

## **AMENDMENT TO NEXT GENERATION 911 SYSTEM AGREEMENT BETWEEN LARAMIE COUNTY, WYOMING & CONVERGE ONE, INC.**

THIS Amendment is made and entered into by and between Laramie County, Wyoming, 415 W. 18<sup>th</sup> Steet, Cheyenne, Wyoming 82001, ("COUNTY") on behalf of the Laramie County Combined Communications Center, and ConvergeOne, Inc., 10900 Nesbitt Avenue South, Bloomington, Minnesota 55437 ("CONTRACTOR"). The Parties agree as follows:

### **I. PURPOSE**

The purpose of this Addendum is to modify Quote SO-000963325 dated July 3, 2025, and CONTRACTOR'S "Online Terms and Conditions – Public Sector", collectively referred to herein as "Agreement" and attached and incorporated herein, as "**Attachment A**". The Agreement is for CONTRACTOR to provide 911 monitoring services as described in the Agreement, for purposes of clarity, CONTRACTOR is referred to as "C1" and "Seller" in the Agreement, and COUNTY is referred to as "Laramie County Combined Communications Center" and "Customer" in the Agreement.

### **II. TERM**

This Amendment shall commence on the date last executed by the Parties' duly authorized representatives and shall remain in full force and effect for a period of one (1) year, subject to the terms and conditions of this Amendment and the above referenced documents, unless terminated as provided herein.

### **III. RESPONSIBILITIES OF COUNTY**

A. COUNTY agrees to pay CONTRACTOR over four (4) quarters, nine thousand two hundred ninety-three dollars and seventy-nine cents (\$9,293.79) per quarter, for a total of thirty-seven thousand one hundred seventy-five dollars and sixteen cents (\$37,175.16) for the term of twelve (12) months per the terms of the Agreement.

### **IV. RESPONSIBILITIES OF CONTRACTOR**

A. CONTRACTOR shall provide COUNTY with "VTWatch Monitoring Services for 911", for 12-months at the Laramie County Combined Communications Center located at 309 W. 20<sup>th</sup> St., Cheyenne, WY 82001-3601 and all related locations, as described in the Agreement.

B. CONTRACTOR shall provide maintenance services for the supported site at the Laramie County Combined Communications Center located at 309 W. 20<sup>th</sup> St., Cheyenne, WY 82001-3601, as described in the Agreement.

### **V. MODIFICATION TO AGREEMENT**

The following provisions of the Agreement are **modified or removed**, and are replaced by terms of this Addendum:

A. Paragraph 2 of *Quote #SO-000963325* the following sentence is **removed** entirely "In the even of a conflict between the terms and conditions in the Agreement and this Order, the order of precedence shall be as follows: (i) this Order (with the most recent and specific document controlling if there are conflicts between the Solution Summary and any applicable supporting document(s) incorporated in to this Order), (ii) Attachment A to the Agreement (if applicable), and (iii) the main body of the Agreement." as Provision 18 of this Addendum addresses the issue of the controlling document.

B. Paragraph 1 of the *Online Terms and Conditions- Public Sector* is **modified** to now read "Important Information About These Terms and Conditions. These Terms and Conditions constitute a binding contract between Customer and ConvergeOne, Inc. ("Seller" or "C1") and are referred to herein as either the "Terms and Conditions" or the "Agreement." Seller and Customer are each a "Party" to this Agreement and may collectively be referred to herein as the "Parties." Customer accepts and agrees to be bound by these Terms and Conditions by making a purchase from, placing an order with, or otherwise requesting Products (as defined below) from Seller, or engaging Seller to perform or procure any Services (as defined below)."

C. Provision 7 of the *Online Terms and Conditions- Public Sector* is **removed** in its entirety, as Provision 18 of this Addendum addresses the issue of the controlling document.

D. Article I, provision 10(b) of the *Online Terms and Conditions – Public Sector* "No Assignment" is **removed** in its entirety, as provision 3 of the General Provision of this Addendum addresses the issue of assignment.

E. Article I, provision 10(c) of the *Online Terms and Conditions – Public Sector* "Notices" is **removed** in its entirety, as provision 17 of the General Provisions of this Addendum addresses the issue of notice.

F. Article I, provision 10(e) of the *Online Terms and Conditions – Public Sector* "Secrecy and Confidentiality" is **removed** in its entirety as COUNTY is subject to the Public Records Act, Wyo. Stat. § 16-4-201 through 16-4-205, which this Addendum, the Agreement, and other information related to the Agreement may be subject to.

G. Article I, provision 10(m) of the *Online Terms and Conditions – Public Sector* "Insurance" is **removed** as Provision 13 of the General Provisions of this Addendum addresses the issue of insurance.

H. Article II, provision 2 of the *Online Terms and Conditions – Public Sector* is **removed** in its entirety, COUNTY does not grant CONTRACTOR a security interest in any product sold to COUNTY.

I. Article II, provision 5(a) of the *Online Terms and Conditions – Public Sector* is **removed** in its entirety as COUNTY reserves the right to return and all products based on warranty claims.

**Any terms and obligations such removed and replaced are not exhaustive, when inconsistent with the provisions and the intent of the Entire Agreement.**

## **VI. GENERAL PROVISIONS**

1. **Entire Agreement:** This entire agreement (consisting of eighteen (19) pages) consists of: 1) this Addendum (7 pages) and 2) *Summary Maintenance Services Order Form, Quote# SO-000963325* (2 pages) and *Online Terms and Conditions – Public Sector* (10 pages) collectively known as the Agreement (12 pages) and represents the entire and integrated agreement and understanding between the parties in regard to the subject matter herein and supersedes all prior negotiations, statements, representations and agreements, whether written or oral. The Agreement and this Addendum shall be referred to as the “Entire Agreement” for the remainder of the document.

2. **Independent Contractor:** The services to be performed by CONTRACTOR are those of an independent contractor and not as an employee of COUNTY. CONTRACTOR is not eligible for Laramie County Employee benefits and will be treated as an independent contractor for federal tax filing purposes. CONTRACTOR assumes responsibility for its personnel who provide services pursuant to the Entire Agreement and will make all deductions required of employers by state, federal and local laws and shall maintain liability insurance for each of them. CONTRACTOR is free to perform the same or similar services for others.

3. **Assignment:** Neither the Entire Agreement, nor any rights or obligations hereunder shall be assigned or delegated by a party without the prior written consent of the other party.

4. **Modification:** The Entire Agreement shall be modified only by a written agreement, duly executed by all parties hereto.

5. **Invalidity:** If any provision of the Entire Agreement is held invalid or unenforceable by any court of competent jurisdiction, or if the COUNTY is advised of any such actual or potential invalidity or unenforceability, such holding or advice shall not invalidate or render unenforceable any other provision hereof. It is the express intent of the parties the provisions of the Entire Agreement are fully severable.

6. **Applicable Law and Venue:** The parties mutually understand and agree the Entire Agreement shall be governed by and interpreted pursuant to the laws of the State of Wyoming. If any dispute arises between the parties from or concerning the Entire Agreement or the subject matter hereof, any suit or proceeding at law or in equity shall be brought in the District Court of the State of Wyoming, First Judicial District, sitting at Cheyenne, Wyoming or the Federal District Court, District of Wyoming. This provision is not intended, nor shall it be construed to waive COUNTY's governmental immunity as provided in this Addendum, or within the Entire Agreement

7. Discrimination: All parties agree they will not discriminate against any person who performs work under the terms and conditions of the Entire Agreement because of race, color, gender, creed, handicapping condition, or national origin.

8. ADA Compliance: All parties agree they will not discriminate against a qualified individual with disability, pursuant to a law as set forth in the Americans with Disabilities Act, P.L. 101-336, 42 U.S.C. § 12101, *et seq.*, and/or any properly promulgated rules and regulations relating thereto.

9. Governmental/Sovereign Immunity: COUNTY does not waive its Governmental/Sovereign Immunity, as provided by any applicable law including W.S. § 1-39-101 *et seq.*, by entering into this Addendum and by extension for the Entire Agreement. Further, COUNTY fully retains all immunities and defenses provided by law with regard to any action, whether in tort, contract or any other theory of law, based on this Addendum, or the Entire Agreement.

10. Third Parties: The parties do not intend to create in any other individual or entity the status of third-party beneficiary, and the Entire Agreement shall not be construed so as to create such status. The rights, duties and obligations contained in the Entire Agreement shall operate only between the parties to the Entire Agreement and shall inure solely to the benefit of the parties to the Entire Agreement.

11. Indemnification: Each party to the Entire Agreement shall assume the risk of any liability arising from its own conduct. Neither party agrees to insure, defend, or indemnify the other.

12. Conflict of Interest: COUNTY and CONTRACTOR affirm, to their knowledge, no CONTRACTOR employee has any personal beneficial interest whatsoever in the Entire Agreement described herein. No staff member of CONTRACTOR, compensated either partially or wholly with funds from the Entire Agreement, shall engage in any conduct or activity which would constitute a conflict of interest relative to the Entire Agreement

13. Insurance: CONTRACTOR shall carry liability insurance sufficient to cover its obligations under the Entire Agreement, CONTRACTOR shall furnish COUNTY with the entire policy, original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by COUNTY before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive CONTRACTOR'S obligation to provide them. COUNTY reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

1. Minimum Limits of Coverage: Insurance shall be Commercial General Liability (CGL): Insurance Services Office Form CG 00 01 or equivalent covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than **\$1,000,000** per occurrence with a **\$2,000,000** aggregate. If a general aggregate limit applies, either the general aggregate



limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. If CONTRACTOR maintains higher limits than the minimums shown above, COUNTY requires and shall be entitled to coverage for the higher limits maintained by CONTRACTOR.

2. Primary and Non-Contributory: For any claims related to this contract, CONTRACTOR'S **insurance coverage shall be primary insurance** as respects COUNTY, its officers, officials, employees, and volunteers. Any insurance of self-insurance maintained by the Entity, its officers, officials, employees, or volunteers shall be excess of the CONTRACTOR'S insurance and shall not contribute with it.
3. Waiver of Subrogation: CONTRACTOR hereby grants to COUNTY a **waiver of any right to subrogation** which any insurer of said CONTRACTOR may acquire against the Entity by virtue of the payment of any loss under such insurance. CONTRACTOR agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the Entity has received a waiver of subrogation endorsement from the insurer.
4. Additional Named: COUNTY, its officers, officials, employees and volunteers are **to be covered as additional insureds** on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Vendor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the CONTRACTOR'S insurance at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used. **Additional Named status shall be reflected on any certificate of insurance** and/or CONTRACTOR will provide COUNTY with a copy of the appropriate endorsement to the policy reflecting the additional named status.

14. Force Majeure: Neither party shall be liable to perform under the Entire Agreement if such failure arises out of causes beyond control, and without the fault or the negligence of said party. Such causes may include, but are not restricted to, Act of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather. In every case, however, a failure to perform must be beyond the control and without the fault or the negligence of said party.

15. Limitation on Payment: COUNTY's payment obligation is conditioned upon the availability of funds which are appropriated or allocated for the payment of this obligation. If funds are not allocated and available for the continuance of the services and equipment provided by CONTRACTOR, the Agreement may be terminated by COUNTY at the end of the period for which funds are available. COUNTY shall notify CONTRACTOR at the earliest possible time of

the services which will or may be affected by a shortage of funds. At the earliest possible time means at least thirty (30) days before the shortage will affect payment of claims, if COUNTY knows of the shortage at least thirty (30) days in advance. No penalty shall accrue to COUNTY in the event this provision is exercised, and COUNTY shall not be obligated or liable for any future payments due or for any damages as a result of termination under this provision. This provision shall not be interpreted or construed to permit COUNTY to terminate the Entire Agreement in order to acquire similar services from another party.

16. Termination: The Entire Agreement may be terminated (a) by either party at any time for failure of the other party to comply with the terms and conditions of the Entire Agreement; (b) by either party, with thirty (30) days' prior written notice to the other party; or (c) upon mutual written agreement by both parties.

17. Notices: All notices required and permitted under the Entire Agreement shall be deemed to have been given, if and when deposited in the U.S. Mail, properly stamped and addressed to the party for whom intended at such parties' address listed herein, or when personally delivered personally to such party. A party may change its address for notice hereunder by giving written notice to the other party.

18. Addendum Controls: Where a conflict exists or arises between any provision or condition of this Addendum or the Entire Agreement, the provisions and conditions set forth in this Addendum shall control.

19. Compliance with Law: The parties agree that they shall comply with all applicable laws, regulations and ordinances, whether Federal, State or Local.

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**AMENDMENT TO NEXT GENERATION 911 SYSTEM AGREEMENT BETWEEN  
LARAMIE COUNTY, WYOMING & CONVERGE ONE, INC.**

**Signature Page**

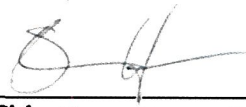
LARAMIE COUNTY, WYOMING

By: \_\_\_\_\_ Date \_\_\_\_\_  
Chairman, Laramie County Commissioners

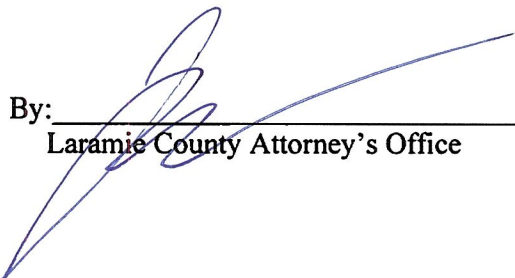
ATTEST:

By: \_\_\_\_\_ Date \_\_\_\_\_  
Debra Lee, Laramie County Clerk

CONTRACTOR: ConvergeOne, Inc.

By:  \_\_\_\_\_ Date 10/13/2025  
Title: Shane Harper, Regional Vice President

REVIEWED AND APPROVED AS TO FORM ONLY:

By:  \_\_\_\_\_ Date 10/20/25  
Laramie County Attorney's Office

## ATTACHMENT A



10900 Nesbitt Avenue South  
Bloomington, MN 55437

Date: 7/3/2025

Page #: 1 of 2

Documents #: OP-000852641  
SO-000963325

Solution Name: Renewal E911 Managed  
Services

Customer: Laramie County Combined  
Communications Center

## Solution Summary Summary Maintenance Services Order Form

<b>Customer:</b> Laramie County Combined Communications Center	<b>Quote #:</b> SO-000963325
<b>Bill To Address:</b> 415 W 18TH ST CHEYENNE, WY 82001-4331	<b>Quote Date:</b> 7/3/2025
<b>Customer ID:</b> VTWLARCOU0001	<b>Quote Valid Until:</b> 9/1/2025
<b>Contact:</b> Amber Young	<b>Master Maintenance Agreement #:</b>
<b>Contact Phone:</b> 307-633-4330	<b>Region:</b> West Public Sec
<b>Account Executive:</b> Brian Kelley	<b>Customer PO:</b>
<b>Email:</b> bkelley@onec1.com	

Supported Sites Address, City, State, Zip	Sold To	Total Annual Price
309 W 20TH ST, , CHEYENNE, WY, 82001-3601		\$37,175.16

The term of this contract is for 12 months.	Total Annual Payment	\$37,175.16
	Total Value for this MSO	\$37,175.16
	Quarterly Payment	\$9,293.79

This Solution Summary summarizes the document(s) that are attached hereto and such documents are incorporated herein by reference (collectively, this "Order"). Customer's signature on this Order (or Customer's issuance of a purchase order in connection with this Order) shall represent Customer's agreement with each document in this Order and acknowledgement that such attached document(s) are represented accurately by this Solution Summary.

Unless otherwise specified in this Order, this Order shall be subject to the following terms and conditions (the "Agreement"): (i) the Master Sales Agreement or other applicable agreement in effect as of the date hereof between ConvergeOne, Inc. and/or its subsidiaries and affiliates (collectively, "C1" or "Seller") and Customer; or (ii) if no such applicable agreement is currently in place between C1 and Customer, the Online General Terms and Conditions currently found on the Internet at: <https://www.onec1.com/agreements>. If Customer's Agreement is a master agreement entered into with one of C1 predecessors, affiliates and/or subsidiaries ("Legacy Master Agreement"), the terms and conditions of such Legacy Master Agreement shall apply to this Order, subject to any modifications, located at: <https://www.onec1.com/agreements>. In the event of a conflict between the terms and conditions in the Agreement and this Order, the order of precedence shall be as follows: (i) this Order (with the most recent and specific document controlling if there are conflicts between the Solution Summary and any applicable supporting document(s) incorporated into this Order), (ii) Attachment A to the Agreement (if applicable), and (iii) the main body of the Agreement.

This Order may include the sale of any of the following to Customer: (a) any hardware, third party software, and/or Seller software (collectively, "Products"); (b) any installation services, professional services, and/or third party provided support services that are generally associated with the Products and sold to customers by Seller (collectively, "Professional Services"); (c) any Seller-provided vendor management services, software release management services, remote monitoring services and/or, troubleshooting services (collectively, "Managed Services"); and/or (d) any Seller-provided maintenance services ordered by Customer to maintain and service Supported Products or Supported Systems at Supported Sites to ensure that they operate in conformance with their respective documentation and specifications (collectively, "Maintenance Services"). For ease of reference only, Professional Services, Managed Services and Maintenance Services may be referred to collectively as "Services." Unless otherwise defined herein, capitalized terms used herein will have the same meanings as set forth in the Agreement.



10900 Nesbitt Avenue South  
Bloomington, MN 55437

Date: 7/3/2025

Page #: 2 of 2

Documents #: OP-000852641  
SO-000963325

Solution Name: Renewal E911 Managed  
Services

Customer: Laramie County Combined  
Communications Center

For the purchase of Maintenance Services, C1 will determine the start date for the Maintenance Services upon C1's acceptance of the applicable Order.

For Maintenance Services or Managed Services that are provided for a term that exceeds twelve (12) months or are subject to renewal for any successive term (s), the Price shall be subject to annual increase as follows: upon completion of the first year of the term, the Price specified in a Solution Summary, Maintenance Services Order Form, or Statement of Work (as applicable) is subject to automatic annual increase by the lesser of: (A) five percent (5%), or (B) the CPI Adjustment (as defined below). The "CPI Adjustment" is a percentage equal to the amount of the increase in the unadjusted Consumer Price Index for all Urban Consumers as published in the Summary Data from the Consumer Price Index News Release by the Bureau of Labor Statistics, U.S. Department of Labor ("CPI"), reported in the month immediately preceding the month of completion of each annual period during the current term or renewal term (the "Current Period CPI") from the CPI reported for the same month twelve (12) months prior (the "Previous Period CPI"). The CPI Adjustment is calculated by: (1) subtracting the Previous Period CPI from the Current Period CPI to obtain the amount of the "Index Point Change", and (2) dividing the Index Point Change by the Previous Period CPI and multiplying that amount by 100.

The pricing on this Order is based on the port and item counts provided to C1. If the actual quantities of ports that are maintained at the inception of this Order vary by more than five percent (5%) from the port count that had been provided to C1, and/or there is a discovery of additional items, C1 reserves the right to adjust the pricing for this Order to reflect the actual quantities being maintained.

In some cases, the Maintenance Services ordered hereunder (and the associated billing) may commence during the applicable Product warranty period. C1, at its discretion, may perform a true-up on a quarterly basis to reconcile future billing on any items that have been added (activated) or removed (deactivated) during the previous period.

ACCEPTED BY:

BUYER: \_\_\_\_\_ DATE: \_\_\_\_\_ SELLER: \_\_\_\_\_ DATE: \_\_\_\_\_

TITLE: \_\_\_\_\_ TITLE: \_\_\_\_\_

## Supported Site Details Appendix

<b>Customer</b>	Laramie County Combined Communications Center	<b>Quote #</b>	SO-000963325
<b>Customer ID</b>	VTWLARCOU0001	<b>Quote Date</b>	7/3/2025

This Supported Site Details Appendix provides an itemized list of the Products and Price for each Supported Site included in the Summary Maintenance Services Order Form. Each Supported Site detail below is considered a separate Order Form under the Agreement.

Site Detail					
Address, City, State, Zip			Sold To	Address Code	Total Annual Price
309 W 20TH ST, , CHEYENNE, WY, 82001-3601				SHIP2	\$37,175.16
Qty	Product #	Description	Coverage	Annual Unit Price	Total Annual Price
1	VTWHCH-MON-911	VTWatch Monitoring Services for 911		\$37,175.16	\$37,175.16
Total Annual Price					\$37,175.16
Total Value for Site					\$37,175.16
Quarterly Payment					\$9,293.79





## ONLINE TERMS AND CONDITIONS – PUBLIC SECTOR

PLEASE READ THE FOLLOWING TERMS AND CONDITIONS COMPLETELY.

**Important Information About These Terms and Conditions.** These Terms and Conditions constitute a binding contract between Customer and ConvergeOne, Inc. ("Seller" or "C1") and are referred to herein as either the "Terms and Conditions" or the "Agreement." Seller and Customer are each a "Party" to this Agreement and may collectively be referred to herein as the "Parties." Customer accepts and agrees to be bound by these Terms and Conditions by making a purchase from, placing an order with, or otherwise requesting Products (as defined below) from Seller, or engaging Seller to perform or procure any Services (as defined below). These Terms and Conditions are subject to change without prior notice, except that the Terms and Conditions posted on the Seller's website at the time Customer signs the applicable Order document(s), or otherwise places an order, will govern the Order in question. These Terms and Conditions and any terms and conditions in an Order (as defined below) are the entire understanding between Customer and Seller, and they supersede and replace any and all prior communications, agreements and understandings, whether oral, written, electronic or implied, if any, between Customer and Seller with respect to the order(s) you are placing with Seller unless Customer and Seller have signed a Master Sales Agreement, in which case the terms and conditions of the Master Sales Agreement will control.

In consideration of the mutual undertakings herein contained, the Parties agree as follows:

1. Attachment A contains terms and provisions that are part of this Agreement and Attachment A is hereby herein incorporated by reference.
2. This Agreement shall apply to sales of the following to Customer:
  - a) All hardware, third party software, and/or Seller software (collectively, "Products"); provided that software, whether third party software or C1 software, includes on-premise perpetual and/or subscription-based software and software as a service and/or cloud subscriptions;
  - b) All installation services, professional services, and/or third party provided support services that are generally associated with the Products and sold to customers by Seller ("Professional Services");
  - c) All Seller-provided vendor management services, software release management services, remote monitoring services and/or, troubleshooting services (collectively, "Managed Services"); and/or
  - d) All Seller-provided maintenance services ordered by Customer to maintain and service Supported Products (as hereinafter defined in Article IV of Attachment A) or Supported Systems (as hereinafter defined in Article IV of Attachment A) at Supported Sites (as hereinafter defined in Article IV of Attachment A) to ensure that they operate in conformance with their respective documentation and specifications ("Maintenance Services").

For purposes of this Agreement, Professional Services, Managed Services and Maintenance Services may be referred to collectively as "Services."

3. Seller will provide the Products and Services to Customer identified in the sales order documentation (collectively, an "Order"), which: (a) is signed by authorized representatives of each Party (except as set forth in Section 5 below); (b) reflects the price to be charged for such Products and/or Services; and (c) incorporates the following supporting documents, as applicable:
  - i) A "Solution Summary" which summarizes the Products and/or Services included in the other Order documents identified below;
  - ii) A "Statement of Work" or "Scope of Work" ("SOW") or Terms of Service ("TOS") which describes the Services to be performed; provided that SOW and TOS may be used interchangeably.
  - iii) A "Master Agreement Rider" which provides the line item cost detail associated with the sale of Products and the provision of Professional Services and Managed Services;
  - iv) A "Maintenance Service Order Form" which provides the line item cost detail of the supported products, supported systems and supported sites in the provision of Maintenance Services; and/or
  - v) Any Solution Quote or other formal quote to which you and Seller mutually agree.

The Order and all applicable supporting documents will be governed by the terms of this Agreement even in the absence of a reference to this Agreement. Any Products and/or Services not specifically itemized in the applicable Order are not provided.

4. Any amendment, supplement, or modification of any term or provision of this Agreement or any Order must be in a writing that is

signed by authorized representatives of both Parties to this Agreement.

5. In lieu of an authorized representative of each Party signing an Order, the Parties agree that Customer may issue to Seller a purchase order to order Products and/or Services from Seller. Such purchase order shall be deemed Customer's agreement to the terms and conditions of the corresponding Order. However, no pre-printed, additional, and/or alternate terms or provisions of the purchase order (other than the description of the Products and/or Services and the quantity thereof) shall apply. Rather, only the terms and provisions of this Agreement shall apply to the sale of Products and/or Services.
6. This Agreement shall remain in effect until terminated by either Party. Either Party may terminate this Agreement, provided that such Party provides to the other Party written notice of such termination at least thirty (30) days prior to the effective date of such termination. The notice of termination shall reflect the effective date of the termination; if it does not, then the effective date of the termination shall be the date that is thirty (30) days after the non-terminating Party receives the written notice of the termination. Notwithstanding the foregoing, however, the termination of this Agreement shall not affect the obligations of either Party pursuant to the terms and provisions of any Order that has been executed by an authorized representative of each Party prior to the effective date of termination of this Agreement.
7. In the event of a conflict between the terms and conditions in this Agreement and any Order, the order of precedence shall be as follows: (i) the applicable Order (with the most recent and specific document controlling if there are conflicts between the Order and any applicable supporting document(s) incorporated into the applicable Order), (ii) Attachment A to this Agreement, and (iii) the main body of this Agreement.
8. **PURCHASE PRICE:** Unless specifically stated and mutually agreed upon in a particular Order, the purchase price of the Products and/or Services set forth in each Order shall be paid as follows:

**a) For Products and Professional Services (excluding third party support services):**

- i) **Payment:** The Price (as defined in Article I, Section 1 of Attachment A) is due thirty (30) days from the date the invoice is issued as follows:

**(1) For Products:**

- (i) In the sole discretion of Seller and as set forth in the Order, a deposit may be required and shall be due upon execution of the Order.
- (ii) One Hundred percent (100%) of the Price attributable to the Product(s) (if a deposit is required as provided in (i) above, then the remaining balance) shall be invoiced upon shipment of the applicable Product(s). However, in the event Seller ships Products for a particular Order in multiple shipments, the balance attributable to the Products contained in each such shipment shall be invoiced separately and due accordingly.

**(2) For Professional Services (excluding third party support services):**

- (i) Professional Services provided on a time and materials basis (including, without limitation, any on-site Services provided pursuant to Article II, Section 4(b) of Attachment A) will be invoiced monthly as Professional Services are performed by Seller (following depletion of the down payment); or
- (ii) Professional Services provided on a fixed price basis are due either:

(A) If specified in the applicable Order, monthly as Professional Services are performed by Seller (following depletion of the down payment, if any); or

(B) Otherwise, periodically based on mutually agreed upon milestones as set forth in the applicable Order (following depletion of the down payment, if applicable). Milestone invoices shall be issued upon the date the applicable milestone is accepted, or deemed accepted pursuant to this subsection, by Customer. Seller will provide Customer with a written acceptance acknowledgement form upon the substantial completion of the Professional Services associated with each milestone. Within ten (10) days of Customer's receipt of such form, Customer may either sign such form confirming Customer's acceptance of such milestone or provide Seller written notice disputing such milestone completion. If Customer provides written notice of a dispute, such milestone shall be deemed accepted by Customer immediately once such defects are remedied by Seller. If Customer fails to sign the applicable form or provide Seller written notice of a dispute, then the applicable milestone shall be deemed accepted by Customer upon the expiration of such ten (10) day period.

- b) **For Third Party Support Services:** One Hundred percent (100%) of the Price attributable to the cost of third party support services as specified in the Order will be invoiced and due prior to commencement of the third party support services.
- c) **For Managed Services:** Customer will be invoiced for Managed Services annually in advance and such invoices are due prior to the commencement of the applicable twelve (12)-month period.



- d) **For Maintenance Services:** Customer will be invoiced for Maintenance Services annually in advance and such invoices are due prior to the commencement of the applicable twelve (12)-month period.

**9. FINANCING OPTION:** If Customer elects to lease the pertinent Products and/or Services, Customer:

- a) Shall inform Seller of such election no later than the time that the applicable Order is executed to avoid being liable for sales tax on the Products and/or Services provided under the pertinent Order; and
- b) May assign an Order to a financing company for the sole purpose of financing the Price, provided that Customer agrees that any such assignment shall not delay or relieve Customer of its duty to perform any of its obligations under this Agreement (including, but not limited to, liability for amounts owed under this Agreement). Customer further agrees that it shall not take any action, or refuse to take any action, that delays Seller's receipt of payment from Customer's financing company.

**ATTACHMENT A – TERMS AND CONDITIONS**

**ARTICLE I – GENERAL TERMS AND CONDITIONS OF THE AGREEMENT**

**1. PRICE; PAYMENT; TAXES; COST ADJUSTMENT.**

- a) Customer agrees to pay the price of each of the Products and/or Services described on an Order, together with freight, taxes, and any other itemized charges, fees, and costs in United States Dollars (the "Price").
- b) Except for material breach by Seller, termination of this Agreement shall not affect Customer's obligation to pay the Price.
- c) If Customer is exempt from tax, Customer shall provide to Seller a valid tax exemption certificate at the time that this Agreement is executed.
- d) For Managed Services and Maintenance Services that are provided for a term that exceeds twelve (12) months, the Price shall be subject to annual increase as follows:
- i. Upon completion of the first year of the term, the Price specified in an Order, Maintenance Services Order Form, or Statement of Work (as applicable) is subject to automatic annual increase by the lesser of: (A) five percent (5%), or (B) the CPI Adjustment (as defined below). The "CPI Adjustment" is a percentage equal to the amount of the increase in the unadjusted Consumer Price Index for all Urban Consumers as published in the Summary Data from the Consumer Price Index News Release by the Bureau of Labor Statistics, U.S. Department of Labor ("CPI"), reported in the month immediately preceding the month of completion of each annual period during the current term (the "Current Period CPI") from the CPI reported for the same month twelve (12) months prior (the "Previous Period CPI"). The CPI Adjustment is calculated by: (1) subtracting the Previous Period CPI from the Current Period CPI to obtain the amount of the "Index Point Change", and (2) dividing the Index Point Change by the Previous Period CPI and multiplying that amount by 100.

**2. REMEDIES UPON DEFAULT.** In the event that Customer fails to pay according to the terms and provisions of this Agreement, or fails to perform any of its obligations pursuant to the terms and provisions of this Agreement, then Seller, at its option, may do any or all of the following: (i) upon notice to Customer, terminate this Agreement and/or any Order related to this Agreement; (ii) regardless of whether this Agreement and/or any Order related to this Agreement is terminated, suspend further performance under this Agreement and/or any Order related to this Agreement; and (iii) retain, as an offset to Customer's liability for such default, all or a portion of the progress payments (if any) previously paid by Customer. The rights afforded Seller hereunder shall not be deemed to be exclusive but, instead, shall be in addition to any rights or remedies provided by law.

**3. INDEPENDENT CONTRACTOR.** Seller shall conduct its business as an independent contractor with respect to Customer. Seller will represent to third persons, to the public generally, and to all governmental bodies (including, but not limited to, federal, state, and local authorities) that the business conducted by Seller with respect to Customer is that of an independent contractor and that such is the sole relationship between the Parties. It is expressly understood that Seller is in no way considered the legal representative of Customer for any purpose whatsoever with respect to this Agreement. Customer shall deduct no income tax or other withholdings whatsoever from payments due to Seller.

**4. CUSTOMER COOPERATION.** Customer shall cooperate fully with Seller to facilitate performance of Seller's obligations hereunder, including the rendition of Services and/or the installation of Products. Customer shall dedicate such time, personnel, and resources as may be reasonably necessary to complete Seller's performance of Services. Cooperation shall include the following:

- (a) Customer shall designate a coordinator at Customer's site with the knowledge and authority to make decisions with respect to all of Customer's operations in order for Seller to meet its obligations hereunder;
- (b) Customer shall make available such data as is necessary to adequately test the Products and/or Services;
- (c) If Customer is purchasing an application software solution, Customer shall be responsible for the operation of each CPU, conducting a back-up, performing all program translation, contacting all third-party vendors to confirm that existing hardware and software will be compatible with the new software, and processing any necessary changes;
- (d) Customer shall provide full, free, and safe access to Customer's facilities to allow Seller to meet its obligations hereunder;
- (e) Customer shall provide the telephone numbers, network addresses, and passwords necessary for Seller to gain remote access to Customer's systems when necessary in connection with the performance of Services;
- (f) Customer shall provide (i) interface information for Managed Products (as defined in Article III, Section 1 of this Attachment A) and Supported Products (as defined in Article IV, Section 1 of this Attachment A), and (ii) any third party consents and licenses needed by Seller to access such Managed Products and Supported Products; and
- (g) If Seller provides an Update pursuant to Article IV, Section 2(f) of this Attachment A, or other new release of software as part of the Maintenance Services, Customer will promptly implement such Update or new release.
- (h) Customer expressly acknowledges that with respect to Seller's performance of the Services called for under this Agreement, such Services do not involve or in any way require Seller's access to Personal Data as defined herein. If, in the future, Customer requests



additional services that require Seller access to Personal Data, those additional services, and the security requirements associated with Seller's access to Personal Data in order to perform those additional services, shall be subject to a separate written agreement between the parties. "Personal Data" is personal data of any employee, customer, or other individual.

(i) In order to mitigate any potential delays in the provision of Products and/or Services under any Order, Customer shall promptly perform all of its obligations set forth in this Agreement and the applicable Order(s). However, in the event of any Customer delay(s) which reasonably impact Seller's provision of Products and/or Services, Customer agrees that Seller may invoice Customer, and Customer agrees to pay Seller, for each applicable milestone or other periodic payment upon the originally anticipated completion date mutually agreed to by the parties in the applicable Order and/or as part of the project kick-off process.

5. **FORCE MAJEURE.** Seller shall not be liable for any loss, failure, or delay in furnishing Products, or providing Services, resulting from any of the following: fires; explosions; floods; storms; acts of God; governmental acts, orders, or regulations; hostilities; acts of terrorism; civil disturbances; strikes; labor difficulties; machinery breakdowns; transportation contingencies; difficulty in obtaining parts, supplies, or shipping facilities; delays of carriers; or any other cause beyond the control of Seller.

6. **DISPUTE RESOLUTION.** If a dispute arises that cannot be resolved by the personnel directly involved, the dispute shall be referred jointly to the responsible area senior management for Seller and Customer. The senior management shall exercise good faith efforts to settle the dispute within thirty (30) days (or an extended period, if they so agree). In the event that the dispute is not resolved within such a period, the Parties reserve the right to seek other relief as the Party deems appropriate.

7. **LIMITATION OF LIABILITY.** THE ENTIRE LIABILITY OF SELLER (AND SELLER'S OWNERS, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AND AFFILIATES) AND CUSTOMER'S EXCLUSIVE REMEDIES FOR ANY DAMAGES CAUSED BY ANY PRODUCT DEFECT OR FAILURE, OR ARISING FROM THE PERFORMANCE OR NON-PERFORMANCE OF ANY SERVICES, REGARDLESS OF THE FORM OF ACTION (WHETHER IN CONTRACT, TORT, OR OTHERWISE), SHALL BE (I) FOR FAILURE OF PRODUCTS DURING THE WARRANTY PERIOD, THE REMEDIES STATED IN ARTICLE II, SECTION 3 OF THIS ATTACHMENT A; (II) FOR DELAYS IN DELIVERY OR INSTALLATION (WHICHEVER IS APPLICABLE) OF MORE THAN SIXTY (60) DAYS BY CAUSES ATTRIBUTABLE SOLELY TO SELLER, UPON THIRTY (30) DAYS' WRITTEN NOTICE FROM CUSTOMER TO SELLER OF SUCH DELAY AND SELLER'S FAILURE TO CORRECT SUCH FAILURE WITHIN SUCH NOTICE PERIOD, CUSTOMER'S SOLE REMEDY SHALL BE TO TERMINATE THE APPLICABLE ORDER WITHOUT INCURRING CHARGES FOR SUCH TERMINATION AND, WITHIN THIRTY (30) DAYS AFTER THE EFFECTIVE DATE OF SUCH TERMINATION, RECEIVE A REFUND OF ALL MONIES PAID UNDER SUCH ORDER; OR (III) FOR SELLER'S FAILURE TO PERFORM ANY OTHER MATERIAL TERM OF THIS AGREEMENT, IF SELLER DOES NOT CORRECT SUCH FAILURE WITHIN THIRTY (30) DAYS AFTER RECEIPT OF WRITTEN NOTICE ADDRESSING SUCH FAILURE, CUSTOMER'S SOLE REMEDY SHALL BE TO TERMINATE THE APPLICABLE ORDER WITHOUT INCURRING CHARGES FOR SUCH TERMINATION AND, WITHIN THIRTY (30) DAYS AFTER THE EFFECTIVE DATE OF SUCH TERMINATION, RECEIVE A REFUND OF ALL MONIES PAID UNDER SUCH ORDER. SELLER SHALL IN NO CASE BE LIABLE FOR PUNITIVE, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, LOST SAVINGS, OR LOST REVENUES OF ANY KIND; LOST, CORRUPTED, MISDIRECTED, OR MISAPPROPRIATED DATA; NETWORK DOWNTIME; INTERRUPTION OF BUSINESS ARISING OUT OF OR IN CONNECTION WITH PERFORMANCE OR NON- PERFORMANCE OF THE PRODUCTS OR USE BY CUSTOMER; CHARGES FOR COMMON CARRIER TELECOMMUNICATIONS SERVICES; COST OF COVER; OR CHARGES FOR FACILITIES ACCESSED THROUGH OR CONNECTED TO THE PRODUCTS ("TOLL FRAUD")). THE PREVIOUS SENTENCE APPLIES REGARDLESS OF WHETHER SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

8. **NON-SOLICITATION OF EMPLOYMENT.**

Customer shall not solicit for employment, either directly or indirectly, employees or subcontractors of Seller during the term of any Order, or for a period of twelve (12) months thereafter; provided, however, that Customer may hire employees or subcontractors of Seller if such employees or subcontractors initiate contact with Customer (e.g., a response to general employment advertisements of Customer). If Customer violates this provision, Customer will pay to Seller an amount equal to the amount of total potential compensation for the first twelve (12) months for the employee or subcontractor of Seller that has been hired. Customer shall pay such amount to Seller on the date that is thirty (30) days after the person accepts an offer of employment from Customer.

9. **AFFILIATE RIGHTS.**

(a) **C1.** The Parties agree that any C1 Affiliate may sell Products and/or Services to Customer under the terms and provisions of this Agreement; provided, however, that only the C1 Affiliate that is the party to such sale is liable to Customer for the sale of such Products and/or Services. By signing a given Order for any such sale, the applicable C1 Affiliate and Customer agree that the terms and conditions of this Agreement will apply to such sale as if such C1 Affiliate were Seller under this Agreement, but only with respect to such sale. For purposes of this Agreement, "C1 Affiliate" means any corporation, partnership, or other entity that, directly or indirectly, controls (or is controlled by or is under common control with) Seller.

(b) **Customer.** Seller agrees that Seller approved Affiliates (as that term is defined below) may purchase Products and/or Services under the terms and conditions of this Agreement by signing an Order referencing this Agreement. The terms of this Agreement will be incorporated by reference in any such Order as if this Agreement were separately executed by such Affiliate (and solely by such Affiliate) and the term "Customer" used herein will be deemed as applying to such Affiliate for the purposes of the Order. The applicable rights, obligations and liabilities of Customer under each Order executed by Customer will be solely those of Customer, and none of the Affiliates will be responsible for any obligations or liabilities of Customer under such Order. The applicable rights, obligations and liabilities of an Affiliate executing an Order will be solely those of such Affiliate, and neither Customer nor any other Affiliate will be responsible for any obligations or liabilities of the Affiliate under the Order. Under no circumstances will Customer and any of the Affiliates be jointly or severally liable for the obligations of the others. "Affiliate(s)" means any entity that directly or indirectly controls, is controlled by, or is under common control or ownership with Customer, where "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct, cause or influence the direction of the management policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

10. **MISCELLANEOUS.**

(a) **Merger.** This Agreement constitutes the entire agreement between Seller and Customer with respect to the subject matter described herein, superseding all prior and contemporaneous correspondence between the Parties.



- (b) **No Assignment.** This Agreement shall not be assignable by either Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld; provided, however, that in any assignment of this Agreement, both the assignor and the assignee are jointly and severally liable under this Agreement for any outstanding obligations of the assignor that are due as of the date of the assignment. Notwithstanding the foregoing, (i) Seller may, without notice, assign the Agreement, in whole or in part, or any of its rights hereunder to an affiliate or entity which acquires all or substantially all of Seller's assets (with an "affiliate" for purposes of this section meaning (a) any corporation or other entity owning, either directly or indirectly, a majority of the outstanding stock of Seller ("Parent") or (b) any corporation or other entity in which a majority of the ownership interest is held either directly or indirectly by Parent or Seller); and (ii) Seller may assign all of its rights and delegate all of its obligations with respect to any order that relates to the performance of Professional Services and/or delivery of Products at any location that is outside of the United States of America to one or more third parties believed by Seller in good faith to be capable of providing such goods and services.
- (c) **Notices.** Any notice required or permitted under this Agreement shall be in writing and delivered to the address of the other Party as set forth in the applicable Order or to such other address as a Party shall designate and shall be: (i) delivered in person, (ii) sent by overnight courier service, properly addressed and prepaid, or (iii) sent by first class mail, properly addressed and with the correct postage.
- (d) **Acknowledgment and Authority.** By placing an Order, Customer hereby certifies that it has read this Agreement and these terms, understand them, and agree to all terms and provisions stated herein. In addition, Seller and Customer warrant to each other that each respective Party and its respective signatory have the full right, power, and authority to enter into this Agreement.
- (e) **Secrecy and Confidentiality.** Each Party (the "Receiving Party") covenants and agrees on behalf of itself, its officers, directors, employees, and agents as follows: (i) all information obtained from the other Party (the "Disclosing Party") (including, but not limited to, the terms and conditions of this Agreement, customer lists, customer-sensitive information, business practices and operations, pricing and financial information, product plans and designs, and configurations and layouts) is secret, proprietary, and confidential ("Confidential Information"); (ii) such Confidential Information shall be neither disclosed to any third party without the prior written approval of the Disclosing Party (except Seller may disclose Customer's Confidential Information to its subcontractors under this Agreement, but will ensure that such subcontractors are subject to the same confidentiality obligations set forth herein) nor used for any unauthorized purpose; and (iii) the Receiving Party shall use its best efforts to return such Confidential Information to the Disclosing Party upon termination of this Agreement. However, the Receiving Party shall have no obligation to preserve the confidentiality of any Confidential Information which (i) was known to the Receiving Party free of any obligation to keep it confidential; (ii) is or becomes publicly available by other than the authorized disclosure by the Receiving Party; (iii) is independently developed by or on behalf of the Receiving Party independent of any Confidential Information received from the Disclosing Party; (iv) is received by the Receiving Party from a third party whose disclosure does not violate any confidentiality obligation; or (v) is required by law to be disclosed by the Receiving Party, provided that the receiving party gives the Disclosing Party prompt written notice of such requirement prior to such disclosure and reasonable assistance, at the Disclosing Party's sole expense, in obtaining an order, if necessary, protecting the information from public disclosure. The Parties further acknowledge that the unauthorized use or disclosure of Confidential Information will create a risk of irreparable harm to the Disclosing Party, entitling the Disclosing Party to seek injunctive relief, without the necessity of posting a bond, against the receiving party to prevent such harm in addition to all other remedies at law, including monetary damages.
- (f) **Intellectual Property Rights.** Provisions pertaining to title and risk of loss in connection with the purchase of applicable Products and/or Services are set forth Articles II-IV of this Attachment A below. Additionally, each Party reserves all rights, including, but not limited to, ownership, title, intellectual property rights and all other rights and interest in and to any intellectual property that it makes available to the other Party as is necessary for such other Party's performance under this Agreement. Furthermore, Seller will own any intellectual property that it develops, creates, or otherwise acquires, excluding Customer's intellectual property, while performing the Services, unless otherwise mutually agreed to and expressly set forth in the applicable Order. For Services that are purchased, developed, or created under this Agreement, upon receipt of Customer's payment for such Services, Seller hereby grants Customer a perpetual, non-exclusive, non-transferable, fully-paid license to use and reproduce the Services as originally configured and deployed for the limited purpose of conducting Customer's internal business. Seller reserves all other intellectual property rights not expressly granted herein.
- (g) **No Resale.** In the event that the Products contain manufacturer's software, Customer shall not resell the software or provide access to the software either directly or indirectly to third parties unless authorized to do so in an Order.
- (h) **Waiver.** If either Party fails to enforce any right or remedy available under the terms and provisions of this Agreement, such failure shall not be construed as a waiver of any right or remedy with respect to that breach or any other breach or failure by the other Party. Rather, any waiver of a Party's rights or remedies available under the terms and provisions of this Agreement must be in a writing that is signed by the Party against whom enforcement is sought.
- (i) **Severability.** In the event that any term or provision of this Agreement is held to be illegal, unenforceable, or invalid, the remaining terms and provisions hereof shall remain in full force and effect.
- (j) **Survival of Terms.** Notwithstanding any termination or expiration of this Agreement, all rights and remedies available to the Parties and all terms and provisions of this Agreement that are not performed or cannot be performed during the term of this Agreement shall survive the termination or expiration of this Agreement.
- (k) **Governing Law.** This Agreement shall be governed by and construed in accordance with the substantive laws of the state in which the Customer is located, without regard to its choice or conflicts of law principles.
- (l) **Counterparts and Electronic Signature.** This Agreement may be executed in two (2) or more counterparts, each of which will be deemed an original, but all of which taken together shall constitute one (1) and the same Agreement. The counterparts of this Agreement may be executed and delivered by facsimile or other electronic signature by one (1) Party to the other Party. The receiving Party may rely on the receipt of such document so executed and delivered by facsimile or other electronic means as if the original had been received.
- (m) **Insurance.** Seller will obtain and maintain reasonable insurance coverage at its sole cost and expense during the term of this Agreement, and ensure that its subcontractors also obtain and maintain reasonable insurance coverage at their sole cost and expense, with insurers licensed to do business in all jurisdictions where services are performed.

## **ARTICLE II – ADDITIONAL TERMS AND CONDITIONS SPECIFIC FOR PRODUCTS AND PROFESSIONAL SERVICES**



1. **TITLE; RISK OF LOSS.** Title, ownership, and risk of loss of hardware sold pursuant to the terms and provisions of this Agreement shall pass to Customer upon delivery to Customer. Title and ownership of software delivered to Customer pursuant to the terms and provisions of this Agreement shall remain solely with its licensor. Risk of loss of software delivered to Customer pursuant to the terms and provisions of this Agreement shall pass to Customer upon delivery to Customer.

2. **SECURITY INTEREST.** Seller reserves a purchase money security interest in and to the Products (together with the cost of any Professional Services related thereto) sold hereunder as security for performance of Customer's obligations. Seller may file the Agreement (together with any attachments thereto) to perfect such interest.

3. **WARRANTIES; DISCLAIMERS; SOFTWARE LICENSES.** Seller represents and warrants that, immediately prior to the sale of Products to Customer, Seller will be the lawful owner thereof, free and clear of any liens and encumbrances (other than those that may arise under the terms and provisions of this Agreement). In addition, Seller represents and warrants that Seller has the full right, power, and authority to sell, deliver, or provide the Products to Customer.

(a) **Product Warranties.** Products are warranted to Customer either directly by the original equipment manufacturer ("OEM") or by Seller.

1) **Direct OEM Warranty.** Customer receives the OEM's warranty in effect at the time of delivery with respect to hardware purchased and/or software licensed hereunder. Except for the warranties of title and rightful transfer, the OEM warranty is Customer's sole warranty with respect to such items. SELLER MAKES NO OTHER EXPRESS OR IMPLIED WARRANTIES WITH RESPECT TO OEM PRODUCTS.

2) **Indirect OEM Warranty.** If Customer does not receive the Product warranty directly from the OEM, then Seller warrants the Products to Customer to the same extent and term as the OEM warrants the Products to Seller. Upon request, Seller will provide such warranty information to Customer. Except for the warranties of title and rightful transfer, the OEM warranty is Customer's sole warranty with respect to such items. SELLER MAKES NO OTHER EXPRESS OR IMPLIED WARRANTIES WITH RESPECT TO OEM PRODUCTS.

3) **Seller Warranty for Refurbished Products.**

i) Products refurbished by Seller are warranted for a term of one (1) year from either (i) the date of delivery of the Products if such Products are installed by Customer; or (ii) the date of Products installation if such Products are installed by Seller.

ii) This warranty does not extend to Products or components thereof that have had their serial numbers, date of manufacturing, or OEM labels removed, defaced, or altered, nor does this warranty cover any of the following: counterfeit parts; repair for damages to Products or components thereof; or malfunctions caused by (i) misuse, neglect, power failures, power surges, lightning, fire, flood, or accident; (ii) use of products or facilities supplied by others; (iii) failure to follow installation, operation, or maintenance instructions; (iv) failure to permit remote access; or (v) force majeure conditions specified in Article I, Section 5 of this Attachment A.

(b) **Professional Services Warranty.** Professional Services are warranted for thirty (30) days from the date on which such Professional Services are completed. Professional Services will be performed in a good and workmanlike manner by qualified personnel.

(c) **Warranty Procedures and Disclaimers.** The terms and provisions of this Article II, Section 3(c) apply to all Products and Replacement Products provided hereunder.

1) If Products or Replacement Products do not conform to the Products warranty during the warranty period, Customer shall promptly notify Seller in writing of such non-conformance, which shall be stated in detail sufficient to describe both the problem and its symptoms. Seller or the OEM (as the case may be), at its option, will either (i) repair such Products so that Products conform to the Products warranty; or (ii) replace such Products with Products that conform to the Products warranty ("Replacement Products"). Replacement Products are warranted as outlined above for the remainder of the original applicable Products warranty period. The original Products that were replaced become the property of Seller. Seller will not charge Customer for the Replacement Products. Seller, however, may charge Customer for the time that is incurred to diagnose the problem and to repair or replace such Products, if the problem is not covered by the Products warranty.

2) THE EXPRESS WARRANTIES HEREIN CONTAINED ARE IN LIEU OF ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING NON-INFRINGEMENT AND THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ALL OF WHICH SELLER DISCLAIMS AND ARE EXCLUDED. SELLER DOES NOT WARRANT UNINTERRUPTED OR ERROR-FREE OPERATION OF THE PRODUCTS OR SERVICES PROVIDED HEREUNDER. SELLER DOES NOT WARRANT THAT THE PRODUCTS ARE IMMUNE FROM OR WILL PREVENT EITHER FRAUDULENT INTRUSION OR UNAUTHORIZED USE. SELLER WILL NOT BE RESPONSIBLE FOR UNAUTHORIZED USE (OR THE IMPACTS OF FOR SUCH USE) OF COMMON CARRIER SERVICES OR FACILITIES ACCESSED THROUGH OR CONNECTED TO THE PRODUCTS. UNLESS OTHERWISE AGREED IN THIS AGREEMENT, CUSTOMER IS SOLELY RESPONSIBLE FOR ENSURING THAT CUSTOMER'S NETWORKS AND SYSTEMS ARE ADEQUATELY SECURED AGAINST UNAUTHORIZED INTRUSION.

3) If the Products are to be used either on or to support Telephony over Transmission Control Protocol/Internet Protocol (TCP/IP) facilities, Seller requires that a network assessment be performed prior to installation to determine network performance, reliability, and security. In the event that Customer either refuses to authorize a pre-installation network assessment or fails to follow Seller's reasonable recommendations after Seller performs the network assessment, and if performance problems are encountered and determined to be associated with network performance, reliability, or security issues, Customer shall be solely responsible for all costs associated with a post-installation network assessment and network reconfiguration.

(d) **Software Licenses.** Customer agrees that it has read, understood, and will abide by the terms and provisions of the software license(s) applicable to the Products provided hereunder. Such software licenses may be found on the Internet at <https://www.onec1.com/agreements>. Seller Software licenses, as identified in the pertinent Order, may be found in the Order.

#### 4. **PROFESSIONAL SERVICES.**

(a) **GENERALLY.** Professional Services not specifically itemized are not provided, and unless otherwise specified on the applicable Order, all Professional Services shall be provided by Seller to Customer remotely.

(b) **ON-SITE SERVICES.**

1) Unless otherwise specified on the applicable Order, the provision of any Services at Customer's location(s) shall be considered out of scope and subject to additional charges.

2) In the event Customer requests that Seller provide any such Services on-site at Customer's location(s), Customer agrees to reimburse



Seller for all reasonable, out-of-pocket travel and/or other expenses incurred by Seller in connection with the provision of such Services (including without limitation, travel time at Seller's applicable then-current hourly rate for the applicable resources, and subject to any applicable minimum charges).

(c) **BACK-UPS.** CUSTOMER IS SOLELY RESPONSIBLE FOR SYSTEM BACK-UP PRIOR TO COMMENCEMENT OF PROFESSIONAL SERVICES OR INSTALLATION OF PRODUCTS AND TIMING.

**5. TERMINATION RIGHTS FOR PRODUCTS AND PROFESSIONAL SERVICES.**

(a) **PRODUCT RETURNS:** All configured orders, including hardware and software, are non-returnable. All software, regardless of whether such software is part of a configured order, is non-returnable. All authorized returns may be assessed a twenty percent (20%) restocking charge; provided, however, that Product returns based on warranty claims will not be assessed such restocking charge.

(b) **PROFESSIONAL SERVICES.**

1) **Time and Material:** For Professional Services provided on a time and material basis, Customer agrees to pay for time and material Professional Services rendered up to and through the effective date of cancellation.

2) **Fixed Price:** For Professional Services provided on a fixed price basis, unless otherwise set forth in the applicable Order, fixed price Professional Services may not be cancelled.

**ARTICLE III – ADDITIONAL TERMS AND CONDITIONS SPECIFIC FOR MANAGED SERVICES**

**1. DEFINED TERMS OF ARTICLE III.**

(a) "EULA" is an acronym used to refer to an End User License Agreement.

(b) "Managed Products" are all hardware and/or software identified on an Order for which the Managed Services are to be provided.

(c) "Managed Sites" are the locations specified on each applicable Order.

**2. PROVISION AND SCOPE OF MANAGED SERVICES.**

(a) **Order Form and Provision of Managed Services.** Seller will provide the Managed Services for Managed Products at Managed Sites remotely, as described further in each pertinent Order. The Price set forth on such Order for Managed Services is based on the number of active Managed Products. Seller, at its discretion, will perform a true-up on a quarterly basis to reconcile future billing on any Managed Products that have been added (activated) or removed (deactivated) during the previous period.

(b) **Monitoring.** Seller may electronically monitor Managed Products for the following purposes: (i) to perform and analyze diagnostics from a remote location and to take corrective actions, if necessary; (ii) to determine system configuration and applicable charges; (iii) to verify compliance with applicable software license terms and restrictions; (iv) to assess Customer needs for additional products and/or Managed Services; and (v) as otherwise provided in each applicable Order.

(c) **General Limitations.** Seller will not provide Managed Services for Managed Products that have been misused, used in breach of the terms and provisions of their respective license, improperly installed or configured, or that have had their serial numbers altered, defaced, or deleted. Unless otherwise expressly specified in the applicable Order, all Managed Services shall be provided by Seller to Customer remotely. In the event Customer requests that Seller provide any Services on-site at Customer's location(s), such Services shall be subject to additional charges in accordance with the provisions of Article II, Section 4(b) above.

**3. CUSTOMER RESPONSIBILITIES FOR MANAGED SERVICES.**

(a) **Provision of Managed Products.** Customer will provide all Managed Products and Managed Sites. Customer continuously represents and warrants that (i) Customer is either the owner of, or is authorized to access and use, each Managed Product and each Managed Site; and (ii) Seller and its suppliers and subcontractors are authorized to do the same to the extent necessary to provide the Managed Services in a timely manner.

(b) **Moves of Managed Products.** When Customer seeks to move any Managed Products, Customer will notify Seller. Only Seller or its authorized agent may move Managed Products. Seller may charge additional amounts to recover any additional costs incurred by Seller in providing the Managed Services that result from the move of Managed Products by a party other than Seller or its authorized agent.

(c) **Identification Tags.** Customer will not remove any identification tags or other markings from any Managed Product.

**4. TITLE AND RISK OF LOSS OF MANAGED PRODUCTS.** Except for Products provided by Seller to Customer under the terms and provisions of this Agreement, title to the Managed Products will have passed to Customer pursuant to the terms and provisions of a separate agreement under which Customer originally obtained the Managed Products. Customer will bear the risk of loss, theft, destruction, or damage to the Managed Products (each, a "Loss"), and Customer will promptly provide written notice to Seller of any Loss that occurs.

**5. SOFTWARE LICENSE FOR MONITORING SOFTWARE INCLUDED IN MANAGED SERVICES.** Customer understands that Seller may license software from a third party to provide the Managed Services for which Customer may have access to certain functionality. Customer may use such software in accordance with the terms and conditions of any end user license agreement accompanying such software, whether the terms and conditions of the end user license be in "shrinkwrap," "clickwrap," or some other form.

**6. TERM AND TERMINATION RIGHTS OF MANAGED SERVICES.**

(a) **Managed Services Term.** Unless a different term is specified on the pertinent Order, Seller will provide the applicable Managed Services for a term ("Managed Services Term") of one (1) year. Managed Services shall expire at the end of the Managed Services Term, unless expressly extended or renewed by the parties in writing pursuant to a mutually agreed upon amendment or new Order.

(b) **Termination Rights of Managed Services.**

1) **For Convenience.** Unless otherwise specified on the pertinent Order, Customer may terminate Managed Services, in whole or in part, upon providing Seller with thirty (30) days advance written notice; provided, however, that Customer shall be liable to Seller for the lesser amount due for Managed Services for (i) twelve (12) months; or

(ii) the remainder of the Managed Services Term.

2) **For Cause.** Either Party may terminate the pertinent Managed Services without liability to the other Party by providing written notice to such other Party if such other Party (a) fails to cure any material breach of the terms and provisions of the Agreement or the applicable Managed Services included in such Order within a thirty (30)-day period after it has received from the non-breaching Party



a written notice that details the breach and requests that the breach be cured; or (b) becomes insolvent or insolvency proceedings are instituted against such other Party.

#### **7. MANAGED SERVICES WARRANTIES; DISCLAIMERS.**

(a) **Managed Services Warranty.** Seller represents and warrants to Customer that the Managed Services will be performed in a professional and workmanlike manner by qualified personnel and in accordance with the terms and provisions of the Agreement and the pertinent Order. If the Managed Services have not been so performed and if within thirty (30) days after the performance of the Managed Services Customer provides to Seller written notice of such non-compliance, then Seller, at its option, will re-perform the Managed Services, correct the deficiencies, or render a prorated refund based on the original charge for the deficient Managed Services. The warranty remedies expressly provided in this Section will be Customer's sole and exclusive remedies for breach of warranty claims only. EXCEPT AS REFERENCED AND LIMITED IN THIS ARTICLE III, SECTION 7 OF ATTACHMENT A, NEITHER SELLER NOR ITS LICENSORS OR SUPPLIERS MAKE ANY OTHER EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE MANAGED SERVICES. IN PARTICULAR, THERE IS NO WARRANTY THAT ALL SECURITY THREATS AND VULNERABILITIES WILL BE DETECTED OR THAT THE MANAGED SERVICES WILL RENDER ANY PRODUCT SAFE FROM SECURITY BREACHES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, SELLER DISCLAIMS ALL OTHER EXPRESS, IMPLIED, AND STATUTORY WARRANTIES, INCLUDING, BUT NOT LIMITED TO, NON-INFRINGEMENT AND THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

### **ARTICLE IV – ADDITIONAL TERMS AND CONDITIONS SPECIFIC FOR MAINTENANCE SERVICES**

#### **1. DEFINED TERMS OF ARTICLE IV.**

(a) "Added Products" are those additional Customer-acquired products of the same type and manufacturer(s) as the existing Supported Products.

(b) "End of Support" occurs when the manufacturer declares a Supported Product "end of life," "end of service," "end of support," "manufacture discontinue," or any similar designation.

(c) "Extended Support" is the limited set of Maintenance Services provided by Seller when certain Supported Products are subject to End of Support.

(d) "Host" is a third party service provider.

(e) "Maintained Products" means collectively, the Supported Products and the Supported Systems

(f) "New Software" includes patches, Updates, or feature upgrades for Supported Products.

(g) "Supported Products" are (1) all hardware and/or software identified on an Order for which the Maintenance Services are to be provided; and (2) Added Products.

(h) "Supported Sites" are the locations specified on an Order.

(i) "Supported Systems" are the networks specified on an Order, and/or a group of Supported Products.

(j) "Replacement Hardware" is hardware that Seller provides as part of the Maintenance Services.

(k) "Vendor Management" are certain functions Seller performs to instruct third party vendors, or request products or services on Customer's behalf from third party vendors, under Customer's supply contracts with such third party vendors.

#### **2. PROVISION AND SCOPE OF MAINTENANCE SERVICES.**

(a) **Order Form and Provision of Maintenance Services.** Seller will provide the Maintenance Services for Supported Products or Supported Systems at Supported Sites remotely, as described further in the Order. The Price set forth on the pertinent Order is based on the port and item counts provided to Seller. If the actual quantities of ports that are maintained at the inception of the Order vary by more than five percent (5%) from the port count provided to Seller, and/or there is a discovery of additional items, Seller reserves the right to adjust the Price on the applicable Order to reflect the actual quantities being maintained. Seller, at its discretion, will perform a true-up on a quarterly basis to reconcile future billing on any items that have been added (activated) or removed (deactivated) during the previous period.

(b) **Title and Risk of Loss of Supported Products.** Except for Products sold by Seller to Customer under the terms and provision of this Agreement, title to the Supported Products will have passed to Customer pursuant to the terms and provisions of a separate agreement under which Customer originally obtained the Supported Products. Title to any Replacement Hardware (as defined in Article IV, Section 2(h) of this Attachment A) (if applicable) provided by Seller as part of the Maintenance Services will pass to Customer when installed. Customer bears the risk of loss, theft, destruction, or damage to the Supported Products (each, a "Loss"), and Customer will promptly provide Seller with written notice of any Loss that occurs.

(c) **Monitoring.** Seller may electronically monitor Maintained Products for the following purposes: (i) to perform and analyze diagnostics from a remote location and to take corrective actions, if necessary; (ii) to determine system configuration and applicable charges; (iii) to verify compliance with applicable software license terms and restrictions; (iv) to assess Customer needs for additional products and/or Maintenance Services; and (v) as otherwise provided in the Order.

(d) **Error Correction.** Some Maintenance Services options may include correction of Errors. An "Error" means a failure of a Supported Product to conform in all material respects to the manufacturer's specifications applicable when the Supported Product was originally purchased or originally licensed by Customer.

(e) **Help Line Support.** Where the Maintenance Services include help line support, Seller will provide such help line support (e.g., service hours and target response intervals) in accordance with that which is indicated on the Order.

(f) **Updates.** Where the Maintenance Services include the provision of Updates, Seller will make available to Customer such Updates as the manufacturer makes available to Seller. An "Update" is a change in software that typically provides maintenance correction only. An Update typically is designated as a change in the digit to the right of the second decimal point (e.g., n.y.[z]). Seller, at its option, will determine how to provide an Update (e.g., via a website, email, U.S. Mail, etc.). Updates may either be remotely installed by Seller (or its subcontractor) or delivered to Customer for installation by Customer.

(g) **End of Support.** The Seller may discontinue or limit the scope of Maintenance Services on a Supported Product for which the manufacturer has declared End of Support. If Maintenance Services are discontinued for a Supported Product, the Supported Product will be removed from the Order and the Price adjusted accordingly. For certain Supported Products subject to End of Support, Seller



may continue to offer Extended Support. Where Seller chooses to provide such Extended Support, the description of such Extended Support, and the fees associated therewith, will be available at the time notice is sent by Seller to Customer. These notices will communicate information such as Extended Support eligibility, Extended Support alerts related to parts shortages, and end of Maintenance Services (including Extended Support) eligibility.

(h) **Replacement Hardware.** Replacement Hardware may be new, factory reconditioned, refurbished, re-manufactured, or functionally equivalent. Replacement Hardware, if not new, will be warranted the same as new hardware and will be equivalent to new in its performance. Replacement Hardware will only be furnished on an exchange basis. Immediately upon Customer's receipt of Replacement Hardware, or installation of the Replacement Hardware by Seller, as applicable, the hardware being replaced by Seller will become the property of Seller. Seller represents and warrants that all Replacement Hardware will be free of defects in design, materials, and workmanship. In addition, if Seller is not the manufacturer of such Replacement Hardware, Seller will make available to Customer all warranties provided by the manufacturer for such Replacement Hardware.

(i) **Added Products.** If Customer acquires Added Products and locates such Added Products with existing Supported Products at a Supported Site, the Added Products will automatically be added to the Order at the then current fees charged by Seller as of the date on which the Added Products are first co-located with the Supported Products and for the remainder of the Maintenance Term (as hereinafter defined). Added Products purchased from a party other than Seller are subject to certification by Seller at its then current certification rates. If an Added Product fails certification, Seller may choose not to add such Added Product as a Supported Product.

(j) **General Limitations.** Unless an Order provides otherwise, Seller will only provide Maintenance Services on software for (i) the unaltered current release of such software, and (ii) the prior release of such software. The following items are included in the Maintenance Services only if the Order specifically includes them: (i) support of user-defined applications; (ii) support of Supported Products that have been modified by a party other than Seller (except for installation of standard, self-installed Updates provided by the manufacturer); (iii) making corrections to user-defined reports; (iv) data recovery services; (v) services associated with relocation of Supported Products; (vi) correction of Errors arising from causes external to the Supported Products (such as power failures, power surges, or lightning strikes); (vii) Maintenance Services for Supported Products that have been misused, used in breach of the terms and provisions of their respective license, improperly installed or configured, or that have had their serial numbers altered, defaced, or deleted; and (viii) correction of Errors, the cause of which occurred prior to the commencement of Maintenance Services pursuant to the terms of the pertinent Order. Unless otherwise expressly specified in the applicable Order, all Maintenance Services shall be provided by Seller to Customer remotely. In the event Customer requests that Seller provide any Services on-site at Customer's location(s), such Services shall be subject to additional charges in accordance with the provisions of Article II, Section 4(b) above.

### **3. CUSTOMER RESPONSIBILITIES FOR MAINTAINED PRODUCTS.**

(a) **Provision of Supported Products and Supported Systems.** Customer will provide all Supported Products, Supported Systems, and Supported Sites. Customer continuously represents and warrants that (i) Customer is either the owner of, or is authorized to access and use, each Supported Product, each Supported System, and each Supported Site; and (ii) Seller and its suppliers and subcontractors are authorized to do the same to the extent necessary to provide the Maintenance Services in a timely manner.

(b) **Moves of Supported Products.** When Customer seeks to move any Supported Product, Customer will notify Seller. Only Seller or its authorized agent may move Supported Products. Seller may charge additional amounts to recover any additional costs incurred in providing the Maintenance Services that result from the move of Supported Products by a party other than Seller or its authorized agent.

(c) **Identification of Maintained Products.** Customer will not remove any identification tags or other markings from any Maintained Product.

(d) **Vendor Management Authorization.** Where Seller is to perform Vendor Management functions, Customer will provide Seller with a letter of agency or similar document, in a form that is reasonably satisfactory to Seller, that authorizes Seller to perform the Vendor Management. Where the third party vendor's consent is required for Seller to be able to perform the Vendor Management in a timely manner, Customer will obtain the written consent of the third party vendor and will provide Seller with a copy of such written consent.

(e) **Third Party Hosting.** For Maintenance Services that include monitoring, in the event that one (1) or more network address(es) to be monitored by Seller are associated with systems owned, managed, and/or hosted by a Host, Customer will (i) notify Seller of the Host prior to commencement of the Maintenance Services; (ii) obtain Host's advance written consent for Seller to perform the Maintenance Services on Host's computer systems and provide to Seller a copy of such written consent; and (iii) facilitate necessary communications between Seller and Host in connection with the Maintenance Services.

**4. SOFTWARE LICENSES OF MAINTAINED PRODUCTS.** Where the Maintenance Services include providing New Software, the New Software will be provided subject to the license grant and restrictions contained in the original agreement under which Customer licensed the original software for which the New Software is provided. Where there is no existing license for the original software, New Software will be provided subject to the current license terms and restrictions of the manufacturer for the New Software. New Software may include components provided by third party suppliers that are subject to their own end user license agreements. Customer may install and use these components in accordance with the terms and conditions of the end user license agreement accompanying such components, whether the terms and conditions of the end user license are in "shrinkwrap," "clickwrap," or some other form.

### **5. TERM AND TERMINATION RIGHTS OF MAINTENANCE SERVICES.**

(a) **Maintenance Services Term.** Unless a different term is specified on the applicable Order, Seller will provide the applicable Maintenance Services for a term ("Maintenance Term") of one (1) year. Maintenance Services shall expire at the end of the Maintenance Term, unless expressly extended or renewed by the parties in writing pursuant to a mutually agreed upon amendment or new Order.

(b) **Termination Rights of Maintenance Services.**

1) **For Convenience.** Unless otherwise specified on the pertinent Order, Customer may terminate Maintenance Services, in whole or in part, upon providing Seller with thirty (30) days advance written notice; provided, however, that Customer shall be liable to Seller for the lesser amount due for Maintenance Services for (i) twelve (12) months; or (ii) the remainder of the Maintenance Term or the applicable Maintenance Renewal Term.

2) **For Cause.** Either Party may terminate the applicable Maintenance Services included in an Order without liability to the other Party by providing written notice to such other Party if such other Party (a) fails to cure any material breach of the terms and provisions of the Agreement or such Maintenance Services included in the pertinent Order within a thirty (30)-day period after it has received from the non-breaching Party a written notice that details the breach and requests that the breach be cured; or (b) becomes insolvent, or

insolvency proceedings are instituted against such other Party.

**6. MAINTENANCE SERVICES WARRANTIES; DISCLAIMERS.**

(a) **Maintenance Services Warranty.** Seller represents and warrants to Customer that the Maintenance Services will be performed in a professional and workmanlike manner by qualified personnel and in accordance with the terms and provisions of the Agreement and the pertinent Order. If the Maintenance Services have not been so performed, and if within thirty (30) days after the performance of the Maintenance Services Customer provides Seller with a written notice of such non-compliance, then Seller, at its option, will re-perform the Maintenance Services, correct the deficiencies, or render a prorated refund based on the original Price for the deficient Maintenance Services. The warranty remedies expressly provided in this Article IV, Section 6 of Attachment A will be Customer's sole and exclusive remedies for breach of warranty claims only.

(b) EXCEPT AS REFERENCED AND LIMITED IN THIS ARTICLE IV, SECTION 6 OF ATTACHMENT A, NEITHER SELLER NOR ITS LICENSORS OR SUPPLIERS MAKE ANY OTHER EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE MAINTENANCE SERVICES. IN PARTICULAR, THERE IS NO WARRANTY THAT ALL SECURITY THREATS AND VULNERABILITIES WILL BE DETECTED OR THAT THE MAINTENANCE SERVICES WILL RENDER A SUPPORTED PRODUCT OR SUPPORTED SYSTEM SAFE FROM SECURITY BREACHES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, SELLER DISCLAIMS ALL OTHER EXPRESS, IMPLIED, AND STATUTORY WARRANTIES, INCLUDING, BUT NOT LIMITED TO, NON-INFRINGEMENT AND THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.