

Terms and Conditions Applicable to Legacy Master Agreements
with
ConvergeOne Systems Integration, Inc. ("C1SI")

In the event that a customer ("**Customer**") wishes to purchase products and/or services utilizing the terms and conditions of a Legacy Master Agreement that was entered into or otherwise later acquired by ConvergeOne Systems Integration, Inc. (formerly, Arrow Systems Integration, Inc.) (the "**C1SI Legacy Master Agreement**"), the terms and conditions set forth below (the "**C1SI Supplemental Terms and Conditions**") shall apply to such purchase to the extent applicable. In the event of a conflict between the terms and conditions of the C1SI Legacy Master Agreement, the C1SI Supplemental Terms and Conditions, and the terms and conditions of any Order (as hereinafter defined), 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) the C1SI Supplemental Terms and Conditions, and (iii) the C1SI Legacy Master Agreement.

Any references to Arrow Systems Integration, Inc., its predecessor or predecessor-in-interest shall be deemed to refer to ConvergeOne, Inc. and/or its subsidiaries and affiliates (collectively, "**C1**" or "**Seller**").

1. The following revised defined terms shall apply to such purchases:

- a. "**Added Products**" shall mean those additional Customer-acquired products of the same type and manufacturer(s) as the existing Supported Products.
- b. "**Affiliate(s)**" shall mean 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. Customer Affiliates that are approved by Seller may purchase Products and/or Services under the terms and conditions of the Agreement by: (i) signing an Order referencing the Agreement, or (ii) issuing to Seller a purchase order to order Products and/or Services from Seller in lieu of an authorized representative signing such Order. The terms of the Agreement will be incorporated by reference in any such Order as if the Agreement were separately executed by such Affiliate (and solely by such Affiliate) and the term "Customer" used therein will be deemed as applying to such Affiliate for the purposes of such 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 Orders. 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 such Order. Under no circumstances will Customer and any of the Affiliates be jointly or severally liable for the obligations of the others.
- c. "**Agreement**" shall mean the C1SI Legacy Master Agreement as modified by these C1SI Supplemental Terms and Conditions.
- d. "**C1 Affiliate**" shall mean any corporation, partnership, or other entity that, directly or indirectly, controls (or is controlled by or is under common control with) Seller. Any C1 Affiliate may sell Products and/or Services to Customer under the terms and provisions of the 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 the Agreement will apply to such sale as if such C1 Affiliate were Seller under the Agreement, but only with respect to such sale.
- e. "**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.
- f. "**Error**" shall have the meaning set forth in Section 5(a)(iv) below.
- g. "**EULA**" shall mean an End User License Agreement. A EULA may have been referenced as a Software License Agreement and/or a similar defined term under the C1SI Legacy Master Agreement.
- h. "**Extended Support**" shall mean the limited set of Maintenance Services provided by Seller when certain Supported Products are subject to End of Support.
- i. "**Host**" is a third party service provider.
- j. "**Loss**" shall have the meaning set forth in Section 5(a)(ii) below.
- k. "**Maintained Products**" shall mean the Supported Products and the Supported Systems. Maintained Products may have been referenced as Equipment, CPE, and/or a similar defined term under the C1SI Legacy Master Agreement.

- l. **"Maintenance Services"** shall mean 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.
- m. **"Maintenance Services Order Form"** shall mean the Order document that provides the line item cost detail of the supported products, supported systems and supported sites in the provision of Maintenance Services.
- n. **"Maintenance Term"** shall have the meaning set forth in Section 5(d)(i) below.
- o. **"Maintenance Renewal Term"** shall have the meaning set forth in Section 5(d)(i) below.
- p. **"Managed Products"** shall mean all hardware and/or software identified on a Master Agreement Rider or Solution Quote for which the Managed Services are to be provided. Managed Products may have been referenced as Equipment, CPE, and/or a similar defined term under the C1SI Legacy Master Agreement.
- q. **"Managed Services"** shall mean any Seller-provided vendor management services, software release management services, remote monitoring services, and/or troubleshooting services.
- r. **"Managed Services Term"** shall mean the one (1) year period during which Seller will provide the applicable Managed Services, unless a different period of time is specified on the pertinent Order.
- s. **"Managed Sites"** are the locations specified on each pertinent Order. Managed Sites may have been referenced as Customer Premises, Customer Locations, and/or a similar defined term under the C1SI Legacy Master Agreement.
- t. **"Master Agreement Rider"** is incorporated into the applicable Order and provides the line item cost detail associated with the sale of Products and the provision of Professional Services and Managed Services.
- u. **"New Software"** shall include any patches, Updates, and/or feature upgrades for Supported Products.
- v. **"OEM"** shall mean the original equipment manufacturer.
- w. **"Order"** shall mean each applicable 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. The Order documents (i.e. Solution Summary, Master Agreement Rider, Solution Quote, and/or Maintenance Services Order Form) may have been referenced as a Schedule 1, an Order Form, a Sales Order, a Maintenance Order and/or a similar defined term under the C1SI Legacy Master Agreement. Any Products and/or Services not specifically itemized in the applicable Order are not provided.
- x. **"Personal Data"** shall mean any personal data of any employee, customer, or other individual.
- y. **"Price"** shall mean the price of each Product and/or Service described on an Order, together with freight, taxes, and any other itemized charges, fees, and costs. Price may have been referenced as Project Price, Recurring Charges, and/or a similar defined term under the C1SI Legacy Master Agreement. For any 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 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 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.
- z. **"Products"** shall mean any hardware, third party software, and/or Seller software: 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. Products may have been referenced as Hardware, Software, Equipment and/or a similar defined term under the C1SI Legacy Master Agreement.
- aa. **"Professional Services"** shall mean 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. Products may have been referenced as Professional Services, Installation Services, Vendor Assist Services, and/or a similar defined term under the C1SI Legacy Master Agreement.
- bb. **"Replacement Hardware"** is hardware that Seller provides as part of the Maintenance Services.
- cc. **"Replacement Product"** shall have the meaning set forth in Section 3(c)(iii) below.
- dd. **"Services"** shall collectively mean Professional Services, Managed Services and/or Maintenance Services.
- ee. **"Solution Quote"** is incorporated into the applicable Order and shall mean any formal quote to which you and Seller mutually agree.
- ff. **"Solution Summary"** shall mean the Seller-provided ordering document that summarizes the purchase of Products and/or Services, which: (i) is signed by authorized representatives of each Party (except as set forth in Section 5 below); (ii) reflects the price to be charged for such Products and/or Services; and (iii) incorporates the following supporting documents, as applicable: SOW, Master Agreement Rider, Maintenance Service Order Form, and/or Solution Quote.

- gg. **“Statement of Work,” “Scope of Work,” or “SOW” or “TOS”** shall mean the Seller-provided statement of work provided in connection with the Master Agreement Rider, Solution Quote, and/or Maintenance Services Order Form describing the Services to be performed, which may be incorporated into the applicable Order.
- hh. **“Supported Products”** shall mean all hardware and/or software identified on a Maintenance Services Order Form for which the Maintenance Services are to be provided, as well as any Added Products. Supported Products may have been referenced as Equipment, CPE, and/or a similar defined term under the C1SI Legacy Master Agreement.
- ii. **“Supported Sites”** shall mean any locations specified on a Maintenance Services Order Form or Statement of Work. Supported Sites may have been referenced as Customer Premises, Customer Locations, and/or a similar defined term under the C1SI Legacy Master Agreement.
- jj. **“Supported Systems”** shall mean the networks specified on a Maintenance Services Order Form, and/or a group of Supported Products. Supported Systems may have been referenced as Equipment, CPE, and/or a similar defined term under the C1SI Legacy Master Agreement.
- kk. **“Update”** shall have the meaning set forth in Section 5(a)(vi) below.
- ll. **“Vendor Management”** shall mean those 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. Additional terms and conditions specific to the purchase of **PRODUCTS** and **PROFESSIONAL SERVICES**:

- a. **TITLE; RISK OF LOSS.** Title, ownership, and risk of loss of hardware sold pursuant to the terms and provisions of the Agreement shall pass to Customer upon delivery to Customer. Title and ownership of software delivered to Customer pursuant to the terms and provisions of the Agreement shall remain solely with its licensor. Risk of loss of software delivered to Customer pursuant to the terms and provisions of the Agreement shall pass to Customer upon delivery to Customer.
- b. **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.
- c. **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 the 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.
 - i. **Product Warranties.** Products are warranted to Customer either directly by the original equipment manufacturer (“OEM”) or by Seller.
 - A. **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.
 - B. **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.
 - C. **Seller Warranty for Refurbished Products.**
 - I. Products refurbished by Seller are warranted for a term of one (1) year from either (1) the date of delivery of the Products if the Products are installed by Customer; or (2) the date of installation if the 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 (1) misuse, neglect, power failures, power surges, lightning, fire, flood, or accident; (2) use of products or facilities supplied by others; (3) failure to follow installation, operation, or maintenance instructions; (4) failure to permit remote access; or (5) force majeure conditions specified in the Agreement.

- ii. **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.
 - iii. **Warranty Procedures and Disclaimers.** The terms and provisions of this Section 3(c)(iii) apply to all Products and Replacement Products provided hereunder.
 - A. 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.
 - B. 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 THE AGREEMENT, CUSTOMER IS SOLELY RESPONSIBLE FOR ENSURING THAT CUSTOMER'S NETWORKS AND SYSTEMS ARE ADEQUATELY SECURED AGAINST UNAUTHORIZED INTRUSION.
 - C. 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.
 - iv. **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 such Order, may be found in the Order.
- d. **PROFESSIONAL SERVICES.**
- i. **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.
 - ii. **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).
 - iii. **BACK-UPS.** CUSTOMER IS SOLELY RESPONSIBLE FOR SYSTEM BACK-UP PRIOR TO COMMENCEMENT OF PROFESSIONAL SERVICES OR INSTALLATION OF PRODUCTS.

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

- i. **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.
- ii. **Professional Services.**
 - A. **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.
 - B. **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.

3. **Additional terms and conditions specific to the purchase of MANAGED SERVICES:**

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

- i. **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 that references the Agreement. The Price set forth on the pertinent 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.
- ii. **Monitoring.** Seller may electronically monitor Managed Products for the following purposes: (A) to perform and analyze diagnostics from a remote location and to take corrective actions, if necessary; (B) to determine system configuration and applicable charges; (C) to verify compliance with applicable software license terms and restrictions; (D) to assess Customer needs for additional products and/or Managed Services; and (E) as otherwise provided in each pertinent Order.
- iii. **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 Section 2(d) above.

b. **CUSTOMER RESPONSIBILITIES FOR MANAGED SERVICES.**

- i. **Provision of Managed Products.** Customer will provide all Managed Products and Managed Sites. Customer continuously represents and warrants that (A) Customer is either the owner of, or is authorized to access and use, each Managed Product and each Managed Site; and (B) 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.
 - ii. **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.
 - iii. **Identification Tags.** Customer will not remove any identification tags or other markings from any Managed Product.
- c. **TITLE AND RISK OF LOSS OF MANAGED PRODUCTS.** Except for Products provided by Seller to Customer under the terms and provisions of the 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. Customer, at its expense, will maintain insurance against Losses to the Managed Products for the full replacement value of the Managed Products. Upon Seller's request, Customer will provide Seller with evidence of this insurance.

- d. **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.

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

- i. **Managed Services Term.** Unless a different term is specified on the pertinent Order corresponding to the pertinent Order, Seller will provide the applicable Managed Services for a term ("Managed Services Term") of one (1) year.

- ii. **Termination Rights of Managed Services.**

- A. **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.
- B. **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 (I) fails to cure any material breach of the terms and provisions of the Agreement or the pertinent Managed 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 (II) becomes insolvent or insolvency proceedings are instituted against such other Party.

f. **MANAGED SERVICES WARRANTIES; DISCLAIMERS.**

- i. **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 4(f) will be Customer's sole and exclusive remedies for breach of warranty claims only.
- ii. EXCEPT AS REFERENCED AND LIMITED IN THIS SECTION 4(f), 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.

4. **Additional terms and conditions specific to the purchase of MAINTENANCE SERVICES:**

a. **PROVISION AND SCOPE OF MAINTENANCE SERVICES.**

- i. **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 pertinent 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.

- ii. **Title and Risk of Loss of Supported Products.** Except for Products sold by Seller to Customer under the terms and provision of the 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 (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. Customer, at its expense, will maintain insurance against Losses to the Supported Products for the full replacement value of the Maintained Products. Upon the request of Seller, Customer will provide Seller with evidence of this insurance.
- iii. **Monitoring.** Seller may electronically monitor Maintained Products for the following purposes: (A) to perform and analyze diagnostics from a remote location and to take corrective actions, if necessary; (B) to determine system configuration and applicable charges; (C) to verify compliance with applicable software license terms and restrictions; (D) to assess Customer needs for additional products and/or Maintenance Services; and (E) as otherwise provided in the Order.
- iv. **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.
- v. **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.
- vi. **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.
- vii. **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.
- viii. **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.
- ix. **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. 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.

- x. **General Limitations.** Unless an Order provides otherwise, Seller will only provide Maintenance Services on software for (A) the unaltered current release of such software, and (B) 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 Section 2(d) above.

b. CUSTOMER RESPONSIBILITIES FOR MAINTAINED PRODUCTS.

- i. **Provision of Supported Products and Supported Systems.** Customer will provide all Supported Products, Supported Systems, and Supported Sites. Customer continuously represents and warrants that (A) Customer is either the owner of, or is authorized to access and use, each Supported Product, each Supported System, and each Supported Site; and (B) 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.
 - ii. **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.
 - iii. **Identification of Maintained Products.** Customer will not remove any identification tags or other markings from any Maintained Product.
 - iv. **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.
 - v. **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 (A) notify Seller of the Host prior to commencement of the Maintenance Services; (B) 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 (C) facilitate necessary communications between Seller and Host in connection with the Maintenance Services.
- c. **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.

d. TERM AND TERMINATION RIGHTS OF MAINTENANCE SERVICES.

- i. **Maintenance Services Term.** Unless a different term is specified on the pertinent Order, Seller will provide the applicable Maintenance Services for a term (“Maintenance Term”) of one (1) year. Following the expiration of the Maintenance Term and subject to the terms in Section 2(y), Maintenance Services will automatically renew for successive one (1) year periods (each a “Maintenance Renewal Term”) unless, at least thirty (30) days prior to the expiration of the Maintenance Term or the applicable Maintenance Renewal Term, Customer or Seller provides the other with written notice of its intent not to renew.
- ii. **Termination Rights of Maintenance Services.**
 - A. **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.
 - B. **For Cause.** Either Party may terminate the pertinent Maintenance Services included in an Order without liability to the other Party by providing written notice to such other Party if such other Party (I) fails to cure any material breach of the terms and provisions of the Agreement or the pertinent 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 (II) becomes insolvent, or insolvency proceedings are instituted against such other Party.

e. MAINTENANCE SERVICES WARRANTIES; DISCLAIMERS.

- i. **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 Section 5(e) will be Customer’s sole and exclusive remedies for breach of warranty claims only.
- ii. EXCEPT AS REFERENCED AND LIMITED IN THIS SECTION 5(e), 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.

5. Purchase Terms:

- a. **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:
 - i. **For Products and Professional Services (excluding third party support services):**
 - A. **Payment:** The remaining balance of the Price is due thirty (30) days from the date the invoice is issued as follows:
 - I. **For Products:**

1. In the sole discretion of Seller and as set forth in a Order, a deposit may be required upon execution of the Order.
2. One Hundred Percent (100%) of the Price attributable to the cost of such Product(s) (if a deposit is required as provided in (1) 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.

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

1. Professional Services provided on a **time and materials** basis (including, without limitation, any on-site Services provided pursuant to Section 2(d) above) will be invoiced monthly as Professional Services are performed by Seller (following depletion of the down payment); or
 2. 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.
- ii. **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.
- iii. **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.
- iv. **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.
- b. **FINANCING OPTION:** If Customer elects to lease the pertinent Products and/or Services, Customer:
- i. Shall inform Seller of such election no later than the time that the pertinent Order is executed to avoid being liable for sales tax on the Products and/or Services provided under the pertinent Order; and
 - ii. 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.