

TYCHON
Enterprise Endpoint Management Platform, Data Collector, Data Management Node and Tactical
TYCHON
LICENSE AGREEMENT- U.S. GOVERNMENT

This Enterprise Endpoint Management Platform, Data Collector, Data Management Node and Tactical TYCHON License Agreement ("Agreement") describes the relationship between the GSA Multiple Award Schedule Contractor acting on behalf of TYCHON, LLC ("Company") and the eligible Ordering Activity under GSA Schedule contracts identified in the Purchase Order, Statement of Work, or similar document ("Licensee" or "Ordering Activity") (collectively, the "Parties") and includes the License Terms and Conditions and all Addenda that are separately executed by the Parties. This Agreement will become effective when this order is made and accepted by the Company or the distributor, reseller or other business partner ("Authorized Partner") of Company.

BY BOTH PARTIES EXECUTING THIS AGREEMENT IN WRITING, YOU AFFIRM YOU HAVE READ AND CONFIRM YOUR AGREEMENT WITH THE TERMS SET FORTH BELOW. YOU ALSO AFFIRM THAT YOU HAVE THE LEGAL AUTHORITY TO BIND THE LICENSEE TO COMPLIANCE WITH THE TERMS HEREUNDER, INCLUDING ALL OBLIGATIONS HEREUNDER.

IF LICENSEE DOES NOT AGREE TO THESE TERMS:

- DO NOT DOWNLOAD, INSTALL, COPY, ACCESS, OR USE THE COMPANY SOFTWARE, AND
- PROMPTLY RETURN THE COMPANY SOFTWARE AND PROOF OF THE ENTITLEMENT TO IT TO THE PARTY FROM WHOM LICENSEE ACQUIRED THEM.

LICENSE TERMS AND CONDITIONS

1. DEFINITIONS. Certain capitalized terms used in this Agreement shall have the meanings set forth or cross-referenced below.

1.1 "Authorized Systems" shall in any case be limited to computer systems owned, operated or under the supervision and control of Licensee, and such computer systems means any kind of device capable of processing data and includes any of the following types of computer devices: diskless workstations, personal computer workstations, networked computer workstations, homeworke/teleworker home-based systems, file and print servers, email servers, Internet gateway devices, storage area network servers (SANS), terminal servers, portable workstations connected or connecting to the server(s) or network or mobile/smart phone.

1.2 "Authorized User" shall have the meaning set forth in Section 2.3.

1.3 "Confidential Information" shall mean all written or oral information, disclosed by either Party to the other, related to the operations of either Party or a third party that has been identified as confidential or that by the nature of the information or the circumstances surrounding disclosure ought reasonably to be treated as confidential. Without limiting the generality of the foregoing, the Company Software shall be considered Company's Confidential Information.

1.4 "Company Software" shall mean the machine-readable, executable version of Company's proprietary application software licensed by Company to Licensee, herein Enterprise Endpoint Management Platform, Data Collector, Data Management Node and Tactical TYCHON, under the license purchased by Licensee, including Updates and Upgrades.

1.5 "Documentation" shall mean Company's standard user manuals and/or related documentation generally made available to licensees of the Company Software.

1.6 "Support" means the support services offered by Company for the support and maintenance of the Software. During the first year of the Term, without additional charges, Licensee will be granted Support by: (i) being provided rights to Updates and Upgrades; and (ii) being provided both a telephone number and email contact address for contact to the Company support personnel. Licensee is not granted further rights to any Support, and Licensee has no further right to Support, including without limitation any further Updates and Upgrades or access to Company support personnel (or continued use of the telephone number and email contact address for contact to the Company support personnel) unless Licensee has applied and/or installed all Updates and Upgrades offered by the Company.

1.7 "Updates" are related to Company Software content and include without limitation all DATs, signature sets, policy updates, and database updates for the Company Software, which are made

generally available to Company's customer base as a part of the Company Software and which are not separately priced or marketed by Company.

1.8 "Upgrade" means any and all improvements in the Company Software, which are made generally available to Company's customer base as a part of the Company Software and which are not separately priced or marketed by Company.

2. LICENSE AND USAGE OF SOFTWARE.

2.1 License Usage. Subject to the terms and conditions of this Agreement, Company hereby grants to Licensee a non-exclusive, non-transferable, non-sublicensable right and license during the Term to install and operate the Company Software on one (1) Authorized System per each individual license acquired, solely in accordance with applicable Documentation provided by Company, solely for use by Authorized Users, and solely for Licensee's internal business purposes.

2.2 Documentation License. Subject to the terms and conditions of this Agreement, Company hereby grants to Licensee a non-exclusive, non-transferable, non-sublicensable right and license during the Term to make copies of the Documentation provided by Company, solely for use by Authorized Users in connection with the exercise of rights granted in Section 2.1.

2.3 Authorized Users. For purposes of this Agreement, the term "Authorized Users" shall mean any individual employee, agent or contractor of Licensee accessing or using the Company Software solely on behalf and for the benefit of Licensee in the operation of Licensee's business. Licensee acknowledges and agrees that it shall be responsible for all acts and omissions of Authorized Users, and any act or omission by an Authorized User which, if undertaken by Licensee, would constitute a breach of this Agreement, shall be deemed a breach of this Agreement by Licensee. Licensee shall undertake reasonable efforts to make all Authorized Users aware of the provisions of this Agreement as applicable to such Authorized User's use of the Company Software, and shall cause Authorized Users to comply with such provisions.

2.4 Delivery of Licensee Copies. As soon as commercially practicable after the Effective Date, Company shall deliver to Licensee one (1) copy of each of the Company Software and one (1) copy of the Documentation for each Authorized System for use by Licensee in exercising its rights under the licenses granted in Sections 2.1 and 2.2, provided that any use of the Company Software shall at all times remain subject to the limitations and restrictions set forth in Section 2.6. Delivery shall be deemed complete upon receipt by Licensee of media upon which the Company Software and Documentation are digitally stored. Unless otherwise agreed between the Parties in an

Addendum to this Agreement or in a separate written agreement, Company shall have no obligation to install or configure the Company Software for or on behalf of Licensee.

2.5 Ownership of Company Software Subject to the rights granted in Sections 2.1 and 2.2, Company retains all right, title and interest in and to the Company Software, the Documentation and associated intellectual property rights, and Licensee acknowledges that it neither owns nor acquires any rights in any of the foregoing not expressly granted by this Agreement. Licensee further acknowledges that Company retains the right to use the Company Software for any purpose in Company's sole discretion, and Company reserves all rights not expressly granted in this Agreement. Additionally, Licensee may not incorporate, contribute or otherwise combine Company's software, documentation or developments with any software or other materials that require, as a condition of use, modification, and/or distribution of software or other materials, Company's software, documentation or services (either in whole or in part).

2.6 General Usage Restrictions.

(a) Licensee will not use the Company Software or Documentation for any purposes beyond the scope of the licenses granted in this Agreement.

(b) Without limiting the generality of the foregoing, Licensee will not (i) authorize or permit use of the Company Software or Documentation by persons other than Authorized Users; (ii) market or distribute the Company Software or Documentation; (iii) assign, sublicense, sell, lease or otherwise transfer or convey, or pledge as security or otherwise encumber, Licensee's rights under the licenses granted in Sections 2.1 and 2.2; (iv) use the Company Software in any time-sharing or service bureau arrangement, including, without limitation, any use to provide services or process data for the benefit of, or on behalf of, any third party; (v) modify the Company Software or Documentation, except with the prior written consent of Company; (vi) combine or integrate the Company Software with hardware, software or technology not provided to Licensee by Company hereunder, provided that use of the standard application programming interface of the Company Software, as contemplated in the Documentation, will not be considered to violate the foregoing; (vii) decompile, disassemble, reverse engineer or otherwise attempt to obtain or perceive the source code from which any component of the Company Software is compiled or interpreted, and Licensee hereby acknowledges that nothing in this Agreement shall be construed to grant Licensee any right to obtain or use such source code; or (viii) make copies of the Company Software or Documentation other than a reasonable number of copies solely for archival purposes.

(c) Licensee shall undertake all measures necessary to ensure that its use of the Company Software and the Documentation complies in all respects with any contractual or other legally binding obligations of Company to any third party, provided that Company has notified Licensee with respect to any such obligations. Licensee shall not enter into any contractual relationship or other legally binding obligation with any third party which shall have the purpose or effect of encumbering the use by Company of the Company Software or the Documentation.

(d) Licensee shall undertake all measures necessary to ensure that its use of the Company Software and the Documentation complies in all respects with all applicable laws, statutes, regulations, ordinances or other rules promulgated by governing authorities having jurisdiction over the Parties, the Company Software or the Documentation, including, without limitation, by means of obtaining any permits, licenses and/or approvals required with respect to export regulations promulgated by the Bureau of Export Administration or any other agency or department of the federal government of the United States of America. Licensee acknowledges that Company makes no representation or warranty that the Company Software may be exported without appropriate licenses or permits under applicable law, or that any such license or permit has been, will be or can be obtained.

(e) Licensee shall duplicate all proprietary notices and legends of Company and its suppliers or licensors upon any and all copies of the Company Software and Documentation made by Licensee. Licensee shall not remove, alter or obscure any such proprietary notice or legend.

2.7 Compliance Records; Auditing Rights.

(a) Licensee shall create and maintain complete and accurate records of all copies of the Company Software and/or Documentation made by or on behalf of Licensee, including the date such copies are made and the locations of Authorized Systems where such copies are installed. Licensee shall promptly provide a copy of such records upon request by Company.

(b) Throughout the Term of this Agreement, Company or a third party acceptable to both Parties, will have the right, at its own expense, upon reasonable prior notice, periodically to inspect and audit Licensee's use of the Company Software and Documentation for purposes of determining Licensee's compliance with the terms and conditions herein. Licensee agrees to cooperate with Company in the performance of any such audit and subject to Government security requirements, shall provide to Company such access to Licensee's relevant records, data, information, personnel and/or facilities as Company may reasonably request for such limited purposes.

3. FEES AND PAYMENTS.

3.1 License Fees. In consideration for the licenses granted to Licensee hereunder and the performance of Company's obligations hereunder, Licensee shall pay to Company, without offset or deduction, certain fees, in such amounts as may be determined by reference to the GSA Schedule pricing schedule and/or any formula set forth in the pricing schedule, which fees shall be due and payable pursuant to the terms of the Prompt Payment Act, 31 U.S.C. 3901, *et seq.*

3.2 Other Fees and Required Payments. In addition to the fees payable under Section 3.1, Licensee may be required to make certain additional payments under the terms of any addenda to this Agreement. Unless otherwise expressly provided in such addenda, such payments shall be due and payable pursuant to the terms of the Prompt Payment Act, 31 U.S.C. 3901, *et seq.*

3.3 Licensee Operating Expenses. As between the Parties, Licensee shall bear all expenses incurred in performance of its obligations or exercise of its rights hereunder.

3.4 Taxes. Company shall state separately on invoices taxes excluded from the fees, and the Licensee agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

3.5 Late Payments; Interest. Any portion of any fee or other amount payable hereunder that is not paid when due will accrue interest at the rate permitted by the Prompt Payment Act (31 USC 3901 *et seq.*) and Treasury regulations at 5 CFR 1315).

3.6 Auditing Rights and Required Records. If any amounts payable under this Agreement (including under any Addendum) are not based upon a fixed sum ascertainable as of the Effective Date (or the effective date of the applicable Addendum), Licensee agrees to maintain complete and accurate records in accordance with generally accepted accounting principles during the Term and for a period of two (2) years after the termination or expiration of this Agreement with respect to matters necessary for accurately determining amounts due hereunder. Company or a third party acceptable to both Parties will have the right, at its own expense, upon reasonable prior notice, and subject to Government Security requirements, periodically to inspect and audit the records of Licensee with respect to matters covered by this Agreement, provided that if such inspection and audit reveals that Licensee has underpaid Company with respect to any amounts due and payable during the period to which such inspection and audit relate, Licensee shall promptly pay such amounts as are necessary to rectify such underpayment, together with interest in accordance with Section 3.5. Such inspection and auditing rights shall extend throughout the Term and for a period of two (2) years after the termination of this Agreement.

4. CONFIDENTIALITY RIGHTS AND OBLIGATIONS.

4.1 Ownership of Confidential Information. The Parties acknowledge that during the performance of this Agreement, each Party will have access to certain of the other Party's Confidential Information or Confidential Information of third parties that the disclosing Party is required to maintain as confidential. Both Parties agree that all items of Confidential Information are proprietary to the

disclosing Party or such third party, as applicable, and shall remain the sole property of the disclosing Party or such third party. Licensee acknowledges that the Software, Documentation, and services constitute Confidential Information.

4.2 Mutual Confidentiality Obligations. Subject to the provisions of the Freedom of Information Act, 5 U.S.C. § 552, and the Trade Secrets Act, 18 U.S.C. 1905, each Party agrees as follows: (i) to use the Confidential Information only for the purposes described herein; (ii) that such Party will not reproduce the Confidential Information and will hold in confidence and protect the Confidential Information from dissemination to, and use by, any third party; (iii) that neither Party will create any derivative work from Confidential Information disclosed to such Party by the other Party; (iv) to restrict access to the Confidential Information to such of its personnel, agents, and/or consultants, if any, who have a need to have access and who have been advised of and have agreed to treat such information in accordance with the terms of this Agreement; and (v) to return or destroy, pursuant to Section 7.4, all Confidential Information of the other Party in its possession upon termination or expiration of this Agreement.

4.3 Confidentiality Exceptions. Notwithstanding the foregoing, the provisions of Sections 4.1 and 4.2 shall not apply to Confidential Information that: (i) is publicly available or in the public domain at the time disclosed other than by breach of this Agreement; (ii) is or becomes publicly available or enters the public domain through no fault of the recipient; (iii) is rightfully received by the recipient from persons not bound by confidentiality obligations with respect thereto; (iv) is already in the recipient's possession free of any confidentiality obligations with respect thereto prior to its first receipt from the disclosing Party under this Agreement; (v) is independently developed by the recipient without access to the Confidential Information of the disclosing Party; or (vi) is approved for release or disclosure by the disclosing Party without restriction. Notwithstanding the foregoing, each Party may disclose Confidential Information to the limited extent required: (A) in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the Party making the disclosure pursuant to the order shall first have given notice to the other Party and shall allow the Disclosing Party to obtain confidential treatment or to limit the scope of the required disclosure or have made its own reasonable effort to obtain a protective order in such form acceptable to the Disclosing Party; or (B) to establish a Party's rights under this Agreement, including to make such court filings as it may be required to do.

5. WARRANTIES; DISCLAIMERS.

5.1 Representations and Warranties. Each Party hereby represents and warrants: (i) that it is duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation; (ii) that this Agreement, when executed and delivered, will constitute a valid and binding obligation of such Party and will be enforceable against such Party in accordance with its terms and (iii) that the Company Software will, for a period of sixty (60) days from the date of your receipt, perform substantially in accordance with Company Software written materials accompanying it.

5.2 Disclaimer. EXCEPT AS EXPRESSLY SET FORTH IN THE FOREGOING, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, COMPANY DISCLAIMS ANY AND ALL OTHER PROMISES, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, DATA ACCURACY, SYSTEM INTEGRATION, TITLE, NON-INFRINGEMENT AND/OR QUIET ENJOYMENT, AND THE COMPANY SOFTWARE, DOCUMENTATION, ANY OTHER INFORMATION OR MATERIALS OTHERWISE PROVIDED AND ANY RELATED SERVICES PROVIDED BY COMPANY IS PROVIDED "AS IS" WITH NO OTHER WARRANTY PROVIDED. NO WARRANTY IS MADE BY COMPANY ON THE BASIS OF TRADE USAGE, COURSE OF DEALING OR COURSE OF TRADE. COMPANY DOES NOT WARRANT THAT THE COMPANY SOFTWARE WILL MEET LICENSEE'S REQUIREMENTS OR THAT THE OPERATION OF THE COMPANY SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ALL ERRORS WILL BE CORRECTED. LICENSEE

ACKNOWLEDGES THAT COMPANY'S OBLIGATIONS UNDER THIS AGREEMENT ARE FOR THE BENEFIT OF LICENSEE ONLY.

5.3 Exclusions of Remedies; Limitation of Liability. IN NO EVENT SHALL COMPANY BE LIABLE TO LICENSEE FOR ANY INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, REGARDLESS OF THE NATURE OF THE CLAIM, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, COSTS OF DELAY, ANY FAILURE OF DELIVERY, BUSINESS INTERRUPTION, COSTS OF LOST OR DAMAGED DATA OR DOCUMENTATION OR LIABILITIES TO THIRD PARTIES ARISING FROM ANY SOURCE, EVEN IF COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION UPON DAMAGES AND CLAIMS IS INTENDED TO APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED OR HAVE PROVEN INEFFECTIVE. THE CUMULATIVE LIABILITY OF COMPANY TO LICENSEE FOR ALL CLAIMS ARISING FROM OR RELATING TO THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY CAUSE OF ACTION SOUNDING IN CONTRACT, TORT, OR STRICT LIABILITY, SHALL NOT EXCEED THE TOTAL AMOUNT OF ALL FEES PAID TO COMPANY BY LICENSEE UNDER SECTION 3.1 DURING THE TWELVE (12)-MONTH PERIOD IMMEDIATELY PRIOR TO THE EVENT, GIVING RISE TO SUCH LIABILITY. THIS LIMITATION OF LIABILITY IS INTENDED TO APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED OR HAVE PROVEN INEFFECTIVE. THIS LIMITATION OF LIABILITY DOES NOT APPLY TO VIOLATIONS OF U.S. GOVERNMENT STATUTES. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO (1) PERSONAL INJURY OR DEATH RESULTING FROM LICENSOR'S NEGLIGENCE; (2) FOR FRAUD; OR (3) FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW.

5.4 Essential Basis. The Parties acknowledge and agree that the disclaimers, exclusions and limitations of liability set forth in this Section 5 form an essential basis of this Agreement, and that, absent any of such disclaimers, exclusions or limitations of liability, the terms of this Agreement, including, without limitation, the economic terms, would be substantially different.

6. INDEMNIFICATION.

6.1 Indemnification of Licensee. Company agrees to indemnify, defend and hold harmless Licensee from and against any and all losses, liabilities, costs (including reasonable attorneys' fees) or damages resulting from any claim by any third party that the Company Software infringes or misappropriates, as applicable, such third party's U.S. patent rights issued as of the Effective Date, or such third party's copyrights or trade secret rights under applicable laws of any jurisdiction within the United States of America, provided that, notwithstanding the foregoing, Company shall have no obligation to indemnify Licensee hereunder if the alleged infringement arises, in whole or in part, due to modification of the Company Software by Licensee, on Licensee's behalf, or upon Licensee's request or direction, or if such alleged infringement arises, in whole or in part, due to combination or integration of the Company Software with hardware, software and/or technology not supplied by Company hereunder, if such infringement would have been avoided by use of the Company Software absent such combination or integration. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516. If any claim for which indemnity is or may be sought hereunder is made or appears reasonably likely, Licensee agrees: (i) promptly to notify Company in writing; (ii) to cooperate in good faith with Company in the defense and settlement of such claim; and (iii) to permit Company to enable Licensee to continue to use the Company Software, or to modify or replace any such infringing material to make it non-infringing, provided that, if Company determines that none of the foregoing alternatives is reasonably available, Licensee shall, upon written request from Company, cease use of, and, if applicable, return, such materials as are the subject of the relevant infringement claim. Company shall not be obligated to indemnify, hold harmless or defend Licensee from and against any losses, liabilities, costs (including reasonable attorneys' fees) or damages resulting from: (i) Licensee's negligence or willful

misconduct; or (ii) a breach by Licensee of its obligations, representations or warranties hereunder.

6.2 Indemnification of Company. INTENTIONALLY OMITTED FROM AGREEMENT FOR U.S. GOVERNMENT LICENSEES.

7. TERM AND TERMINATION.

7.1 Term. The term of this Agreement shall commence on the Effective Date and shall continue for the limited time period set forth in the subscription acquired, or otherwise, in the absence of a subscription acquisition, perpetually, unless and until terminated in accordance with this Section 7 (the period during which this Agreement remains in effect, the “**Term**”).

7.2 Termination for Breach. Subject to the provisions of any U.S. Government contract pursuant to which this Agreement is executed, either Party may, at its option, terminate this Agreement in the event of a material breach by the other Party. When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Company shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer.

7.3 Effect of Termination. Upon any termination of this Agreement, Licensee: (i) shall immediately discontinue all use of the Company Software and Documentation, as well as any use of Company's Confidential Information; (ii) shall delete any Company Confidential Information from Licensee's computer storage or any other media, including, but not limited to, online and off-line libraries; (iii) shall return to Company or, at Company's option, destroy all copies of Company's Confidential Information then in Licensee's possession; and (iv) shall pay to Company all amounts due and remaining payable hereunder.

7.4 Survival. The provisions of Sections 2.5, 2.6, 4, 5, 7.3, 7.4 and 8 will survive the termination of this Agreement.

8. GENERAL PROVISIONS.

8.1 Entire Agreement. This Agreement, together with the underlying GSA Schedule Contract, Schedule Pricelist, Purchase Order(s), sets forth the entire agreement and understanding between the Parties hereto with respect to the subject matter hereof and, except as specifically provided herein, supersedes and merges all prior oral and written agreements, discussions and understandings between the Parties with respect to the subject matter hereof, and neither of the Parties shall be bound by any conditions, inducements or representations other than as expressly provided for herein. No terms or provisions or any purchase order or similar document provided by or on behalf of Licensee shall be binding on Company unless executed and agreed to by Company in writing. In the event of a conflict between this Agreement and a Negotiated Purchase Order, this Agreement shall prevail.

8.2 Independent Contractors. In making and performing this Agreement, Licensee and Company act and shall act at all times as independent contractors, and, except as expressly set forth herein, nothing contained in this Agreement shall be construed or implied to create an agency, partnership or employer and employee relationship between them. Except as expressly set forth herein, at no time shall either Party make commitments or incur any charges or expenses for, or in the name of, the other Party.

8.3 Notices. All notices required by or relating to this Agreement shall be in writing and shall be sent by means of certified mail, postage prepaid, or delivered by nationally recognized courier or by hand to the Parties to the Agreement and addressed, if to Licensee, as set forth on the Cover Page, or if to Company, as follows:

If to Company: 725 Jackson Street, Suite 101
Fredericksburg, Virginia 22401
Attention: TYCHON Audit and Compliance

with a copy to: Kevin Oliveira, Esq.
Odin, Feldman & Pittleman, P.C.
1775 Wiehle Avenue, Suite 400
Reston, Virginia 20190-5159

or addressed to such other address as that Party may have given by written notice in accordance with this provision. If mailed, any such notice will be considered to have been given five (5) business days after it was mailed, as evidenced by the postmark. If delivered by nationally recognized courier, any such notice will be considered to have been given upon confirmation of receipt by the receiving Party. If delivered by hand, any such notice will be considered to have been given when received by the Party to whom notice is given, as evidenced by written and dated receipt of the receiving Party.

8.4 Amendments; Modifications. This Agreement may not be amended or modified except in a writing duly executed by the Party against whom enforcement of such amendment or modification is sought.

8.5 Assignment; Delegation. Licensee shall not assign any of its rights or delegate any of its duties hereunder without the prior written consent of the Company, and, absent such consent, any attempted assignment or delegation shall be null, void and of no effect.

8.6 No Third Party Beneficiaries. The Parties acknowledge that the covenants set forth in this Agreement are intended solely for the benefit of the Parties, their successors and permitted assigns. Nothing herein, whether express or implied, shall confer upon any person or entity, other than the Parties, their successors and permitted assigns, any legal or equitable right whatsoever to enforce any provision of this Agreement.

8.7 Severability. If any provision of this Agreement is invalid or unenforceable for any reason in any jurisdiction, such provision shall be construed to have been adjusted to the minimum extent necessary to cure such invalidity or unenforceability. The invalidity or unenforceability of one or more of the provisions contained in this Agreement shall not have the effect of rendering any such provision invalid or unenforceable in any other case, circumstance or jurisdiction, or of rendering any other provisions of this Agreement invalid or unenforceable whatsoever.

8.8 Waiver. No waiver under this Agreement shall be valid or binding unless set forth in writing and duly executed by the Party against whom enforcement of such waiver is sought. Any such waiver shall constitute a waiver only with respect to the specific matter described therein and shall in no way impair the rights of the Party granting such waiver in any other respect or at any other time. Any delay or forbearance by either Party in exercising any right hereunder shall not be deemed a waiver of that right.

8.9 Force Majeure. Excusable delays shall be governed by FAR 52.212-4(f).

8.10 Governing Law. This agreement shall be construed and governed by and interpreted in accordance with the Federal laws of the United States.

8.11 U.S. Government End-Users. Each of the components that constitute the Company Software and documentation is a “commercial item” as that term is defined at 48 C.F.R. 2.101, consisting of “commercial computer software” and “commercial computer software documentation” as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 all U.S. Government end users acquire the Company Software with only those rights set forth herein.

8.12 Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which when taken together shall constitute one Agreement.

8.13 Gratuitous Services. It is Company's intent that this Agreement be in compliance with applicable federal laws and regulations with respect to gratuitous services. It is specifically understood that all software, documents and services provided under this Agreement to a US Government department or agency are for the sole benefit and use of the US Government department or agency. Company may use any technical information it derives from providing services related to the software or documentation for problem resolution, troubleshooting, product functionality enhancements and fixes, for its knowledge base. Company agrees not to identify the Licensee or disclose any of its

confidential information in any item in the knowledge base. Company may provide, and may have provided, gratuitous services to Licensee to assist Licensee in the evaluation of the software. The scope and staffing of the services to be provided by Company shall be at Company's sole discretion.

8.14 Headings. The headings in this Agreement are inserted merely for the purpose of convenience and shall not affect the meaning or interpretation of this Agreement.

[END OF LICENSE TERMS AND CONDITIONS]

