to address the security, confidentiality and availability of the Products, Support Services and Professional Services as more fully set forth in the Data Security Schedule and the Data Processing Addendum (“**DPA**”) which are available at <https://www.rubrik.com/en/legal>. Customer acknowledges and agrees that the DPA will apply to the extent Rubrik is required to process Customer Personal Data in connection with the SaaS Services, Professional Services and Support Services. Customer must promptly notify Rubrik of any unauthorized use of or access to the Products purchased by Customer.

**10. SUPPORT.** Support Services for the Products are covered in the then-current support terms available at <https://www.rubrik.com/en/legal>, which are incorporated by reference into this Agreement to the extent applicable.

**11. PROFESSIONAL SERVICES.** Customer may place an Order for Professional Services. Professional Services may be performed by Rubrik or sub-contractors acting on Rubrik’s behalf. In regard to Professional Services, Rubrik warrants that: (i) it and each of its employees, consultants and subcontractors, if any, have the necessary knowledge, skills, experience, qualifications and resources to provide and perform the Professional Services; and (ii) the Professional Services will be performed in a professional and workmanlike manner in accordance with industry standards. Rubrik shall own all rights, title and interest in and to any deliverables provided to Customer and all related intellectual property rights (excluding Customer’s Confidential Information), unless otherwise set forth in a mutually agreed upon Statement of Work (“**SOW**”). Except for those Professional Services with a term specified in an Order or SOW, all training Professional Services must be used within twelve (12) months of the date of the Order, and all other Professional Services must be used within six (6) months of the date of the Order, after which, all unused Professional Services will expire. Orders for Professional Services are not transferable to any other Product or Service. As a condition to Rubrik providing Professional Services hereunder, Customer shall: (a) provide good faith cooperation and access to such information, facilities, and equipment as may be reasonably required in order to provide the Professional Services; and (b) provide such personnel assistance as may be reasonably requested from time to time. If, through no fault or delay by Customer, or any failure by Customer or Customer’s representatives to perform in accordance with this Section 11 (Professional Services), the Professional Services do not conform to the foregoing warranty, and Customer notifies Rubrik within ten (10) days of Rubrik’s completion of the Professional Services, Rubrik will re-perform the non-conforming portion(s) of the Professional Services at no additional cost to Customer.

## **12. WARRANTIES AND DISCLAIMER.**

**12.1 Software Warranty.** Rubrik warrants to Customer, for ninety (90) days from the date of delivery (“**Software Warranty Period**”), the Software will conform in all material respects to the applicable Documentation (“**Software Warranty**”). Rubrik’s delivery of any Update does not extend the Software Warranty Period applicable to the Software.

**12.2 SaaS Services Warranty.** Rubrik warrants to Customer during the Term (“**SaaS Services Warranty Period**”), the SaaS Services will conform in all material respects to the applicable Documentation (“**SaaS Services Warranty**”).

**12.3 Remedy; Exclusions.** Rubrik's sole obligation under the Software Warranty or SaaS Services Warranty (as applicable), and Customer's exclusive remedy, is to use commercially reasonable efforts to correct the non-conformity during the applicable Software or SaaS Services Warranty Period. If Rubrik is not able to correct the non-conformity in the Software or SaaS Services (as applicable) such that it complies with the applicable Warranty, Rubrik will process a refund of the unused, prepaid fees for such non-conforming Software or SaaS Services via the applicable channel partner. In the event of a refund in accordance with the foregoing, Customer's right to use the Software or SaaS Services for which the refund was processed terminates. Customer's obligation is to provide all information reasonably requested to enable Rubrik to cure the deficiencies. The foregoing warranties do not apply to any Software or SaaS Services (as applicable): (i) that are installed, operated, maintained, stored or used improperly, or in any manner not in accordance with the Documentation, this Agreement or Rubrik's written instructions; (ii) that are repaired, altered or modified other than by Rubrik or its authorized service provider; or (iii) where the issue is caused by any failure of third-party software or cloud services not supplied by Rubrik.

**12.4 Disclaimer of Warranties.** EXCEPT AS PROVIDED IN THIS AGREEMENT, AND TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW, RUBRIK AND ITS LICENSORS DISCLAIM ALL CONDITIONS, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. RUBRIK DOES NOT WARRANT AGAINST LOSS OR INACCURACY OF DATA, THAT THE OPERATION OF THE PRODUCTS WILL BE UNINTERRUPTED OR ERROR FREE OR THAT THE PRODUCTS WILL BE COMPATIBLE WITH ANY THIRD-PARTY SOFTWARE OR HARDWARE. RUBRIK, ITS SUPPLIERS AND LICENSORS ARE NOT LIABLE OR RESPONSIBLE FOR ANY WARRANTIES, EXPRESS OR IMPLIED, PROVIDED BY A CHANNEL PARTNER OR OTHER THIRD PARTY. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, TRIAL PRODUCTS ARE PROVIDED AND LICENSED TO CUSTOMER ON AN "AS IS" BASIS, AND ALL WARRANTIES AND INDEMNITIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, ARE EXCLUDED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAWS.

### **13. INDEMNIFICATION.**

**13.1 Intellectual Property Indemnification.** Rubrik agrees to defend or settle, at Rubrik's option, a third-party claim or cause of action against Customer alleging that the Products infringe or misappropriate a U.S. patent or copyright of such third party ("**Claim**") and to pay damages finally awarded against Customer by a court of competent jurisdiction or as agreed to in a settlement. Rubrik's obligations hereunder do not apply with respect to any Claim that arises out of: (i) any unauthorized use, reproduction or distribution of the Products; (ii) use of the Products in combination with any other software or equipment not specified by the Documentation if such Claim would have been avoided without such combination; (iii) Products that were modified after delivery without Rubrik's prior written authorization; or (iv) Customer's continued use of the allegedly infringing Product after Rubrik supplied a modified or replacement non-infringing Product. If any Claim arises, Rubrik may, at its sole option and expense: (a) replace or modify the affected Product to make it non-infringing; (b) procure a license for Customer's continued use of the affected Product; or if (a) and (b) are not commercially viable (as determined by Rubrik in its sole discretion), accept return of the affected Products and terminate Customer's rights thereto, in which case Rubrik will process a pro-rated refund for the applicable prepaid unused fees for such Product covering the remainder of the Term via the applicable channel partner. For Life of the Device licensed Software and Hardware, the refund will be based on a straight-line amortization over a three (3) year term beginning on the date of initial delivery of the Software and Hardware. This Section 13.1 (Intellectual Property Indemnity) states Customer's sole and exclusive remedy, and Rubrik's sole liability, with respect to infringement of intellectual property rights.

**13.2 SaaS Services Indemnity.** Customer agrees to defend and indemnify Rubrik from and against any loss, damage, or cost arising from a third-party claim that Customer data stored or uploaded into the SaaS Services, or Customer's use of the SaaS Services (i) infringes an intellectual property right or misappropriates a trade secret of a third party; or (ii) violates the AUP or this Agreement.

**13.3 Indemnification Process.** As a condition of receiving indemnity as described in Section 13 (Indemnification), the party seeking the indemnity will provide the other party with: (i) prompt written notice of the claim, provided, however, that the failure to give such notice shall not relieve the indemnifying party of its obligations hereunder except to the extent that the indemnifying party is prejudiced by such failure; (ii) complete control over the defense and settlement of the claim (provided that the indemnifying party will not settle any claim without the other party's prior written permission if the settlement fails to unconditionally release the indemnified party from all liability pertaining to the claim, such permission not to be unreasonably withheld, delayed or conditioned); and (iii) reasonable assistance in connection with the defense and settlement of the claim.

### **14. LIMITATION OF LIABILITY.**

**14.1 Disclaimer of Consequential Damages.** EXCEPT FOR CUSTOMER'S BREACH OF SECTIONS 2.1 (SOFTWARE LICENSE) AND 3 (USE RESTRICTIONS) OF THIS AGREEMENT, IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT

LIMITATION, LOST PROFITS OR REVENUE, LOSS OR CORRUPTION OF DATA OR THE COST OF COVER, HOWEVER CAUSED, WHETHER BASED IN CONTRACT, TORT, WARRANTY, NEGLIGENCE OR ANY OTHER THEORY OF LIABILITY, EVEN IF SUCH PARTY HAS BEEN ADVISED AS TO THE POSSIBILITY OF SUCH DAMAGES. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES. IN SUCH AN EVENT, THIS EXCLUSION WILL NOT APPLY TO THE EXTENT THE EXCLUSION IS PROHIBITED BY LAW.

**14.2 Limitation of Liability.** IN NO EVENT WILL RUBRIK'S, ITS AFFILIATES' AND ITS LICENSORS' TOTAL AND CUMULATIVE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL FEES PAID BY CUSTOMER TO RUBRIK (OR TO THE APPLICABLE CHANNEL PARTNER) FOR THE PRODUCTS IN THE TWELVE (12) MONTHS PRECEDING THE DATE OF THE FIRST EVENT GIVING RISE TO LIABILITY UNDER THIS AGREEMENT. THE FOREGOING LIMITATION DOES NOT LIMIT OR EXCLUDE ANY LIABILITY FOR DEATH OR PERSONAL INJURY CAUSED BY NEGLIGENCE.

## **15. TERM AND TERMINATION.**

**15.1 Term; Termination for Cause.** This Agreement begins on the Effective Date and continues until the end of the Term. Notwithstanding the foregoing, a Party may terminate this Agreement if the other Party: (i) materially breaches this Agreement and such breach is not cured within thirty (30) days of such Party's receipt of written notice describing the breach; or (ii) becomes insolvent, admits in writing of its inability to pay its debts as they mature, makes an assignment for the benefit of creditors, becomes subject to control of a trustee, receiver or similar authority, or becomes subject to any bankruptcy or insolvency proceeding.

**15.2 Post-Termination Obligations.** Upon expiration or termination of this Agreement, including if Customer does not renew its applicable Subscription License, the license granted hereunder will immediately terminate and Customer will stop using the Software. Customer will uninstall and destroy the Software and Documentation or undertake such actions as to ensure that the Software and Documentation will not be used after the effective date of termination. For clarity, upon termination or expiration, Customer loses entitlement to all Software features; however, Customer data will remain on the Hardware for archival purposes.

**15.3 Surviving Provisions.** Upon expiration or termination of this Agreement, the following sections will survive: Sections 1 (Definitions), 4 (Proprietary Rights), 5 (Orders; Fees), 6 (Audit), 7.2 (Restrictions) 8 (Confidentiality), 12.4 (Disclaimer of Warranties), 13 (Indemnification), 14 (Limitation of Liability), 15.2 (Post-Termination Obligations) 16 (General).

## **16. GENERAL.**

**16.1 Independent Contractors.** The Parties are independent contractors under this Agreement and nothing herein shall authorize one Party to have, or hold itself out as having, any right or authority to incur any obligation on behalf of the other.

**16.2 Use of Business Contact Data.** Each Party consents to the use of its Business Contact Data by the other Party for the purposes of developing and maintaining the business relationship, and each Party will process the other Party's Business Contact Data consistent with applicable data protection laws and internal policies. Unless otherwise prohibited by applicable data protection laws, the receiving Party may transfer such data to, or access such data from, any country in which such Party or its Affiliates conduct business relating to this Agreement. Each Party will use reasonable and appropriate security measures to protect such Business Contact Data; and each Party undertakes to notify its personnel of the other Party's proposed use of such data, and other purposes as set out in the using Party's global data privacy policy. Customer may access Rubrik's privacy notice at <https://www.rubrik.com/en/legal/privacy-policy>.

**16.3 Assignment.** Customer will not, directly, indirectly, by operation of law or otherwise, assign all or any part of this Agreement or Customer's rights hereunder or delegate performance of any of Customer's duties hereunder without the prior written consent of Rubrik. Rubrik may assign this Agreement without obtaining Customer's consent: (i) to an Affiliate of Rubrik; or (ii) to a successor in interest in connection with a merger, reorganization or a sale of all or substantially all of the assets of Rubrik. Any assignment in violation of the foregoing shall be void and without effect. Subject to the foregoing restrictions, this Agreement will be fully binding upon, inure to the benefit of and be enforceable by the parties and their permitted successors and assigns.

**16.4 Export Controls and Trade Laws.** Customer will comply with all applicable laws and regulations, including the Export Administration Regulations, the International Traffic in Arms Regulations, and economic sanctions programs implemented by the Office of Foreign Assets Control. Without limiting the foregoing, Customer agrees that Customer will not export, re-export, download, or otherwise transmit Confidential Information or the Products: (i) to any country or region subject to a U.S. embargo or comprehensive trade sanctions; (ii) to any individual or entity identified on any U.S. Government restricted party lists (including the Consolidated Sanctions, Specially Designated Nationals, Denied Persons, Entity, or Unverified Lists); or (iii) to any end user with knowledge or reason to know that the Products or Confidential Information will be used for nuclear, chemical, or biological weapons proliferation, or for missile-development purposes.

16.5 **Enhancement Data.** Rubrik may collect machine data generated by the Software and SaaS Services, together with Customer's usage metrics (collectively, "**Enhancement Data**"). Rubrik uses Enhancement Data to operate, manage, debug, improve and secure the Software and SaaS Services and for internal analytical purposes. Enhancement Data include, but are not limited to, the amount of data scanned and moved, performance characteristics, and administrative user actions with the Products. For the avoidance of doubt, backups Customer creates using the Products are not Enhancement Data collected by Rubrik.

16.6 **Third Party Beneficiaries.** Nothing in this Agreement shall confer, or is intended to confer, on any third party any benefit or the right to enforce any term of this Agreement.

16.7 **U.S. Federal Government Users.** This Section 16.7 (U.S. Federal Government Users) applies only if Customer is a U.S. Federal Government Customer. The Software, SaaS Services and Documentation are "commercial" computer software and documentation, and are licensed in accordance with the rights articulated in applicable U.S. government acquisition regulations (e.g., FAR, DFARs) pertaining to commercial computer software and documentation. U.S. Federal Government customers will not be subject to Rubrik's applicable expenses associated with the cost of audit specified in Section 6 (Audit) of this Agreement. Disputes will be subject to resolution pursuant to the Contract Disputes Act of 1978. Nothing contained in this Agreement is meant to derogate the rights of the U.S. Department of Justice as identified in 28 U.S.C §516. All other terms remain in effect as written.

16.8 **Use of Name.** During the Term of the Agreement, Rubrik may refer to Customer as a Rubrik customer in sales and marketing materials and public statements, subject to Customer's trademark and logo usage guidelines if Customer provides such guidelines to Rubrik. Customer may send an email to Rubrik at [stories@rubrik.com](mailto:stories@rubrik.com) with its trademark and logo usage guidelines, or if Customer does not wish to be referred to as a Rubrik customer.

16.9 **Anti-corruption.** Each Party will comply with all applicable laws relating to anti-corruption or anti-bribery, including but not limited to the U.S. Foreign Corrupt Practices Act, as amended, the UK Bribery Act 2010, and legislation implementing the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. Customer agrees that it has not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from any of Rubrik's employees, agents, resellers or subcontractors in connection with this Agreement and that Customer will use reasonable efforts to promptly notify Rubrik should Customer learn of any violation of this restriction.

16.10 **Severability.** In the event that any provision of this Agreement is declared by a court of competent jurisdiction to be illegal, void or unenforceable, such provision will be limited or eliminated to the extent necessary so that the remainder of this Agreement will continue in full force and effect.

16.11 **Nonwaiver.** The failure of Customer or Rubrik to enforce any provision of this Agreement will not be construed as a waiver of such provision or of any other provision of this Agreement.

16.12 **Force Majeure.** Neither Party shall be liable hereunder by reason of any failure or delay in the performance of its obligations under this Agreement to the extent caused by circumstances beyond the reasonable control of the Party including (without limitation) pandemics, strikes, shortages, riots, insurrection, fires, flood, storm, explosions, acts of God, internet service provider failures or delays, denial of services attacks or other similar causes, war, terrorism, governmental action, labor conditions, earthquakes, volcanic eruptions or material shortages.

16.13 **Integration; Order of Precedence.** This Agreement constitutes the entire agreement between Customer and Rubrik and supersedes any and all prior agreements or communications between the parties with regard to the subject matter hereof. This Agreement may not be amended or modified except by a writing that specifically refers to this Agreement and is signed by an authorized representative of both Customer and Rubrik. The terms of this Agreement shall supersede and control over any conflicting or additional terms and conditions of any purchase order, acknowledgement, confirmation or other document issued by or on behalf of Customer, and such documents are of no force or effect. Notwithstanding any agreement Customer may have previously accepted during the installation of any prior versions of the Products, this Agreement applies to the Software, SaaS Terms and any Updates or Upgrades (except to the extent such Updates or Upgrades are accompanied by new or additional terms, in which case the different terms apply prospectively and do not alter Customer's or Rubrik's rights relating to pre-updated Software).

16.14 **Ambiguities and Notices.** Customer and Rubrik have participated in the review of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not apply in interpreting this Agreement. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any Party. Any notices under this Agreement shall be delivered in writing. For Rubrik, notices shall be sent to [legal@rubrik.com](mailto:legal@rubrik.com).

16.15 **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California, U.S.A., without applying conflict of law rules. With respect to all disputes and actions arising from or related to this Agreement, the Parties irrevocably consent to exclusive jurisdiction and venue in the state and federal courts located in Santa Clara County. The United Nations Convention of Contracts for the International Sale of Goods (1980) is hereby excluded in its

entirety from application to this Agreement. Nothing in this Section 16.15 (Governing Law) will limit or restrict either Party from seeking injunctive or other equitable relief from a court of competent jurisdiction.

16.16 **Electronic Signature.** The Parties expressly agree that this Agreement may be signed electronically. In the event of a dispute where the law is unclear as to the treatment of electronic signatures, the U.S. Electronic Signatures in Global and National Commerce Act (“ESIGN”) controls.

SCALE

**Terms of Support and Maintenance**

**SCALE COMPUTING, INC.**  
**TERMS OF SUPPORT AND MAINTENANCE**

These Terms of Support and Maintenance (these “**Terms**”) set forth the terms pursuant to which Scale Computing, Inc. (“**Scale Computing**”) will provide Support Services to the individual or entity who has purchased or licensed a Covered Product (“**Customer**”). Each of Scale Computing and Customer is a “**Party**” and together, the “**Parties**.” By entering into an Order Form for Support Services, purchasing a Covered Product, or otherwise using or accessing a Covered Product, Customer agrees to be bound by these Terms.

**1. DEFINITIONS**

- 1.1. “**Clustered System**” means three or more Covered Products that have been joined together in a Scale Computing-supported configuration utilizing native hardware and software components to create a single unified system.
- 1.2. “**Covered Product**” means a hardware appliance or software sold by Scale Computing or Scale Computing’s authorized reseller to Customer for which Customer has purchased Support Services.
- 1.3. “**Customer Data**” means any electronic data submitted by or on behalf of Customer to Scale Computing in connection with the Support Services.
- 1.4. “**Dark Site**” means a location that does not have internet capabilities or which is not connected to the internet.
- 1.5. “**Error**” means any failure of a Covered Product to substantially conform to its published specifications.
- 1.6. “**High Temperature Alert**” means an alert shown by a Covered Product indicating that the temperature of the Covered Product or a component thereof is approaching or has exceeded the manufacturer’s temperature thresholds for safety and proper operation of such Covered Product or component.
- 1.7. “**Order Form**” means the order form, purchase order, or other ordering document pursuant to which Customer is entitled to obtain Support Services from Scale Computing.
- 1.8. “**Severity Levels**” means the severity level classifications and descriptions and their corresponding service objectives and initial response times, as set forth in Exhibit A.
- 1.9. “**Software**” means the SC//HyperCore product.
- 1.10. “**Software Update**” means improvements, bug fixes, error corrections, and patches that may include minor new features, but not architectural changes or major new features to the Software. A Software Update is indicated by a change in the version number after the first decimal (e.g. version 1.0.0 to 1.1.0).
- 1.11. “**Support Hours**” means the support hours corresponding to the Support Package.
- 1.12. “**Support Package**” means the support package purchased by Customer, as indicated on the Order Form.
- 1.13. “**Support Services**” means the technical support, maintenance, and other services provided by Scale Computing, as set forth in these Terms.

**2. SUPPORT SERVICES.**

- 2.1. Generally. During the Term, and subject to Customer’s compliance with these Terms, Scale Computing will provide the Support Services to Customer based on Customer’s purchased Support Package. During the term of the Support Services, Scale Computing will provide Customer with assistance to diagnose and

resolve technical problems with the Covered Products through Scale Computing's website, by telephone, or by other means specified by Scale Computing.

- 2.2. Scale Support Web Site. Scale Computing will provision Customer an account to access Scale Computing's online customer support portal (the "**Support Portal**"). Customer will use the Support Portal only for supporting its authorized use of the Covered Products and for logging a support ticket. Customer agrees to keep the credentials used to access the Support Portal confidential and secure, and accepts responsibility for all activities that occur under its account. Customer agrees to immediately notify Scale Computing in the event Customer believes that Customer's account is no longer secure. Scale Computing may terminate or suspend Customer's access to the Support Portal, if Scale Computing, in its sole discretion, determines Customer's account is no longer secure. All software that is available for download through the Support Portal will be licensed to Customer under the same terms as those covering Customer's use of the Covered Product unless otherwise indicated. By downloading, installing, or otherwise using such software, Customer hereby accepts such additional or different license terms. Customer agrees that Scale Computing may track or collect information or data related to Customer's use of Scale Computing's website or Support Portal, and hereby consents to Scale Computing's use thereof in connection with its business.
  - 2.3. Error Corrections. Scale Computing will use commercially reasonable efforts to correct or minimize the effects of any reproducible and demonstrable Error reported to Scale Computing by Customer in accordance with the service and response objectives for the Severity Level of such Error.
  - 2.4. Security. Scale Computing will maintain appropriate administrative, physical, and technical safeguards, reasonably designed to protect Customer Data from unauthorized access, destruction, use, modification, or disclosure. In addition, Scale Computing will also maintain procedures reasonably designed to respond to security incidents and will notify Customer after becoming aware of any unlawful access or unauthorized acquisition or disclosure of Customer Data following determination by Scale Computing that such security incident has occurred.
3. **FULL SUPPORT**. If Customer has an active Support Package containing full support (as indicated in the Support Portal), Scale Computing will provide the following support for the applicable Covered Products. For clarity, Section 3.1 applies to Software, and the other Sections in this Section 3 apply to hardware:
    - 3.1. Software Support. Scale Computing will provide Support Services for Software, as described in Section 4.
    - 3.2. Hardware Failure Analysis. Upon receipt of a Customer's report that a Covered Product has failed, Scale Computing may review such allegedly failing Covered Product or component and perform a failure analysis to determine the cause of the alleged non-conformance. In the event that such failure may be the result of defective materials or workmanship, Scale Computing may, at its option, repair or place such Covered Product or component, and issue a return material authorization ("**RMA**") in accordance with the applicable Support Package. Customer shall return such Covered Product or component to Scale Computing in accordance with Section 3.3 below. Scale Computing may further examine the allegedly failing Covered Product or component upon receipt thereof to confirm the reason for the failure.
    - 3.3. Return of Products. Upon receipt of an RMA, Customer shall package and ship the Covered Products and components identified in the RMA to Scale Computing within 15 days from when Customer receives a replacement part or as otherwise requested by Scale Computing. Customer shall ensure that the RMA number is marked and visible on the outside of the package, and the package is sent prepaid, insured, and packaged appropriately for safe shipment of the Covered Products or components. Scale Computing may reject any packages sent that do not comply with the foregoing. Customer may contact Scale Computing to obtain instructions and packaging materials (as available) for safe shipment of Covered Products or components. Title and risk of loss to any returned Covered Products or components shall transfer to Scale Computing upon receipt. If the failure is due to defective materials or workmanship, Scale Computing will bear all freight expenses for returned Covered Products or components, provided Customer complies with the process set forth in this Section 3.3 and utilizes Scale Computing's designated carrier.
    - 3.4. Spare Parts. Customer may purchase spare parts by submitting a purchase order to Scale Computing. Any

purchase of spare parts is subject to and governed by these Terms. Such spare parts will be subject to the original warranty. Title to, and risk of loss of, the spare parts will pass to Customer when such spare parts are entrusted to a carrier. Any and all legal terms in a customer's purchase order are null and void. Payments for spare parts will be made as directed by Scale Computing.

- 3.5. Excluded Coverage. For clarity, Scale Computing will not be responsible for replacing or repairing any Covered Products or components with failures caused by: (a) issues external to the Covered Product, such as issues with Customer's network or systems, (b) improper use or installation, or (c) damage to the Covered Product while in Customer's possession or control (each an "**Out of Warranty Cause**"). If Scale Computing determines that the failure of a Covered Product or component is caused by an Out of Warranty Cause, Scale Computing may invoice Customer for, and Customer agrees to pay, any costs incurred by Scale Computing for diagnosing the cause of such failure, for any related shipping costs, and, to the extent Scale Computing has repaired or replaced the failed Covered Product or component, the cost of such repair or replacement. Replacing or repairing any Covered Product or component shall not extend any warranty covering the replaced Covered Product or component.
- 3.6. Opened Hardware Covers. Covered Products may contain mechanisms or devices to detect whether the Covered Product has been opened or any protective casing has been removed or tampered with. Scale Computing shall have no obligation to provide support for any Covered Product that Scale Computing determines has been opened or for which any casing has been removed or tampered with unless Customer does so in accordance with Scale Computing's express written instructions.
4. **SOFTWARE SUPPORT**. If Customer has an active Support Package specified as containing full support or Software-only support, Scale Computing will provide the following support for Software:
  - 4.1. Software Updates. Scale Computing will make Software Updates available to Customer, if, as and when Scale Computing makes any such Software Update generally available to its other customers. Updates are licensed under the terms of the Software unless otherwise stated.
  - 4.2. Documentation. Customer may access Scale Computing's most recently published support documentation on Scale Computing's website, through the Support Portal.
5. **FULL SUPPORT ELIGIBILITY**. For the avoidance of doubt, Customer will be entitled to full support (i.e., coverages for hardware and software) for Covered Products, when Customer has purchased a Support Package that includes full support from Scale Computing. If Customer purchased support from a third party, such third party support may include hardware-related support to be provided by such third party, and Software-only support to be provided by Scale Computing.
6. **ON-SITE INSTALLATION**. Scale Computing may, upon Customer's request, agree to provide on-site installation. If on-site installation is included in Customer's Support Package, such installation will be offered on a one time basis as a separate charge to Customer. Without limiting the foregoing, future on-site support may be provided pursuant to a separate written agreement between Scale Computing and Customer.
7. **DARK SITES SUPPORT**. In the event Customer operates a Covered Product from a Dark Site, or a Covered Product is not connected or has limited access to the internet ("**Dark Products**"), Customer is responsible for ensuring Scale Computing has remote access to the Dark Products sufficient to allow Scale Computing to provide the Support Services, such as, by way of example, via lights-out management, KVM over IP, or remote terminal access. Scale Computing will use commercially reasonable efforts to provide Customer support for Dark Products during Scale Computing's Support Hours only if: (a) Customer has an active Support Package that includes Dark Site support, and (b) Scale Computing has sufficient access to provide the Support Services. Customer may purchase Remote Access Mechanisms from Scale Computing upon request.
8. **EXCLUSIONS, LIMITATIONS AND CONDITIONS TO SUPPORT SERVICES**.
  - 8.1. Services Not Covered. Notwithstanding anything to the contrary in these Terms, the Support Services shall not include, and Scale Computing will have no obligation to provide Support Services for any Errors,

failures, defects or other issues caused by or resulting from:

- 8.1.1. Customer's failure to implement any Software Update;
- 8.1.2. Changes made by Customer or a third party to an operating system, network configuration or environment that adversely affects a Covered Product;
- 8.1.3. Configuration of the Customer's network (except for configuration of the Customer's network done in accordance with Scale Computing's written instructions for installation, or maintenance of a Covered Product);
- 8.1.4. Any repairs, alterations or modifications made to a Covered Products other than those made by or at the direction of Scale Computing;
- 8.1.5. Use of a Covered Product in a manner other than as specified in the applicable documentation or specifications;
- 8.1.6. Customer's installation, operation, repair, or maintenance of a Covered Product in a manner not accordance with Scale Computing's instructions
- 8.1.7. The combination, replacement, use, or interconnection of a Covered Product (or any part thereof) with other software or hardware that was not supplied or approved by Scale Computing;
- 8.1.8. Fire or water damage, earthquakes, lightning, or other acts of nature, or other causes external to a Covered Product;
- 8.1.9. Abnormal physical or electrical stress;
- 8.1.10. Customer's or a third party's negligence or accidental damage;
- 8.1.11. Customer's failure to provide and maintain adequate electrical power, cooling or humidity controls, in accordance with a Covered Product's specifications;
- 8.1.12. Excessive wear or deterioration of a Covered Product;
- 8.1.13. Relocation of a Covered Product (except as authorized by Scale Computing in accordance with Section 10);
- 8.1.14. Breach of Customer of these Terms or of the license agreement governing Customer's use of a Covered Product;
- 8.1.15. Customer's refusal to follow Scale Computing's instructions, implement any Error correction, or install a replacement part made available to Customer by Scale Computing or its designee.

## 8.2. Limitations on Support Services.

- 8.2.1. *Single Node Systems.* With the exception of HyperCore Edge systems, in the event Customer operates a Covered Product by itself and not in a Clustered System ("SNS System"), as a condition to Scale Computing's obligation to provide Support Services for the SNS System, Customer must have an active Support Package for the SNS System, and must replicate Customer's applications and data to another system sufficient to allow Customer to failover to such system and run its applications and access its data while the SNS System is inoperable for any reason. In the event Scale Computing provides Support Services for a Covered Product that has not been so replicated, then, without limiting any other limits of Scale Computing's liability arising out of or in connection with the subject matter hereof, Scale Computing shall have no liability for any data, productivity, monetary or business losses incurred by Customer in connection with providing such Support Services. An SNS System can be operated as a business resilience system only if purchased as a HyperCore BRS limited license type. Customer must use a data backup service when Customer is using the HyperCore BRS limited license type. For the avoidance of doubt, Scale Computing shall have no liability for any downtime or data loss experienced by Customer in connection with the BRS for SNS Systems, whether the underlying data is subject to backup or not.
- 8.2.2. *Clustered Systems.* Each Covered Product in a Clustered System must have an active Support Package in order to receive Support Services. Scale Computing will have no obligation to provide Support Services to any Covered Products in a Clustered System if any individual Covered Product within the Clustered System does not have an active Support Package that includes the type of Support Service requested.

- 8.3. Customer Obligations. Scale Computing's obligation to provide the Support Services is conditioned on Customer's fulfillment and compliance with the following obligations.

- 8.3.1. *Maintenance.* Customer will maintain the installation site, the Covered Products, and the operating environment for the Covered Products in good working order and in accordance with the specifications and documentation for the Covered Products, including any manufacturer's specifications for the Covered Product or a component thereof.
  - 8.3.2. *Personnel.* Customer shall only allow use of the Covered Products by competent, trained personnel.
  - 8.3.3. *Software Releases.* In order to receive Support Services, Customer must implement all Software Updates in accordance with on Scale Computing's Software Support Matrix (available at <https://community.scalecomputing.com/s/article/Scale-Computing-Software-Support-Matrix> or a successor URL).
  - 8.3.4. *Cooperation.* Customer will reasonably cooperate with Scale Computing and assist as reasonably requested by Scale Computing in connection with Scale Computing's provision of the Support Services. Such cooperation shall include: (a) providing Scale Computing with remote access to the Covered Products as may be necessary to provide the Support Services, (b) providing Scale Computing with the information about Errors (as set forth in subsection 8.3.5 below), and (c) reasonable assistance as may be required to diagnose or service a Covered Product, including restarting the system, logging or running operational readiness tasks, as may be requested by Scale Computing.
  - 8.3.5. *Notification.* Customer shall promptly notify Scale Computing of any Errors with information sufficient to allow Scale Computing to reproduce the Error ("**Error Notification**"). The Error Notification shall include a description of the Error, including, if applicable, a description of any physical indicators of the Error, alarm codes, system logs, or any other information reasonably requested by Scale Computing. Error Notifications made via email will, by default, be treated as having a Severity Level of 4 (as described in the Severity Levels). Any software or product information provided by Customer to Scale Computing in connection with the Support Services may be freely used by Scale Computing without restriction.
  - 8.3.6. *Designated Contact.* Customer will designate a primary contact and an alternate contact (each a "**Designated Contact**") that Scale Computing may contact in connection with the Support Services. All Error Notifications must be made by a Designated Contact. Customer may change its Designated Contacts by providing Scale Computing at least 10 days' notice of such change.
  - 8.3.7. *Data.* Customer will be responsible for maintaining backup copies of all data residing in or relying in any way on a Covered Product. Scale Computing will have no responsibility or liability arising out of or related to the loss of any data incurred in connection with the Support Services.
  - 8.3.8. *Temperature, Cooling and Age.* Customer shall maintain proper cooling of the Covered Products. In the event a High Temperature Alert is triggered, Customer will check the physical hardware location and take corrective action as may be necessary to address the any underlying causes, including, without limitation, powering off the affected Covered Products. Additionally, Customer shall promptly notify Scale Computing in the event Customer is unable to ascertain the underlying cause for the High Temperature Alert. In the event Scale Computing determines that Customer has failed to comply with its obligations, Scale Computing may elect (in its sole discretion) to either: (a) provide Software-only support for the remainder of the Support Term (as defined in Section 11.1), and upon such election, Customer will no longer be entitled to receive full support for the Covered Product, or (b) require (as a condition to Scale Computing's obligation to provide any Support Services) that Customer purchase and replace the affected components in the Covered Product in accordance with Scale Computing's written directions.
  - 8.3.9. *Fees.* Customer shall pay the fees for the Support Services as set forth in the Order Form. Except as indicated on the applicable Order Form, payments are non-refundable.
- 8.4. Abuse of Support Services. Customer acknowledges that the Support Services are intended to provide support for the Covered Products. Accordingly, in no event will the Support Services include administrative, monitoring, troubleshooting or other duties:
- 8.4.1. Outside of the Covered Product's direct software or hardware platforms or immediate networking environment;
  - 8.4.2. Outside of the provided web interface features, including but not limited to performing accessible configurations such as snapshot scheduling or virtual machine cloning, replication, or exporting; or

- 8.4.3. Involving guest environments on host software, including operating system boot issues, performance issues, viruses, software or hardware customizations, general troubleshooting or server, service, or application installation and configuration.

Scale Computing reserves the right to limit or terminate active Support Packages without refund after one written warning if Scale Computing determines that Customer is utilizing or attempting to utilize Scale Computing support resources to assist with any of the foregoing.

9. **LAPSED SERVICE FEE.** In the event Customer elects to purchase a Support Package for a Covered Product for which Support Services have lapsed, Customer agrees to pay Scale Computing: (a) the maintenance fees set forth on the Order Form for the such Support Package, (b) a lapsed service fee equal to Scale Computing's then-current standard maintenance fee for such Support Package pro-rated for the amount of time Support Services for the Covered Product have lapsed, (c) Scale Computing's then-current catch-up fees, if applicable, and (d) any recertification fees, as applicable.

10. **RELOCATION AND TRANSFER OF COVERED PRODUCTS.** All relocations of a Covered Product must be performed in accordance with Scale Computing's instructions in order to continue receiving full support as indicated in Section 3. In no event will Scale Computing be responsible for, or be obligated to provide hardware replacement support for, damage, failures, Errors or other issues arising out of or resulting from relocation or movement of a Covered Product. Scale Computing may provide Customer with shipping and packaging materials for the relocation of a Covered Product upon request. Scale Support will assist in facilitating pre- and post-move health checks of the Covered Products upon request. A full list of recommendations for a successful physical relocation can be found on the transfer documents.

## 11. TERM AND TERMINATION.

- 11.1. Support Term. These Terms go into effect on the date Customer agrees to these Terms and continue until terminated, or until Customer no longer maintains an active Support Package for such Covered Product (such period the "**Support Term**"). The Support Term for each Support Package will begin on the date the applicable Covered Product is shipped to Customer unless otherwise specified on the Order Form, and will continue for the purchased duration unless these Terms are terminated.

- 11.2. Full Support Renewal. Except as otherwise specified on an Order Form, Customer may renew the Support Term for Support Packages containing full support for so long as full support is offered by Scale Computing for the applicable Covered Product by providing notice to Scale Computing at least 30 days prior to the end of the Support Term, provided, however, that in no event can the aggregate Support Term for the Support Package extend beyond five (5) years from the original purchase date of the applicable Covered Product.

- 11.3. Software Support Renewal. Except as otherwise specified on an Order Form, Customer may request to renew the Support Term for Support Packages containing full support or Software-only support as Software-only support for so long as Software-only support is offered by Scale Computing for the applicable Covered Product by providing notice to Scale Computing at least 30 days prior to the end of the Support Term, provided, however, that in no event can the aggregate Support Term for the Support Package extend beyond seven years from the original purchase date of the applicable Covered Product. For clarity, any Support Packages renewed pursuant to this Section 11.3 shall contain Software-only support, and Scale Computing shall not be obligated to provide hardware-related support for any Covered Product covered by such renewed Support Package.

- 11.4. Termination. Either Party may terminate these Terms or an affected Support Package in the event the other Party: (a) materially breaches these Terms, and fails to cure such breach within 30 days of being notified thereof; or (b) makes an assignment for the benefit of creditors, become subject to proceedings under bankruptcy or insolvency law, is unable to pay debts as they mature, becomes insolvent, or ceases operating in the normal course of business. Either Party may terminate these Terms upon notice to the other in the event there are no active Support Packages.

- 11.5. Effect of Termination. Upon termination of these Terms, all Support Packages shall terminate as well, and

the rights and obligations of the Parties under these Terms will terminate, except that Sections 1, 11.5, 12, 13, 14.2, 15, and 16 will survive termination of these Terms.

**12. PROPRIETARY RIGHTS.** Except as explicitly provided herein, Scale Computing retains all right, title, and interest in and to the intellectual property rights in the Support Services, Covered Products and the Software, including, without limitation, any Software Updates, documentation, and all derivative works created therefrom. Customer will not delete or in any manner alter any copyright, trademark, or other proprietary rights notices of Scale Computing appearing on or in the Covered Products, Software, or documentation, and Customer shall reproduce any such notices on all copies it makes of the Covered Products, Software or documentation. To the extent Customer provides feedback to Scale Computing regarding any Covered Product, Software, Support Services, or documentation (“**Feedback**”), Customer agrees that Scale Computing may freely exploit such Feedback without further compensation to Customer.

### **13. CONFIDENTIALITY.**

13.1. Definition. As used herein, “**Confidential Information**” means all confidential information disclosed by or otherwise obtained from a Party (“**Disclosing Party**”) to or by the other Party (“**Receiving Party**”), whether orally, visually, or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. “Confidential Information” of a Disclosing Party includes such Disclosing Party’s technology and technical information, product plans and designs, and business processes. Without limiting the foregoing, Scale Computing’s “Confidential Information” includes the Software, documentation, and all Scale Computing product technical information, as well as technical information generated by Covered Products about the operation or performance of Covered Products. “Confidential Information” does not include any information that (a) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (b) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (c) is received from a third party without breach of any obligation owed to the Disclosing Party, or (d) was independently developed by the Receiving Party without use of or reference to the Disclosing Party’s Confidential Information.

13.2. Protection of Confidential Information. Except as otherwise permitted in writing by the Disclosing Party, the Receiving Party will (a) use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care) not to disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of these Terms and (b) limit access to Confidential Information of the Disclosing Party to those of its employees, contractors and agents who need such access for purposes consistent with these Terms and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein. Notwithstanding the foregoing, the Receiving Party is permitted to disclose Confidential Information of the Disclosing Party on a need-to-know basis to employees, contractors, and agents of its Affiliates. The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party’s cost, if the Disclosing Party wishes to contest the disclosure. “**Affiliate**” means any corporation, partnership, joint venture, or other entity: (a) as to which a Party owns or controls, directly or indirectly, stock or other interest representing more than 50% of the aggregate stock or other interest entitled to vote on general decisions reserved to the stockholders, partners, or other owners of such entity; (b) if a partnership, as to which a Party or another Affiliate is a general partner; or (c) that a Party otherwise is in common control with, controlled by, or controls in matters of management and operations.

### **14. WARRANTIES AND DISCLAIMER**

14.1. Limited Warranty. Scale Computing warrants to Customer that it will perform the Support Services in a professional and workmanlike manner. Scale Computing will use reasonable efforts to reperform any Support Services to correct or circumvent any nonconformities in the Support Services identified by

Customer within the 30-day period following the date of performance of such Support Services. This Section 14.1 states Scale Computing's sole and exclusive liability, and Customer's sole and exclusive remedy for breach of this warranty.

- 14.2. Disclaimer. EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES STATED IN THIS SECTION, SCALE COMPUTING MAKES NO ADDITIONAL REPRESENTATION OR WARRANTY OF ANY KIND WHETHER EXPRESS, IMPLIED (EITHER IN FACT OR BY OPERATION OF LAW), OR STATUTORY, AS TO ANY MATTER WHATSOEVER. SCALE COMPUTING EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY, ACCURACY, TITLE, AND NON-INFRINGEMENT. SCALE COMPUTING DOES NOT WARRANT AGAINST INTERFERENCE WITH THE ENJOYMENT OF THE SOFTWARE. SCALE COMPUTING DOES NOT WARRANT THAT THE SOFTWARE, OR THE DOCUMENTATION ARE ERROR-FREE OR THAT OPERATION OF THE SOFTWARE WILL BE SECURE, FULLY AVAILABLE OR UNINTERRUPTED. SCALE COMPUTING DOES NOT WARRANT THAT ANY INFORMATION PROVIDED ON, IN OR THROUGH THE SOFTWARE OR THE DOCUMENTATION IS ACCURATE OR COMPLETE OR THAT ANY SUCH INFORMATION WILL ALWAYS BE AVAILABLE. SCALE COMPUTING EXERCISES NO CONTROL OVER, AND EXPRESSLY DISCLAIMS ANY LIABILITY ARISING OUT OF OR BASED UPON THE RESULTS OF, CUSTOMER'S USE OF THE SOFTWARE, OR THE DOCUMENTATION. SCALE COMPUTING DOES NOT WARRANT AGAINST LOSS OF DATA.

## 15. LIMITATIONS OF LIABILITY

- 15.1. Disclaimer of Indirect Damages. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THESE TERMS, SCALE COMPUTING WILL NOT, UNDER ANY CIRCUMSTANCES, BE LIABLE TO CUSTOMER FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS OR LOSS OF BUSINESS, ARISING OUT OF OR RELATED TO THE SUBJECT MATTER OF THESE TERMS, EVEN IF SCALE COMPUTING IS APPRISED OF THE LIKELIHOOD OF SUCH DAMAGES. WITHOUT LIMITING THE FOREGOING, UNDER NO CIRCUMSTANCES WILL SCALE COMPUTING BE LIABLE FOR ANY LOSS OF DATA STORED IN, OR IN CONNECTION WITH, THE SOFTWARE.
- 15.2. Cap on Liability. UNDER NO CIRCUMSTANCES WILL SCALE COMPUTING'S (OR ITS SUPPLIERS) TOTAL LIABILITY OF ALL KINDS ARISING OUT OF OR RELATED TO THESE TERMS (INCLUDING BUT NOT LIMITED TO WARRANTY CLAIMS), REGARDLESS OF THE FORUM AND REGARDLESS OF WHETHER ANY ACTION OR CLAIM IS BASED ON CONTRACT, TORT, OR OTHERWISE, EXCEED THE TOTAL AMOUNT OF FEES PAID BY CUSTOMER FOR THE ACTIVE SUPPORT PACKAGE FOR WHICH CLAIMED DAMAGES AROSE.
- 15.3. Independent Allocations of Risk. EACH PROVISION OF THESE TERMS THAT PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES, OR EXCLUSION OF DAMAGES IS TO ALLOCATE THE RISKS OF THESE TERMS BETWEEN THE PARTIES. THIS ALLOCATION IS REFLECTED IN THE PRICING OFFERED BY SCALE COMPUTING TO CUSTOMER AND IS AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES. EACH OF THESE PROVISIONS IS SEVERABLE AND INDEPENDENT OF ALL OTHER PROVISIONS OF THESE TERMS. THE LIMITATIONS IN SECTION 15 WILL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY IN THESE TERMS.

## 16. GENERAL

- 16.1. Relationship. The Parties to these Terms are independent contractors and these Terms will not establish any relationship of partnership, joint venture, employment, franchise, or agency between the Parties. Neither Party will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent.

- 16.2. Use of Brand Name. Scale Computing and its Affiliates may use the name, brand, or logo of Customer (and Customer's parent company) (the "**Customer Marks**") solely for the purpose of identifying Customer as a licensee or customer of Scale Computing and its Affiliates in a 'customer' section of their websites, brochures, or other promotional materials, or as part of a list of their customers in a press release or other public relations materials. Any such limited use shall include proper attribution to Customer or its parent company of any trademark or logo of Customer or its parent company, and shall in no way suggest that Scale Computing and its Affiliates are affiliated with, or speaking on behalf of, Customer or Customer's parent company. Any other press releases or marketing materials referring to the Customer Marks shall require mutual approval in writing prior to public dissemination thereof. Without limiting the foregoing, Customer may object to use of the Customer Marks by providing written notice to Scale Computing specifying the objectionable uses, and Scale Computing and its Affiliates will use reasonable efforts to promptly cease the identified uses following receipt of such notice.
- 16.3. Assignability. Customer shall not assign or otherwise transfer its rights under these Terms without the prior written consent of Scale Computing. Any attempt to make such an assignment without Scale Computing's consent shall be void. Scale Computing may freely assign these Terms.
- 16.4. U.S. Government Restricted Rights. The Software is commercial computer software, as that term is defined in 48 C.F.R. §2.101. Accordingly, if the Customer is the U.S. Government or any contractor therefor, Customer will receive only those rights with respect to the Software and corresponding documentation as are granted to all other end users under license, in accordance with (a) 48 C.F.R. §227.7201 through 48 C.F.R. §227.7204, with respect to the Department of Defense and their contractors, or (b) 48 C.F.R. §12.212, with respect to all other U.S. Government licensees and their contractors.
- 16.5. Notices. All notices and other communications required or permitted hereunder shall be in writing and be deemed given when delivered personally or sent by certified or registered mail, return receipt requested, to the appropriate Party at the address set forth in Customer's order for Scale Computing Platform software and with the appropriate postage affixed. Either Party may change its address for receipt of notice by notice to the other Party in accordance with this Section 16.5. Notices to Scale Computing shall be sent to: Scale Computing, Inc, 525 S. Meridian - Suite 3E, Indianapolis, IN 46225. Email for legal notices: legalnotices@scalecomputing.com.
- 16.6. Force Majeure. Neither Party will be liable to the other Party for any delay or failure to perform as required by these Terms as a result of any cause or condition beyond its reasonable control, including, without limitation, Acts of God, accident, death, acts, omissions and defaults of third parties and official, governmental and judicial action not the fault of the Party failing or delaying in performance.
- 16.7. Governing Law. These Terms shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to the provisions of the 1980 U.N. Convention on Contracts for the International Sale of Goods. The Parties hereby irrevocably consent to the personal jurisdiction and venue of the federal, state, and local courts in New Castle County, Delaware in connection with any action arising out of or in connection with these Terms. Notwithstanding the foregoing, at either Party's option, any dispute or claim arising out of or related to these Terms may be finally settled by confidential binding arbitration in Wilmington, Delaware before one arbitrator, administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Customer will use the Software and corresponding documentation in compliance with all applicable laws and regulations.
- 16.8. Waiver. Waiver of any right or remedy under these Terms or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. Failure by either Party to enforce any provisions of these Terms shall not be deemed a waiver of future enforcement of that or any other provision.
- 16.9. Severability. If a court or arbitrator of competent jurisdiction holds any term of these Terms invalid or unenforceable, such term will be reduced or otherwise modified by such court or arbitrator to the minimum extent necessary to make it valid and enforceable. If such term cannot be so modified, it will be severed

and the remaining terms of these Terms will be interpreted in such ways as to give maximum validity and enforceability to these Terms. If any material limitation or restriction on the use of the Software under this Agreement is found to be illegal, unenforceable, or invalid, Customer's right to use the Software will immediately terminate.

- 16.10. Entire Agreement. These Terms, including all exhibits, constitutes the entire agreement between these Parties and supersedes, and the terms of these Terms govern, all prior and contemporaneous oral and written communications regarding this transaction, except that these Terms do not supersede any prior nondisclosure or comparable agreement between the Parties executed prior to these Terms being executed, nor do they affect the validity of any agreements between the Parties relating to products or services of Scale Computing other than the Software. No employee, agent, or other representative of Scale Computing has any authority to bind Scale Computing with respect to any statement, representation, warranty, or other expression unless the same is specifically set forth in these Terms. No usage of trade or other regular practice or method of dealing between the Parties will be used to modify, interpret, supplement, or alter the terms of these Terms. These Terms may not be altered, modified, or amended except by written amendment duly executed by authorized representatives of each Party hereto. Scale Computing will not be bound by, and specifically objects to, any term, condition, or other provision that is different from or in addition to these Terms (whether or not it would materially alter these Terms) that is proffered by Customer in any receipt, acceptance, confirmation, correspondence, purchase order, or otherwise, unless Scale Computing specifically provides a written acceptance of such provision signed by an authorized representative of Scale Computing. Scale Computing may update these Terms from time to time and any updates will be binding at time of Customer's next renewal of the Software. Customer will periodically check for updates to these Terms, including prior to any renewal.

## EXHIBIT A

### Severity Levels

Scale Computing will assign a Severity Level for each technical problem based on Customer's description of the problem(s) and their impact on overall data accessibility. The Initial Response Time Objective is defined as Scale Computing providing some form of verbal or written contact with Customer to respond to and/or identify the issue or concern as Scale Computing understands it at that time. Scale Computing will use commercially reasonable efforts to meet the objectives below.

<b>Severity</b>	<b>Definition</b>	<b>Service Objective</b>	<b>Initial Response Time Objective</b>
1 (Critical)	A critical problem requiring immediate resolution. Problem may cause loss of data and/or restrict production data availability.	Resources applied continuously until a solution or acceptable workaround is found.	2 hours
2 (Major)	A serious problem that affects major functionality. Operation continues in a restricted fashion and there may be restricted access to production data.	Resources applied on a priority basis during normal business hours (8AM–8PM ET Monday through Friday), until a solution or workaround is found.	2 hours
3 (Minor)	A problem that minimally affects, if at all, functionality operations or for which an acceptable workaround exists.	Resources applied during normal business hours (8AM–8PM ET Monday through Friday) until a solution or workaround is found	2 hours
4 (Minor Enhancements)	A minor condition or request that has no significant effect on the Customer operations.	Resources applied during normal business hours (8AM–8PM ET Monday through Friday) until a solution or workaround is found	1 business day

## **Scale Computing: End User Software License Agreement (EULA)**

### **1. Binding Agreement**

This Software License Agreement (“Agreement” or “EULA”) is a legal agreement between Scale Computing, Inc., a Delaware corporation with an office at 525 S. Meridian – Suite 3E, Indianapolis, IN 46225 (“Scale”) and the person or entity entering into these terms (“you” or “Licensee”). If you are entering into this Agreement on behalf of a company or other legal entity, then you represent that you have the authority to commit such entity to this Agreement, and the term “you” shall hereafter refer to such entity.

PLEASE READ THIS AGREEMENT CAREFULLY BEFORE DOWNLOADING, INSTALLING OR USING THE SOFTWARE. BY CLICKING “I ACCEPT”, DOWNLOADING, INSTALLING OR OTHERWISE USING THE SOFTWARE, YOU AGREE THAT YOU HAVE READ AND UNDERSTOOD, AND, AS A CONDITION TO YOUR USE OF THE SOFTWARE, YOU AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO BE BOUND BY THE TERMS OF THIS EULA, THEN DO NOT INSTALL, COPY OR USE THE SOFTWARE.

### **2. Definitions**

2.1. “HC3” means Scale’s HC3 virtualization software.

2.2. “Licensee Computer” means the Scale computer hardware equipment and operating systems, which Scale has provided to Licensee or which Licensee has procured to operate the Software .

2.3. “Open Source Software” means any software, operating system, programming language, device, or program licensed under the terms of an open source license.

2.4. “Order Form” means the order form, agreement or other ordering document between Licensee and Scale (or its authorized reseller) pursuant to which Licensee purchased the right to use the Software from Scale or its authorized reseller.

2.5. “Shipment Date” means the date of shipment of product or licenses, physical or virtual by Scale or its authorized reseller.

2.6. “Software” means the object code for the computer programs and computer coded instructions, the specific Scale program modules, feature set(s) or feature(s), including all related specifications, documentation, technical information, and all Upgrades (defined in Section 3.3) to any of the foregoing, in each case provided by or made available by Scale (or its authorized resellers) to Licensee. Software shall include HC3, add-on components, web services or supplements that Scale may provide or make available to Licensee, whether directly or via Scale’s authorized resellers, after the date Licensee obtains the initial copy of the Software (“Add-Ons”). For clarity, such Add-Ons may be subject to additional terms and conditions, which shall control in the event of any conflict between the terms of this Agreement and such additional terms and conditions, but only with respect to such Add-Ons.

### **3. License**

#### **3.1. License Grant**

3.1.1. Upon Licensee’s full payment of the required license fees (as specified in the Order Form), Scale hereby grants to Licensee, and Licensee hereby accepts, a limited, nonexclusive, nontransferable, non-sublicensable license to: (i) install the number of licensed units of the Software onto equipment authorized by Scale, if and as indicated in the Order Form, and (ii) use the Software solely as embedded in, for execution on, or (where the applicable documentation permits installation on equipment not authorized by Scale) for communication with, Scale-authorized equipment owned or leased by Licensee in accordance with the applicable documentation, in each case subject to the terms and conditions set forth herein. Licensee’s use of the Software shall be limited to use on the specified number of chassis or central processing units specified on the Order Form (or if unspecified, then a single chassis and central processing unit).

### **3.2. General Restrictions**

Except and solely to the extent such restriction is impermissible under applicable law, and other than as expressly set forth in this Agreement, Licensee will not, and will not assist or permit any third party to: (a) disassemble, reverse engineer, decompile, or otherwise attempt to derive the source code of the Software or any component thereof, (b) copy, reproduce, modify, alter or otherwise create any derivative works of the Software or any component thereof, (c) sell, lease, sublicense or otherwise transfer the Software to any third party, (d) use the Software to violate, misappropriate, or infringe the rights of any third party, (e) interfere with or circumvent any feature of the Software, including any security or access control mechanisms, (f) use the Software in any way that is not in accordance with the applicable documentation (including, for clarity, by installing or using the Software on any hardware that is not approved by Scale for use with the Software) or that violates applicable law, or (g) attempt to do any of the foregoing.

### **3.3. Upgrades and Additional Copies**

Any upgrades, updates, bug fixes or modified versions (collectively, "Upgrades") or backup copies of the Software licensed or provided to Licensee by Scale or an authorized reseller shall be deemed to be Software, provided that Licensee has paid the fees, if any, for such copies or Upgrades. Notwithstanding the foregoing, Licensee may not use any additional copies of the Software provided by Scale or its authorized reseller other than for backup purposes only. Licensee may create a reasonable number of copies of any documentation or materials related to the Software solely for use in connection with Licensee's authorized use of the Software, provided, however, that Licensee shall promptly destroy all such copies upon termination of this Agreement.

### **3.4. Responsibility of Licensee**

Licensee acknowledges that the Software incorporates or is based in part upon proprietary information of Scale and its third party licensors. Licensee shall not disclose or make available the Software, documentation, or any information or data embodied therein, to any person or entity other than employees of Licensee who have a need to know and that are bound by non-disclosure and non-use obligations at least as restrictive as those provided in this Section. Such employees shall be required to use the Software and documentation solely for the purposes set forth in this Agreement and shall not disclose or make available the Software, documentation, or any information or data embodied therein, to any person or entity other than those permitted by this Agreement. In all events the Licensee shall use at minimum the same care to maintain the confidentiality of the Scale proprietary information that it uses to maintain the confidentiality of its own information of equal importance.

### **3.5. Ownership**

As between Scale and Licensee, Scale retains all right, title and interest in and to the Software, including any modifications, derivatives, and copies thereof, and any related documentations or materials, whether or not made by Scale. Scale reserves all rights in and to the foregoing, and except as expressly granted in this Agreement, Licensee receives no rights or licenses hereunder.

### **3.6. Maintenance and Support Services**

Scale may provide Licensee with maintenance and support services related to the Software ("Support Services"). Such Support Services shall be provided pursuant to Scale's then-current standard terms for such Support Services. Unless otherwise indicated by Scale, all supplemental software code or documentation provided to Licensee as part of the Support Services, if any, will be deemed to be Software hereunder and use of such code or documentation be subject to the terms and conditions of this Agreement.

### **3.7 HC3 Platform**

If Customer's subscription to HC3 includes the right to access Scale's online HC3 management platform, such access is provided under the HC3 Platform Terms available at <https://community.scalecomputing.com/s/article/Scale-Computing-HC3-Platform-Terms>. Licensee's rights to use the HC3 management platform does not extend beyond Customer's subscription to HC3.

### **3.8. Licensee Records**

Licensee grants to Scale and its independent accountants the right to examine Licensee's books, records and accounts during Licensee's normal business hours to verify compliance with this Agreement. In the event the results of such audit reveals that Licensee has failed to comply with the terms of this Agreement, Licensee shall promptly reimburse Scale for its reasonably incurred costs of conducting such audit, and Scale may terminate this Agreement immediately upon notice to Licensee. In the event that such failure includes Licensee's use of the Software that exceeds the scope of the rights granted hereunder, Licensee shall promptly pay to Scale the appropriate license fees for such excess use at Scale's then-current rates plus interest at the highest rate allowed under applicable law calculated from the date such non-compliance began. The terms of this Section shall survive any termination or expiration of this Agreement.

### **3.9. Limited Warranty by Scale**

3.9.1. Scale warrants to Licensee that for a period of thirty (30) days commencing from the Shipment Date (“Warranty Period”) (i) the media on which the Software is furnished will be free of defects in materials and workmanship under normal use; and (ii) the Software substantially conforms to its published specifications.

3.9.2 Licensee’s sole and exclusive remedy and Scales sole and exclusive liability arising out of or related to a breach of warranty shall be limited, at Scale’s election, to: (i) repair of the defective media or Software, (ii) replacement of the defective media or Software, or (iii) refund of the license fees actually paid by Licensee and received by Scale for the affected Software, in each case if reported to Scale (and, if requested by Scale, returned and received by Scale) within the Warranty Period. For the avoidance of doubt, Licensee shall remain responsible for its own costs in connection with receipt of such remedies, including, by way of example, the cost of shipping the hardware on which the Software is installed to Scale for Scale.

3.9.3. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN SECTION 3.9.1 ABOVE, THE SOFTWARE AND ANY DOCUMENTATION OR OTHER RELATED MATERIALS ARE PROVIDED ‘AS IS’ AND ‘AS AVAILABLE’. SCALE DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, RELATING TO THE SOFTWARE, DOCUMENTATION AND RELATED MATERIALS, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, QUIET ENJOYMENT, OR NON-INFRINGEMENT OR ANY WARRANTY ARISING OUT OF COURSE OF DEALING, USAGE, OR TRADE. SCALE DOES NOT WARRANT THAT THE SOFTWARE, DOCUMENTATION OR ANY RELATED MATERIALS OR ANY PORTION THEREOF WILL BE UNINTERRUPTED, SECURE, OR FREE OF ERRORS, VIRUSES, OR OTHER HARMFUL COMPONENTS, AND SCALE DOES NOT WARRANT THAT ANY OF THOSE ISSUES WILL BE CORRECTED, AND SCALE DOES NOT WARRANT THAT THE FUNCTIONS OR FEATURES CONTAINED WITHIN THE SOFTWARE OR THAT OPERATION OF THE SOFTWARE WILL BE SECURE, UNINTERRUPTED OR ERROR-FREE, OR THAT ALL DEFECTS THAT MAY EXIST IN THE SOFTWARE WILL BE CORRECTED, OR THAT THE SOFTWARE WILL BE COMPATIBLE WITH ANY SOFTWARE OR HARDWARE POSSESSED BY LICENSEE.

NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM THE SOFTWARE OR SCALE WILL CREATE ANY WARRANTY REGARDING THE SOFTWARE THAT IS NOT EXPRESSLY STATED IN THIS AGREEMENT. SCALE IS NOT RESPONSIBLE FOR ANY DAMAGE THAT MAY RESULT FROM LICENSEE’S DOWNLOADING, INSTALLATION, OR USE OF THE SERVICE. LICENSEE UNDERSTANDS AND AGREES THAT LICENSEE USES ANY PORTION OF THE SOFTWARE AT ITS OWN DISCRETION AND RISK, AND THAT SCALE IS NOT RESPONSIBLE FOR ANY DAMAGE TO LICENSEE’S PROPERTY (INCLUDING YOUR COMPUTER SYSTEM OR OTHER DEVICES USED IN CONNECTION WITH THE SOFTWARE) OR FOR ANY LOSS OF DATA.

THE LIMITATIONS, EXCLUSIONS AND DISCLAIMERS IN THIS SECTION 3.9.3 SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW. SCALE DOES NOT DISCLAIM ANY WARRANTY THAT SCALE IS PROHIBITED FROM DISCLAIMING UNDER APPLICABLE LAW.

3.9.4. Licensee agrees that the Software is not designed or intended for use in hazardous environments requiring fail-safe performance, including without limitation, in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, weapons systems, direct life-support machines, or any other application in which the failure of the Software could lead directly to death, personal injury, or severe physical or property damage (collectively, “High Risk Activities”). Licensee acknowledges that the Licensee’s right to use the Software does not extend to use in connection with High Risk Activities, and Licensee hereby agrees to indemnify Scale from any and all liabilities, losses, harm or other costs (including reasonable attorney’s fees) incurred by Scale resulting from Licensee’s use of the Software in connection with High Risk Activities.

### **3.10. Limitations**

Scale shall have no liability or obligation with regard to Scale’s breach of any warranty hereunder in the event the Software or any related product or equipment supplied by Scale: (a) has been altered, except by Scale, (b) has not been installed, operated, repaired, or maintained in accordance with instructions supplied by Scale, (c) has been subjected to abnormal physical or electrical stress, misuse negligence, virus or accident, or (d) is licensed for beta, trial, evaluation or demonstration basis for which Scale does not receive a payment or license fee.

### **3.11. LIMITATION ON LIABILITY**

3.10.1. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL SCALE OR ITS RESELLERS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, LOSS OF DATA, CONFIDENTIAL OR OTHER INFORMATION, FOR BUSINESS INTERRUPTION OR LOSS OF USE, FOR PERSONAL INJURY, FOR LOSS OF PRIVACY, FOR FAILURE TO MEET ANY DUTY INCLUDING DUTY OF GOOD FAITH OR OF REASONABLE CARE, FOR NEGLIGENCE, OR FOR ANY OTHER PECUNIARY OR OTHER LOSS WHATSOEVER) ARISING OUT OF OR IN ANY WAY RELATED TO THE USE OF OR INABILITY TO USE THE SOFTWARE OR THE HARDWARE ON WHICH IT IS INSTALLED, EVEN IF SCALE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER SCALE NOR ITS RESELLERS’ LIABILITY ARISING OUT OF OR RELATED TO THE SUBJECT MATTER OF THIS AGREEMENT SHALL EXCEED THE AMOUNTS ACTUALLY RECEIVED BY SCALE IN EXCHANGE FOR THE LICENSE GRANTED TO LICENSEE HEREUNDER DURING THE 12 MONTHS IMMEDIATELY PRECEDING THE EVENTS GIVING RISE TO THE CLAIM. WITHOUT LIMITING THE FOREGOING, NO ACTION, REGARDLESS OF FORM, ARISING OUT OF OR PERTAINING TO THIS AGREEMENT MAY BE BROUGHT BY LICENSEE MORE THAN ONE (1) YEAR FROM THE DATE SUCH CAUSE OF ACTION AROSE.

### **3.12 Additional Functionality**

Licensee acknowledges that the Software may contain the capability to self-report back to Scale any issues with the Software, the Licensee Computer and other relevant metrics (“Reported Data”). Licensee agrees that it shall not

interfere with the capability of the Software to collect Reported Data and transmit such Reported Data to Scale. In addition, Licensee acknowledges that in the event such capability is disabled or otherwise unavailable, Licensee may lose the ability to use certain features or functionality of the Software.

### **3.13. License Limitations**

The availability of certain features depends on the type of license you purchase. Some features may not be enabled or supported for certain license types. Information regarding the availability of features by license type is available at the following support matrix: <https://community.scalecomputing.com/s/article/Scale-Computing-Software-Support-Matrix>. The version of the matrix that is in effect at the time of your purchase will govern the features available to you.

## **4. Third Party Software**

The Software may include, or may be distributed on the same media or in the same download with third-party software, including Open Source Software ("Third Party Technology"). Use of such Third Party Technology may be governed by separate copyright notices and license provisions, including those listed at <https://www.scalecomputing.com/support/open-sources-licensing-agreements/>.

## **5. Indemnification**

To the fullest extent permitted by law, Licensee will indemnify Scale and its affiliates from and against any claim, demand, action, proceeding, loss, liability, cost and expense (including court costs and reasonable fees of attorneys, accountants and other professionals) incurred or suffered by Scale and its affiliates arising out of or related to: (i) Licensee's unauthorized use of the Software or (ii) Licensee's breach of the terms of this Agreement. Scale reserves the right to assume the exclusive defense and control of any matter otherwise subject to indemnification by Licensee (without limiting Licensee's obligations with respect to such matter), and in that case, Licensee agrees to reasonably assist Scale in connection with the defense of such matter.

## **6. Term and Termination**

### **6.1. Term**

This Agreement is effective beginning upon Licensee's acceptance of this Agreement or when Licensee first downloads, installs or uses the Software, and, unless terminated earlier in accordance with its terms, shall continue for the subscription period indicated on the Order Form, or, if none is indicated, until terminated as specified herein. Licensee's rights under this Agreement will terminate immediately without notice from Scale if Licensee fails to comply with any provision of this Agreement.

### **6.2. Termination by Scale**

Scale will have the right to terminate this Agreement immediately upon notice if (a) Licensee breaches any term of this Agreement, or (b) Licensee becomes the subject of a voluntary or involuntary petition in bankruptcy or any proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors.

### **6.3. Termination by Licensee**

Licensee may terminate this Agreement: (i) at any time by destroying all copies of the Software including any documentation and other related materials, or (ii) in the event Scale breaches or fails to perform any other material term or condition of this Agreement and fails to remedy any such breach within thirty (30) days of receiving notice thereof from Licensee, by providing notice to Scale.

### **6.4. Effect of Termination of Agreement**

Upon termination or expiration of this Agreement, Licensee shall immediately cease all use of the Software, the documentation or related materials, and return to Scale or (at Scale's request) destroy all copies of the Software, documentation or related materials, and will certify to Scale in a writing signed by Licensee (or, if Licensee is an entity, an officer of Licensee) that Licensee has returned or destroyed all such copies. All obligations relating to nonuse and nondisclosure of confidential information, indemnification, and the obligations of Licensee to respect Scale's intellectual property rights shall survive termination or expiration of this Agreement for any reason. Licensee further agrees that in the event of such termination or expiration, all fees or charges due for the remaining term of this Agreement shall immediately become due and payable. Scale's obligations under this Agreement shall cease upon termination or expiration thereof.

## **7. Miscellaneous**

### **7.1. Restricted Rights**

7.1.1. All Software and any accompanying documentation or related materials is deemed to be "commercial computer software" and "commercial computer software documentation," respectively, pursuant to DFAR Section 227.7202 and FAR Section 12.212, as applicable. Any use, modification, reproduction release, performance, display or disclosure of the Software and accompanying documentation by the U.S. Government shall be governed solely by the terms of this Agreement, and shall be prohibited except to the extent expressly permitted hereunder.

### **7.2. Export Restrictions**

Licensee acknowledges that the Software, documentation, or any related materials may be subject to export control laws and regulations, and that each of Scale and Licensee is responsible for their own compliance with such laws and regulations. This requirement shall survive expiration or termination of this Agreement.

### **7.3. Notices**

All notices and other communications required or permitted hereunder shall be in writing and be deemed given when delivered personally or sent by registered or certified mail, return receipt requested, to the official address of the other party or to such other place as the parties hereto from time to time may direct.

**7.4. Relationship of Parties**

The parties to this Agreement are independent contractors and this Agreement will not establish any relationship of partnership, joint venture, employment, franchise, or agency between the parties. Neither party will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent.

**7.5. Force Majeure**

Neither party hereto will be liable to the other for any failure or delay in performance hereunder due to circumstances beyond its reasonable control including, without limitation, Acts of God, accident, death, injury or illness of key personnel, acts, omissions and defaults of third parties and official, governmental and judicial action not the fault of the party failing or delaying in performance.

**7.6. Assignment**

Licensee shall not assign or otherwise transfer its rights under this Agreement, including the Software obtained pursuant to this Agreement, without the prior written consent of Scale. Any attempt to make such an assignment without Scale's consent shall be void. Scale may freely assign this Agreement.

**7.7. No Waiver**

Waiver of any right or remedy under this Agreement or by law is only effective only if given in writing and shall not be deemed a waiver of any subsequent breach or default. Failure by either party to enforce any provisions of this Agreement shall not be deemed a waiver of future enforcement of that or any other provision.

**7.8. Choice of Law and Jurisdiction**

This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, USA, without giving effect to principles of conflict of laws, without regard to the United Nations Convention on the International Sale of Goods. The parties hereby irrevocably consent to the personal jurisdiction and venue of the state courts sitting in New Castle County or the federal courts located in the District of Delaware.

**7.9. Attorneys' Fees**

If any legal action or other legal proceedings is brought for the enforcement of this Agreement, or if a dispute arises under this Agreement, the successful or prevailing party shall be entitled to recover reasonable attorney's fees and other costs incurred in that action or proceeding, in addition to any other relief to which it may be entitled.

**7.10. Severability**

If a court of competent jurisdiction holds any term of this Agreement invalid or unenforceable, such term will be reduced or otherwise modified by such court to the minimum extent necessary to make it valid and enforceable. If such term cannot be so modified, it will be severed and the remaining terms of this Agreement will be interpreted in such ways as to give maximum validity and enforceability to this Agreement.

**7.11. Entire Agreement**

This agreement constitutes the entire agreement between the parties and supersedes and all prior and contemporaneous written and oral communications regarding this transaction, and may not be altered, modified, or amended except by a written amendment duly executed by authorized representatives of each party hereto.

**7.13 Language**

The English language shall govern the meaning and interpretation of this Agreement.

SCHNEIDER ELECTRIC

**Sales and Service Terms and Conditions  
Factory Warranty**



## SALES AND SERVICE TERMS AND CONDITIONS

Unless you the "Customer" have a valid agreement with APC Sales and Service Corporation (APC) which has precedence over this document, the following terms and conditions, including any documents incorporated by reference herein, shall govern all Products and Services delivered by APC.

### DEFINITIONS ARTICLE 1

#### 1.1.1 Certain Definitions.

- A. "Affiliate" means any entity controlling, controlled by or under common control with either party. "Control" shall mean or indirect the direct ownership of more than fifty per cent (50%) of the voting rights or income interest in a company or other business entity or such other relationship as, in fact, constitutes actual control.
- B. "Change" means any alteration or any extra work, delay or other circumstance which results in an adjustment to any of the cost, delivery schedule, and/or any other aspect of the Product or Services.
- C. "Cost" means the charges, prices, and fees for the Product and Services.
- D. "Commissioning" means on site Start-up and testing of the Products, in accordance with APC's standards.
- E. "Documentation" means the APC user guides, operating manuals, education materials, reports generated by the APC Configurator, product descriptions and specifications, technical manuals, supporting materials, and other information relating to the Products or used in conjunction with the Services, whether made available in print, magnetic, electronic, or video format, in effect as of the date (i) the applicable Product is shipped to Customer, or (ii) the applicable Service is provided to Customer.
- F. "Entitlement or Entitlements" means the document that memorializes the scope of the Services.
- G. "End User" means the third party, final user of the Product or Service.
- H. "Equipment" means any and all third party sourced finished goods including spare parts relating thereto. Equipment does not include any APC branded products.
- I. "Products" means (individually or collectively as appropriate) such APC hardware, Software, Documentation, supplies, accessories, and other commodities, that have been provided or will be provided by APC pursuant to this AGREEMENT. "Products" does not include Equipment.
- J. "Purchase Order" means a written or electronic order from Customer for the purchase of Products, Equipment or Services.
- K. "Quotation" means the applicable authorized APC quotation in effect when APC accepts Customer's order.
- L. "Services" means the Start-up, Commissioning, repair, and/or maintenance activities provided by APC.
- M. "Statement of Work or SOW" means the document used by APC to describe customized Services. A SOW may (i) describe the attributes of the customized Services to be provided, and APC's and Customer's responsibilities relating to such Services; (ii) specify the price for such Services; and (iii) include technical and administrative requirements associated with such Services.
- N. "Software" means computer programs and program objects of any kind (including source code and object code), program set-up and customization parameters, tools, and data and the tangible media on which any of the foregoing are recorded (and copies thereof), including middleware and firmware and related updates and upgrades.
- O. "Specifications" means APC's published specifications for the Products or Services.
- P. "Start-up" means installation of the Product at the End User's site and verification by APC that the Product is in substantial conformance with the Specifications.

Q. "Substantial Completion" means the point in time at which the Products have been installed such that Commissioning and Start-up of the Products may thereafter commence, as further defined herein.

R. "Trademarks" means all applicable trademarks, and service marks legally registered to and claimed or used by APC and its Affiliates.

S. "Vendor" means the manufacturer of Equipment.

T. "Version" or "Release" means a release of Software that contains new features, enhancements, and/or maintenance updates, or for certain Software, a collection of revisions packaged into a single entity and, as such, made available by APC to its customers.

## ARTICLE 2. PURCHASE ORDERS

2.1 All Purchase Orders are subject to acceptance by APC. These terms and conditions supersede and replace in their entirety any and all terms and conditions set forth on the face or reverse side of any Purchase Order or other document presented by Customer, except for the specific terms of the Purchase Order setting forth the price, quantity, and delivery location, unless different terms are mutually agreed to between the parties. All Purchase Orders placed with APC for Service(s) shall be subject to availability and Customer's favorable credit status with APC.

2.2 Customer may request a Change to a Product order provided that the request for Change is delivered to APC at least thirty days (30) prior to the scheduled shipping date. Customer shall pay to APC all reasonable costs associated with the Change.

2.3 Customer may cancel a Product order provided that such cancellation is delivered in writing to APC at least thirty days (30) prior to the scheduled shipping date. In the event of any cancellation Customer shall pay to APC a restocking fee equal to 25% of the Product order plus costs incurred by APC for manufactured goods, and 100% for Equipment ordered by APC pursuant to the Purchase Order being cancelled.

## ARTICLE 3. PROVISION OF PRODUCTS AND SERVICES

3.1 Transportation of Products. All shipments from APC will be made EXW (Ex Works) as per Incoterms 2000. Customer shall reimburse APC for all costs associated with positioning the Products and Equipment at the Customer's site. Shipment dates shall be estimated after APC receives and approves the applicable Purchase Order.

3.2 Title and Risk of Loss. Title and risk of loss pass to Customer at APC's shipping dock in accordance with the shipping terms set forth in Section 3.1 above.

3.3 Installation of Products. If installation is provided for, APC shall install the Product in good working order at the designated location in accordance with the standards agreed to between the parties. APC shall not be liable for any differing, subsurface, latent or concealed conditions encountered in the performance of any Services. The existence of such differing, subsurface, latent or concealed conditions shall constitute a Change.

3.4 Site Preparation. Any specific environmental conditions which are required for the provision of the Services shall be the responsibility of Customer unless otherwise agreed to in writing by APC. APC shall be entitled to rely on the sufficiency and accuracy of any documentation or data, whether written or oral, provided by Customer to APC regarding site conditions and site preparation requirements.

3.5 Health and Safety. If the Customer is subject to health and safety laws or regulations which are more stringent than the health and safety standards governing APC, or if Customer elects to operate under more stringent health and safety standards than those to which APC is subject, and Customer requires APC to comply with those higher standards, APC shall be entitled to charge the Customer any extra costs incurred in so complying. Furthermore, APC may refuse, without any liability to Customer whatsoever, to perform in whole or in part the Services if the site presents unhealthy or unsafe conditions.

3.6 Relocation. If Customer relocates any of the Products which are subject to the terms of an Entitlement without APC agreeing to perform maintenance work as provided under that Entitlement at the new site, APC shall have the right, without any liability to Customer, to terminate the portion of the Entitlement that relates to the new site without any liability to Customer. Any such termination shall not relieve Customer of any maintenance fees to be paid or invoices due under the Entitlement.

3.7 Information. Information and/or notices given by APC to the Customer shall be deemed to be correctly given if provided to employees or representatives of the Customer. APC shall have reasonable access to the sites and the Products.

3.8 Site Access. APC shall have reasonable access to the sites and the Products. APC will be entitled to charge the Customer at its normal rates for the time lost by APC's employees as a result of delays from the Customer in granting

access to the site. Furthermore, APC will not be required to perform any Service beyond the term of the Entitlement or Entitlement if Customer does not provide reasonable and timely site access.

3.9 **Third Party Providers.** If a party other than APC services the Products and if in APC's reasonable opinion, corrective action is required to return the affected Products to their normal operating condition, APC will offer to perform such work at the service rates and spare part prices in force at the time of the offer. APC will not be obliged to perform maintenance work until all remedial work has been done.

3.10 **Regulatory Requirements.** When required by national regulations or safety rules, an employee or representative of the Customer shall be present in the room where the maintenance work takes place. If no employee or representative of the Customer is present, APC shall have the right to stop its work and to invoice the Customer at its normal labor rate.

3.11 **By-Pass Switch.** If no installation by-pass switch has been installed by Customer prior to the performance of any Service, it may be necessary to power down all equipment which depends on electricity from the circuit on which work is being performed. Customer must make time available during regular business hours for the shut down to take place and for the services to be performed. Customer is reminded that where there is an installation by-pass switch and it is engaged, or where the product is inoperative, the product does not provide any protection against interruptions or irregularities in, or loss of, electrical power.

3.12 **Replacement Parts.** If an APC authorized engineer installs a replacement part, the removed part becomes property of APC as soon as it is detached from the Customer product. APC authorized engineers are authorized to install only replacement parts specified by APC. APC will take possession of defective parts (excluding batteries) for which it has provided replacements and will properly dispose of them at no additional cost to Customer.

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

4.1 **Payment.** Customer agrees to pay, without offset, all invoiced amounts within thirty (30) days of APC's invoice date. Payment by Customer shall not be contingent upon payment by a third party. If APC places Customer's account in the hands of an agency or a law firm for collection by legal action, Customer will pay an additional charge equal to the costs of collection including agency and attorneys' fees and court costs incurred to the extent permitted by laws governing these transactions. In case any invoice is not paid when due, APC shall be entitled to discontinue any maintenance works with fifteen (15) days' prior notice. Discontinuation of Services does not relieve the Customer of its obligation to pay for the Services previously rendered and to pay the yearly fee in whole for the current year.

4.2 **Prices for Services, Additional Services, Contract Renewal and Multi-year Contracts.** If the term of a service Entitlement is for more than one year, yearly invoices will be issued by APC at each anniversary date and shall be paid by the Customer in accordance with the payment terms below. Pricing may be adjusted each year at the anniversary date of an Entitlement. Payment for any additional work not quoted by APC which goes beyond the scope of this Agreement which is approved by Customer will be paid within ten (10) days of the date of the invoice unless otherwise stated on the invoice.

4.3 **Taxes.** Unless Customer provides acceptable evidence of exemption, Customer shall pay or reimburse APC for all taxes which are imposed upon Customer's acquisition of Products or Services. Customer shall not be obligated to pay or reimburse APC for any taxes attributable to the sale of any Products or Services which are imposed on or measured by net or gross income, capital, net worth, franchise, privilege, any other taxes, or assessments, nor any of the foregoing imposed on or payable by APC.

#### **ARTICLE 5. WARRANTIES**

5.1 **Limited Hardware Warranty.** APC warrants that the APC hardware Products delivered to Customer will be free from defects in workmanship and materials under normal use for the length of time outlined in the hardware Product manual for the relevant hardware Product, current as of the date on which the Product is ordered.

5.2 **Limited Software Warranty.** APC warrants that during the Software Warranty Period (i) the Software licensed hereunder will perform in substantial conformance to the program specifications; and (ii) the magnetic media on which the Software is furnished will be free from defects in material and workmanship when given normal, proper and intended usage. The warranty period applicable to the Software is sixty (60) days ("Software Warranty Period"). The Software Warranty Period commences on the date of shipment of such Software by APC. No Software updates are provided under this Agreement. Licensor does not warrant that the operation of the Software will be uninterrupted or error-free, or that Software will operate in hardware and software combinations other than as expressly provided for in the Product Specifications or that Software will meet requirements specified by Customer.

5.3 **Equipment Warranties.** No warranty is made with respect to Equipment, and no recommendation of such Equipment shall imply or constitute any warranty with respect thereto. Warranties associated with Equipment are passed "as is" from the applicable vendors, and any enforcement of such Equipment warranties shall be between Customer and Vendor.

5.4 **Service Warranties.** APC warrants that the Services to be performed hereunder shall be performed in accordance with recognized professional standards customary in the industry in which the Services are being performed. Should the Services fail to comply with such standards, APC agrees to re-perform such deficient Services at no cost to Customer provided that APC has received written notification within thirty (30) days following the completion of the specific Services giving rise to the claim. FURTHERMORE, CUSTOMER AGREES TO HOLD APC HARMLESS FROM ANY DAMAGES THAT ARISE FROM SERVICES PERFORMED IN STRICT ACCORDANCE WITH THE CUSTOMER'S SPECIFICATIONS OR DIRECTIONS WHICH ARE CONTRARY TO THE APC'S STANDARD PRACTICES.

5.5 **Exclusive Warranties.** THE FOREGOING WARRANTIES AND REMEDIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, REPRESENTATIONS, OR CONDITIONS, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OR CONDITIONS OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE. APC'S WARRANTIES CONTAINED HEREIN RUN ONLY TO CUSTOMER, AND ARE NOT EXTENDED TO ANY THIRD PARTIES.

5.6 **Exclusions.** APC shall not warrant, nor is APC required to provide, any Service on any Product defects (i) resulting from (a) the Product being modified by any person other than APC, (b) incorrect use of the Product (c) unsuitable environmental conditions, or (d) causes not attributable to the Product; or (ii) which were not apparent at the time of the Service visit. APC will submit to the Customer an estimate of the additional repair work required to correct any such defects. Said estimate will be based on APC labour and spare parts price list in force when the estimate is issued. APC will not perform any additional Services without having obtained the Customer's written approval. The opinion of APC as to whether or not the work is additional maintenance work and therefore not covered under an Entitlement shall be conclusive. Furthermore, APC is not responsible for any software, firmware, information or memory data of Customer or End Users contained in, stored on, or integrated with any Products returned to APC for repair, whether under warranty or not. APC also makes no warranty or representation that its Software will work in combination with any hardware or applications software products provided by third parties, that the operation of the Software will be uninterrupted or error-free, or that all defects in the Software will be corrected.

## ARTICLE 6. TERM

6.1 **Termination for Non-Payment.** APC may terminate any Entitlement, or any portion thereof, if Customer fails to pay when due any amounts due pursuant to any Purchase Order and such failure continues for a period of thirty (30) days after written notice is given to Customer.

6.2 **Immediate Termination.** APC may terminate a Service obligation immediately if Customer engages a third party to perform emergency or corrective maintenance on equipment which is covered by an Entitlement. In the event of said termination all obligations hereunder shall be terminated and APC shall have no liability for the termination or any damages caused as a result of the third party's actions or inaction.

6.3 **Termination of Entitlements.** Entitlements are non-cancellable by Customer.

## ARTICLE 7. LIABILITIES

7.1 **Limitation of Liability.** APC'S MAXIMUM LIABILITY TO CUSTOMER FOR DIRECT DAMAGES WILL BE LIMITED TO THE AMOUNT PAID BY CUSTOMER FOR THE PRODUCT OR SERVICES WHICH IS THE SUBJECT OF THE CLAIM. THE FOREGOING LIMITATION WILL NOT REDUCE APC'S OBLIGATIONS UNDER THE INTELLECTUAL PROPERTY INDEMNIFICATION SECTION OF THIS AGREEMENT, OR APC'S LIABILITY FOR BODILY INJURY CAUSED BY APC'S NEGLIGENCE. **NOTWITHSTANDING ANY PROVISION IN THESE TERMS AND CONDITIONS TO THE CONTRARY, IN NO EVENT SHALL EITHER PARTY, ITS OFFICERS, DIRECTORS, AFFILIATES OR EMPLOYEES BE LIABLE FOR ANY FORM OF INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, WHETHER SUCH DAMAGES ARISE IN CONTRACT OR TORT, IRRESPECTIVE OF FAULT, NEGLIGENCE OR STRICT LIABILITY, OR WHETHER SUCH PARTY HAS BEEN ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES.**

7.2 **Applicability of Limitations of Liability.** The limitation of liability in Section 7.1 shall apply to the full extent permitted by law, and shall apply whether liability is grounded in contract, tort, or otherwise, and shall extend to each party and their respective Affiliates, directors, officers, and employees.

## ARTICLE 8. SUBSTANTIAL COMPLETION

- 8.1 Substantial Completion. When Installation is included in the Services, APC shall provide written notice to Customer when APC deems such installation to be Substantially Complete and ready for Commissioning and Start-up. Within five (5) days after receiving notice of Substantial Completion, Customer shall advise APC in writing of any known defects or deficiencies in the Services. Upon receipt of such notice Company shall then take appropriate corrective action. The installation shall be deemed to have achieved Substantial Completion should Customer fail to reply to APC's written notice within said five (5) day time period.

## ARTICLE 9. ACCEPTANCE

- 9.1 All Products delivered pursuant to this Agreement will be deemed accepted upon delivery.

## ARTICLE 10. INTELLECTUAL PROPERTY INFRINGEMENT

10.1 Third-Party Claims. APC will defend or settle any claim against Customer alleging that a Product provided under these terms and conditions infringes a third party's U.S. intellectual property right, if Customer:

1. promptly notifies APC of the claim in writing;
2. cooperates with APC in the defense of the claim; and
3. grants APC sole control of the defense or settlement of the claim.

APC will pay infringement claim defense costs, APC negotiated settlement amounts, and court-awarded damages with respect to any such claim.

10.2. Remedies. If such a claim appears likely, then APC may modify the APC Products or Services, procure any necessary license, or replace the affected Product with one that is functionally equivalent. If APC determines that none of these alternatives is reasonably available, then APC will issue Customer a refund equal to the depreciated value of the affected Product.

10.3. Exclusions. APC has no obligation for any claim of infringement arising from:

1. APC compliance with Customer or third party designs, specifications, instructions, or technical information;
2. modifications made by Customer or a third party;
3. Customer non-compliance with the Documentation; or
4. Customer use with non-APC products, software, or services.

## 11. LICENSE AND RESTRICTIONS

11.1 Software License Grant. Subject to these terms and conditions and the payment of all applicable license fees, APC grants Customer a limited, personal, non-exclusive, non-transferable, non-assignable license to "Use", in object code form, the Version or Release of the APC Software delivered pursuant to this Agreement. For purposes of this Agreement, "Use" means to install, store, load, execute, and/or display one copy of the Software on one device at a time for Customer's internal business purposes, or the act of Using per this definition. Customer's Use of such Software is subject to these license terms and the Use restrictions and authorizations for the Software specified herein or as otherwise made available to Customer with the Software (the "Software License"). Additional Software License terms are contained in Exhibit A, and are hereby incorporated by reference.

11.2 Trademarks. Neither Customer nor its Affiliates have any right to incorporate any Trademark into Customer's or Affiliate's company name or trade name. Neither Customer nor its Affiliates will alter, cover, obfuscate or remove any Trademarks placed by APC on the Products or any material contained therein.

## 12. MISCELLANEOUS

12.1 Relationship of Parties. APC is performing only as an independent contractor. Nothing set forth in this Agreement shall be construed to create the relationship of principal and agent between APC and Customer.

12.2 Intellectual Property Rights. Customer shall not have or obtain title to any tangible or intangible property or materials which APC may supply, and all such items may be used only for the performance of the Services.

12.3 Confidentiality. Each party acknowledges that in the course of performance of its obligations such party may obtain confidential and/or proprietary information of the other party. "Confidential Information" includes: information

relating to development plans, costs, finances, marketing plans, equipment configurations, data, access or security codes or procedures utilized or acquired, business opportunities, names of customers, research, and development; the terms, conditions and existence of this Agreement; any information designated as confidential in writing or identified as confidential at the time of disclosure if such disclosure is verbal or visual; and any copies of the prior categories or excerpts included in other materials created by the recipient party. Each party agrees that, for a period of two (2) years following its receipt of Confidential Information from the other party, whether before or after the effective date of this Agreement, such recipient party shall use the same means it uses to protect its own confidential and proprietary information, but in any event not less than reasonable means to prevent the disclosure and to protect the confidentiality of the Confidential Information. Further, the recipient party shall only use the Confidential Information for the purposes of this Agreement, and shall not disclose the Confidential Information without the prior written consent of the other party. This provision shall not apply to Confidential Information which is (i) already known by the recipient party without an obligation of confidentiality, (ii) publicly known or becomes publicly known through no unauthorized act of the recipient party, (iii) rightfully received from a third party (other than an Affiliate or customer of the party owning the Confidential Information) without an obligation of confidentiality, (iv) disclosed without similar restrictions by the Party owning the Confidential Information to a third party (other than an Affiliate or customer of the party owning the Confidential Information), (v) approved by the party owning the Confidential Information, in writing, for disclosure, or (vi) required to be disclosed pursuant to a requirement of a governmental agency or law so long as the recipient party provides the other party with timely prior written notice of such requirement.

12.4 **Force Majeure.** Neither party will be liable for performance delays nor for non-performance due to causes beyond its reasonable control; however, this provision shall not apply to Customer's payment obligations.

12.5 **Severability.** If for any reason a court of competent jurisdiction finds any provision of these Terms and Conditions, or portion thereof, to be unenforceable, that provision of the Agreement shall be enforced to the maximum extent permissible so as to effect the intent of the parties, and the remainder of this Agreement shall continue in full force and effect.

12.6 **Waiver.** Any waiver of any covenant, condition, or agreement to be performed by a party under this Agreement shall (i) only be valid if the waiver is in writing and signed by an authorized representative of the party against which such waiver is sought to be enforced, and (ii) apply only to the specific covenant, condition or agreement to be performed, the specific instance or specific breach thereof and not to any other instance or breach thereof or subsequent instance or breach.

12.7 **Electronic Communications.** If APC and Customer mutually agree, business communications between the parties, including, but not limited to, Purchase Orders, invoices, and payment, may be submitted electronically. In such case, the parties shall mutually agree in writing upon supplemental terms and conditions, including technical standards, for the electronic exchange of such items including refresh frequency.

12.8 **Remedies.** The remedies set forth in Terms and Conditions shall be the exclusive remedies of the parties.

12.9 **Export Control.** Customer acknowledges and agrees that the commodities, software, and/or technology herein are subject to the export control laws and regulations of the United States and/or other national governments. These regulations include, but are not limited to, the U.S. Export Administration Regulations (US EAR), the U.S. State Department's International Traffic in Arms Regulations (ITAR), sanction regimes of the U.S. Department of Treasury Office of Foreign Assets Controls (OFAC) and export laws and regulations of the European Union (EU) and/or any of its member states. Buyer will comply with these laws and regulations. Customer shall not, without prior U.S. Government authorization, export, re-export, or transfer any commodities, software, or technology, either directly or indirectly, to any country subject to a U.S. trade embargo or sanction or to any resident or national of said countries, or to any person, organization, or entity on any of the restricted parties lists maintained by the U.S. Departments of State, Treasury, or Commerce. In addition, any commodities, software, or technology herein may not be exported, re-exported, or transferred to any end-user engaged in activities, or for any end-use, directly or indirectly related to the design, development, production, use, or stockpiling of weapons of mass destruction (e.g. nuclear, chemical, or biological weapons, and the missile technology to deliver them). APC may suspend performance if Customer is in violation of any applicable laws or regulations.

12.10 **Dispute Resolution.** THE RIGHTS AND OBLIGATIONS OF THE PARTIES UNDER THIS AGREEMENT SHALL NOT BE GOVERNED BY THE PROVISIONS OF THE 1980 UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS. RATHER THESE RIGHTS AND OBLIGATIONS SHALL BE GOVERNED BY THE LAWS, OTHER THAN CHOICE OF LAW RULES, OF THE COMMONWEALTH OF MASSACHUSETTS.

12.11 **Data Protection.** (a) In this Section "the Directive" means Directive 95/46/EC of the European Parliament and the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, and where appropriate, terms used in this clause shall have meanings ascribed to them in the Directive. (b) The Customer acknowledges and agrees that all personal data provided by it or on its behalf will be processed by and on behalf of the Company in connection with the Services. Each party shall comply with the Directive as regards all such processing.



## **AMERICAN POWER CONVERSION LIMITED FACTORY WARRANTY**

### **One-Year Factory Warranty<sup>1</sup>**

The limited warranty provided by American Power Conversion (APC<sup>®</sup>) in this Statement of Limited Factory Warranty applies only to products you purchase for your commercial or industrial use in the ordinary course of your business.

#### **Terms of Warranty**

American Power Conversion warrants its products to be free from defects in materials and workmanship for a period of one year from the date of purchase. APC obligation under this warranty is limited to repairing or replacing, at its sole discretion, any such defective products. This warranty does not apply to equipment that has been damaged by accident, negligence or misapplication or has been altered or modified in any way. Repair or replacement of a defective product or part thereof does not extend the original warranty period. Any parts furnished under this warranty may be new or factory remanufactured.

#### **Non-transferable Warranty**

This warranty applies only to the original purchaser who must have properly registered the product. Product may be registered at [warranty.apc.com](http://warranty.apc.com).

#### **Exclusions**

APC shall not be liable under the warranty if its testing and examination disclose that the alleged defect in the product does not exist or was caused by end user or any third person misuse, negligence, improper installation or testing. Further APC shall not be liable under the warranty for unauthorized attempts to repair or modify wrong or inadequate electrical voltage or connection, inappropriate on-site operation conditions, corrosive atmosphere, repair, installation, start-up by non-APC designated personnel, a change in location or operating use, exposure to the elements, Acts of God, fire, theft, or installation contrary to APC recommendations or specifications or in any event if the APC serial number has been altered, defaced, or removed, or any other cause beyond the range of the intended use.

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<sup>1</sup> To determine which factory warranty applies to the APC product you purchased, please consult the factory warranties located on the APC web site: [www.apc.com/products](http://www.apc.com/products)

**THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE, OF PRODUCTS SOLD, SERVICED OR FURNISHED UNDER THIS AGREEMENT OR IN CONNECTION HEREWITH. APC DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTION AND FITNESS FOR A PARTICULAR PURPOSE. APC EXPRESS WARRANTIES WILL NOT BE ENLARGED, DIMINISHED, OR AFFECTED BY AND NO OBLIGATION OR LIABILITY WILL ARISE OUT OF, APC RENDERING OF TECHNICAL OR OTHER ADVICE OR SERVICE IN CONNECTION WITH THE PRODUCTS. THE FOREGOING WARRANTIES AND REMEDIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES AND REMEDIES. THE WARRANTIES SET FORTH ABOVE CONSTITUTE APC SOLE LIABILITY AND PURCHASER'S EXCLUSIVE REMEDY FOR ANY BREACH OF SUCH WARRANTIES. APC WARRANTIES RUN ONLY TO PURCHASER AND ARE NOT EXTENDED TO ANY THIRD PARTIES.**

**IN NO EVENT SHALL APC, ITS OFFICERS, DIRECTORS, AFFILIATES OR EMPLOYEES BE LIABLE FOR ANY FORM OF INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, ARISING OUT OF THE USE, SERVICE OR INSTALLATION, OF THE PRODUCTS, WHETHER SUCH DAMAGES ARISE IN CONTRACT OR TORT, IRRESPECTIVE OF FAULT, NEGLIGENCE OR STRICT LIABILITY OR WHETHER APC HAS BEEN ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES. SPECIFICALLY, APC IS NOT LIABLE FOR ANY COSTS, SUCH AS LOST PROFITS OR REVENUE, LOSS OF EQUIPMENT, LOSS OF USE OF EQUIPMENT, LOSS OF SOFTWARE, LOSS OF DATA, COSTS OF SUBSTITUANTS, CLAIMS BY THIRD PARTIES, OR OTHERWISE.**

**NO SALESMAN, EMPLOYEE OR AGENT OF APC IS AUTHORIZED TO ADD TO OR VARY THE TERMS OF THIS WARRANTY. WARRANTY TERMS MAY BE MODIFIED, IF AT ALL, ONLY IN WRITING SIGNED BY AN APC OFFICER AND LEGAL DEPARTMENT.**

### **Warranty Claims**

Customers with warranty claims issues may access the APC worldwide customer support network through the APC web site: [support.apc.com](http://support.apc.com). Select your country from the country selection pull-down menu. Open the Support tab at the top of the web page to obtain contact information for customer support in your region.

VMWARE

**End User License Agreement**

## VMWARE END USER LICENSE AGREEMENT

PLEASE NOTE THAT THE TERMS OF THIS END USER LICENSE AGREEMENT (“EULA”) SHALL GOVERN YOUR USE OF THE SOFTWARE, REGARDLESS OF ANY TERMS THAT MAY APPEAR DURING THE INSTALLATION OF THE SOFTWARE. IN THIS EULA, “YOU” MEANS THE “CUSTOMER” NAMED IN THE ELA ORDER FORM TO WHICH THIS EULA IS ATTACHED.

**EVALUATION LICENSE.** If You are licensing the Software for evaluation purposes, Your use of the Software is only permitted in a non-production environment and for the period limited by the License Key. Notwithstanding any other provision in this EULA, an Evaluation License of the Software is provided “AS-IS” without indemnification, support or warranty of any kind, expressed or implied.

### 1. DEFINITIONS.

- 1.1 **“Affiliate”** means, with respect to a party, an entity that is directly or indirectly controlled by or is under common control with such party, where “control” means an ownership, voting or similar interest representing fifty percent (50%) or more of the total interests then outstanding of the relevant entity (but only as long as such person or entity meets these requirements).
- 1.2 **“Documentation”** means that documentation that is generally provided to You by VMware with the Software, as revised by VMware from time to time, and which may include end user manuals, operation instructions, installation guides, release notes, and on-line help files regarding the use of the Software.
- 1.3 **“Guest Operating Systems”** means instances of third-party operating systems licensed by You, installed in a Virtual Machine and run using the Software.
- 1.4 **“Intellectual Property Rights”** means all worldwide intellectual property rights, including without limitation, copyrights, trademarks, service marks, trade secrets, know how, inventions, patents, patent applications, moral rights and all other proprietary rights, whether registered or unregistered.
- 1.5 **“License”** means a license granted under Section 2.1.
- 1.6 **“License Key”** means a serial number that enables You to activate and use the Software.
- 1.7 **“License Term”** means the duration of a License as specified in the Order.
- 1.8 **“License Type”** means the type of License applicable to the Software, as more fully described in the Order.
- 1.9 **“Open Source Software” or “OSS”** means software components that are licensed under a license approved by the Open Source Initiative (“OSI”) or similar open source or freeware license and are embedded in the delivered Software.
- 1.10 **“Order”** means a purchase order, enterprise license agreement, or other ordering document issued by You to VMware or a VMware authorized reseller that references and incorporates this EULA and is accepted by VMware as set forth in Section 4.
- 1.11 **“Product Guide”** means the current version of the VMware Product Guide at the time of Your Order, copies of which are found at [www.vmware.com/download/eula](http://www.vmware.com/download/eula).
- 1.12 **“Services Terms”** means the support services terms as indicated in the applicable Order, or if the Order does not specify any support services terms, then VMware’s then-current Support and Subscription Contract Terms and Conditions, copies of which are found at [www.vmware.com/files/pdf/support/support\\_terms\\_conditions.pdf](http://www.vmware.com/files/pdf/support/support_terms_conditions.pdf).
- 1.13 **“Software”** means the VMware Tools and the VMware computer programs listed on VMware’s commercial price list to which You acquire a license under an Order, together with any software code relating to the foregoing that is provided to You pursuant to a support and subscription service contract and that is not subject to a separate license agreement.
- 1.14 **“Territory”** means the Territory as set forth in the applicable Order, or if the Order does not specify the Territory, then the country or countries in which You have been invoiced; provided, however, that if You have been invoiced within any of the European Economic Area member states, You may deploy the corresponding Software throughout the European Economic Area.
- 1.15 **“Third Party Agent”** means a third party delivering information technology services to You pursuant to a written contract with You.
- 1.16 **“Virtual Machine”** means a software container that can run its own operating system and execute applications like a physical machine.
- 1.17 **“VMware”** means VMware, Inc., a Delaware corporation, if You are purchasing Licenses or services for use in the United States and VMware International Limited, a company organized and existing under the laws of Ireland, for all other purchases.
- 1.18 **“VMware Tools”** means the suite of utilities and drivers, Licensed by VMware under the “VMware Tools” name, that can be installed in a Guest Operating System to enhance the performance and functionality of a Guest Operating System when running in a Virtual Machine.

## 2. LICENSE GRANT.

- 2.1 Scope of License.** Subject to the terms and conditions of this EULA, VMware grants You, during the License Term, a non-exclusive, non-transferable License to use the Software, in executable code form only, within the Territory, for Your internal operations in accordance with (a) the Documentation; (b) the License Type for which You have paid the applicable fees; (c) other applicable limitations set forth in the Order. The License to the Software is limited to the quantities specified in each applicable Order.
- 2.2 Third Party Use.** Under the License granted to You in Section 2.1 above, You may permit Your Third Party Agents to access, use and/or operate the Software on Your behalf for the sole purpose of delivering services to You, provided that You will be fully responsible for Your Third Party Agents' compliance with terms and conditions of this EULA and any breach of this EULA by a Third Party Agent shall be deemed to be a breach by You.
- 2.3 Permitted Copies.** You may make one copy of the Software for archival purposes only. The copy shall: (a) be kept within Your possession or control; (b) include all titles, trademarks, and copyright and restricted rights notices in the original; and (c) be subject to this EULA. You may not otherwise copy the Software without VMware's prior written consent.
- 2.4 Benchmarking.** You may use the Software to conduct internal performance testing and benchmarking studies. You may only publish or otherwise distribute the results of such studies to third parties as follows: (a) if with respect to VMware's Workstation or Fusion products, only if You provide a copy of Your study to [benchmark@vmware.com](mailto:benchmark@vmware.com) prior to distribution; (b) if with respect to any other Software, only if VMware has reviewed and approved of the methodology, assumptions and other parameters of the study (please contact VMware at [benchmark@vmware.com](mailto:benchmark@vmware.com) to request such review and approval) prior to such publication and distribution.
- 2.5 VMware Tools.** You may distribute the VMware Tools (whether or not as part of the Virtual Machine You create with the Software) to third parties solely when installed in a Guest Operating System to enhance its performance and functionality when running in a Virtual Machine, provided that You will be fully responsible for such third parties' compliance with the terms and conditions of this EULA, and any breach of this EULA by any such third party shall be deemed to be a breach of this EULA by You.
- 2.6 Open Source Software.** Notwithstanding anything herein to the contrary, Open Source Software is licensed to You under such OSS's own applicable license terms, which can be found in the `open_source_licenses.txt` file, the Documentation or as applicable, the corresponding source files for the Software available at [http://www.vmware.com/download/open\\_source.html](http://www.vmware.com/download/open_source.html). These OSS license terms are consistent with the license granted in Section 2, and may contain additional rights benefiting You. The OSS license terms shall take precedence over this EULA to the extent that this EULA imposes greater restrictions on You than the applicable OSS license terms.

## 3. RESTRICTIONS; OWNERSHIP.

- 3.1 Restrictions.** You acknowledge that the Software and the structure, organization and source code of the Software constitute valuable trade secrets of VMware. Accordingly, except as expressly permitted in Section 2 or as otherwise authorized by VMware in writing, You will not and will not permit any third party to: (a) sell, lease, license, distribute, sublicense or otherwise transfer in whole or in part the Software or Documentation to any third party; (b) decompile, disassemble, reverse engineer, or otherwise attempt to derive source code from the Software, in whole or in part; (c) copy the Software, except for archival purposes, as set out in Section 2.3; (d) create, develop, license, install, use, or deploy any software or services to circumvent, enable, modify or provide access, permissions or rights which violate the technical restrictions of the Software as described in this EULA; (e) translate, modify or create derivative works based upon the Software; (f) permit any use of or access to the Software by any third party; (g) remove any product identification, proprietary, copyright or other notices contained in the Software; or (h) operate the Software on behalf of or for the benefit of any third party, including the operation of any service that is accessed by a third party, except that, for the purposes of this Section 3.1 (h), You may use the Software to deliver hosted services to Your Affiliates.
- 3.2 Decompilation.** Notwithstanding the foregoing, decompiling the Software is permitted to the extent the laws of the Territory give You the express right to do so to obtain information necessary to render the Software interoperable with other software; provided, however, You must first request such information from VMware (at [info@vmware.com](mailto:info@vmware.com)), provide all reasonably requested information to allow VMware to assess Your claim, and VMware may, in its discretion, either provide such interoperability information to You, impose reasonable conditions, including a reasonable fee, on such use of the Software, or offer to provide alternatives to ensure that VMware's proprietary rights in the Software are protected and to reduce any adverse impact on VMware's proprietary rights.
- 3.3 Ownership.** The Software and Documentation, all copies and portions thereof, and all improvements, enhancements, modifications and derivative works thereof, and all Intellectual Property Rights therein, are and shall remain the sole and exclusive property of VMware and its licensors. Your rights to use the Software and Documentation shall be limited to those expressly granted in this EULA and any applicable Order. No other rights with respect to the Software or any related Intellectual Property Rights are implied. You are not authorized to use (and shall not permit any third party to use) the Software, Documentation or any portion thereof except as expressly authorized by this EULA or the applicable Order.
- 3.4 Guest Operating Systems.** Certain Software allows Guest Operating Systems and application programs to run on a computer system. You acknowledge that You are responsible for obtaining and complying with any licenses necessary to operate any such third-party software.

4. **ORDER.** Your Order is subject to this EULA. No Orders are binding on VMware until accepted by VMware. Orders for Software are deemed to be accepted upon VMware's delivery of the Software included in such Order. Orders issued to VMware do not have to be signed to be valid and enforceable.
5. **AUDIT RIGHTS.**
  - 5.1 **Records.** You will, during the License Term for any Software licenses acquired under this EULA (and for a period of two (2) years from the expiration of the applicable License Term), maintain accurate records of your use of the Software sufficient to demonstrate Your compliance with the terms of this EULA and all Orders.
  - 5.2 **Audit Rights.** During the period in which You are obligated to maintain such records, VMware, or its third party auditor, may, upon reasonable notice to You, audit such records to verify that You have (a) used the Software solely in the manner authorized herein; (b) paid all applicable license fees; and (c) otherwise complied with the terms of this EULA and all Orders. VMware may conduct no more than one (1) audit in any twelve (12) month period. Audits will be conducted during normal business hours and VMware will use commercially reasonable efforts to minimize the disruption of Your normal business activities. VMware, and any third-party auditor, shall not have physical access to Your computing devices in connection with any such audit, without Your prior written consent. You will reasonably cooperate with VMware and/or its third-party auditor and will promptly pay directly to VMware any underpayments revealed by such audit. You will promptly reimburse VMware for all reasonable costs and expenses incurred by VMware for such audit if: (i) such audit reveals an underpayment by You of more than five percent (5%) of the fees payable by You to VMware for the period audited, or (ii) such audit reveals You have materially failed to maintain accurate records of Your use of the Software.
6. **SUPPORT AND SUBSCRIPTION SERVICES.** Except as expressly specified in the Product Guide, VMware does not provide any support or subscription services for the Software under this EULA. You have no rights to any updates, upgrades or extensions or enhancements to the Software developed by VMware unless you separately purchase VMware support or subscription services. These support or subscription services are subject to the Services Terms.
7. **WARRANTIES.**
  - 7.1 **Software Warranty.** VMware warrants to You that the Software will, for a period of ninety (90) days following delivery ("**Warranty Period**"), substantially conform to the applicable Documentation, provided that the Software (a) has been properly installed and used at all times and in accordance with the applicable Documentation; and (b) has not been modified or added to by persons other than VMware or its authorized representative. VMware will, at its own expense and as its sole obligation and Your exclusive remedy for any breach of the foregoing warranty, either replace the applicable Software or correct any reproducible error in the Software reported to VMware by You in writing during the Warranty Period. If VMware determines that it is unable to correct the error or replace the Software, VMware will refund to You all License fees actually paid by You, in which case the License for the applicable Software and Your right to use such Software will terminate.
  - 7.2 **Disclaimer of Warranties.** THE EXPRESS WARRANTY IN SECTION 7.1 ABOVE IS IN LIEU OF AND, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, VMWARE AND ITS LICENSORS DISCLAIM, ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT AND ANY WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE) REGARDING OR RELATING TO THE SOFTWARE, THE DOCUMENTATION, OR ANY MATERIALS FURNISHED OR PROVIDED TO YOU UNDER THIS EULA. VMWARE AND ITS LICENSORS DO NOT WARRANT THAT THE SOFTWARE WILL OPERATE UNINTERRUPTED OR THAT IT WILL BE FREE FROM DEFECTS OR THAT THE SOFTWARE WILL MEET (OR IS DESIGNED TO MEET) YOUR BUSINESS REQUIREMENTS.
8. **INTELLECTUAL PROPERTY INDEMNIFICATION.**
  - 8.1 **Defense and Indemnification.** Subject to the remainder of this Section 8, VMware shall defend You against any third party claim that the Software infringes any patent, trademark or copyright of such third party, or misappropriates a trade secret (but only to the extent that such misappropriation is not a result of Your actions) under the laws of: (a) the United States and Canada; (b) the European Economic Area; (c) Australia; (d) New Zealand; (e) Japan; or (f) the People's Republic of China, to the extent that such countries are part of the Territory for the License ("**Infringement Claim**") and indemnify You from the resulting costs and damages finally awarded against You to such third party by a court of competent jurisdiction or agreed to in settlement; provided that You: (i) promptly provide VMware with notice of such Infringement Claim; (ii) allow VMware sole control over the defense thereof and related settlement negotiation; and (iii) reasonably cooperate in response to VMware requests for assistance. You may not settle or compromise any Infringement Claim without the prior written consent of VMware.
  - 8.2 **Remedies.** Should the Software become, or in VMware's opinion be likely to become, the subject of an Infringement Claim, VMware will, at VMware's option and expense either: (a) procure the rights necessary for You to make continued use of the affected Software in accordance with this EULA; (b) replace or modify the affected Software to make it non-infringing; or (c) terminate the License to the affected Software and discontinue the related support services, and, upon Your certified deletion of the affected Software, refund: (i) the fees paid by You for the License to the affected Software, less straight-line depreciation over a three (3) year useful life beginning on the date such Software was delivered; and (ii) any pre-paid service fee attributable to related support services to be delivered after the date such service is stopped. Nothing in this Section 8.2 shall limit VMware's obligation under Section 8.1 to defend and indemnify You, provided that You replace the allegedly infringing Software upon VMware's making alternate Software available to You and/or You discontinue using the allegedly infringing Software upon receiving VMware's notice terminating the affected License.

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

## **9. LIMITATION OF LIABILITY.**

**9.1 Limitation of Liability.** TO THE MAXIMUM EXTENT MANDATED BY LAW, IN NO EVENT WILL VMWARE AND ITS LICENSORS BE LIABLE FOR ANY LOST PROFITS OR BUSINESS OPPORTUNITIES, LOSS OF USE, LOSS OF REVENUE, LOSS OF GOODWILL, BUSINESS INTERRUPTION, LOSS OF DATA, OR ANY OTHER INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES UNDER ANY THEORY OF LIABILITY, WHETHER BASED IN CONTRACT, TORT, NEGLIGENCE, PRODUCT LIABILITY, OR OTHERWISE. BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE PRECEDING LIMITATION MAY NOT APPLY TO YOU. VMWARE'S AND ITS LICENSORS' LIABILITY UNDER THIS EULA WILL NOT, IN ANY EVENT, REGARDLESS OF WHETHER THE CLAIM IS BASED IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, EXCEED THE LESSER OF (1) THE LICENSE FEES YOU PAID FOR THE SOFTWARE UNDER THIS EULA, IF ANY, OR (2) ONE MILLION U.S. DOLLARS (\$1,000,000.00 USD). THE FOREGOING LIMITATIONS SHALL APPLY REGARDLESS OF WHETHER VMWARE OR ITS LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

**9.2 Further Limitations.** VMware's licensors shall have no liability of any kind under this EULA and VMware's liability with respect to any third party software embedded in the Software shall be subject to Section 9.1. You may not bring a claim under this EULA more than eighteen (18) months after the cause of action arises.

## **10. TERMINATION.**

**10.1 License Term.** This EULA will terminate in its entirety upon the termination of the License Term, unless terminated earlier under this Section 10.

**10.2 Termination for Breach.** VMware may terminate this EULA in its entirety effective immediately upon written notice to You if: (a) You breach any provision in Section 3 and do not cure the breach within ten (10) days after receiving written notice thereof from VMware; (b) You fail to pay any portion of the fees under an applicable Order within ten (10) days after receiving written notice from VMware that payment is past due; (c) You breach any other provision of this EULA and don't not cure the breach within thirty (30) days after receiving written notice thereof from VMware; or (d) You commit a material breach that is not capable of being cured.

**10.3 Termination for Insolvency.** VMware may terminate this EULA in its entirety effective immediately upon written notice to You if You: (a) terminate or suspend your business; (b) become insolvent, admit in writing Your inability to pay Your debts as they mature, make an assignment for the benefit of creditors; or become subject to control of a trustee, receiver or similar authority; or (c) become subject to any bankruptcy or insolvency proceeding.

**10.4 Effect of Termination.** If VMware terminates this EULA under this Section 10: (a) all Licensed rights to all Software granted to You under this EULA will immediately cease to exist; and (b) You must promptly discontinue all use of all Software, and (destroy all copies of the Software and all License Key(s)) and return, or if requested by VMware, destroy, any related VMware Confidential Information in Your possession or control and certify in writing to VMware that You have fully complied with these requirements. Sections 1 (Definitions), 2.6 (Open Source Software), 3 (Restrictions; Ownership), 5.1 (Records), 5.2 (Audit Rights), 7.2 (Disclaimer of Warranties), 9 (Limitation of Liability), 10 (Termination), 11 (Confidential Information) and 12 (General) will any survive termination of this EULA.

## **11. CONFIDENTIAL INFORMATION.**

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

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

- 11.3 Exceptions.** Recipient's obligations under Section 11.2 with respect to any Confidential Information will terminate if Recipient can show by written records that such information: (a) was already known to Recipient at the time of disclosure by Discloser; (b) was disclosed to Recipient by a third party who had the right to make such disclosure without any confidentiality restrictions; (c) is, or through no fault of Recipient has become, generally available to the public; or (d) was independently developed by Recipient without access to, or use of, Discloser's Information. In addition, Recipient will be allowed to disclose Confidential Information to the extent that such disclosure is required by law or by the order of a court of similar judicial or administrative body, provided that Recipient notifies Discloser of such required disclosure promptly and in writing and cooperates with Discloser, at Discloser's request and expense, in any lawful action to contest or limit the scope of such required disclosure.
- 12. GENERAL.**
- 12.1 Assignment.** This EULA and any Orders, and any of Your rights or obligations thereunder, may not be assigned, subcontracted or transferred by You, in whole or in part, whether voluntary, by operation of contract, law or otherwise, without the prior written consent of VMware. Any attempted assignment or transfer in violation of the foregoing will be null and void. Subject to the foregoing, this EULA will be binding upon and will inure to the benefit of the parties and their respective successors and assigns.
- 12.2 Notices.** Any notice delivered by VMware to You under this EULA will be delivered via mail, email or fax.
- 12.3 Waiver.** The waiver of a breach of any provision of this EULA shall not constitute a waiver of any other provision or any subsequent breach.
- 12.4 Severability.** If any provision of this EULA is held to be illegal, invalid or unenforceable, the provision will be enforced to the maximum extent permissible so as to effect the intent of the parties, and the remaining provisions of this EULA will remain in full force and effect.
- 12.5 Compliance with Laws; Export Control; Government Regulations.** Each party shall comply with all laws applicable to the actions contemplated by this EULA. You acknowledge that the Software is of United States origin, is provided subject to the U.S. Export Administration Regulations, may be subject to the export control laws of the applicable territory, and that diversion contrary to applicable export control laws is prohibited. You represent that (1) you are not, and are not acting on behalf of, (a) any person who is a citizen, national, or resident of, or who is controlled by the government of any country to which the United States has prohibited export transactions; or (b) any person or entity listed on the U.S. Treasury Department list of Specially Designated Nationals and Blocked Persons, or the U.S. Commerce Department Denied Persons List or Entity List; and (2) you will not permit the Software to be used for, any purposes prohibited by law, including, any prohibited development, design, manufacture or production of missiles or nuclear, chemical or biological weapons. The Software and accompanying documentation are deemed to be "commercial computer software" and "commercial computer software documentation", respectively, pursuant to DFAR Section 227.7202 and FAR Section 12.212(b), as applicable. Any use, modification, reproduction, release, performing, displaying or disclosing of the Software and documentation by the U.S. Government shall be governed solely by the terms and conditions of this EULA.
- 12.6 Construction.** The headings of sections of this EULA are for convenience and are not to be used in interpreting this EULA. As used in this EULA, the word 'including' means "including but not limited to."
- 12.7 Governing Law.** The EULA is governed by the laws of the State of California and the United States of America, excluding its conflict of law principles. The UN Convention on International Sale of Goods shall not apply. The parties hereby consent to the exclusive jurisdiction of the state and federal courts located in Santa Clara County, California. If any legal action is brought by a party to enforce the Agreement, the prevailing party will be entitled to receive its reasonable attorneys' fees, court costs, and other collection expenses, in addition to any other relief it may receive from the non-prevailing party.
- 12.8 Third Party Rights.** Other than as expressly set out in this EULA, this EULA does not create any rights for any person who is not a party to it, and no person who is not a party to this EULA may enforce any of its terms or rely on any exclusion or limitation contained in it.
- 12.9 Product Guide.** In addition to the above sections, Your use of the Software is subject to the terms and conditions of the Product Guide, which is incorporated herein by reference.
- 12.10 Order of Precedence.** In the event of conflict or inconsistency among the Product Guide, this EULA and the Order, the following order of precedence shall apply: (a) the Product Guide, (b) this EULA and (c) the Order. With respect to any inconsistency between this EULA and an Order, the terms of this EULA shall supersede and control over any conflicting or additional terms and conditions of any Order, acknowledgement or confirmation or other document issued by You, unless the parties execute a written agreement expressly indicating: (i) that such Order shall modify this EULA; or (ii) that the terms of such Order shall supersede and control in the event of any inconsistency.
- 12.11 Entire Agreement.** This EULA, including accepted Orders and any amendments hereto, and the Product Guide contain the entire agreement of the parties with respect to the subject matter of this EULA and supersede all previous or contemporaneous communications, representations, proposals, commitments, understandings and agreements, whether written or oral, between the parties regarding the subject matter hereof. This EULA may be amended only in writing signed by authorized representatives of both parties.
- 12.12 Contact Information.** Please direct legal notices or other correspondence to VMware, Inc., 3401 Hillview Avenue, Palo Alto, California 94304, United States of America, Attention: Legal Department. If You have any questions concerning this EULA, please send an email to [info@vmware.com](mailto:info@vmware.com).