



MASTER LICENSE SERVICES AGREEMENT ON-PREMISES SOFTWARE

*** IMPORTANT INFORMATION – PLEASE READ CAREFULLY ***

The Software contains proprietary material and information, the use of which is subject to and expressly conditioned upon acceptance of This Master License Services Agreement On-Premises Software (“MLSA” or “Agreement”). Capitalized terms used in this MLSA are defined throughout this MLSA.

The MLSA is a legally binding document between Customer and RedSeal, Inc. (“Supplier” or “RedSeal”) as of the execution of the applicable Order (“Effective Date”). “Customer” means the entity identified on the Cover Page or as set forth in a particular Order, and includes Customer, its Affiliates and its and their employees, directors, officers, agents and representatives. “Affiliate” means an entity that directly or indirectly controls, is controlled by or is under common control with a party, where “control” shall mean the ownership of more than fifty percent (50%) of the (i) voting power to elect the directors of the said entity, or (ii) ownership interest in that entity. Supplier and Customer are each a “Party” and are collectively referred to herein as the “Parties”.

By proceeding with the use of the Software, or authorizing any other person to do so, you are representing to Supplier that you are (i) authorized to bind the Customer; and (ii) agreeing on behalf of the Customer that the terms of the MLSA shall govern the relationship of the parties with regard to the subject matter in the MLSA and are waiving any rights, to the maximum extent permitted by applicable law, to any claim anywhere in the world concerning the enforceability or validity of the MLSA. If you do not have authority to agree to the terms of the MLSA on behalf of the Customer, or do not accept the terms of the MLSA on behalf of the Customer, immediately cease any further attempt to use the Software for any purpose.

This MLSA consists of the following Terms and Conditions (including exhibits and appendices) and the applicable Order form. No terms and conditions on any Order which conflict with, are in addition to, or which modify this MLSA will be deemed part of this MLSA and such terms and conditions shall not be binding on Supplier and are hereby rejected. Orders may be submitted directly to Supplier or via a Supplier-approved reseller.

NOW, THEREFORE, in consideration of the foregoing, the mutual promise and covenants contained herein, along with any applicable Statement of Work(s) (“SOW”) attached hereto, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. PRODUCT LICENSES AND SALES

1.1 Customer Orders. Customer, together with any ordering Affiliate, shall be jointly and severally liable for all obligations set forth in this Agreement. Supplier reserves the right to conduct a credit check of Customer at any time.

1.2 Licenses. (a) License Grant. (i) Subject to the terms and conditions of this Agreement, Supplier hereby grants Customer during the term (or on a subscription basis as provided in 1.2(c) below) specified for such license in the Order, a personal, non-exclusive, non-transferable (except as specified herein) license, without the right of sublicense, to install and have its **Authorized Users** (Customer’s employees or contractors authorized from time to time by Supplier to use the Software) use the **Software** (Supplier’s proprietary computer programs described in the applicable Order, in object code form, and any Updates) for the **Permitted Configurations** (the number of network device configurations on Customer’s network permitted to be analyzed using the Software specified in the Orders, where each configuration is tied to a specific network device and may not be changed to or used with another network device except as expressly permitted in this Agreement) for Customer’s internal business purposes only.

(ii) The Software may be used on the Hardware or on other hardware that complies with the specifications for hardware set forth in the Documentation. If a network device is retired from production, Customer may transfer its use of the Software to a new network device for ongoing use. No other changes or transfers may be made to the network devices allocated for use of the Software unless otherwise agreed by Supplier.

(iii) If more than the licensed number of Authorized Users require use of the Software, additional blocks of Authorized Users may be licensed from Supplier. In the event of use of the Products on other than the Permitted Configurations or in excess of the number of Authorized Users, Customer shall promptly pay Supplier any shortfall plus accrued interest at the Interest Rate (one and one-half percent (1.5%) per month or if this rate is not permitted by law then the highest rate permitted by applicable law).





“Products” means the Software, Hardware (the equipment specified in the Order, if any, onto which the Software is pre-installed), Documentation (Supplier’s standard published documentation accompanying the Products (as applicable) identified in an Order and any Updates thereto, in any form or media provided) and Maintenance (Section 4.4) licensed or purchased by Customer as specified in an Order.

“Updates” means maintenance releases and error corrections to the Software or Documentation that are generally provided or made available by Supplier to Customers receiving Maintenance at no additional charge. Updates do not include releases, new versions, improvements, upgrades, enhancements and the like for which Supplier charges separately or extra as determined by Supplier in its sole discretion

(a) **Restrictions.** Except for the limited license rights expressly granted in Section 1.2(a), Supplier reserves all rights in and to the Software and Documentation. Customer shall not:

- (i) reproduce, modify, translate or create any derivative work of all or any portion of the Software or Documentation;
- (ii) sell, rent, lease, loan, provide, distribute or otherwise transfer all or any portion of the Software or Documentation to a third party;
- (iii) reverse engineer, reverse assemble or otherwise attempt to gain access to the source code of all or any portion of the Software (other than the Open Source Software) except to the extent expressly permitted by law;
- (iv) remove, alter, cover or obfuscate any copyright notices, trademark notices or other proprietary rights notices (**“Proprietary Rights Notices”**) placed or embedded on or in the Products;
- (v) unbundle any components of the Software;
- (vi) exceed the number of Authorized Users having use of the Software; or
- (vii) cause or permit any third party to do any of the foregoing.

In addition, Customer shall not use the Products for the benefit of any third party, including but not limited to as an application service provider, for third-party training, or time-sharing or service bureau use.

(b) **Subscription Licenses.** In lieu of a perpetual or term license, Customer may purchase an annual subscription license as specified in the Order (**“Subscription License”**). All Subscription Licenses include Maintenance at no additional charge. Customer’s Subscription License will begin on the date the license key is issued for the Subscription License and will automatically renew for an additional annual term (or such other period as specified in the Order) unless and until Customer terminates the Subscription License by providing Supplier at least ninety (90) days prior written notice of Customer’s intent to terminate its Subscription License.

1.3 **Term of Agreement, Order and SOW, and Duration of Fees.** Unless earlier terminated in accordance with the terms of this Agreement, or if Customer elects the Subscription License, the Parties agree that: (a) This Agreement shall become effective on the Effective Date and shall continue for three (3) years and will continue thereafter on an annual basis until terminated by either Party upon no less than ninety (90) days prior written notice (**“Agreement Term”**); and (b) If an Order or SOW does not specify otherwise, the term for each license and sale of Products shall commence on the Service Commencement Date (**“Service Commencement Date”**) means (i) the date Customer has accepted or is deemed to have accepted the Products in accordance with the provisions of Section 4.5 or the applicable SOW; or (ii) the date Customer begins using the Products other than for testing purposes, whichever date is earlier) and continue for one (1) year (**“Initial Term”**). At the end of the Initial Term, the term shall automatically renew for successive one (1) year terms until terminated by either Party in accordance with Section 5.1(a) (the Initial Term and any extension thereof is referred to as the **“Service Term”**). To the extent that the Service Term extends beyond the Agreement Term, then this Agreement shall remain in full force and effect for such Service Term until the stated expiration or termination of such Service Term. Upon notice and consent of Customer, but not more than once a year, or at any renewal time the fees set forth in the applicable Order may be subject to an adjustment based upon increases in the most current published Consumer Price Index (**“CPI”**) for the previous twelve-month period. The CPI will be measured as indicated in the column for Urban Wage Earners and Clerical Workers, U.S. City average (base index year 1982-1984=100) as published by the Bureau of Labor Statistics. This increase will be in addition to any other increases. Failure for Customer to consent to the CPI increase may result in a termination by Supplier. To ensure either party is not disadvantaged by large fluctuations in critical components, labor or supply chain, the Parties may annually review of the cumulative change in costs. If these cumulative changes are less than +5% of the pricing, since the last annual review, there will be no change to the pricing. Should the cumulative change, meet or exceed +5% since the last annual review, the pricing will change by the cumulative changes of the cost. Supplier will provide 30 days’ advance notice of such an expected change. This Section only applies if pricing is fixed or specified in this Order. Notwithstanding anything to the contrary, any changes not presented during the annual review are hereby irrevocably waived.





1.4 Payment. Unless set forth otherwise in an Order or SOW, Customer shall pay all amounts due within thirty (30) days from the date of invoice. Any amount due but not received by Supplier within fifteen (15) days of the Due Date will accrue interest at the Interest Rate from the Due Date to the date of actual payment

1.6 Taxes and Regulatory Fees. All charges are exclusive of applicable taxes. Except for taxes based on Supplier's net income, Customer will be responsible for payment of all applicable VAT, consumption, sales, use, excise, access, bypass, franchise, regulatory or other like taxes, and all fees, charges or surcharges, whether now or hereafter enacted, however designated, imposed on or based on the provision, license, sale or use of the Products (hereafter "**Taxes**"). If Customer is or was required by law to make any deduction or withholding from any payment due hereunder to Supplier, then the gross amount payable by Customer to Supplier will be increased so that, after any such deduction or withholding for Taxes, the net amount received by Supplier will not be less than Supplier would have received had no such deduction or withholding been required

1.7 Equipment. If requested by Customer, Supplier may, at its option, and in its discretion upon an additional charge to Customer, install certain equipment in connection with the Products that is provided by Customer or third parties with whom Customer has a contractual relationship (such equipment, "**Customer Equipment**"). Customer must ensure that any Customer Equipment is connected and used in accordance with any instructions, safety and security procedures applying to the use of that equipment. Equipment may also be furnished by Supplier, its Affiliates or licensors or its designated third party vendors (as applicable) for use at Customer's Premises as part of any Products ("**Supplier-Provided CPE**"). Any Supplier-Provided CPE shall be identified in the applicable Order or SOW, together with associated pricing and shipping information.

1.8 Acceptance of Products and Services. Unless otherwise stated in the applicable Order or SOW, the Products shall be accepted or deemed accepted in accordance with the following procedure: (a) upon Customer's receipt of an In-Service Notification (i.e., a written notice from Supplier to Customer that the Products ordered pursuant to an Order have been installed by Supplier and have been tested and are functioning properly in accordance with the applicable Service Schedules), Customer will have two (2) business days to test the Products deliverables and notify Supplier in writing of its acceptance or rejection of the Products or deliverables; and (b) if Customer notifies Supplier of its rejection, Supplier shall remedy the deficiency and a new In-Service Notification will be delivered to Customer and the procedures set forth in this Section 1.8 will be repeated. Customer's failure to notify Supplier of its acceptance or rejection of the Services within this time period will be deemed to constitute Customer's acceptance of the relevant Products deliverables.

2. OBLIGATIONS OF THE PARTIES

2.1 Warranties of Supplier. Supplier warrants that the Hardware and Software, as delivered, will perform substantially in accordance with the applicable Documentation for a period of ninety (90) days from the date of initial delivery to Customer and that any Maintenance shall be performed in a professional manner. Supplier makes no warranty that the operation of the Products will be uninterrupted or error-free, that the Products will meet Customer's requirements or that the Products will operate in combination with hardware or software not provided by Supplier. In the event that the Products do not conform with the above warranties, the exclusive remedy shall be for Supplier to (a) with respect to Software, use its reasonable efforts to correct any reproducible error; provided, however, that Customer acknowledges that Supplier may not be able, and shall have no obligation, to correct all errors or (b) with respect to Maintenance, re-perform such Maintenance at no additional charge to Customer. In the event the Hardware does not conform to the above warranties, the exclusive remedy shall be for Supplier to provide repaired or replacement Hardware to Customer pursuant to Supplier's then current return material authorization (RMA) process.

Supplier's warranty shall not extend to errors that result from: (i) Customer's failure to implement any Updates which are provided by Supplier; (ii) use of the Products other than in accordance with the Documentation; (iii) any alterations or additions to the Products performed by parties other than Supplier; (iv) use of the Products in a manner for which they were not designed; (v) accident, negligence, or misuse of the Products by any party other than Supplier; or (vi) combination of the Products with other products not supplied by Supplier.

Supplier makes no representations or warranties as to any third-party hardware or software provided to Customer, all of which is transferred to Customer on an "AS IS" basis and subject to any third party terms and conditions. Customer shall look solely to the warranties and remedies provided by the equipment manufacturer and third-party licensor, if any.

EXCEPT FOR WARRANTIES EXPRESSLY MADE HEREIN, SUPPLIER MAKES NO WARRANTIES OR REPRESENTATIONS EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT.

2.2 Misuse of the Products and Services; Acceptable Use. Customer is prohibited from marketing or re-branding the Products licensed or purchased by it as its own products and services or to resell any of same to third parties. Customer acknowledges and agrees that Supplier does not monitor and will have no liability or responsibility for the content of any communications transmitted via the Products. Customer's use of the Products shall at all times comply with Supplier's then-





current Acceptable Use Policy (“AUP”) and then-current Privacy Policy (“Privacy Policy”), as amended by Supplier and made available from time to time and which are available on Supplier’s website (www.redseal.net).

3. HARDWARE, INTELLECTUAL PROPERTY AND MAINTENANCE

3.1 Hardware.

(a) Outright Sale of Hardware. If Customer purchases the Supplier-Provided CPE from Supplier pursuant to the Order, then title and risk for that Supplier-Provided CPE shall transfer to Customer, and shipments will be made, Ex Works (Incoterms 2010), Customer’s shipping dock. Customer will pay all costs relating to transportation, delivery and insurance and will bear the risk of loss while materials are in transit. Normal delivery of the Software and Documentation will be through electronic download.

(b) Hardware Provided as Part of the Products and Services. If Supplier provides Supplier-Provided CPE to Customer as part of the Products, title and ownership will remain with Supplier, its Affiliates or its designated third party vendors (as applicable). Risk of loss in the Supplier-Provided CPE shall transfer to Customer upon delivery to the relevant Customer Premises (the location or locations occupied by Customer where the Products are delivered) and Customer shall be required to pay Supplier for the cost of repairing or replacing damaged Hardware (ordinary wear and tear excepted). Customer shall maintain all risk insurance against loss or damage to the Hardware for not less than the full replacement value of the Hardware

3.2 Intellectual Property. Customer is and shall remain exclusively entitled to all right and interest in and to all Customer Technology, and Supplier is and shall remain exclusively entitled to all right and interest in and to all Supplier Technology. Customer shall not, directly or indirectly, reverse engineer, de-compile, disassemble or otherwise attempt to derive source code or other trade secrets from Supplier Technology. The Software and Documentation are licensed, not sold. All right, title, and interest in and to the Software and Documentation and in any ideas, know-how, and programs which may be developed by Supplier in the course of providing Maintenance, including any enhancements or modifications and all intellectual property and industrial property rights embodied therein will at all times remain the property of Supplier or its licensors. “**Customer Technology**” means Customer’s proprietary technology, including without limitation, Customer’s software (in source and object forms), user interface designs, architecture and documentation (both printed and electronic), know-how, and any related intellectual property rights throughout the world (whether owned by Customer or licensed to Customer from a third party). “**Supplier Technology**” means Supplier’s proprietary technology, including without limitation, Products, Services, software tools, hardware designs, algorithms, Software (in source and object forms), user interface designs, architecture, class libraries, objects and documentation (both printed and electronic), network designs, know-how, business methods, and any related intellectual property rights and industrial property rights throughout the world (whether owned by Supplier or licensed to Supplier from a third party).

3.3 Maintenance. Maintenance for term or perpetual licenses may be purchased for one (1) year terms (each a “Maintenance Term”). Provided Customer has purchased Maintenance or has a Subscription License, Supplier will provide the Maintenance specified in Exhibit A during the Maintenance Term or term of the Subscription License. If Customer has not renewed its Maintenance contract, then the license will still be valid but Supplier will not provide Maintenance as specified in Exhibit A. Hardware maintenance is available for annual periods not to exceed three (3) years following date of the Hardware purchase. If Customer has purchased Maintenance for an individual Product deployment under more than one service level (e.g. Basic for some network devices and Premium for others), the lowest class of Maintenance purchased will govern support for such Product deployment. If Customer has staggered Maintenance renewal dates for network device licenses, then all licensed network devices must be covered by a current Maintenance contract to obtain Maintenance from Supplier.

4. INDEMNIFICATION AND LIMITATION OF LIABILITY

4.1 Indemnification – General. Each Party shall indemnify the other from and against any claims by third parties (including any governmental or quasi-governmental body, whether foreign or domestic, including any department, agency, commission, bureau or other administrative or regulatory bodies, courts, public utilities and communications authorities, “**Governmental Authority**”) and expenses (including legal fees and court costs) arising from damage to tangible property, personal injury or death caused by such Party’s negligence or willful misconduct

4.2 Indemnification – Infringement. Subject to 4.3 and 4.4, Supplier (“**Indemnifying Party**”) will defend at its own expense any action against Customer (“**Indemnified Party**”) brought by a third party to the extent that the action is based on a claim that the Indemnified Party’s authorized use of the Software infringes Intellectual Property Rights within the U.S. or Canada of such third party. Indemnifying Party will pay those costs and damages finally awarded against Indemnified Party in any such action that are attributable to such action, or those costs and damages agreed to in a settlement of such action.

4.3 Indemnification Limitations. Notwithstanding the foregoing, a Party will have no obligation under this Section 4 or otherwise with respect to any infringement claim based upon: (a) any use of Supplier’s Technology not in accordance with this





Agreement; (b) any use of Supplier's Technology in combination with other products, hardware, equipment, software, or data not authorized by Supplier to be used with the technology; or (c) any modification of Supplier's Technology by any person other than Supplier or its authorized agents or subcontractors.

4.4 Infringement Remedies. In the event of a third party claim of intellectual property infringement, Supplier may, at its sole option, (a) obtain for Customer the right to continue using the Products deliverables, (b) modify the Products or deliverables so that they are non-infringing, (c) replace the Products or deliverables with functionally equivalent, non-infringing items, or (d) if the alternatives in (a)-(c) above are not available, Supplier may (i) terminate or eliminate such infringing Products or Services, or this Agreement, without penalty to either Party, and (ii) refund "unused" prepaid amounts, if any.

4.5 Notifications and Defense. The indemnified Party under Sections 4.1 and 4.2: (a) must notify the other Party in writing promptly upon learning of any claim or suit for which indemnification may be sought, provided that failure to do so shall have no effect except to the extent the other Party is prejudiced thereby; (b) shall have the right to participate in such defense or settlement with its own counsel and at its sole expense, but the other Party shall have control of the defense and settlement; and (c) shall reasonably cooperate with the defense

4.6 Exclusive Remedy and Limitations.

THIS SECTION 4 STATES THE INDEMNIFYING PARTY'S ENTIRE LIABILITY AND THE INDEMNIFIED PARTY'S EXCLUSIVE REMEDY FOR INFRINGEMENT CLAIMS AND ACTIONS. NOTWITHSTANDING ANY OTHER PROVISION HEREOF, NEITHER PARTY SHALL BE LIABLE FOR (A) ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES OR (B) ANY DAMAGES FOR LOST PROFITS, LOST REVENUES, LOSS OF GOODWILL, LOSS OF ANTICIPATED SAVINGS, LOSS OF CUSTOMERS, LOSS OF DATA, INTERFERENCE WITH BUSINESS OR COST OF PURCHASING REPLACEMENT SERVICES, ARISING OUT OF THE PERFORMANCE OR FAILURE TO PERFORM UNDER THIS AGREEMENT, WHETHER OR NOT CAUSED BY THE ACTS OR OMISSIONS OR NEGLIGENCE (INCLUDING GROSS NEGLIGENCE OR WILLFUL MISCONDUCT) OF ITS EMPLOYEES OR AGENTS, AND REGARDLESS OF WHETHER SUCH PARTY HAS BEEN INFORMED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES. FOR ANY LIABILITY NOT EXCLUDED BY THE FOREGOING, SUPPLIER SHALL IN NO EVENT BE LIABLE IN AN AMOUNT THAT EXCEEDS, IN THE AGGREGATE FOR ALL SUCH LIABILITIES, THE MOST RECENT TWELVE (12) MONTHS OF CHARGES COLLECTED BY SUPPLIER PURSUANT TO THE APPLICABLE ORDER OR SOW GIVING RISE TO THE LIABILITY. NOTWITHSTANDING THE ABOVE, NOTHING IN THIS AGREEMENT SHALL BE CONSTRUED AS LIMITING THE LIABILITY OF EITHER PARTY FOR (I) PERSONAL INJURY OR DEATH RESULTING FROM THE NEGLIGENCE OF A PARTY OR ITS EMPLOYEES, (II) FRAUD OR FRAUDULENT MISREPRESENTATION, (III) WILLFUL MISCONDUCT OR (IV) IF AND ONLY TO THE EXTENT LIABILITY IS NOT AVOIDED, OR IS REDUCED, BY VIRTUE OF SECTION 4.4 (INFRINGEMENT REMEDIES), INDEMNIFICATION PURSUANT TO SECTION 4.2 (INDEMNIFICATION – INFRINGEMENT).

5. TERMINATION

5.1 Termination. Either Party (the "Non-Defaulting Party") may terminate a Product license or Professional Service upon written notice of termination to the other Party ("Defaulting Party") if (i) the Defaulting Party breaches a material provision of this Agreement or the applicable SOW or Order and the Defaulting Party fails to cure such breach within thirty (30) days after receipt of written notice of breach from the Non-Defaulting Party; or (ii) any bankruptcy, insolvency, administration, liquidation or receivership proceeding, or winding up proceeding is commenced against or in respect of the Defaulting Party and any such proceeding is not dismissed or withdrawn within sixty (60) days.

5.2 Additional Termination or Suspension by Supplier. Supplier shall have the right to immediately terminate or suspend this Agreement or any Orders or SOWs (as applicable), and discontinue or suspend the delivery of the affected Product license or Professional Service (without liability) in the event that: (a) Customer fails to make a payment when due and Customer fails to cure such breach within fifteen (15) days after receipt of written notice from Supplier; or (b) Customer has violated any law, rule, regulation or policy of any Governmental Authority related to the Product license or Professional Service or Customer's use thereof; or (c) Customer has engaged in conduct that has caused or may cause (in Supplier's sole reasonable judgment) trafficking of or substantial damage to the Software or Hardware; or (d) Supplier receives any direction, notification or instruction from any Governmental Authority to suspend or terminate the provision of Product license to Customer. Upon any such suspension, Supplier shall provide written notice (where practicable) thereof to Customer.

5.3 Supplier's Remedies. The rates and charges set forth in each Order and SOW are established in reliance on the Service Term commitment made therein. If Customer cancels any Order or SOW during a Service Term commitment for any reason other than as provided in Section 5.1 above or in a particular schedule or exhibit, or in the event Supplier terminates an Order or SOW because of any reasons set forth in Section 5.1(b) or 5.2, then Customer agrees to pay to Supplier, within ten (10) days of such termination an amount equal to (a) one hundred percent (100%) of the Fees payable for the unexpired remainder of the Service Term, plus (b) any documented third party charges or expenses not covered by (a) above incurred by Supplier in respect of the terminated Order or SOW. The obligations of the Customer pertaining to any accrued but unpaid amounts arising out of





this Agreement in relation to any one or all of the Products, including pursuant to Section 1 and this Section 5, shall survive any termination of this Agreement.

6. GENERAL PROVISIONS

6.1 Trademarks & Publicity. Neither Party shall have the right to use the other Party's or its Affiliates' trademarks, logos, trade dress, service marks, trade names or service names in any manner, or to refer to the other Party by name or identifiable description in any marketing, promotional or advertising materials or activities, without the prior written consent of the other Party.

6.2 Confidentiality.

(a) "**Confidential Information**" means all confidential and proprietary information of a party ("**Disclosing Party**") disclosed to the other party ("**Receiving Party**"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure, including but not limited to the terms and conditions of this Agreement (including pricing and other terms), the Software and the Documentation. Confidential Information shall not include information that: (i) is independently developed by the Receiving Party; or (ii) is lawfully received by the Receiving Party free of any obligation to keep it confidential; or (iii) becomes generally available to the public other than by breach of this Section 6.3. Confidential Information shall remain the property of the Disclosing Party. Each Receiving Party shall maintain the confidentiality of the Confidential Information of the Disclosing Party (and each Party shall maintain the confidentiality of this Agreement) using at least the same degree of care as it employs in maintaining as secret its own trade secret, proprietary and confidential information but in any event always with at least a reasonable degree of care. A Receiving Party must not disclose the Disclosing Party's Confidential Information to any person except: (i) to its employees (which for Supplier includes its Affiliates' and its Third Party Service Providers' employees) on a 'need-to-know' basis provided those persons first agree to observe the confidentiality of the information; (ii) to legal and financial advisers; (iii) with the other party's prior written consent; or (iv) if required by law, any stock exchange, or any Governmental Authority. Receiving Party may disclose the Disclosing Party's Confidential Information to the extent such disclosure is required by order or requirement of a court, administrative agency, or other governmental body, provided that the Receiving Party provides prompt written notice thereof to the Disclosing Party (to the extent legally permitted) and assistance to enable the Disclosing Party to seek a protective order or otherwise prevent or restrict such disclosure. The confidentiality obligations of each party will survive expiration or termination of the Agreement for a period of three (3) years.

(b) It is understood and agreed that notwithstanding any other provision of this Agreement, a breach by either party of Section 6.2 of this Agreement may cause the other party irreparable damage for which recovery of money damages might be inadequate, and that the other party shall therefore be entitled to seek timely injunctive relief, without posting bond, in addition to any and all remedies available at law. On Disclosing Party's written request or upon expiration or termination of this Agreement for any reason, the Receiving Party will promptly return or destroy, at Disclosing Party's option, all Confidential Information of Disclosing Party in any form or media and provide a written statement to Disclosing Party certifying the return or destruction of such Confidential Information.

6.3 Compliance with Data Privacy Laws.

(a) Customer confirms it has read and understood Supplier's privacy policy, a copy of which is available on <http://www.redseal.net/policies/privacy-policy>, as updated from time to time.

(b) Each Party represents and warrants to the other Party that it complies with its obligations under relevant and applicable privacy laws. Customer further represents and warrants to Supplier that it shall provide proper notices to, and obtain necessary consents from, its end-users, employees and other data subjects about how their Personal Information and Personal Data may be used, stored, and disclosed to service providers engaged by Customer, as well as how data subjects may opt-out. For additional information, refer to the Data Privacy Addendum incorporated hereto by reference and located here: [Data Processing Addendum \(DPA\)](#).

6.4 Force Majeure. Except for Customer's payment obligations accruing under this Agreement up to the date of a bona fide Force Majeure Event, neither Party shall be liable, nor shall any credit allowance or other remedy be extended, for any performance that is prevented or hindered due to a Force Majeure Event. "**Force Majeure Event**" is any cause beyond a Party's reasonable control, including, without limitation, any act of war, act of God or nature, earthquake, hurricanes, tornados, flood, fire or other similar casualty, epidemic, pandemic, embargo, riot, terrorism, sabotage, strike or labor difficulty, governmental act, law or regulation, insurrections, terrorism, epidemic, quarantine, inability to procure materials or transportation facilities, failure of power, court order, condemnation, failure of the Internet, failure of a supplier or other cause, whether similar or dissimilar to the foregoing, not resulting from the actions or inactions of such Party.

6.5 Governing Law, Jurisdiction and Recovery of Expenses. This Agreement is governed, construed, and enforced in accordance with the laws of the State of California, without reference to conflict of laws principles. The United Nations





Convention on Contracts for the International Sales of Goods and the Uniform Computer Information Transactions Act (UCITA) are expressly excluded. The courts within the Northern District of California shall have jurisdiction to adjudicate any dispute arising out of this Agreement. Each party hereto expressly consents to the personal jurisdiction of, and venue in, such courts in any action to enforce this Agreement. The prevailing party shall be entitled to seek recovery of all court costs and reasonable attorneys' fees incurred, including such costs and attorneys' fees incurred in enforcing and collecting any judgment.

6.6 Severability; Waiver. In the event any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, such provisions shall be stricken and the remainder of this Agreement shall remain legal, valid and binding. The failure by either Party to exercise or enforce any right conferred by this Agreement shall not be deemed to be a waiver of any such right or to operate so as to bar the exercise or enforcement of any such or other right on any later occasion.

6.7 Assignment. Save and except to the extent permitted under this Section 6.7, neither Party may assign this Agreement, an Order or SOW without first obtaining the other Party's written consent. However, either Party may assign this Agreement, an Order or SOW to an Affiliate or as part of a corporate reorganization, consolidation, merger or sale of all or substantially all of its assets by providing advance written notice to the other Party of any such proposed assignment. Any purported assignment in contravention of this clause shall be invalid and void, and the assigning Party shall remain bound. This Agreement or the relevant Order or SOW will bind and inure to the benefit of each Party and each Party's successors and permitted assigns.

6.8 Notice. Any notice or communication required or permitted to be given under this Agreement shall be in writing and may be delivered by hand, sent by overnight courier or email (with confirmation of delivery), at the addresses set forth on the Cover Page or the applicable Orders or at such other address as may hereafter be furnished by either Party to the other by notice in accordance with this Section. Such notice or communication will be deemed to have been given as of the date it is delivered, or emailed, as the case may be.

6.9 Relationship of Parties. Supplier and Customer are independent contractors and this Agreement will not establish any relationship of partnership, joint venture, employment, franchise or agency between Supplier and Customer.

6.10 Regulatory and Legal Changes. In the event of any change in applicable law, regulation, decision, rule or order that materially increases Supplier's costs or adversely affects Supplier's delivery of the Services, Supplier and Customer agree to negotiate regarding the rates to be charged to Customer to reflect such increase in cost or the revisions to this Agreement necessary to equitably adjust for such adverse effect

6.11 Insurance. Each Party shall keep in full force and effect during each Service Term insurance coverage that is no less than that required by applicable law and is customary in accordance with best industry standards. If requested in writing by the other Party, a Party will provide certificates of insurance evidencing its insurance coverage.

6.12 Third Party Beneficiaries. Supplier and Customer agree that there shall be no third party beneficiaries to this Agreement, including, but not limited to, any sub-licensee or end-user of Customer or the insurance providers for either Party. To the extent it is allowed by law, any legislation in any relevant jurisdiction giving rights to third parties is hereby excluded.

6.13 Export Control. Customer acknowledges and agrees that the Products and related technology subject to this Agreement are subject to the export control laws and regulations of the United States, the European Union and other countries. The Parties agree to comply with all such laws and regulations.

6.14 Government Rights. The Software and Documentation are deemed to be "commercial computer software" and "commercial computer software documentation," respectively, pursuant to DFAR Section 227.7202 and FAR Section 12.212(b), as applicable. Any use, modification, reproduction, release, performing, displaying, or disclosing of the Software or Documentation by the U.S. Government or other government entity shall be governed solely by the terms of this Agreement.

6.16 Anti-Bribery. Customer represents that it has complied and shall comply with all applicable anti-bribery laws and regulations, including, without limitation, the U.S. Foreign Corrupt Practices Act, the UK Bribery Act and similar laws of any other Governmental Authority, and has not taken and shall not take any action in furtherance of an unlawful offer, promise, or payment to or for the benefit of any person.

6.17 Entire Understanding. This Agreement constitutes the entire, final, complete and exclusive understanding of the Parties related to the subject matter of this Agreement. All prior written or oral agreements, understandings, communications or practices between Customer and Supplier are hereby superseded insofar as they relate to the Products and Services under this Agreement. This Agreement may be amended only in writing signed by a duly authorized representative of each of Supplier and Customer. In the event of any conflict between the documents comprising this Agreement, precedence shall be given to the documents in the following descending order: (i) the applicable Order; (ii) the applicable SOW; (iii) the applicable schedule or exhibit; (iv) the main body of this Agreement; and (v) and any other document expressly referred to in this Agreement which governs the products and services.





6.18 Further Assurances. Both Parties shall extend their cooperation to do and perform (or cause to be done and performed) all such acts and things, and execute and deliver all such other agreements, instruments and documents, as the other Party may reasonably request in order to accomplish the intent and purposes of this Agreement including the transactions contemplated hereby.





EXHIBIT A

Exhibit A –Supplier Maintenance

In consideration of Customer’s purchase of Maintenance, Supplier shall perform the following Maintenance during the applicable Maintenance Term. The Maintenance Term is the term for which Customer has ordered Maintenance as specified in the Order.

1. Maintenance.

1.1 Error Correction. For purposes of this Exhibit A, “Error” means nonconformity in the Software which causes the Software to not substantially conform to the applicable Documentation and “Error Correction” means additional or replacement code of the Software or a workaround solution provided by Supplier to remedy an Error. Supplier will use commercially reasonable efforts to correct any Errors in the Software in accordance with the priority assigned by Supplier in its discretion. Supplier will provide services directly to the Customer’s Technical Contacts.

1.2 Customer Assistance. Customer will provide Supplier with information in Customer’s possession as reasonably necessary to allow Supplier to duplicate the Error.

1.3 Customer Technical Contact. Customer will designate on the applicable Order technical contact persons (“Customer Technical Contacts”) who will receive all Error Corrections, Updates, correspondence and other communications concerning the Software. The Customer Technical Contacts may be changed from time to time upon written notice to Supplier.

1.4 Supported Versions. Supplier will provide Maintenance only for Software released during the prior twelve (12) months.

1.5 Technical Support. Supplier will provide Technical Support service via telephone, web based Support Portal, and email to the Customer Technical Contacts. Assistance will be available during published Support Hours consistent with the Maintenance level purchased. Supplier will use commercially reasonable efforts to meet the initial response times set forth below from the time an inquiry is received by the appropriate Supplier contacts during the Support Hours.

| Maintenance Level | Support Hours | Initial Support Response Time | Hardware Replacement |
|---------------------|--------------------------------|-------------------------------|----------------------|
| Basic Maintenance | Mon–Fri 6am - 6pm Pacific Time | 4 hours | 5 Business Days |
| Premium Maintenance | Mon–Sun 24 hours Pacific Time | 1 hour | 2 Business Days |

Customer must have a current Maintenance contract on ALL licensed Products in order to receive Technical Support services for ANY of the licensed Products. Supplier reserves the right to change support hours and response times at the time of Maintenance renewal.

1.6 Limitations. (a) Supplier will have no obligation for the correction of Errors that result from: (i) Customer’s failure to implement any Updates which are provided by Supplier; (ii) use of the Products other than in accordance with the Documentation; (iii) any alterations of or additions to the Products performed by parties other than Supplier; (iv) use of the Products in a manner for which they were not designed or outside the scope of this Agreement; (v) accident, negligence, or misuse of the Products by any party other than Supplier; or (vi) combination of the Products with other products not supplied by Supplier.

(b) In addition, Supplier is not obligated to correct Errors that cannot be remedied due to the hardware on which the Software is operated if such hardware does not meet the minimum systems requirements specified in the Documentation. If Supplier agrees to remedy any errors or problems not covered by the terms of this Agreement, Supplier will invoice Customer, and Customer will pay Supplier, for all such work performed at Supplier’s then-current time and materials charges. Customer acknowledges that Supplier is under no obligation to provide Maintenance with respect to any Hardware or any Software for which Customer does not have a valid license.

1.7 Software Releases. So long as the Customer has a current Maintenance contract for all licensed network devices, Supplier will make available via electronic delivery to Customer Updates and Documentation relating thereto, when ready for commercial release. Unless otherwise agreed, such materials will be made available to the Customer Technical Contacts via the Supplier Support Portal

1.8 Hardware. If Customer has purchased separate Hardware Maintenance, Customer may contact Supplier to report a malfunction in the Hardware, and to obtain a Return Material Authorization (“RMA”). Replacement units will be shipped in accordance with the Maintenance level purchased by Customer (Basic or Premium). After receiving an approved RMA from Supplier, Customer





must ship the defective Hardware, which must be clearly identified with its RMA and with any requested documentation, to the address provided by Supplier. Any Hardware damaged during return shipment due to improper packing will not be covered by Maintenance. Defective Hardware must be returned to Supplier within fifteen (15) days following issuance of the RMA or Customer will be billed for the replacement Hardware at Supplier's then current list price. If the Hardware defect is found by Supplier to be caused by one of the events specified in Section 1.6 above, then repairs or replacement will be billed to Customer's account at Supplier's then-current rates.

1.9 Plugins. Updated Plugins will be published to the Supplier Support Portal upon commercial release. Plugin updates may only be downloaded and applied to licensed Software so long as the Customer has a current Maintenance contract. "**Plugin**" means Supplier software modules that facilitate the Product's ability to work with specific network devices from various third party vendors.

1.10 STIGs. Updated STIGs will be published to the Supplier Support Portal on a regularly scheduled basis. STIG updates may only be downloaded and applied to licensed Software so long as the Customer has a current Maintenance contract. "**STIG**" means Security Technical Implementation Guides Module that Customer may purchase and that are periodically updated for Customers with a current Maintenance contract.

1.11 TRLs. Updated TRLs will be published to the Supplier Support Portal on a regularly scheduled basis. TRL updates may only be downloaded and applied to licensed Software so long as the Customer has a current Maintenance contract. "**TRL**" means Threat Reference Library that Customer may purchase and that is periodically updated for Customer with a current Maintenance contract.

