

**1. LICENSE GRANT**

**1.1 License.** Cherwell hereby grants to the eligible Ordering Activity under GSA Schedule contracts identified in the Purchase Order, Statement of Work, or similar document (“Customer” or “Ordering Activity”) and Customer fully accepts, upon the Effective Date and during the Term, a nonexclusive, nontransferable (except as provided in Section 8.7 below) right to use the Licensed Software.

**1.2 Intellectual Property Rights.** The Licensed Software is protected by copyright and other intellectual property laws. Cherwell retains all Intellectual Property Rights in and to the Licensed Software. Customer agrees that this is a license only and that no title passes to Customer. The original and any copies of the Licensed Software may not leave Customer’s control and are owned by Cherwell. Customer retains all rights to Customer Data and in any Customer trademarks and tradenames displayed by the Licensed Software.

**1.3 Restrictions.** Customer may not resell or otherwise transfer for value the Licensed Software without the written consent of Cherwell. Neither party shall export, ship, transmit, or re-export the Licensed Software in violation of any applicable law or regulation, including, without limitation, the Export Administration Regulations issued by the United States Department of Commerce and the United States trade embargoes and economic sanctions administered by the U.S. Treasury Department, Office of Foreign Assets Control, or any such similar law or regulation. Customer agrees not to: (i) modify, decompile, disassemble or reverse engineer the Licensed Software; (ii) distribute, rent, lease or lend the Licensed Software; or (iii) use the Licensed Software except as expressly permitted under this Agreement. All rights not expressly granted are reserved by Cherwell.

**2. INDEMNIFICATION**

**2.1** Cherwell shall have the right to intervene to defend Customer, at Cherwell’s expense (including reasonable attorneys’ fees), against all third-party claims, suits, or other legal proceedings to the extent arising out of or related to any allegation that any portion of the Licensed Software (including any updates thereto), when used solely in the manner and for the purpose for which it was licensed, violates any third-party Intellectual Property Right (collectively, “Claims”). 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. Cherwell shall indemnify and hold Customer harmless against all costs, damages, and losses awarded against Customer as a result of a Claim. If a Claim is filed in a court or other administrative proceeding seeking to enjoin the use of the Licensed Software, Cherwell shall either, at its cost: (i) procure for Customer the right to continue to use the relevant portion of the Licensed Software; (ii) replace the relevant portion of the Licensed Software with a substitute product that functions substantially in accordance with the applicable specifications for that portion of the Licensed Software; or (iii) modify the Licensed Software so that it does not infringe or misappropriate, provided that the Licensed Software, as modified, continues to perform substantially in accordance with the applicable specifications (collectively, “Remedial Measures”). Customer agrees, at Cherwell’s expense, to reasonably cooperate with Cherwell in the defense of any Claim and in the implementation of any Remedial Measures.

**2.2** Cherwell’s indemnification obligation pursuant to the above shall not apply to the extent any Claim would not have occurred or continued but for (i) Customer’s use of the Licensed Software in a manner that is not provided for under this Agreement

or Cherwell’s user documentation; (ii) Customer’s use, operation, or combination of all or any component or portion of the Licensed Software with all or any portion of other software, equipment, or systems not provided or required by Cherwell if the claim would not have been made but for the Customer’s use, operation, or combination with such other software, equipment, or systems; or (iii) Customer’s refusal to reasonably cooperate with the implementation of Remedial Measures. As a condition precedent to any liability of Cherwell, if Customer receives notice of any Claim or threatened Claim for which indemnification may be available under the above, Customer must promptly notify Cherwell in writing of the Claim, provided, however, any delay in notification shall only excuse Cherwell of its indemnification obligation to the extent Cherwell is actually prejudiced by the delay.

**2.3** Cherwell will have the right to control the defense, select counsel, and direct the course of resolution, including settlement of any Claim (but only if the settlement does not include an admission of liability by Customer, does not require payment of money by Customer, and grants Customer a full and unconditional release from all liability with respect to the Claim).

**3. WARRANTIES; DISCLAIMERS**

**3.1 Limited Warranties.** Each party represents and warrants to the other that it has the legal power to enter into this Agreement and that entering into this Agreement does not violate the terms of any agreement between the party and any third-party. Cherwell further represents and warrants that: (i) while Maintenance and Support is in effect, the Licensed Software shall operate in material compliance with its Documentation; (ii) all services provided by Cherwell under this Agreement will be performed in a professional manner, by qualified and skilled individuals, and in conformity with standards generally accepted in Cherwell’s industry; and (iii) the Licensed Software shall be delivered free of any virus or otherwise malicious code, or any code or command intended to impair use of the Licensed Software or Customer’s computers/networks.

**3.2 Limited Remedy.** Customer’s sole remedy for any breach of warranty in Section 3.1(i) shall be for Cherwell to either correct or replace, at no additional charge to Customer, any portion of the Licensed Software or services found to be defective. If Cherwell is unable to correct or replace the defect and Customer terminates the Agreement, Cherwell will refund any prepaid but unused license, Maintenance and Support, and hosting fees.

**3.3 Disclaimer.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE WARRANTIES SET FORTH IN SECTION 3 ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, ORAL OR WRITTEN, EXPRESSED OR IMPLIED. CHERWELL DOES NOT WARRANT THAT THE OPERATION OF THE LICENSED SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE. EXCEPT AS SET FORTH IN THIS SECTION 3, CHERWELL MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESSED OR IMPLIED, WITH RESPECT TO THE LICENSED SOFTWARE, ITS QUALITY, PERFORMANCE, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE.

**4. LIMITATION OF LIABILITY; EXCLUSION OF DAMAGES**

**4.1 Limitation of Liability.** To the maximum extent permitted by applicable law, and except for: (i) either party’s gross negligence or intentional misconduct; (ii) Customer’s payment obligations under this Agreement; (iii) any violation of a party’s obligations under Section 1.3 (Restrictions); Fraud, or Section 7 (Confidentiality); or (iv) Cherwell’s obligation to indemnify Customer under Section 2, each party’s entire liability for any causes of action arising under this Agreement or related to the Licensed Software, Maintenance and

Support, or Professional Services shall be limited to the amount paid by Customer under this Agreement.

**4.2 Exclusion of Consequential and Related Damages.** IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR LOST PROFITS, LOSS OF USE, OR INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, WHETHER IN CONTRACT, TORT, OR ANY OTHER THEORY OF LIABILITY, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, EXCEPT TO THE EXTENT THAT ANY AWARD TO A THIRD-PARTY FOR A THIRD-PARTY CLAIM SUBJECT TO INDEMNIFICATION UNDER SECTION 2 INCLUDES SUCH DAMAGES.

## **5. MAINTENANCE, SUPPORT, AND SERVICES**

**5.1 General.** Upon payment of fees set forth in the Order Confirmation(s), Cherwell will provide Customer with Maintenance and Support for the Licensed Software. For Perpetual Licenses, Maintenance and Support are offered on no less than an annual basis and will commence and be invoiced in accordance with the Order Confirmation(s). For Subscription Licenses, Maintenance and Support are included in the Subscription Fees.

**5.2 Supported Versions.** Cherwell will provide Support for the most current version of the Licensed Software and one prior version, including interim releases between the two versions; for example, upon release of version 9.x Cherwell will support version 9.x and 8.x. Cherwell may provide limited support for older versions at its discretion.

**5.3 Professional Services.** When applicable, Cherwell will provide Professional Services under an agreed statement of work. Any professional or related services purchased from and provided directly by a Partner shall be governed by the terms and conditions of any agreement between Customer and Partner.

**5.4 Hosting Services.** When applicable, Hosting Services shall be provided under additional terms.

## **6. TERM; TERMINATION**

**6.1 Effective Date and Term.** This Agreement is effective as of the Effective Date and continues for the duration of the Term. The parties acknowledge and agree that Perpetual Licenses shall survive termination or expiration of Maintenance and Support.

**6.2 Termination.** When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Cherwell shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer. Upon termination, Cherwell will either, as applicable: (i) pay Customer a pro-rata refund of any prepaid but unused Subscription Fees or (ii) pay Customer a pro-rata refund of any prepaid but unused Maintenance and Support fees, in either case on a monthly pro-rata basis as of the termination date. Upon termination, in whole or in part, prior to the end of the then current Term, Customer will immediately pay Cherwell all fees owing for the Term prior to the termination date. Upon any termination of this Agreement, Customer agrees to remove all Licensed Software from its computers, destroy all copies of the Licensed Software, and, upon request from Cherwell, certify in writing its compliance.

## **7. CONFIDENTIALITY**

Each party agrees to hold the other party's Confidential Information in strict confidence and to treat such other party's Confidential Information with at least the same degree of care employed with respect to its own Confidential Information (but in no event less than reasonable care). Neither party shall (i) use the other party's Confidential Information for its own account or in any manner not contemplated by this Agreement; nor (ii) disclose the other party's Confidential Information to a third-party without the prior written

consent of the other party. Both parties shall limit access of each other's Confidential Information to those of its employees, contractors, and agents who have a need for such access and who are bound to confidentiality obligations substantially similar to those set forth in this Section. This Section shall survive termination or expiration of the Agreement. Cherwell recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which requires that certain information be released, despite being characterized as "confidential" by the vendor.

## **8. MISCELLANEOUS**

**8.1 Severability.** If any of the terms of this Agreement are invalid or unenforceable, the court shall reform the Agreement to include an enforceable term as close to the intent of the original term as possible; all other terms shall remain unchanged.

**8.2 Entire Agreement.** This Agreement, together with the underlying GSA Schedule Contract, Schedule Pricelist, Purchase Order(s), constitutes the entire agreement between Customer and Cherwell relating to the subject matter hereof and supersedes all prior and contemporaneous agreements, representations, proposals, and negotiations, whether written or oral. Any additions to, or modifications of, this Agreement shall be binding upon the parties only if in writing and executed by a duly authorized representative of Customer and Cherwell. ANY TERMS OR CONDITIONS IN ANY OTHER DOCUMENT, INCLUDING, ESTIMATES, REQUESTS, OR PROPOSALS RELATING TO THE LICENSED SOFTWARE, THAT ADD TO OR CONFLICT WITH THE TERMS OF THE AGREEMENT ARE DEEMED MATERIAL AND REJECTED. A NEGOTIATED GOVERNMENT PURCHASE ORDER, SIGNED BY BOTH PARTIES, SHALL SUPERSEDE THE TERMS OF THE AGREEMENT.

**8.3 Waiver.** The waiver or failure of either party to exercise in any respect any right provided for in this Agreement shall not be deemed a waiver of any further or future right under this Agreement.

**8.4 Reserved.**

**8.5 Performance Information.** Cherwell may use de-identified, aggregate and statistical information related to the performance or usage of the Licensed Software, provided that such information does not incorporate any Customer Data.

**8.6 Audit Right.** Cherwell shall have the right on an annual basis, to audit Customer's deployment of the Licensed Software, upon thirty (30) days' prior written notice to Customer. Customer will provide Cherwell with reasonable assistance and access necessary to carry out any such audit subject to Government security requirements.

**8.7 Assignment.** This Agreement is binding upon, and inures to the benefit of, the parties hereto and their respective successors and permitted assigns. A party may not assign any of its rights, obligations, or responsibilities under this Agreement without the prior written consent of the other party.

**8.8 Choice of Law.** This Agreement is governed under the Federal laws of the United States. This Agreement will not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded.

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

## **9. DEFINITIONS**

**Agreement:** This End-User License Agreement ("EULA") and any applicable Order Confirmation that references this EULA.

**Authorized Concurrent Users:** The number of users that are authorized to concurrently use the Licensed Software as listed on any applicable Order Confirmation. Customer's Authorized Concurrent Users of the Licensed Software can include employees and authorized representatives, agents, and contractors of Customer, its subsidiaries, and affiliates.

**Authorized Device Count:** The number of devices that are authorized to use the CAM Software as listed on any applicable Order Confirmation.

**Authorized Devices:** CAM Software is authorized to be installed on a computer workstation with a server, application server, or desktop application virtualization technology including Citrix®, Microsoft Terminal Server®, or VMWare® technologies that are capable of creating multiple virtual machines or sessions; each such separate instance shall be considered an Authorized Device.

**Cherwell:** Cherwell Software, LLC, a Delaware limited liability company.

**Cherwell Asset Management or CAM Software:** (i) CSID and the data accessed by and/or contained therein, (ii) the Logi Analytics, Inc. proprietary software product known as "Logi Info Server", (iii) the reports generated by use of CAM Software, and (iv) CAM Product Documentation. Customer may only install a copy of the CAM Software on an Authorized Device. The total number of separate instances of the CAM Software may not exceed the Authorized Device Count.

**Confidential Information:** Any information, whether oral or written, designated by a party as confidential or that reasonably should be understood to be confidential or proprietary in nature. Customer's Confidential Information shall include Customer Data. Cherwell's Confidential Information shall include at least all documentation of the Licensed Software not publicly available from the Cherwell website. Confidential Information of each party shall include each party's business and marketing plans, financial data, employee data, product plans and designs, and technical information. However, Confidential Information shall not include any information that (i) is or becomes generally known to the public other than by breach of this Agreement; (ii) was known to the receiving party prior to its disclosure; (iii) becomes known to the receiving party after proper disclosure from a third-party not under an obligation of confidentiality; or (iv) was disclosed to the minimum extent necessary to comply with a lawful court order or government law or regulation, provided that in the case of (iv) the disclosing party shall provide the other party with advance written notice thereof and reasonably cooperate with the other party to limit disclosure and obtain protective orders or other relief as appropriate.

**CSID™:** Cherwell Software Identification Database™

**Customer:** The full legal name of the entity identified as the customer on any applicable Order Confirmation.

**Customer Data:** Data, information, and records stored, or operated upon, by the Licensed Software and that were provided solely by or on behalf of Customer.

**Documentation:** The applicable Licensed Software documentation made available to Customer at: <https://help.cherwell.com>.

**Effective Date:** The date indicated as the "Effective Date" on any applicable Order Confirmation.

**Initial Term:** For a Subscription License, the period starting from the Effective Date and expiring after the amount of time indicated in the "Initial Term" section, as set forth on the Order Confirmation; for a Perpetual License, the period starting from the Effective Date and expiring after the amount of time indicated in the "Initial Term of Maintenance and Support" section, as set forth on the Order Confirmation.

**Intellectual Property Rights:** Any and all rights in trademarks and tradenames, patent rights, rights in know-how, copyrights, trade secret rights, moral rights, and any other intellectual property or proprietary rights eligible for protection under the laws of any country, state, or jurisdiction including registrations and applications therefor, and divisionals, divisions, continuations, continuations-in-part, patents of addition, provisionals, reissues, renewals, extensions, certificates of reexamination, foreign counterparts, international counterparts, and extensions thereof.

**Licensed Software:** The software, in object code only, reflected on the applicable Order Confirmation(s) delivered by Cherwell and all updates to any of the preceding. Customer may: (i) install the Licensed Software in a single Production Environment controlled by Customer; and (ii) use and execute the Licensed Software in the one Production Environment and solely in support of a number of concurrent end users or number of devices not exceeding the Authorized Concurrent Users or Authorized Devices, as applicable. Customer may install copies of the Licensed Software in Non-Production Environments solely for purposes of testing, development, or disaster recovery; provided, however, that such copies cannot be used for production purposes.

**Maintenance:** Cherwell developed updates of the Licensed Software, including updated documentation, as Cherwell may generally make available to its customers without requirement of a separate license agreement, and without additional charge other than payment of the annual Maintenance and Support fee.

**Non-Production Environment:** A computing environment limited solely to testing, development, or disaster recovery and not for use by end users.

**Order Confirmation:** The form executed by Cherwell and Customer titled "Order Confirmation" or similar.

**Partners:** Third-parties, such as value-added resellers or solutions partners, authorized by Cherwell to resell the Licensed Software, Maintenance, Support, and/or Professional Services.

**Perpetual License:** A license granted under Section 1.1 for a term that is perpetual.

**Production Environment:** A computing environment for an installation of the Licensed Software operating for use by any end users.

**Professional Services:** Implementation, installation, on-site assistance, and configuration of the Licensed Software performed pursuant to a statement of work.

**Renewal Term:** The time period of each renewal period, if any, following the Initial Term, as set forth on the Order Confirmation.

**Subscription Fees:** Annual license fees owed for the Subscription Licenses.

**Subscription License:** A license granted under Section 1.1 for a term that is less than perpetual.

**Support:** Technical assistance provided by Cherwell for the ongoing use of the Licensed Software. Cherwell service and support guidelines are available to Customer at: <https://www.cherwell.com/SupportGuidelines>.

**Term:** For a Subscription License, the Initial Term and any Renewal Terms, as set forth on the Order Confirmation; for a Perpetual License, the period of time that Customer retains Cherwell to provide Maintenance and Support services.