ZSCALER, Inc. & DEPARTMENT OF DEFENSE
SOFTWARE LICENSE AGREEMENT

This document sets forth the Department of the Defense (DoD) Software License Requirements. Licensor's Software License Agreement is attached hereto as Exhibit A and made a material part hereof by this reference. This document, including the Software License Agreement attached as Exhibit A: **LICENSE AGREEMENT FOR ZSCALER SOFTWARE** constitutes the Agreement between Zscaler, Inc (Licensor) and the DoD. The terms and conditions set out below in these Software License Requirements, supplement, to the extent a conflict exists, supersede, and take precedence over the terms and conditions of Exhibit A and Exhibit B. For clarification in this agreement, Publisher and Licensor are synonymous.

With regard to any conflict in license terms between the DOD ESI License Agreement and any GSA negotiated license agreement, the Order of Precedence is in the following order: 1) the DOD ESI License Agreement and 2) any GSA negotiated license agreement.

1. **Enterprise Language:** The parties agree that more than one agency of the DoD may license products under this Agreement, provided that any use of products by any agency must be made pursuant to one or more executed purchase orders or purchase documents submitted by each applicable agency seeking to use the licensed product. The parties agree that, if the licensee is a "DoD Department or Agency" as defined by the 48 Code of Federal Regulations, section 202.101, and to include the Intelligence Community and the US Coast Guard, the terms and conditions of this Agreement apply to any purchase of products made by the DoD, and that the terms and conditions of this Agreement become part of the purchase document without further need for execution. The parties agree the terms of this Agreement supersede and take precedence over the terms included in any purchase order, terms of any shrink-wrap agreement included with the licensed software, terms of any click through agreement included with the licensed software, or any other terms purported to apply to the licensed software, including any Licensor's published policy or program documentation or customer ordering documents. It is also understood by both parties that any Licensor policies, URLs referencing other terms, conditions or policies or educational documents will not be considered part of this license agreement.

2. **Choice of Law/Venue**: This Agreement shall be governed by and construed in accordance with the substantive laws of the US Code of Federal Regulations, Federal Acquisition Regulations and Defense Federal Acquisition Regulations (DFARS), without regard to principles of conflict of laws.

3. **Indemnification**: The DoD does not have the authority to and shall not indemnify any entity. The DoD agrees to pay for any loss, liability or expense, which arises out of or relates to the DoD's acts or omissions with respect to its obligations hereunder, where a final determination of liability on the part of the DoD is established by a court of law or where settlement has been agreed to by the DoD agency and the Department of Justice. This provision shall not be construed to limit the DoD's rights, claims or defenses which arise as a matter of law or pursuant to any other provision of this Agreement. This provision shall not be construed to limit the sovereign immunity of the DoD.

4. Patent, Copyright, Trademark, and Trade Secret Protection:

a) The Licensor shall, at its expense, indemnify and hold the DoD harmless from any suit or proceeding which may be brought by a third party against the DoD, its departments, officers or employees for the alleged infringement of any United States patents, copyrights, or trademarks, or for a misappropriation of a United States trade secret arising out of performance of this Agreement (the "Claim"), including all licensed products provided by the Licensor. For the purposes of this Agreement, "indemnify and hold harmless" shall mean the Licensor's specific, exclusive, and limited obligation to (a) pay any judgments, fines, and penalties finally awarded by a court or competent jurisdiction, governmental/administrative body or any settlements reached pursuant to Claim and (b) reimburse the DoD for its reasonable administrative costs or expenses, including without limitation reasonable attorney's fees, it necessarily incurs in handling the Claim. The DoD agrees to give Licensor prompt notice of any such claim of which it learns. The DoD has the sole authority to represent itself in actions brought against the DoD. Licensor shall not, without the DoD's consent, which shall not be unreasonably withheld, conditioned, or delayed, enter into any settlement agreement which (a) states or implies that the DoD has engaged in any wrongful or improper activity other than the innocent use of the material which is the subject of the Claim, (b) requires the DoD to perform or cease to perform any act or relinquish any right, other than to cease use of the material which is the subject of the Claim, or (c) requires the DoD to make a payment which Licensor is not obligated by this Agreement to pay on behalf of the DoD. It is expressly agreed by the Licensor that, in the event it makes an appropriate request that the DoD to provide support to the Licensor in defending any such Claim, the Licensor shall reimburse the DoD for all necessary expenses (including attorneys' fees, if such are made necessary by the Licensor's request) incurred by the DoD for such support.

b) The Licensor agrees to exercise reasonable due diligence to prevent claims of infringement on the rights of third parties. The Licensor certifies that, in all respects applicable to this Agreement, it has exercised and will continue to exercise due diligence to ensure that all licensed products provided under this Agreement do not infringe on the patents, copyrights, trademarks, trade secrets or other proprietary interests of any kind which may be held by third parties.

c) If, in the Licensor's opinion, the licensed products furnished hereunder are likely to or do become subject to a claim of infringement of a United States patent, copyright, or trademark, or for a misappropriation of trade secret, then without diminishing the Licensor's obligation to satisfy any final award, the Licensor may, at its option and expense, substitute functional equivalents for the alleged infringing licensed products, or, at the Licensor's option and expense, obtain the rights for the DoD to continue the use of such licensed products.

d) If any of the licensed products provided by the Licensor are in such suit or proceeding held to constitute infringement and the use thereof is enjoined, the Licensor shall, at its own expense and at its option, either procure the right to continue use of such infringing products, replace them with non-infringing items, or modify them so that they are no longer infringing.

e) If use of the licensed products is enjoined and the Licensor is unable to do any of the preceding set forth in item (e) above, the Licensor agrees to, upon return of the licensed products, refund to the DoD the license fee paid for the infringing licensed products,

pro-rated over a sixty (60) month period from the date of delivery plus any unused prepaid maintenance fees.

f) The obligations of the Licensor under this Section continue without time limit and survive the termination of this Agreement.

g) Notwithstanding the above, the Licensor shall have no obligation under this Section 4 for:

(1) Modification of any licensed products provided by the DoD or a third party acting under the direction of the DoD;
(2) any material provided by the DoD to the Licensor and incorporated into, or used to prepare the product;
(3) use of the Software after Licensor recommends discontinuation because of possible or actual infringement and has provided one of the remedy's under (e) or (f) above;
(4) use of the licensed products in other than its specified operating environment;
(5) the combination, operation, or use of the licensed products with other products, services, or deliverables not provided by the Licensor as a system or the combination, operation, or use of the product, service, or deliverable, with any products, data, or apparatus that the Licensor did not provide;
(6) infringement of a non-Licensor product alone;
(7) the DoD's use of the licensed product beyond the scope contemplated by the Agreement; or
(8) the DoD's failure to use corrections or enhancements made available to the DoD by the Licensor at no charge.

h) The obligation to indemnify the DoD, under the terms of this Section, shall be the Licensor's sole and exclusive obligation for the infringement or misappropriation of intellectual property.

5. Virus, Malicious, Mischievous or Destructive Programming:

Licensor warrants that the licensed product as delivered by Licensor does not contain any viruses, worms, Trojan Horses, or other malicious or destructive code to allow unauthorized intrusion upon, disabling of, or erasure of the licensed products (each a "Virus"). However, the licensed products may contain a key limiting use to the scope and quantity of the license(s) granted, and license keys issued by Licensor for temporary use are time-sensitive.

The DoD's exclusive remedy, and Licensor's sole obligation, for any breach of the foregoing warranty shall be for Licensor to (a) replace the licensed products with a copy that does not contain Virus, and (b) if the DoD, has suffered an interruption in the availability of its computer system caused by Virus contained in the licensed product, reimburse the DoD for the actual reasonable cost to remove the Virus and restore the DoD's most recent back up copy of data provided that:

- the licensed products have been installed and used by the DoD in accordance with the Documentation;
- the licensed products have not been modified by any party other than Licensor;
- The DoD has installed and tested, in a test environment which is a mirror image of the production environment, all new releases of the licensed products and has used a

generally accepted antivirus software to screen the licensed products prior to installation in its production environment.

Under no circumstances shall Licensor be liable for damages to the DoD for loss of the DoD's data arising from the failure of the licensed products to conform to the warranty stated above.

6. **Delivery**: Publisher's delivery of the Products to DoD shall be by electronic download or as otherwise specified in Delivery Orders, FOB Destination.

7. **Program Warranty:** Licensor warrants for one (1) year from the date on which the Software specified in a Delivery Order Document is first used in production by Licensee that the Software will perform in all material respects the functions described in the Documentation when operated in accordance with the Documentation on a Supported Platform.

a) Noncomplying Product: In the event DOD determines that the Product is a Noncomplying Product, during the one-year period specified above, DOD will notify Licensor and Licensor will have ten (10) business days thereafter to begin remedying the nonconformance. If Licensor is unable to remedy such nonconformance within a reasonable time, Publisher agrees that DOD may return the Product and Publisher shall promptly refund any moneys paid for such Noncomplying Product.

b) Publisher Remedies: Licensee must report to Licensor in writing any breach of the warranties during the relevant warranty period. Licensor shall use commercially reasonable efforts to correct or provide a workaround for reproducible Software errors that cause a breach of this warranty or, if Publisher is unable to make the Software operate as warranted within a reasonable time considering the severity of the error and its impact on Licensee, Licensee shall be entitled to return the Software to Publisher and recover the fees paid by Licensee to Licensor for the license to the non-conforming Software.

c) Discontinuance of Support: Licensor will give DOD one hundred eighty (180) days advance written notice before Licensor or its authorized Resellers discontinue support of any Product.

8. **Limitation of Liability:** The Licensor's liability to the DoD under this Agreement shall be limited to the greater of (a) the value of any purchase order issued; or (b) $250,000. This limitation does not apply to damages for:

a) Bodily injury;

b) death;

c) intentional injury;

d) damage to real property or tangible personal property for which the Licensor is legally liable; or

e) licensor's indemnity of the DoD for patent, copyright, trade secret, or trademark protection.

In no event will the Licensor be liable for consequential, indirect, or incidental damages unless otherwise specified in the Agreement. Licensor will not be liable for damages due to lost records or data.

9. **Termination:** Licensor may not terminate this Agreement for non-payment from reseller.

a) The DoD may terminate this Agreement without cause by giving Licensor thirty (30) calendar day's prior written notice (Notice of Termination) whenever the DoD shall determine that such termination is in the best interest of the DoD (Termination for Convenience).

10. **Background Checks:** This term will be applicable if required by local command policy and prior to the commencement of on-site professional services by Licensee employee who is proposed for assignment to perform services at your site or via remote access in or from the United States and only if the Licensor employee does NOT possess a Department of Defense ("DoD") performed National Agency Check with Inquiries ("NACI") or a DoD security clearance of SECRET or higher, Licensor, or its agent, will complete a criminal background check, or confirm that such a background check has been completed, on such employee. The criminal background check shall consist of a check of public records, to the extent available at the county level, where the employee has established credit in the United States as determined by a social security trace. The check is for felony and misdemeanor convictions within the seven (7) years preceding the date of the check. To the extent not prohibited by law, Licensor shall not assign any employee to perform such services for whom a criminal background check, at the time of its completion, uncovered conviction of a felony or conviction of a misdemeanor. In the event that DoD requires on-site support outside the United States, Licensor will make reasonable efforts to work with DoD in order to address its security concerns.

11. **Confidentiality:** Each party shall treat the other party's confidential information in the same manner as its own confidential information. The parties must identify in writing what is considered confidential information.

12. **Publicity/Advertisement:** The Licensor must obtain DoD approval prior to mentioning the DoD or a DoD agency in an advertisement, endorsement, or any other type of publicity. This includes the use of any trademark or logo.

13. **Territory:** Any Department of Defense (DoD) civilian or military installation or work site in the Continental United States (CONUS) or outside the Continental United States (OCONUS), regardless of where software was acquired.

14. **Backup for User Documentation:** Licensor grants DoD to make a reasonable number of copies for DoD's internal business purposes. DoD is responsible for ensuring that all copyright notices, trademarks and other restrictive legends are maintained on such copies. DoD is also responsible for reporting to Licensor if DoD learns of the misuse or mishandling of User Documentation provided under the contract to DoD personnel, contractors or Government employees.

15. **Transfers and Assignments:** Licensee is authorized to transfer or assign the Software or Licensee's rights in the Software, and such authorization would include sublicensing, assignment or transfer among or between DOD agencies, outsourcers, contractors or Licensee, (in support of the DoD mission) or authorize any portion of the Software to be copied onto or accessed from

another individual's or entity's computer, except as may be explicitly provided in this Agreement.

a) Transfers: within the DoD and in the event that an Authorized User has a valid license under this Agreement and that Authorized User is reorganized or restructured such that its responsibilities and operations are transferred to another Authorized User agency, the agency shall have the right to assign the affected program licenses to a successor.

b) Assignments: Licensee is authorized to assign ownership of licenses when Licensee intends to designate an outsourcer, contractor (in support of the DoD mission), DoD Agency or other, as determined, to assume ownership of the license along Licensor written concurrence. All activities by such Assignee shall be subject to the Licensor's Software License Agreement as modified herein. Any deviation shall be subject to a separate agreement between Licensor and such Assignee, specifying conditions for the management and maintenance of the Software, which agreement shall not impose any more restrictive covenants than are provided to Licensee in the Licensor's Software License Agreement, as modified herein. The assignment of licenses will be without cost to any party involved in the assignment of licenses. It is further understood that Assignee will be responsible for all future software maintenance costs of any assigned licenses.

c) Licensee shall complete any required Licensor documentation required to facilitate the transfer or assignment of license and continuation of support for the transferee or assignee. All license transfers or assignments will be without cost to the Licensee, provided that the licenses are current with regard to Licensor annual maintenance, and the Licensee does not re-market or otherwise intend to resell the licenses to be transferred.

It is inherently understood Licensee and the successor transferee or assignee agree to be bound to this Software License Agreement.

16. **Functionality Replacement and Extended Support.** If Licensor removes any or all of the material features or functionality to which DoD is being granted access hereunder from the Software without introducing replacement or substitute functionality such that the Software no longer performs its core operations as when initially released and Licensor subsequently offers those features or functionality in a new or different product (whether directly or indirectly or through a third party), then upon request by DoD the License will be deemed to include (i) the portion of those new or different products that contain the original features, or (ii) if those features cannot be separated out, the entire product, or (iii) another reasonable substitute as determined by DoD, will be provided to DoD under the terms of this Agreement at no additional charge to DoD. If the Software provided to DoD is updated as replacement, renamed or re-branded applications or products for any reason, then DoD shall be entitled to the same license to use the replacement, renamed or re-branded product as DoD had with respect to the Software that DoD had immediately prior to such replacement, renaming or re-branding, at no additional charge to DoD so long as (a) the new applications or products are functionally equivalent, at a minimum, and the same conditions of use apply as to the Software and (b) Licensor ceased or has advised DoD that Licensor intends to cease supporting the initial Software while DoD was still purchasing Maintenance and Support for such Software. If the form, fit, or functionality contained in any licensed products acquired hereunder is substantially reduced or if the product is replaced, and/or the Licensor provides the same or substantially similar functionality as a separate or renamed product, then the DoD is entitled to license such

software without any additional license requirements or additional maintenance fees. However, throughout the term of this agreement, the Licensor will provide support services for at least a period of one year after the publisher declares an “end-of life” to the software.

17. **Rights of Survivorship of the Agreement.** This Agreement shall survive unto Licensor, its Successor, rights and assigns. The software and agreement terms and conditions as covered under this agreement shall survive this agreement, in perpetuity, notwithstanding the acquisition or merger of Licensor by or with another entity. Any software name changes, re-packing or merger of similar products that carry forward the same or similar function of the software shall be supported with updates, upgrades and new releases under this agreement at no additional cost.

18. **Audit Responsibilities:** This Section sets out the sole audit right under this agreement.

a) DOD will maintain, and promptly provide to Publisher upon its request, but no more frequently than once in a twelve (12) month period, accurate records regarding use of the software by or for DOD. If DOD becomes aware of any unlicensed use of the software, DOD will notify Contractor and Publisher within 15 calendar days, providing reasonable details. The limit of DOD’s responsibility for any unlicensed use of the software by any Users employed by or performing services for DOD is the requirement that DOD purchase additional licenses for the product through Contractor without any penalty or promptly stop using the software and delete any unauthorized copies.

b) DOD will perform a self-audit, upon the request of the Publisher, but no more frequently than once in a twelve (12) month period, and report any change in software program use (hereinafter "True up number"). The Publisher may make such a request of an individual agency of the DOD and will notify the DOD in the event of such a request. If the Publisher requests a self-audit from a DOD agency, a will not make another request of that agency for at least 12 months. Any self–audit, which shall be certified by a DOD employee authorized to do so, shall include, but not be limited to, the number of copies of the programs installed and/or in use by the DOD, the designated system(s) on which the programs are installed and/or running, and if applicable, the number of users of the programs. DOD shall notify Contractor and Publisher of the True up number no later than 90 calendar days after completion of the self-audit. If the self-audit finds that DOD is under-licensed, DOD will either 1) cease use of the quantity in excess of the DoD licensed quantity and work with the Publisher and Contractor in good faith to account for such excess use or 2) make an additional purchase of the product through Contractor, wherein such pricing is in accordance with any current ESI pricing. The procurement of additional licenses, if required, will transpire no later than 60 days after DOD’s aforementioned notification. There will be no penalties involved in the procurement of the additional licenses.

19. **US Government Configuration Baseline:** The Publisher shall comply with the requirements of the US Government Configuration Baseline (USGCB) as specified at http://usgcb.nist.gov to ensure applications are fully functional and operate correctly as intended. The standard

installation, operation, maintenance, updates, and/or patching of software shall not alter the configuration settings from the approved USGCB configuration.

a) Applications designed for normal end users shall run in the standard user context without elevated system administration privileges.

b) Publisher shall also certify that any subsequent product/module for the life of the agreement is/are fully functional and operate correctly as intended on systems using USGCB prior to any product/module revisions being made available for Government use. Further, the Publisher shall maintain operability with USGCB standards as they evolve.

c) DoD buyers may require compliance with additional baseline configuration requirements.

20. **Net-Centricity:** The Department of Defense is transforming the way information is managed to accelerate decision-making, improve joint war fighting and create intelligence advantages. To reach this "Net-Centric" state, DoD must exploit advancing technologies that move the enterprise from an application centric to a data-centric paradigm. DoD ESI Contractor partners are encouraged to use the OSD NII DCIO Net-Centric Checklist, located at: http://DoDcio.defense.gov/Portals/0/Documents/NetCentric_Checklist_v2-1-3_.pdf to provide information on the Net-Centric posture of their IT products and services. Software products offered to and purchased by the DoD and Intelligence Community shall be licensed by the software publisher without restriction to information sharing among the DoD and IC in performing their missions.

21. **Section 508 of the Rehabilitation Act Compliance:** All products and services provided under this agreement must meet the applicable accessibility standards at 36 CFR Part 1194 as required by FAR Case 1999-607. General information regarding the Section 508 Act can be found at the web site **www.section508.gov**. The Publisher's Section 508 compliancy information must be readily available at the Publisher's website.

22. **Orders**: Any term or condition in an order to be placed that will expressly supersede a term or condition of this agreement must be approved in writing via email by the designated DOD PCO for this ESI BPA, a copy of which shall be attached to such order. Any term or condition in an order that has been placed that expressly supersedes a term or condition of this agreement is ineffective unless subsequently agreed to in writing via an email by the designated DOD PCO for this agreement attached to the order with an Administrative Modification.

23. **Temporary Use of Software During Times of Conflict and/or Natural Disaster:** As part of Temporary Expeditionary Deployments (TEDs), during the term of this Agreement, DoD may temporarily deploy and install or use on, or access from qualified desktops or servers, a reasonable number of Licensor software products in addition to those previously licensed pursuant to this Agreement at no additional cost ("TED Licenses"). TEDs are limited to deployments away from in-garrison locations (any military post or government office where troops or civilian government personnel are at a permanent location), war games, exercises, real world contingencies, and emergency situations similar to the initiated domestic terrorist attacks of 19 April 1995 (i.e., the Timothy McVeigh Terry Nichols perpetrated 'Oklahoma City Bombing' involving the Alfred P. Murrah Federal Building'); the initiated international terrorist attacks, perpetrated on American soil, on 9/11/2001; and finally, the national inclement weather natural

disasters perpetrated by Hurricane(s) Katrina and Rita during the August and September months of Calendar Year 2005, where temporary duty stations (TED's) and continuity of operations (COOP) alternative venues or sites were needed, for a substantial period of time, due to the destruction of federal or U.S. Government facilities, infrastructure, offices and work spaces. For licenses connected to a DoD network server, on a semi-annual basis, Licensor shall provide an additional temporary license pool equal to the quantity of network versions purchased, which may be accessed during a TED event. For computers not connected to a DoD network server, The Licensor shall provide, on a quarterly basis, a pre-activated temporary (ninety) 90 day single seat network license which can be copied for use on any number of computers. After the TED, or six (6) calendar months, whichever is shorter ("Temporary Use Period"), unless a different time period is agreed to in writing by the Licensor, the DoD will provide a written certification that the TED Licenses have either been removed from service, or payment has been made under this Agreement to purchase additional perpetual licenses equal to the number of TED Licenses not removed from service. DoD agrees to use the TED Licenses in accordance with the terms contained in this Agreement and the applicable version of the Software License Agreement.

24. **Software Asset Management & ISO-IEC 19770:2015 Series:** The Licensor shall comply with ISO 19770:2009 Series Standards for all installable or distributable software products governed by this agreement. If any part of the ISO-IEC 19770:2009 standard is not approved by the ISO International Standards Committee at the time of contract execution, the Licensor shall make commercially reasonable efforts to comply with the standard upon approval by ISO.

25. **Authorized Users:** An Authorized User includes, but is not limited to DoD government employees (military, civilian, reserves, national guard), contractors, non-human devices, detailed individuals that are included and accounted for in the DoD in support of DoD missions and those individuals or non-human devices who have access to, use or are tracked by Licensor's programs.

26. **Data Sharing/Transfer:** Data transfer is: Batch Processing, Multiplexing and Flat File Environments**.** This license provides the DoD all rights concerning data sharing, data access, data transfer and data manipulation for authorized users associated with the DoD missions. The parties agree that as long as one party has a valid license, the transfer of data or the sharing of data is unrestricted. This license also provides for the ability of authorized users to access data from any US-owned datacenter with data owner granted permission and any appropriately licensed non-US owned datacenters.

27. **Data Recovery and Virtualization:**

a) Data Recovery methods include four types of environments: Backup, Failover, Standby, and Remote Mirroring. All types of data recovery servers will not require additional licenses as long as the number of data recovery servers equals the number of primary servers.

b) For virtualized servers, both parties agree that only the primary server must be licensed. It is understood that advanced virtualization functions (soft partitioning including live migration) are incorporated herein by expressed written reference and by this license agreement. Thus, no additional licenses will be required to accommodate future data recovery and virtualization commercially accepted methods or practices.

28. **Shelf Ware:** It is recognized, that in some instances, DoD may have excess Licensor software licenses that are not currently being used or needed by DoD. These licenses are commonly called Shelf Ware. At DoD's sole discretion, the DoD may transfer any these licenses as described in Section 13 of this document or DoD may terminate the license grant, as it deems necessary. The termination or transfer of licenses may result in a reduced license count and will be deducted from the next annual maintenance payment, in a prorated method. In no event, when a subset of licenses is terminated or if the level of support is reduced, support for the remaining licenses will not change in services or result in any type of fee recalculation.

29. **Third Party Software:** Notwithstanding anything to the contrary, the Government shall not be subject to third party terms and conditions that are contrary to Federal law.

30. **Additional Functionality:** Any additional functionality provided on Licensor Products shall not impose additional license terms and/or fees on the Government.

31. **License copies for training, evaluation, research and development (including Research Labs) and back-up.**
During the term of this agreement (including any renewal term), an agency (as defined locally) may (i) run up to 50 complimentary copies of any additional product in a dedicated training facility on their premises; (ii) run up to 10 complimentary copies of any product that the Licensor make available to license as an additional product for a 120-day evaluation period; (iii) run complimentary copies of enterprise products and additional products on 5% (five percent) of Authorized Users desktops or processors for research and development purposes; and (iv) make and retain one complimentary copy of any licensed product for back-up or archival purposes for each of their distinct geographic locations.

32. **Finality of Terms:** This agreement and any attachments to this agreement will be the sole document governing the granting of licenses between DoD and Licensor. There shall be no changes to this license agreement unless agreed to by both parties in writing.

33. **Software Titles Incorporated by this License Agreement:** All software titles sold by Licensor will be incorporated into this agreement and any and all other software or software title which may be added through Licensor's in-house development or corporate acquisition. It is the DoD's anticipation this agreement will cover any and all software companies Licensor may purchase in the future.

34. **Use of this Agreement by the Federal Government:** The parties agree that, if a federal agency implements another contracting vehicle for Licensor's products, and if the licensee is an agency of the Federal Government, then, the terms and conditions of this Agreement can apply to any purchase of software products by that agency, and that the terms and conditions of this Agreement become part of the purchase document without need for further execution. Additionally, should a Federal Government Agency desire to use this agreement, it will be without remuneration to any party.

35. **DoD Enterprise License:** The parties agree, that in the spirit of cooperation, there may be an instance, during the course of this agreement, where DoD desires an Enterprise Agreement with

the publisher. The parties agree that all will work towards implementation of a DoD Enterprise Agreements, that all terms contained in this agreement may become part of the Enterprise Agreement and the DoD and Publisher will work cooperatively on issues that may hamper such an agreement (legacy licenses and the accompanying support, Right-sizing the enterprise and so on).

36. **Virtualization**: Publisher recognizes Virtualization through partitioning. Should DOD desire to implement virtualization for Publisher's software programs licensed pursuant to this agreement, partitioning shall be defined and executed as follows:

a) Soft Partition (also called Software Partition): Soft Partition means to partition the operating system using system resource managers that limit the number of CPUs running Publisher Programs. Soft Partitioning creates areas within the same operating system where CPU resources are specifically allocated to respective applications.

b) Hard Partition (also called Hardware Partition): Hard Partition means to partition the server by physically separating the processors of a single server into distinct smaller servers, each of which acts as a physically independent, self-contained server, typically with its own dedicated CPUs, operating system, separate boot area, memory, input/output subsystem, and network resources.

c) Implementation: If DOD partitions through either Soft Partitioning or Hard Partitioning then DOD is only required to license programs for the partitions on which DOD will be installing and/or running the software.

37. **Deployment and Use of Perpetual, Subscription or Term Licenses in a Cloud Computing Environment:** Any licenses acquired under this agreement will have a perpetual Cloud Grant. DOD can deploy and use any quantity of its perpetual or term Publisher licenses in any cloud computing environment (private or public) and with any third-party cloud service provider. The use of DOD licenses is limited to the mission and business of the DOD. The DOD retains all ownership responsibilities of the licenses. The DOD will maintain records of license deployment.

DOD can transfer its perpetual and term Publisher licenses between on-premises data centers and third party cloud service providers or to other third party cloud service providers without charge, limitation, or change in functionality. The DOD shall have the right to determine the version level for transfers.

For licensed programs used in Cloud Environments and for which software support or maintenance is current, DOD may upgrade or downgrade the version level without charge.

When counting Publisher processor license requirements in cloud computing environments, the Publisher Processor Core Factor Table is applicable. Deviations are not allowed to the Core Factor Table based on the cloud service provider used.

38. **Ineffective Provisions**: If any document incorporated by reference into this agreement, and/or referenced therein, contains a provision (a) allowing for the automatic termination of your license rights or technical support services; (b) allowing for the automatic renewal of services and/or fees; (c) requiring the governing law to be anything other than Federal law, and/or (d) that otherwise violates applicable Federal law, then, such terms shall not apply and shall have

no effect. If any document incorporated by reference into this agreement, including additional terms and conditions included and/or referenced therein, contains an indemnification provision, such provision shall not apply as to the United States indemnifying the Publisher or any other party.

39. **Previously Acquired Licenses:** All Publisher licenses, of any versions or releases, that were acquired and/or assigned to any DOD agency prior to the effective date of this Software License Agreement shall be converted and replaced with licenses subject to this Software License Agreement.

40. **Data Ownership in a Cloud Environment:** When the term of services end, Licensee generally no longer has rights to access or use the services, including the associated Publisher programs and services environments. For a period of 180 days after the end of the services, Publisher will make available Licensee's content and applications then in the services environment for the purpose of retrieval by Licensee. At the end of the 180-day period, and except as may be required by law, regulation, or federal, DoD, or agency policy or directives, Publisher may delete or otherwise render inaccessible any of content and applications that remain in the services environment.

41. **Professional Services:** Publisher may subcontract all or part of the Services to be performed, to a qualified third party only with the explicit written acceptance of the Licensor. Any subcontracting of services must be noted on the Order Form and acknowledged in the customer's delivery order.

42. **Parallel Operations:** For no additional cost, the DOD agency shall have the ability to run Publisher's software on parallel systems for up to 180 days, or a longer mutually agreed upon timeframe, for system migrations, testing, and/or hardware refreshes. The DOD will ensure the duplicate Instances required during the Parallel Operation period are uninstalled and deleted once the parallel operation is no longer required. The DOD will only request the ability to run the same number of license Instances that are currently owned by the DOD. If additional licenses are required than the quantity owned by the DOD agency, the DOD will acquire the necessary licenses.