

**ServiceNow DEPARTMENT OF DEFENSE  
DOD ESI License Agreement**

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This document sets forth the Department of the Defense (DoD) ESI Software License Agreement (the "Agreement"). Licensor's Subscription Service Agreement is attached hereto as Exhibit A and made a material part hereof by this reference. This document, including the GSA Approved Subscription Service Agreement attached as Exhibit A: Carahsoft Rider to Manufacturer End User License Agreement (collectively the "GSA EULA") constitutes the terms that govern the DoD end customer's use of ServiceNow, Inc.'s (Licensor or Publisher) products and services. For clarification in this agreement, Publisher and Licensor are synonymous. Customer or Licensee means the U.S. Federal entity indicated on a Purchase Order.

In accordance with FAR 52.212-4 and the GSA Deviation thereto, this document relates to paragraph (4) in the Order of Precedence as an addendum to the contract. With regards to the documents within paragraph (4), any inconsistencies between the Exhibits listed shall be resolved with the following order of precedence: 1) the DOD ESI License Agreement, 2) the GSA EULA attached as Exhibit A, and 3) any additional terms attached or incorporated into a Purchase Order

Publisher's standard Software as a Service offering is hosted on Publisher's cloud platform as detailed a Customer order (referred to herein as "ServiceNow Hosted"). Customers may also request, subject to Publisher's approval and differing fees, software instances that are not hosted by Publisher, such as instances hosted by Customers or other third parties (referred to herein as "Self-Hosted" or "On-Prem"). Self-Hosted instances shall be subject to the Self-Hosted Software Guide incorporated into the GSA EULA, except as modified herein.

- 1. Enterprise Language:** The parties agree that more than one agency of the DoD may purchase usage rights to Licensor's services or products ("Software" or "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 ("Customer" or "Licensee") seeking to use the Products or Services. The parties agree that, if the Customer 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 a Customer under this Agreement, and that the terms and conditions of this Agreement become part of the mutually executed 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. 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. The parties agree that the Licensee shall be required to mutually execute any additional terms applicable for products or services not addressed by this Agreement as a precondition to using such other products or services.
- 2. Choice of Law/Venue:** This Agreement shall be governed by and construed in accordance with the substantive laws of the US Code; US Code of Federal Regulations, Federal Acquisition Regulations and Defense Federal Acquisition Regulations (DFARS), without regard to principles of conflict of laws.

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- 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.

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- 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:** To ServiceNow's knowledge, the Subscription Service contains no Malicious Code, where "**Malicious Code**" means software viruses, time bombs, Trojan horses, worms, time locks, clocks, trap door devices or any other similar harmful, malicious or hidden procedures, routines or mechanisms. ServiceNow will test the Subscription Service in accordance with good industry practice for the presence of Malicious Code prior to providing the Subscription Service for general availability to its customers. In the event Subscription Service is found to contain any Malicious Code that materially and adversely affects the performance of the Subscription Service or cause a material security risk to Customer Data, ServiceNow shall use all commercially reasonable efforts to remove the Malicious Code or to advise and assist Customer in the removal of the Malicious Code. 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

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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. The foregoing warranty does not include, and ServiceNow shall not be liable for, any Customer Data or any modifications made to the Subscription Service by any person other than ServiceNow or a person acting at ServiceNow's direction. Customer shall be responsible for any security vulnerabilities, and the consequences of such vulnerabilities, arising out of the Customer Data, including any viruses, Trojan horses, worms or other programming routines contained in Customer Data that could limit or harm the functionality of the Subscription Service or that could damage, intercept or cause the loss or unauthorized disclosure of Customer Data.

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

**Program Warranty:** ServiceNow's Product and Service warranties are described in the ServiceNow Subscription Service Agreement attached to the underlying GSA EULA, with the exception that Section 5.3, Customer Warranty, is hereby replaced with the following:

*The Customer authorizes and consents to all use in performing this contract or any subcontract at any tier, (A) Customer Data, (B) Customer Technology or (C) a modification to the Subscription Service made to Customer's specifications or otherwise made by or on behalf of Customer by any person other than ServiceNow or a person acting at ServiceNow's direction (but only if the infringement or misappropriation would have been avoided by use of the unmodified Subscription Service). Customer shall be responsible for any Claim that the aforementioned categories violates, infringes, or misappropriates the rights of a third party.*

7. **Limitation of Liability:** ServiceNow's limitation of liability are described in the attached GSA EULA. The Customer, as described in paragraph 8.1 of the GSA EULA, is the DOD.

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

9. **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 a Customer site 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. When such background check requirements are applicable, they shall be indicated in the relevant delivery order or Order Form. If applicable, 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

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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.

10. **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.
11. **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.
12. **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.
13. **Reserved**
14. **Transfers and Assignments:**

Unless otherwise agreed to by Publisher, transfers of Subscription Service entitlements within the DOD shall be permitted only when (1) the existing Customer has a valid and current order; (2) the Customer's usage rights are fully paid; and (3) the Customer is reorganized such that the Customer's mission responsibilities, operations, and staff are transferred to other agencies. Publisher will work in good faith with Customers to accommodate any other requests to transfer or assign usage rights among DOD agencies.

The existing Customer and recipient(s) of usage rights (each a "Transferee") shall execute a mutual Consent to Transfer Amendment to the applicable order. The Consent to Transfer Agreement shall (a) identify the Transferee; (b) identify the Subscription Services being transferred and the remainder of the Subscription Term for the transferred Subscription Services, the duration of which may not be reduced; and (c) document whether any Customer Data will be transferred, copied, or deleted upon the transfer of the Subscription Services; (d) transfer ServiceNow's obligations to support the Software to the Transferee; and (e) agreement from the Transferee will abide by the terms and conditions of the License Requirements and that the Transferee replaces the Customer as the party thereto with respect to the transferred Subscription Services.

15. **Functionality Replacement and Extended Support.** If during the Subscription Term Licensor removes any or all of the material features or functionality to which Customer is being granted access under a then-applicable order hereunder from the Software without introducing replacement or substitute functionality such that the Software no longer performs its core operations as when initially ordered under the then applicable order and during the Subscription Term under such order Licensor subsequently offers those identical features or functionality in a new or different product (whether directly or indirectly or through a third party), then upon request by Customer the grant of use rights will be deemed to include (i) the

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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 will be provided to DoD under the terms of this Agreement at no additional charge to Customer for the remainder of the then-current Subscription Term. If during the Subscription Term, the Software provided to Customer under a then-applicable order is updated as replacement, renamed or re-branded applications or products for any reason such that it is no longer made available to Customer under the then-current order, then Customer shall be entitled to the same rights to use the replacement, renamed or re-branded product as Customer had with respect to the Software that Customer had immediately prior to such replacement, renaming or re-branding for the remainder of the then-current Subscription Term, at no additional charge to Customer 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 Customer that Licensor intends to cease supporting the initial Software. If during the Subscription Term, the functionality contained in any Software for which use rights were acquired pursuant to an order 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 during the Subscription Term, then the Customer is entitled to use rights to such software for the remainder of the Subscription Term without any additional fees; provided however, throughout the Subscription Term, the Licensor will provide support services in accordance with the Upgrades and Updates Exhibit to the GSA EULA

**16. 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.

**17. Audit Responsibilities:**

For On-Prem Software:

- a) Customers shall 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 user count (hereinafter "True up number"). If the Publisher requests a self-audit from a Customer, it will not make another request of that agency for at least 12 months. Any self-audit, which shall be certified by a Customer 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 Customer, the designated system(s) on which the programs are installed and/or running, and if applicable, the number of users of the programs. Customer shall notify Contractor and Publisher of the True up number no later than 30 calendar days after completion of the self-audit. If the self-audit finds that Customer has exceeded its permitted use of the Software, Customer shall either 1) immediately cease use of the quantity in excess of the Customer purchased 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 usage rights, if required, will transpire no later than 60 days after Customer's aforementioned notification. There will be no penalties involved in the procurement of the additional usage rights.
- b) For ServiceNow Hosted: See Audit rights specified in the GSA EULA, paragraph 3.2.

- 18. US Government Configuration Baseline:** The following requirements only apply to instances hosted by ServiceNow. 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) DoD Customer may request compliance with additional baseline configuration requirements.
- 19. 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](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.
- 20. Section 508 of the Rehabilitation Act Compliance:** Licensor will make available to DoD Voluntary Product Accessibility Templates (VPATs) for ServiceNow products to assist DoD in meeting its obligations under Section 508. VPATs for ServiceNow products are available on ServiceNow's products by product release.
- 21. 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 Customer 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 Customer PCO for this agreement attached to the order with an Administrative Modification.
- 22. 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, Customer may temporarily deploy and use additional users of the Software ordered under then then-applicable order at no additional cost ("TED Licenses"). TEDs are limited to 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.

TED Licenses shall be limited to additional users or applications for Software or Products that Customer has purchased under the then applicable order. After the TED, or six (6) calendar months, whichever is shorter ("Temporary Use Period"), but in no event for a term longer than

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the license end date on the then applicable order, 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 subscription usage rights equal to the number of TED Licenses not removed from service per a separate mutually agreed order. DoD agrees to use the TED Licenses in accordance with the terms contained in this Agreement and the applicable version of the GSA EULA.

**23. Reserved**

**24. Authorized Users:** The Licensor Product and Use Definitions defines the User types and respective function and use rights. Customer may allow a User to include, but is not limited to, Customer 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. Each of the aforementioned types of Users shall count towards the Customer's overall Software usage if the User satisfies the respective function and use rights as defined in the Product and Use Definitions.

**25. 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 consistent with the User types specified in the applicable Product and Use Definitions applicable. Customer retains rights, title, and interest in and to its intellectual property rights in Customer Data and Customer Technology.

**26. Reserved**

**27. Reserved**

**28. Third Party Software:** Usage of the Software or Products shall not subject the Customer to third party terms and conditions that are contrary to Federal law. Customers' acceptance and use of third-party Applications on ServiceNow's Application Store will be separately negotiated with the respective third-party vendor.

**29. Additional Functionality:** Reserved.

**30. License copies for training, evaluation, research and development (including Research Labs) and back-up.**

Customer may use developer instances by registering with ServiceNow Developers platform at <https://developer.servicenow.com>. This Agreement takes precedence over any inconsistencies with the ServiceNow Developers platform Terms of Service.

**31. Finality of Terms:** There shall be no changes to this license agreement unless agreed to by both parties in writing.

**32. Software Titles Incorporated by this License Agreement:** For future software Products and Services offered by the Publisher, including those added through Publisher's in-house

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development or corporate acquisitions, Publisher will use commercially reasonable efforts and good faith negotiations to incorporate such new Products and Services into this Agreement.

### 33. Reserved

**34. 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).

**35. Virtualization:** The following requirements only apply to On-Prem instances. For customer-hosted instances, ServiceNow does not prohibit or limit a customer's ability to partition and does not require addition user licenses in partitioning scenarios.

**36.** 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.

### 37. Deployment and Use of Subscription or Term Licenses in a Cloud Computing Environment:

For Customers that purchase Self-Hosted Products or Services, the Customer can deploy and use any quantity of its term Publisher software as purchased in any cloud computing environment (private or public) and with any third-party cloud service provider, as determined by the Customer. The Customer's use of the Software or Products is limited to the mission and business of the DOD. The DOD retains all ownership responsibilities of the Product and Service usage. The DOD will maintain records of usage deployment.

For Software instances that are purchased for On-Prem hosting, DOD may transfer its term Publisher licenses between Customer's data centers and third-party cloud service providers or to other third-party cloud service providers without charge, limitation, or change in functionality.

Customer may upgrade or downgrade the currently available version level without charge, per ServiceNow Upgrade Policy. ServiceNow does not guarantee all functionality on downgrades, and may not provide patches or hot fixes for downgrades. ServiceNow does not provide downgrades for family release upgrades.

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- 38. Previously Acquired Licenses:** The terms of this Agreement shall only apply to purchases made under this Agreement after the effective date of this Agreement.
- 39. Data Ownership in a Cloud Environment:** For ServiceNow-hosted services, ServiceNow's data ownership provisions are described in the ServiceNow Subscription Service Agreement attached to the underlying GSA EULA.
- 40. Subcontractors:** Publisher may subcontract all or part of the Professional Services to be performed, to a qualified third party only with the explicit written acceptance of the Licensee. Any subcontracting of Professional Services must be noted on the Order Form and acknowledged in the customer's delivery order.