

Attachment ____

SOFTWARE LICENSE RIDER - U.S. GOVERNMENT

This Software License Rider (“Rider”) modifies the commercial computer software End User License Agreement (“EULA”) which is included as “click-wrap” within the commercial computer software and/or included as an attachment to the EC America (“Agreement”). This Rider brings the EULA into compliance with the “Notice of Class Deviation to Commercial Supplier Agreement Terms Inconsistent with Federal Law,” 80 Fed. Reg. 15011 (March 20, 2015), and GSA Acquisition Letter MV-15-03, “Memorandum for the Acquisition Workforce: Class Deviation Addressing Commercial Supplier Agreement Terms that Conflict or Are Incompatible with Federal Law” (July 31, 2015). FAR 12.212(a) and DFARS 227.7202-3 require the Government procure commercial computer software under the licenses customarily provided to the public except to the extent that those licenses are inconsistent with Federal law. The EULA is modified as follows:

1. **Click-wrap.** No Government nor any Government authorized end user shall be deemed to have agreed to any clause by virtue of it appearing in the EULA, rather the EULA and this Software Rider are accepted by inclusion in the Agreement by an authorized official. If the EULA or any other third-party EULA is invoked through an “I agree” click box or other comparable mechanism (e.g., “click-wrap” or “browse-wrap” agreements), execution does not bind the Government or any Government authorized end user to such clause; such indemnity clause is deemed to be stricken from the EULA. The Government acknowledges that third party terms may apply but does not agree to be bound by them unless provided for review. Inclusion of these Third Party License Agreement(s) within release notes within the Licensed Software file is an acceptable presentation of the Third Party License Agreement(s), provided that the Third Party License Agreement(s) will not create any new monetary obligation upon the End User or diminish the End User's right to use the Licensed Software as set forth in the EULA where the End User is in compliance with the EULA. Any clause to the contrary is hereby deleted.

2. **Applicability.** The EULA and this Software License Rider is a part of the Agreement between Tanium and the U.S. Government for the acquisition of the supply or service that necessitates a license, except to the extent inconsistent with Federal law.

3. **End user.** This Software License Rider and the EULA shall bind the ordering activity as end user but shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity.

4. **Law and disputes.** This Software License Rider and the EULA are governed by Federal law.

(a) Any language purporting to subject the U.S. Government to the laws of a U.S. state, U.S. territory, district, or municipality, or a foreign nation, except where Federal law expressly provides for the application of such laws, is hereby deleted.

(b) Any language requiring dispute resolution in a specific forum or venue that is different from that prescribed by applicable Federal law is hereby deleted.

(c) Any language prescribing a different time period for bringing an action than that prescribed by applicable Federal law in relation to a dispute is hereby deleted.

(d) Other disputes will be resolved through the Disputes Clause in the Agreement.

5. **Continued performance.** If the supplier or licensor believes the ordering activity to be in breach of the Agreement, it shall continue performance while pursuing rights under the Disputes Clause in the Agreement.

6. **Arbitration; equitable or injunctive relief.** In the event of a claim or dispute arising under or relating to the Agreement, (a) binding arbitration shall not be used unless specifically authorized by agency guidance, and (b) equitable or injunctive relief, including the award of attorney fees, costs or interest, may be awarded against the U.S. Government only when explicitly provided by statute (e.g., Prompt Payment Act or Equal Access to Justice Act).

7. **Additional terms.**

(a) This Software License Rider may unilaterally incorporate additional terms by reference. Terms may be included by reference using electronic means (e.g., via web links, click and accept, etc). Such terms shall be enforceable only to the extent that:

(i) When included by reference using electronic means, the terms are readily available at referenced locations; and

(ii) Terms do not materially change Government obligations; and

(iii) Terms do not increase Government prices; and

(iv) Terms do not decrease overall level of service; and

(v) Terms do not limit any other Government rights addressed elsewhere in this contract.

(b) The order of precedence clause of this contract notwithstanding, any software license terms unilaterally revised subsequent to award are not enforceable against the Government.

8. **No automatic renewals.** If any license or service tied to periodic payment is provided under the EULA (e.g., annual software maintenance or annual lease term), such license or service shall not renew automatically upon expiration of its current term without prior express Government approval.

9. **Indemnification & Liability.** Any clause of the EULA requiring the commercial supplier or licensor to defend or indemnify the end user is hereby amended to provide that the U.S. Department of Justice has the sole right to represent the United States in any such action, in accordance with 28 U.S.C. § 516. The Government shall not indemnify any entity. The Government agrees to pay for any loss, liability or expense, which arises out of or relates to the Government's acts or omissions with respect to its obligations hereunder, where a final determination of liability on the part of the Government is established by a court of law or where settlement has been agreed to by the Government agency with, where appropriate, coordination of the Department of Justice. This provision shall not be construed to

limit the Government's rights, claims or defenses which arise as a matter of law or pursuant to any other provision of the Agreement.

10. **Audits.** Any clause of the Agreement permitting the commercial supplier or licensor to audit the end user's compliance with the Agreement is hereby amended as follows: (a) Discrepancies found in an audit may result in a charge by the commercial supplier or licensor to the ordering activity. Any resulting invoice must comply with the proper invoicing requirements specified in the underlying Government contract or order. (b) This charge, if disputed by the ordering activity, will be resolved through the Disputes clause at FAR 52.233-1; no payment obligation shall arise on the part of the ordering activity until the conclusion of the dispute process; (c) Any audit requested by the Contractor will be performed at the Contractor's expense, without reimbursement by the Government and in accordance with Government security requirements.

11. **Taxes or surcharges.** Any taxes or surcharges which the commercial supplier or licensor seeks to pass along to the Government as end user will be governed by the terms of the underlying Government contract or order and, in any event, must be submitted to the Contracting Officer for a determination of applicability prior to invoicing unless specifically agreed to otherwise in the Government contract.

12. **Non-assignment.** The Agreement may not be assigned, nor may any rights or obligations thereunder be delegated, without the Government's prior approval.

13. **Use of Government logos.** Notwithstanding any contrary provision contained in the Agreement, the vendor shall not be permitted to use U.S. Government logos for advertising or endorsement purposes, without obtaining the separate written consent of the Government.

14. **Right of entry.** No provision in the Agreement shall provide any Party the right of entry to any Government facility.

15. **Termination.** Termination, including termination for convenience of the government, may occur in accordance with the procedures described in Paragraph 4 of the Tanium EULA in the GSA Schedule Contract. Any terms of unilateral termination by Tanium are hereby deleted. Recourse against the United States for any alleged breach of this agreement must be made under the terms of the Federal Tort Claims Act or as a dispute under the contract disputes clause (Contract Disputes Act) as applicable. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer.

End User License Agreement

This End User License Agreement (the “**Agreement**”) is entered into by and between Tanium and _____ a company organized under the laws of _____, with offices located _____ (hereinafter “**Customer**”), to permit the use of the Licensed Software and Services as defined herein and purchased by Customer. This Agreement is made effective as of the last date signed below (the “**Effective Date**”). “**Tanium**” means the Tanium entity listed above or, if no entity is specified above, the Tanium entity identified on the Tanium-provided Quote or otherwise communicated to the Customer by Tanium.

- 1. Grant of License; Affiliates and Managing Parties.** During the term of this Agreement, Tanium grants Customer a revocable, nontransferable, nonexclusive license to use the object code version of the software purchased in connection with this Agreement (the “**Licensed Software**”) and the Documentation for Customer’s internal use only during the applicable Term. The term “**Licensed Software**” will include any updates, bug fixes, and versions (collectively, “**Enhancements**”) provided by Tanium in connection with a Support Services entitlement or subscription license grant. The Licensed Software is licensed on a per Managed OS Instance basis. A “**Managed OS Instance**” means a physical or virtual hardware device where the Software is installed, and where that device is capable of processing data. Managed OS Instances include any of the following types of computer devices: mobile/smart phone, diskless workstation, personal computer workstation, networked computer workstation, homemaker/teleworker, home-based system, File Server, Print Server, e-mail server, Internet gateway device, Storage Area Network Server (SANS), Terminal Servers, or portable workstation connected or connecting to a Server or network. In the case of a virtual system, in addition to the virtual Managed OS Instances, the Hypervisor is considered to be a single instance if Licensed Software is installed at the Hypervisor level.

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

- 2. Restrictions.** The license granted to Customer in this Agreement is restricted as follows:
 - 2.1 Customer’s Benefit.** Customer must not use or permit the Licensed Software or Documentation to be used in any manner, whether directly or indirectly, that would enable Customer’s personnel or any other person or entity to use the Licensed Software or Documentation for anyone’s benefit other than Customer or its Affiliates. Customer must purchase each license it intends to use.
 - 2.2 Limitations on Copying and Distribution.** Customer must not copy or distribute the Licensed Software or Documentation whether directly or indirectly except to the extent that copying is necessary to use the Licensed Software or Documentation for purposes set forth herein. Customer may make a single copy of the Licensed Software for backup and archival purposes.
 - 2.3 Limitations on Reverse Engineering and Modification.** Except to the extent expressly permitted by applicable law, Customer must not reverse engineer, decompile, disassemble, modify or create

derivative works of the Licensed Software or Documentation whether directly or indirectly.

- 2.4 **Sublicense, Rental and Third Party Use.** Except to the extent expressly permitted by this Agreement, Customer must not assign, sublicense, rent, timeshare, loan, lease or otherwise transfer the Licensed Software or Documentation, or directly or indirectly permit any third party to use or copy the Licensed Software. Customer must not operate a service bureau or other similar service for the benefit of third parties using the Licensed Software.
- 2.5 **Proprietary Notices.** Customer must not remove any proprietary notices (*e.g.*, copyright and trademark notices) from the Licensed Software or Documentation. Customer must reproduce the copyright and all other proprietary notices displayed on the Licensed Software on each permitted back-up or archival copy.
- 2.6 **Use in Accordance with Documentation.** All use of the Licensed Software shall be in accordance with Tanium's then-current documentation made generally available by Tanium to its licensees for use of the Licensed Software. Documentation may be updated from time to time to provide updated instructions on proper use of Tanium products, but is not intended to alter the terms of this End User License Agreement (EULA). In the event of a conflict between the Documentation and this EULA, this EULA shall prevail. Tanium will have no liability damages resulting from Customer's use of Tanium products when that use does not comply with the Documentation. Current documentation is available at <https://docs.tanium.com/> ("**Documentation**").
- 2.7 **Compliance with Applicable Law.** Customer shall be solely responsible for ensuring that Customer's use of the Licensed Software and Documentation is in compliance with all applicable foreign, Federal, state and local laws, rules, and regulations.
- 2.8 **Tanium's Intellectual Property.** Customer will not use the Licensed Software, Documentation or Tanium Confidential Information whether directly or indirectly to contest the validity of any Tanium intellectual property, including the Licensed Software and Documentation; any such use of Tanium's information will constitute a material, non-curable breach of this Agreement.
- 2.9 **Competition.** Customer will not use the Licensed Software in a manner to compete with Tanium or to assist a third party in competing with Tanium.

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

3. **Third Party Components.** The Licensed Software and future Enhancements if any may contain certain third party components ("**Third Party Components**") that are provided to Customer under terms and conditions which are different from this Agreement, or which require Tanium to provide Customer with certain notices and/or information. Tanium will identify such Third Party Components in the Release Notes, "LICENSE.TXT" or "READ-ME" file(s) (and shall include any associated license agreement, notices and other related information therein) delivered with the Licensed Software or future Enhancements. Customer's use of each Third Party Component that contains or is accompanied by its own license agreement ("**Third Party License Agreement**"), as identified in the Release Notes, LICENSE.TXT or READ-ME file(s), will be subject to the Third Party License Agreement, and not this Agreement. Customer will be liable for its breach of the Third Party License Agreement. Notwithstanding the foregoing, the following terms and conditions apply to all Third Party Components: (i) all Third Party Components are provided on an "AS IS" basis; (ii) Tanium will not be liable to Customer or indemnify Customer for any claims related to the Third Party Components; and (iii) Tanium will not be liable for any direct, indirect, incidental, special, exemplary, punitive or consequential damages with respect to the Third Party

Components. Except as may be provided in the LICENSE.TXT file(s), Customer's sole and exclusive remedy with regard to any defect, claim, or other dispute relating to the Third Party Components is to cease use of the Third Party Components.

- 4. Term and Termination.** If Customer purchases perpetual license(s), the license will commence on the Effective Date of the purchase order and continue in effect per the agreed upon purchase order ; or, if Customer purchases subscription license(s), the license will commence on the Effective Date and continue in effect for term of the subscription license or until this Agreement is terminated as provided in this Section, as applicable (the "**Term**"). Either party may terminate this Agreement on written notice to the other party if the other party is in material breach of its obligations hereunder and fails to cure the breach within thirty (30) days of such written notice. In addition, either party may, in its sole discretion, elect to terminate this Agreement on written notice to the other party upon the bankruptcy or insolvency of the other party or upon the commencement of any voluntary or involuntary winding up, or upon the filing of any petition seeking the winding up of the other party. Upon any termination or expiration of this Agreement, the license granted in Section 1 will automatically terminate and Customer will have no further right to possess or use the Licensed Software. On Tanium's request, Customer shall provide Tanium with a signed written statement confirming that the Licensed Software has been permanently removed from Customer's systems. Tanium reserves the right to seek all remedies available at law and in equity for Customer's material breach of this Agreement.

5. Fees and Expenses; Order/Fulfillment; Delivery and Taxes.

5.1 Fees and Expenses. Notwithstanding anything else to the contrary, if Customer orders from a Tanium authorized business partner ("**Reseller**"), final terms of the transaction (e.g., pricing, discounts, fees, payments, and taxes) are solely subject to the agreement between Customer and its Reseller of choice. Unless Customer orders directly from a Reseller, Customer will pay the Licensed Software and Service fees directly to Tanium and Tanium will fulfill all orders per the purchase order. The parties will enter into a schedule(s) or purchase order(s) that describe the Licensed Software and/or Services to be acquired by Customer (each a "**Schedule**"). This Agreement applies to any Schedule that references this Agreement or any purchase order that references this Agreement and that Tanium accepts, provided the purchase order mirrors the terms and conditions of the Tanium provided Quote. Fees for Licensed Software licensed on a subscription basis and fees for Support Service will be billed on an annual basis, payable in advance. Fees for Licensed Software licensed on a perpetual basis will be billed and payable fully in advance. All amounts to be paid by Customer are due and payable thirty (30) days after Customer's receipt of an invoice.

5.2 Delivery and Taxes. All amounts payable by Customer to Tanium under this Agreement are exclusive of any taxes, levies, or duties, of any nature, that may be assessed by any jurisdiction which are allowable under the terms of the FAR, GSAR and the terms of this contract. (collectively "**Taxes**")

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

Unless both Customer and Tanium agree otherwise, Customer will make no deduction from any amounts owed to Tanium for any un-invoiced taxes of any type. Subject to applicable laws, Tanium will cooperate with Customer to reduce the amount of applicable withholding taxes and Customer will not take any action

that is prejudicial to obtaining an available tax exemption by Tanium. Upon Customer's written request, Tanium will provide Customer with written proof that it has made all registrations and reports required for these tax payments. If Tanium claims a tax exemption that may affect any obligations of Customer, Tanium will disclose this exemption to Customer on a timely basis and provide Customer with all exemption documentation requested by Customer. If Customer is required to withhold amounts from any payments due to Tanium hereunder as prescribed by applicable law, Customer will make such withholding, remit such amounts to the appropriate taxing authorities and promptly, within thirty (30) days of the payment date, furnish Tanium a certificate for tax deducted at the source for which Tanium may be eligible to claim tax credit in its country of tax residency. Until such tax certificate is received and approved by Tanium, amounts withheld by Customer will continue to be due to Tanium.

Customer will indemnify Tanium from and against any disputed taxes, including interest and penalties, on the contracted products or services, by the taxing authorities. If the taxation of the item(s) is disputed by the taxing authorities, Tanium will notify Customer, if practical, to work with Customer and the taxing authorities to minimize any potential deficiencies.

6. **Services.** "Services" means, collectively, the Support Services and any other services acquired by Customer from Tanium. If Customer has a current Support Services entitlement or a subscription license grant governed by this Agreement, then Tanium will provide Customer with the support and maintenance services described in Exhibit A (the "Support Services"). All Services are subject to the terms and conditions of this Agreement.
7. **Limited Warranty; Disclaimer.** Tanium warrants that (i) for a period of 60 (sixty) days from the Effective Date, the Licensed Software will operate in substantial conformity with the Documentation; and (ii) it shall use commercially reasonable efforts to screen the Licensed Software prior to delivery for viruses, Trojan horses, and other malicious code. Tanium shall not be liable for failures caused by third party hardware and software (including Customer's own systems), misuse of the Licensed Software, or Customer's negligence or willful misconduct. The foregoing warranties are solely for the benefit of Customer and Customer shall have no authority to extend such warranty to any third party. The sole and exclusive remedy of Customer and the sole and exclusive liability of Tanium for breach of the foregoing warranty in Sections 7(i) and 7(ii), shall be to repair or replace the non-conforming Licensed Software, or if repair or replacement would in Tanium's opinion be commercially unreasonable, then Tanium shall terminate the relevant licenses and refund to Customer the portion of prepaid license fees paid for such non-conforming Licensed Software. Tanium shall not be responsible for use of the Licensed Software if not operated in a manner recommended in the Documentation. EXCEPT AS PROVIDED IN THIS SECTION, THE LICENSED SOFTWARE AND ALL SERVICES ARE PROVIDED ON AN "AS AVAILABLE," "AS IS" BASIS. TO THE MAXIMUM EXTENT PERMITTED BY LAW, TANIUM AND ITS LICENSORS AND SUPPLIERS DISCLAIM ALL OTHER WARRANTIES WITH RESPECT TO THE LICENSED SOFTWARE AND SERVICES, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF NON-INFRINGEMENT, TITLE, MERCHANTABILITY, QUIET ENJOYMENT, QUALITY OF INFORMATION, AND FITNESS FOR A PARTICULAR PURPOSE. TANIUM DOES NOT WARRANT THAT THE LICENSED SOFTWARE WILL MEET CUSTOMER'S REQUIREMENTS, OR THAT THE OPERATION OF THE LICENSED SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT DEFECTS IN THE LICENSED SOFTWARE WILL BE CORRECTED. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY TANIUM SHALL CREATE ANY ADDITIONAL TANIUM WARRANTIES OR IN ANY WAY INCREASE THE SCOPE OF TANIUM'S OBLIGATIONS HEREUNDER. If applicable law affords Customer implied warranties, guarantees or conditions despite these exclusions, those warranties will be limited to one (1) year from the Effective Date and Customer's remedies will be limited to the maximum extent allowed by Sections 7 and 9.
8. **Indemnities.** Tanium will indemnify and defend Customer from and against any claim, demand, action, proceeding, judgment, or liability arising out of a claim by a third party that Customer's use of the Licensed Software in conformance with the terms of this Agreement infringes a United States patent, copyright, or

trade secret of that third party and pay any amounts awarded in a final judgment or a settlement approved by Tanium. The foregoing indemnification obligation of Tanium is contingent upon Customer promptly notifying Tanium in writing of such claim, permitting Tanium sole authority to control the defense or settlement of such claim, and providing Tanium reasonable assistance in connection therewith. If a claim of infringement under this Section occurs, or if Tanium determines a claim is likely to occur, Tanium will have the right, in its sole discretion, to either: (i) procure for Customer the right or license to continue to use the Licensed Software free of the infringement claim; or (ii) modify the Licensed Software to make it non-infringing, without loss of material functionality. If either of these remedies is not reasonably available to Tanium, Tanium may, in its sole discretion, immediately terminate this Agreement and return the license fees paid by Customer for the infringing Licensed Software, prorated for use over (i) a three (3) year period for Licensed Software licensed on a perpetual basis or (ii) the remaining unused subscription term for Licensed Software licensed on a subscription basis. Notwithstanding the foregoing, Tanium shall have no obligation with respect to any claim of infringement that is based upon or arises out of (the “**Excluded Claims**”): (i) the use or combination of the Licensed Software with any third party hardware, software, products, data or other materials, including Customer’s own systems and data; (ii) modification or alteration of the Licensed Software by anyone other than Tanium; (iii) Customer’s use of the Licensed Software in excess of the rights granted in this Agreement; (iv) any Third Party Components; or (v) a business method or process that is inherent to Customer’s business. The provisions of this Section state Customer’s sole and exclusive remedy and the sole and exclusive obligations and liability of Tanium and its licensors and suppliers for any claim of intellectual property infringement arising out of or relating to the Licensed Software and/or this Agreement and are in lieu of any implied warranties of non-infringement, all of which are expressly disclaimed. Customer will indemnify, defend, and hold Tanium harmless from any claim, demand, action, proceeding, judgment, or liability from a third-party claim arising out of an Excluded Claim. Customer’s indemnification obligation is contingent upon Tanium promptly notifying Customer in writing of such claim, permitting Customer sole authority to control the defense or settlement of such claim, and providing Customer reasonable assistance in connection therewith.

9. **Limitation of Liability.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL TANIUM OR ITS LICENSORS OR SUPPLIERS BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR INDIRECT DAMAGES, WHICH SHALL INCLUDE, WITHOUT LIMITATION, DAMAGES FOR PERSONAL INJURY, LOST PROFITS, LOST DATA AND BUSINESS INTERRUPTION, ARISING OUT OF OR RELATED TO THE LICENSED SOFTWARE, SERVICES OR THIS AGREEMENT, EVEN IF TANIUM HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY CASE, THE MAXIMUM AGGREGATE LIABILITY OF TANIUM AND ITS LICENSORS AND SUPPLIERS UNDER THIS AGREEMENT FOR ALL DAMAGES, LOSSES, AND CAUSES OF ACTION (WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE) SHALL BE LIMITED TO FEES PAID BY CUSTOMER FOR THE LICENSED SOFTWARE OR SERVICES GIVING RISE TO SUCH CLAIM DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEEDING THE FIRST EVENT GIVING RISE TO SUCH CLAIM. No action, regardless of form, arising out of any of the transactions under this Agreement may be brought by Customer more than one (1) year after such action accrued. The foregoing limitation of liability shall not apply to (1) personal injury or death resulting from Licensor’s gross negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by contract as a matter of law.
10. THIS AGREEMENT SHALL NOT IMPAIR THE U.S. GOVERNMENT’S RIGHT TO RECOVER FOR FRAUD OR CRIMES ARISING OUT OF OR RELATED TO THIS CONTRACT UNDER ANY FEDERAL FRAUD STATUTE, INCLUDING THE FALSE CLAIMS ACT, 31 U.S.C. 3729-3733. FURTHERMORE, THIS CLAUSE SHALL NOT IMPAIR NOR PREJUDICE THE U.S. GOVERNMENT’S RIGHT TO EXPRESS REMEDIES PROVIDED IN THE GSA SCHEDULE CONTRACT (E.G., CLAUSE 52.212-4(H) – PATENT INDEMNIFICATION, AND GSAR 552.215-72 – PRICE ADJUSTMENT – FAILURE TO PROVIDE ACCURATE INFORMATION).
11. **Confidentiality.** The parties agree to hold each other’s Confidential Information in strict confidence and

not to make each other's Confidential Information available in any form to any third party (other than their authorized agents) or to use each other's Confidential Information for any purpose other than as specified in this Agreement. Each party agrees to take all reasonable steps to ensure that Confidential Information of the other party is not disclosed or distributed by its employees, agents, or consultants in violation of the provisions of this Agreement. In addition, Customer must ensure that any Managing Party will hold Tanium's Confidential Information in confidence in accordance with this Section 10. "**Confidential Information**" shall mean, with respect to a party hereto, all information or material which (i) gives that party some competitive business advantage or the opportunity of obtaining such advantage or the disclosure of which could be detrimental to the interests of that party; or (ii) from all the relevant circumstances should reasonably be assumed to be confidential. Confidential Information includes, but is not limited to, the Licensed Software. Each party's Confidential Information shall remain the sole and exclusive property of that party. Neither party shall have any obligation with respect to Confidential Information which: (i) is or becomes generally known to the public by any means other than a breach of the obligations of a receiving party; (ii) was previously known to the receiving party or rightly received by the receiving party from a third party without restrictions on disclosure; or (iii) is independently developed by the receiving party. Notwithstanding the foregoing, Customer acknowledges and agrees that Tanium may use Customer's Confidential Information internally at Tanium for sales/support analytics and training. When the end user is the Federal Government, such markings shall not be dispositive in determining that material containing such markings is confidential. .

12. Tanium 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 and Customer recognizes that information that is "trade secrets and commercial or financial information obtained from a person and privileged or confidential" is exempt from release under FOIA (5 U.S.C. 552(b)(4)).

13. Evaluation Software and Feedback.

11.1 **Evaluation Software.** This Section 11.1 only applies to Licensed Software designated by Tanium as "**Evaluation Software.**" Subject to Section 2, Tanium grants to Customer a non-transferable, non-exclusive limited license to use the Evaluation Software for its internal evaluation purposes only. The term of this license is for a period of thirty (30) days following delivery of the Evaluation Software ("**Evaluation Period**"). Tanium may extend the Evaluation Period in writing at its discretion. Unless otherwise agreed in writing by Tanium, Customer agrees to use the Evaluation Software in a non-production environment. Customer bears the sole risk of using the Evaluation Software. Tanium provides the Evaluation Software to Customer "AS-IS" and gives no representation, warranty, indemnity, guarantee or condition of any kind. To the maximum extent permitted by law, Tanium's total aggregate liability and that of its third party licensors and partners is expressly limited to five hundred dollars (\$500) for any and all damages regardless of the nature of the claim or theory of liability. Because the Evaluation Software is provided "AS-IS," Tanium may not provide Services for it. This Section 11.1 supersedes any other inconsistent term in the Agreement for purposes of the Evaluation Software.

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

11.3 **Beta Software.** If the Licensed Software released to Customer has been identified by Tanium as "**Beta Software,**" then the provisions of Section 11.1 will apply. In addition, Tanium has no obligation to Customer to (1) further develop or release the Beta Software or (2) provide Services for the Beta Software. If Tanium releases another version of the Beta Software, Customer will return or destroy all prior version(s)

or release(s) of the Beta Software that it received from Tanium.

- 14. Governing Law/Jurisdiction.** This Agreement will be governed by and construed in accordance with the substantive laws in force: (a) in the State of California, if you purchased the Licensed Software and Services in the United States or Canada, or (b) in England and Wales if you purchased the Licensed Software and Services in any country other than the United States and Canada, unless another local law is required to be applied. This Agreement will not be governed by the conflict of laws rules of any jurisdiction or the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded. The Uniform Computer Information Transactions Act as enacted shall not apply. The state or federal courts of competent jurisdiction located in San Francisco, California, when the laws of California apply, and the courts of London, England when the laws of England and Wales apply, shall each have exclusive jurisdiction over all disputes relating to this Agreement.
- 15. General.** This EULA sets forth the entire agreement and understanding of the Parties relating to the object hereof and merges all prior discussions and agreements of the matter hereof between them. Nothing in this Agreement modifies the commitments between the prime contractor and the Customer under the GSA Schedule Contract, Schedule Pricelist and Purchase Orders executed between them, to which Tanium is not a party. This Agreement shall not be modified, amended or in any way altered except by an instrument in writing signed by authorized representatives of both parties. In the event any provision of this Agreement is found invalid or unenforceable pursuant to judicial decree, the remainder of this Agreement shall remain valid and enforceable according to its terms. Any failure by Tanium to strictly enforce any provision of this Agreement will not operate as a waiver of that provision or any subsequent breach of that provision. There are no intended or implied third party beneficiaries of this Agreement. The following provisions shall survive any termination or expiration of this Agreement: Sections 2 (Restrictions), 4 (Term and Termination), 5.1 (Fees and Expenses), 9 (Limitation of Liability), 10 (Confidentiality), 13.2 (Feedback), 12 (Governing Law/Jurisdiction), 15 (General), 17 (U.S. Government Rights), 16 (Audit), 17 (Force Majeure), and Customer's indemnity obligations hereunder. Tanium may assign any of its rights or obligations hereunder as it deems necessary. **IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT IN THE EVENT ANY REMEDY HEREUNDER IS DETERMINED TO HAVE FAILED OF ITS ESSENTIAL PURPOSE, ALL LIMITATIONS OF LIABILITY AND EXCLUSIONS OF DAMAGES SET FORTH HEREIN SHALL REMAIN IN EFFECT.**
- 16. Export.** Customer acknowledges that the Licensed Software is subject to the export control, economic sanctions, and import laws, regulations and requirements of the United States and other countries including European Union regulations. Without limiting the foregoing, Customer agrees that it will not export, re-export, or re-transfer the Licensed Software in contravention of the foregoing, or provide the Licensed Software or Services to any person, in any jurisdiction, or for any user that would create a licensing requirement under U.S. Export control and economic sanctions laws, regulations and requirements without first obtaining any such license. Customer acknowledges that certain products containing encryption may be subject to import and/or restrictions in other countries. Tanium will reasonably cooperate, in Tanium's discretion, in assisting Customer with respect to an application for any required export or import licenses and approvals, however, Customer acknowledges it is Customer's ultimate responsibility to comply with any and all export and import laws and that Tanium has no further responsibility after the initial sale to Customer within the original country of sale. In addition to the other requirements of this Section, Customer shall be solely responsible for complying with the import laws and regulations and other relevant restrictions, if any, of any country into which Customer imports the Licensed Software. Customer shall defend, indemnify, and hold harmless Tanium from and against any and all damages, fines, penalties, assessments, liabilities, costs and expenses (including attorneys' fees and expenses) arising out of or relating to any claim the Licensed Software was exported or otherwise shipped or transported by Customer in violation of applicable laws, rules and regulations as described in this Section.
- 17. U.S. Government Rights.** The Licensed Software is commercial computer software as described in DFARS 252.227-7014(a) (1) and FAR 2.101. If acquired by or on behalf of any the Department of Defense or any component thereof, the U.S. Government acquires this commercial computer software and/or commercial computer software documentation subject to the terms of this Agreement as specified in

DFARS 227.7202-3, Rights in Commercial Computer Software or Commercial Computer Software Documentation, as applicable. If acquired by or on behalf of any civilian agency, the U.S. Government acquires this commercial computer software and/or commercial computer software documentation subject to the terms of this Agreement as specified in FAR 12.212, Computer Software.

- 18. Audit.** During the term of this Agreement and for one (1) year thereafter, no more than once in any twelve (12) month period, Tanium may audit Customer’s use of the Licensed Software (“**Audit**”). An Audit may include, without limitation, the inspection and review of computers or servers on which the Licensed Software has been installed or hosted, and records, procedures or business practices that relate to Customer’s performance under and compliance with the terms of this Agreement. Tanium (or an auditor retained by Tanium) shall provide Customer at least five (5) calendar days’ advance notice of an Audit. Customer will reasonably cooperate with Tanium and any auditor retained by Tanium in the conduct of the Audit. Audits will be conducted during Customer’s normal business hours. The cost of the Audit shall be borne by Tanium, unless the Audit reveals a breach of this Agreement by Customer, in which case any charge the vendor believes to be payable by the Government should be submitted individually to the contracting officer for adjudication through the holder of the GSA Schedule Contract..
- 19. Force Majeure.** Except for Customer’s payment obligations, neither party will be liable for any failure or delay in performance under this Agreement which is due to any event beyond the reasonable control of such party, including without limitation, fire, explosion, unavailability of utilities or raw materials, unavailability of components, labor difficulties, war, riot, act of God, export control regulation, laws, judgments or government instructions. Excusable delays shall be governed by FAR 52.212-4(f).

Tanium and Customer have executed this Agreement to become effective as of the Effective Date.

TANIUM

CUSTOMER

Signature

Signature

Printed Name

Printed Name

Title

Title

Date

Date

Exhibit A

TANIUM SUPPORT SERVICES TERMS AND CONDITIONS

Tanium will provide Support Services to Customer according to the Agreement and Support Services Terms and Conditions set forth below. Capitalized terms not otherwise defined herein will have the meaning set forth in the Agreement.

1. **Definitions.**

“Error” means a failure of the Licensed Software to perform in substantial accordance with the Documentation.

“Error Correction” or **“Correction”** means the use of reasonable commercial efforts to correct Errors.

“Fix” means the repair or replacement of object or executable code versions of Licensed Software to remedy an Error.

“Previous Sequential Release” means at any time the release of Licensed Software that has been replaced by the then-current release of the same Licensed Software. Notwithstanding anything else, a Previous Sequential Release will be supported by Tanium only for a period of six (6) months after release of the then-current release.

“Severity 1 Error” means an Error that renders Licensed Software inoperative or causes Licensed Software to fail catastrophically.

“**Severity 2 Error**” means an Error that substantially degrades the performance of Licensed Software or materially restricts Customer’s use of the Licensed Software.

“**Severity 3 Error**” means an Error that causes only a minor impact on the performance of Licensed Software or Customer’s use of Licensed Software.

“**Support Services**” or “**Support**” means Tanium support services as described in Section 4 and/or Section 6, as applicable.

“**Support Request**” means a Customer request made to Tanium in accordance these Support Services Terms and Conditions.

“**Telephone Support**” means technical support telephone assistance provided by Tanium to the Technical Support Contact concerning the installation and use of the then-current release of Licensed Software and the Previous Sequential Release.

“**Technical Support Contact**” means the person designated by Customer that may contact Tanium for support.

“**Workaround**” means a change in the procedures followed or data supplied by Customer to avoid an Error without substantially impairing Customer’s use of Licensed Software.

2. **Term; Renewal Fees.** Unless otherwise set forth in a Schedule, the term of Support shall be one (1) year from the Support order date (the “**Initial Support Term**”). After the Initial Support Term, the Support shall automatically renew, and all applicable fees shall be due at the commencement of each successive one (1) year period (each a “**Renewal Support Term**”) unless either party notifies the other of cancellation of Support Services no later than forty-five (45) days prior to the end of such Support Term. The Initial Support Term and any Renewal Support Terms, if any, are referred to collectively as the “**Support Term.**” Following the initial Support Term, Tanium may change the fees for Support set forth above by providing Customer with thirty (30) days’ written notice in advance of the effective date of any change in such fees. Tanium may suspend or cancel Support Services if Customer breaches either the Agreement or any material provision of these Support Services Terms and Conditions and such breach is not remedied within thirty (30) days after Customer receives notice of the breach.

3. **Replacement Software.** If Tanium introduces a successor product (“**Replacement Software**”) with substantially the same features and functionality as the original Licensed Software, and Customer has purchased and is entitled to Support Services for the original Licensed Software as of the date Tanium offers the Replacement Software to customers, then Customer shall be entitled to receive, upon request, the Replacement Software (without additional charge) and Support Services thereon. Customer must de-install and destroy the original Licensed Software.

4. **Support Services.**

4.1. In General. During the Support Term, Tanium shall provide Customer with (i) reasonable Support for Customer’s Technical Support Contact, (ii) Error Correction, and (iii) product updates that Tanium in its sole discretion makes generally available to its other similarly situated customers at no charge. Tanium’s Support is available Monday through Friday, 7 a.m. to 7 p.m. P.S.T., excluding Tanium holidays. Customer may designate up to a maximum of two (2) Technical Support Contacts with Tanium’s standard Support Services. Tanium is only obligated to remotely support Customer at Customer’s corporate headquarters.

Tanium support can be contacted via three means:

1. Customer may contact Tanium Support via Tanium Support Portal;

2. Customer may contact Tanium Support by emailing support@tanium.com; and
3. Customer may contact Tanium Support by calling Telephone Support (1 510 900 9443).

Tanium will make commercially reasonable efforts to assist Customer with the installation and configuration of the Licensed Software during the hours specified in Section 4.1 as part of Support Services, including, but not limited to:

1. Specify hardware and software requirements; and
2. Walk-through Tanium's pre-deployment and production deployment checklist(s), as applicable.

As conditions precedent: Customer will support remote delivery via teleconference or WebEx; Tanium will not request and Customer will not provide logical or physical access to Customer data or systems; Customer will assign qualified technical administrators and project management personnel to perform hands-on installation and configuration tasks; Customer will make a good-faith effort to ensure timeliness of deployment and Customer will provision alternate physical or virtual server(s) to permit initial agent deployment, if necessary; and Customer will ensure server(s) are in one location.

4.2. **Error Correction.** Tanium shall use commercially reasonable efforts to correct reproducible Errors reported by Customer in the current unmodified release of the Licensed Software, in accordance with the severity level reasonably assigned to such Error by Tanium:

Severity 1 Error: Tanium shall promptly commence the following procedures: (i) assign Tanium engineers to correct the Error; (ii) notify Tanium management that such Error has been reported and of steps being taken to correct such Error; (iii) provide Customer with periodic reports on the status of the corrections; and (iv) initiate work to provide Customer with a Workaround or Fix.

Severity 2 Error: Tanium shall exercise commercially reasonable efforts to include a Fix for the Error in the next regular Licensed Software maintenance update.

Severity 3 Error: Tanium may include a Fix for the Error in a later major release of the Licensed Software.

4.3. **Unsupported Failures.** If Tanium believes that a problem reported by Customer may not be due to an Error in the Licensed Software, Tanium will so notify Customer. At that time, Customer may (1) instruct Tanium to proceed with problem determination at Customer's possible expense as set forth below or (2) instruct Tanium that Customer does not wish the problem pursued at Customer's possible expense. If Customer requests that Tanium proceed with problem determination at Customer's possible expense and Tanium determines that the problem was not due to an Error in the Licensed Software, Customer shall pay Tanium, at Tanium's then-current and standard consulting rates, for all work performed in connection with such determination, plus reasonable related expenses incurred therewith. If Customer informs Tanium that it does not wish the problem pursued at Customer's possible expense or if such determination requires effort in excess of Customer's instructions, Tanium may, at its sole discretion, elect not to investigate the problem without liability therefor.

4.4. **Exclusions.** Notwithstanding the foregoing, Tanium shall have no obligation to provide Support for: (i) altered, damaged or modified Licensed Software or any portion of the Licensed Software incorporated with or into other software; (ii) Licensed Software that is not the then-current release or immediately Previous Sequential Release; or (iii) Licensed Software issues caused by Customer's negligence, abuse or misapplication, Customer's use of Licensed Software other than as specified in the Documentation, or by other factors beyond the control of Tanium; or (iv) Third Party Components or third party products, as applicable.

5. **Customer's Obligations.** Customer shall have the following obligations:

- 5.1. Customer will provide the location of its server(s) to Tanium.
 - 5.2. All Support Requests shall be submitted by Customer to Tanium through Customer's Technical Support Contact(s). Customer may change its designation on written notice to Tanium.
 - 5.3. Customer shall provide Tanium with free and full access to the Licensed Software for purposes of rendering Support, including, where appropriate, dedicated modem access. Any time expended because of delays caused by Customer in providing Tanium with such access to the Licensed Software will be considered a change, and Tanium may request an adjustment to the price as a result through the schedule contract holder in accordance with the GSA Schedule Contract.
 - 5.4. Customer is responsible for (1) preparing and maintaining their systems and facilities in accordance with the specifications of the appropriate suppliers, (2) securing all required permits, inspections, and licenses, (3) providing adequate personnel to assist Tanium in carrying out its duties under this Agreement, (4) installing any Fixes, Enhancements, and any other updates and improvements to the Licensed Software made generally available by Tanium, and (5) complying with all applicable state and Federal laws.
 - 5.5. Customer shall ensure the appropriate Customer personnel have been trained in the operation, support, and management of the Licensed Software.
 - 5.6. Customer shall be solely responsible for maintaining all necessary backup and recovery procedures to prevent loss of its data.
 - 5.7. Customer shall install and implement Fixes, Enhancements, and any other updates and improvements to the Licensed Software made generally available by Tanium within sixty (60) days of their general availability, unless a delay is mutually agreed upon in writing by the parties.
 - 5.8. Customer shall obtain at Customer's expense all additional equipment, latest level of third party software as designated by Tanium, and professional services required in response to Federal and state regulatory change, or relating to Fixes, Enhancements, and any other updates and improvements to the Licensed Software made generally available by Tanium.
6. **Tanium Premium Support.** If Customer purchases Tanium Premium Support ("TPS"), Tanium will provide an expanded support offering over the duration of the TPS Support Term that, in addition to Tanium's standard Support Services, includes:
- 6.1. Priority Support Portal Notification – Technical Account Manager ("TAM") management team copied on each Support Request submitted by Customer to ensure immediate escalation.
 - 6.2. Prioritization – TAMs assigned to Customer will prioritize Support Requests submitted by Customer.
 - 6.3. Implementation Review and Advice - TAMs assigned to Customer will be available to assist with the deployment and configuration of the Licensed Software and provide ongoing advice to the Customer.
 - 6.4. Remote Support – TAMs assigned to the Customer will provide remote support.
 - 6.5. 24-Hour Support – For Severity 1 Error and Severity 2 Error Support Requests, 24-hour support is available via telephone, Support Portal or email.
 - 6.6. Technical Support Contacts – Customer may designate up to a maximum of six (6) Technical Support Contacts with Tanium Premium Support.

6.7. 24-Hour Support Process.

During normal business hours, support for Severity 1 Error and Severity 2 Error Support Requests following the guidelines specified in the relevant Standard Support Services and Premium Support Services sections. During off-business hours, Support is extended through TPS.

- Support Portal – Support Requests made through the Support Portal during off hours are automatically assigned to active TAMs. For appropriate escalation, Support Requests must be flagged as “Severity 1 Error” or “Severity 2 Error” and must be filed through a user account where the domain of the configured email matches a customer entitled to TPS. In the event the Support Request is not engaged or opened in a timely fashion, active TAM managers are automatically notified.
- Phone Support – Support Requests via telephone during off hours are sent to active TAMs. Only Support Requests that are verbally verified as “Severity 1 Error” or “Severity 2 Error” will be engaged and supported during off hours.
- Support Portal-Email Support – Support Requests via email to support@tanium.com cannot be escalated with the appropriate “Severity 1 Error” or “Severity 2 Error” classification. However, once submitted, the Technical Support Contact or reporter of the Support Request may enter the Support Portal and directly update the Support Request to include the “Severity 1 Error” or “Severity 2 Error” classification to engage in the 24-hour support process accordingly.

6.8. Services beyond the scope of TPS may be made available through a separate mutually agreed services contract.