

TERMS AND CONDITIONS

1. SDM OBLIGATIONS AND SUBSCRIBER OBLIGATIONS

1.1 Delivery of Solution. SDM shall deliver to Subscriber one copy of the SDM product set forth on the Cover Page (the “**Solution**”), in object code form together with a copy of the standard end-user documentation generally made available by SDM (the “**Documentation**”). The Solution is deemed accepted upon delivery.

1.2 Installation; Other Professional Services. Subscriber shall be solely responsible for installing the Solution and acknowledges and agrees that it shall bear all costs and expenses related thereto. Subscriber shall provide and maintain, at its cost and expense, and shall be solely responsible for all equipment, software, and connectivity necessary to permit the installation and operation of the Solution. In the event that Subscriber wishes to receive installation and/or other professional services from SDM in connection with the Solution (collectively, the “**Professional Services**”), Subscriber may purchase such Professional Services from SDM under a separate professional services agreement.

1.3 Maintenance and Support Services. While the subscription hereunder remains effective and the Subscription Fees and any other applicable fees have been paid, SDM will provide maintenance and support services to Subscriber pursuant to SDM’s support policy and subject to the terms and conditions set forth in Exhibit A attached hereto (the “**Maintenance and Support Services**”). A copy of SDM’s current support policy can be accessed on SDM’s webpage at <http://www.sdmsoftware.com/support>.

2. LIMITED RIGHT TO INSTALL AND USE THE SOLUTION; RESTRICTIONS; SUBSCRIBER’S OBLIGATIONS

2.1 Right to Install and Use. Subject to Subscriber’s compliance with the terms and conditions of this Agreement, including but not limited to the payment in full of all associated fees and expenses when such fees and expenses are due, SDM grants to Subscriber during the specific term set forth on the Cover Page a limited, non-transferable, nonexclusive, non-sublicenseable right and license to (i) install and use the Solution on a subscription basis, in object code format, for Subscriber’s internal business purposes, and (ii) use the Documentation to support such authorized use of the Solution, all in accordance with the specific license terms and conditions set forth herein and on the Cover Page, such as, but not limited to usage and volume limitations (e.g., number of Active Directory Computers and/or GPOs).

2.2 Limited Rights; Ownership. No other rights to the Solution are granted herein to Subscriber other than as expressly set forth above. SDM does not and shall not be deemed to have sold or transferred title in the Solution to Subscriber. SDM retains all right, title and interest in and to the Solution (including Error Corrections, Upgrades and

New Versions) and Documentation. Subscriber shall not take any action to jeopardize, limit or interfere with SDM’s ownership of and rights with respect to the Solution. All materials and intellectual property created or generated by SDM in connection with the performance of maintenance and support and any services hereunder shall be the sole and exclusive property of SDM, notwithstanding that Subscriber may contribute to the cost of updates or other versions or derivative works. Without limiting any prohibition provided herein, Subscriber hereby assigns to SDM all right, title and interest in and to any and all derivative works of the Solution, Documentation and materials created or generated by SDM in connection with the performance of maintenance and support or any other services hereunder.

2.3 Restrictions. Subscriber will not, directly or indirectly (a) modify, translate or create derivative works based on the Solution, or copy, rent, lease, sublicense, lend, time share, distribute, pledge, assign, resell or otherwise transfer or encumber rights to the Solution, (b) use or access the Solution to build or support and/or assist a third party in building or supporting, products or services competitive to SDM or to create similar products, (c) unless otherwise expressly set forth on the Cover Page, operate a service bureau for, provide any data, analysis or reports computed or generated by the Solution to, or provide consulting or professional services based on the results, data or output of the Solution to, any third party, (d) remove any proprietary notices or labels from the Solution, (e) use the Solution for any fraudulent undertaking or in any manner that could damage, disable, overburden, impair or otherwise interfere with SDM’s provision of the Solution, (f) attempt or knowingly permit or encourage others to attempt to reverse engineer, decompile, disassemble, or otherwise reduce to human-perceivable form the Solution’s source code, or any part thereof (or the underlying ideas, algorithms, structure or organization), (g) modify or create derivative works of the Solution, (h) violate or breach any operating procedures, license key, requirements or guidelines regarding Subscriber’s use of the Solution that are provided or made available to Subscriber, or (i) perform your own load testing or otherwise interfere with or disrupt the integrity or performance of the Solution or the data contained therein. Subscriber shall not use the Solution, in whole or in part, for any purpose or in any manner other than as expressly provided for in this Agreement. In the event of a breach of the above restrictions, Subscriber’s rights to use the Solution granted herein shall be deemed to be immediately and automatically revoked by SDM.

2.4 Additional Subscriber Obligations; Acknowledgments. Subscriber shall comply with all applicable federal, state, local and foreign laws, rules and regulations in using the Solution and transmitting data, including, without limitation all applicable export compliance laws and regulations (collectively, “**Applicable Law**”), and Subscriber’s use of the Solution will be in compliance with this Agreement and Applicable Law. Subscriber shall safeguard the Solution (including all copies

thereof) from infringement, misappropriation, theft, misuse or unauthorized access. Subscriber shall not take any action to jeopardize, limit or interfere with SDM's ownership of and rights with respect to the Solution. Subscriber acknowledges and agrees that the Solution (i) has been reviewed and tested by Subscriber and that the Solution meets Subscriber's business and operational needs, (ii) is not a records repository, and as such, shall not use the Solution for historical record retention purpose, and (iii) may utilize third party vendor data, tools, and utilities, use of which may be subject to additional license terms, conditions and restrictions imposed by such vendors. Subscriber's use of the Solution is expressly subject to Subscriber's agreement to be bound by and comply with such terms. Subscriber is responsible for ensuring that Subscriber is in possession of all necessary licenses for the third party products required for Subscriber to use the Solution.

3. OWNERSHIP

3.1 SDM Property. You acknowledge that SDM and its licensors retain all right, title and interest (including, without limitation, all intellectual property rights) in and to the Solution, including any software, documentation, training materials and hardware used by SDM and its service providers to provide the Solution, and any modification, translation or adaptation or any other improvement or development of any of the foregoing ("**SDM Property**"). Subscriber acknowledges and agrees that SDM shall retain all right, title and interest in the performance data SDM may collect from your use of the Solution for our use in the optimization of the Solution and other SDM service offerings. Performance data does not include any Subscriber Confidential Information. In addition, SDM shall be entitled to use any feedback or suggestion it receives from you regarding the Solution for the purpose of optimizing, improving, enhancing or creating derivative products and shall have no obligation to compensate or identify you as the source of such feedback or suggestion, provided that your intellectual property and proprietary rights are not violated.

4. FEES; PAYMENT; TAXES

4.1 Fees. For the Solution and the Maintenance and Support Services, SDM will charge the fees (the "**Fees**") set forth on the Cover Page and Subscriber will pay such Fees in accordance with the payment terms set forth on the Cover Page. Subscriber shall pay for all reasonable costs and expenses (including reasonable travel and out-of-pocket expenses) incurred by SDM related to its performance of services hereunder. All amounts are due within thirty (30) days after invoice date. Any amounts due hereunder are exclusive of, and Subscriber shall be responsible for, all sales taxes, value added taxes, duties, use taxes, withholdings and other governmental assessments, excluding taxes based on the net income of SDM, unless Subscriber provides to SDM a valid tax-exempt certificate. All Fees and charges are stated in US dollars. All Fees payable under this Agreement are fully earned, non-cancelable and the sums paid are non-refundable.

4.2 Late Payments. Failure to pay any amount in accordance with this Agreement, on the due date, for a period exceeding sixty (60) days, will be subject to a late charge of 1.5% per month (18% per year), or the maximum lawful rate, whichever is less, compounded monthly, until paid in full. You agree you will pay all costs, including reasonable attorney's fees, incurred by SDM in collecting overdue amounts.

5. TERM & TERMINATION; EFFECT OF TERMINATION

5.1 Term. The initial term of this Agreement shall commence upon the Effective Date and continue for the period set forth on the Cover Page, unless earlier terminated in accordance with this Section 5 ("**Initial Term**"). Thereafter, the term of this Agreement will extend automatically for successive one (1) year periods (each, a "**Renewal Term**") unless a party provides written notice of non-renewal to the other party within thirty (30) days after receipt of the proposed renewal fees for the Renewal Term. The "**Term**" shall include the Initial Term and the Renewal Terms.

5.2 Termination. Either party may terminate this Agreement at any time by giving written notice to the other party if the other party is in breach or default of any material provision of this Agreement (including, but not limited to Section 2 above, Section 3 above or Section 9 below), and the breaching party fails to cure the breach or default within thirty (30) days after being given written notice specifying details of the breach or default and requiring the same to be remedied.

5.3 Automatic Termination. This Agreement shall automatically terminate upon the occurrence of an Event of Insolvency with respect to Subscriber. An "**Event of Insolvency**" with respect to Subscriber shall be deemed to have occurred, if Subscriber: (a) voluntarily files a petition for bankruptcy, reorganization or an arrangement with creditors, (b) makes a general assignment for the benefit of creditors, (c) is adjudged bankrupt, (d) is generally unable or is unwilling to pay its debts as they become due, (e) has a trustee, receiver or other custodian appointed on its behalf, or (f) is the subject of any other case or proceeding under any bankruptcy or insolvency law, or any dissolution or liquidation proceeding be commenced against it, which case or proceeding is not dismissed within sixty (60) days of filing. Subscriber agrees that it shall give SDM prompt written notice upon becoming aware of the occurrence of any of the events described above constituting, or which could reasonably be expected to constitute, an Event of Insolvency.

5.4 Consequences of Termination. Upon termination of this Agreement for whatever cause, this Agreement and the limited rights granted in Section 2 above shall be deemed terminated with immediate effect, and Subscriber will (i) cease all use of the Solution, (ii) return the Solution and all copies thereof, as well as any and all documentation and Confidential Information and any part thereof within its possession, to SDM, and (iii) certify in writing to SDM that all copies and partial copies of the Solution and Confidential

Information and Documentation have been either returned to SDM or otherwise erased or destroyed and deleted from any computer libraries or storage devices and are no longer in use by Subscriber. Without derogating from any of the foregoing, upon the termination of this Agreement all payments accrued prior to the date of termination shall accelerate and be deemed immediately due to SDM from Subscriber. Upon any such termination, all sections of this Agreement which by their nature should survive termination will survive, including without limitation, Section 2.2, Section 3, Section 4, this Section 5.4, Section 7, Section 8, Section 9, Section 10, and Section 13.

6. SDM LIMITED WARRANTIES; DISCLAIMER OF WARRANTIES

6.1 Limited Warranty of Performance. SDM warrants that for so long as Subscriber pays all fees and charges hereunder, the Solution, in the form delivered to Subscriber by SDM, and when properly used for the purpose and in the manner specifically authorized by this Agreement, will perform materially in accordance with the Documentation. The warranty in this Section 6.1 shall not apply to the Solution to the extent that the Solution has been modified by any party other than SDM or if the failure of the Solution to meet the warranty can be attributable to hardware, networks, third party software, or any other causes that are not the responsibility of SDM.

6.2 Exclusive Remedy. SDM's sole obligation and Subscriber's sole remedy for breaches of the warranty in Section 6.1 is for SDM, at its option, to use commercially reasonable efforts to provide an Error Correction to address the failure of the Solution to operate materially in accordance with the Documentation or to replace any component or media that causes SDM to be in breach of this warranty. THE FOREGOING REMEDY IS EXCLUSIVE, IS SUBJECT TO THE LIMITATIONS SET FORTH IN SECTION 7 AND SHALL BE SUBSCRIBER'S SOLE REMEDY WITH RESPECT TO ANY CLAIM OF BREACH OF WARRANTY ARISING OUT OF OR RELATING TO THIS AGREEMENT, WHETHER BASED IN CONTRACT, BREACH OF WARRANTY OR TORT.

6.3 Third Party Products. Notwithstanding anything to the contrary, the warranties stated in this Agreement shall not apply to third party products, including any equipment, necessary to operate the Solution.

6.4 DISCLAIMER. EXCEPT FOR THE WARRANTIES SPECIFICALLY STATED IN THIS SECTION 6, SDM HEREBY EXPRESSLY EXCLUDES AND DISCLAIMS ALL WARRANTIES OF ANY KIND WHATSOEVER RELATING TO THE SOLUTION AND THE SERVICES. FURTHER, SDM DOES NOT WARRANT THAT THE SOLUTION WILL MEET SUBSCRIBER'S REQUIREMENTS, OR THAT THE OPERATION OF THE SOLUTION WILL BE UNINTERRUPTED OR ERROR OR BUG FREE. THE WARRANTIES STATED IN THIS SECTION 6 ARE SDM'S SOLE AND EXCLUSIVE WARRANTIES PERTAINING TO THE SOLUTION, AND SDM HEREBY

DISCLAIMS ANY OTHER WARRANTY, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

6.5 Subscriber Warranties. Subscriber represents, warrants and covenants to SDM that on a continuing basis during the Term: (i) it has the corporate power and authority to enter into, and perform its obligations under, the Agreement, and (ii) it will not make any unauthorized representation or warranty, whether written or oral, to any third party relating to the Solution.

7. LIMITATION OF LIABILITY

7.1 EXCLUSION OF CONSEQUENTIAL DAMAGES. NEITHER PARTY (INCLUDING SDM'S THIRD PARTY VENDORS AND LICENSORS WHICH ARE NOT CONTRACTED DIRECTLY WITH SUBSCRIBER) SHALL BE LIABLE (WHETHER UNDER CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE) TO THE OTHER PARTY, FOR ANY LOSS OR DAMAGE, DERIVED FROM INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, ANY LOSS OR DAMAGE TO BUSINESS EARNINGS, LOST PROFITS OR GOODWILL AND LOST OR DAMAGED DATA OR DOCUMENTATION, SUFFERED BY ANY PERSON, ARISING FROM AND/OR RELATED WITH AND/OR CONNECTED TO THIS AGREEMENT (INCLUDING, WITHOUT LIMITATION, SERVICES, CUSTOMIZATION, DELIVERY, INSTALLATION, USE OR PERFORMANCE OF THE SOLUTION, OR PART THEREOF), EVEN IF SUCH PARTY IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

7.2 LIMITATION OF LIABILITY. SDM'S AGGREGATE LIABILITY FOR ANY AND ALL CLAIMS UNDER THE AGREEMENT SHALL NOT EXCEED THE AMOUNTS PAID BY SUBSCRIBER TO SDM DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENTS GIVING RISE TO SUCH CLAIMS. NO CLAIM MAY BE ASSERTED BY SUBSCRIBER AGAINST SDM MORE THAN TWELVE (12) MONTHS AFTER THE DATE OF THE CAUSE OF ACTION UNDERLYING SUCH CLAIM.

7.3 The allocation of liability set forth in this Agreement fairly reflects the economic circumstances and risks that the parties are willing to undertake in view of the amounts paid or payable for the rights to install and use the Solution specified herein.

8. INDEMNIFICATION

8.1 By SDM. SDM will defend the Subscriber and its employees, officers and directors ("Subscriber Indemnitees") from and against any and all third party claims brought against Subscriber alleging that the Solution, when used in accordance with this Agreement and the

applicable documentation, infringes a United States patent, trademark or copyright and will pay resulting damages and reasonable costs and attorney fees finally awarded under such claims or agreed upon in settlement of such claims, provided that Subscriber notifies SDM promptly (but in any event within thirty (30) days of becoming aware) in writing of the claims and Subscriber provides SDM with all necessary assistance, information and authority to perform the above (at SDM's expense). SDM shall have sole control of the defense with respect to any such claim (including settlement of such claim) provided, however, that Subscriber shall have the option, at its sole discretion and sole expense, to participate in the defense of any such claim using attorneys selected by it. If any portion of the Solution in the opinion of SDM, is likely to or does become the subject of a claim of infringement, SDM shall have the right at its sole option and expense to (a) modify the Solution to be non-infringing, (b) obtain for Subscriber a license to continue using the Solution at no additional charge to Subscriber, or (c) if neither (a) nor (b) are reasonably practicable, terminate the Agreement and refund to Subscriber the pro rata portion of the Fees paid to SDM for such portion of the Solution thereof that can no longer be utilized due to such infringement. SDM shall have no obligation to indemnify Subscriber hereunder with respect to any claim based upon (i) any component provided by Subscriber or any third party, (ii) any modification of the Solution by a party other than SDM, unless such modification was at the written direction of SDM, (iii) the combination, operation or use of the Solution with a software program(s) or data not part of the Solution if the claim would have been avoided had such combination, operation or use not occurred, or (iv) the use of other than the latest release of the Solution, if such claim could have been avoided by use of the latest release. Subscriber agrees that the remedies set forth in this Section 8.1 provide Subscriber's sole and exclusive remedies and SDM's sole obligations in the event of claims of intellectual property infringement by third parties regarding the Solution.

8.2 Subscriber will indemnify, hold harmless and defend SDM and its employees, officers and directors from and against any and all third party proceedings, claims, losses, damages, demands, liabilities and expenses, including all reasonable legal and accounting fees and expenses and all reasonable collection costs, incurred by SDM or its Representatives to the extent resulting from or arising out of (a) Subscriber's use of the Solution, (b) any noncompliance with any Applicable Laws by Subscriber, (c) use of data provided by Subscriber as contemplated hereunder, or (d) Subscriber's breach or nonperformance of any provision of this Agreement, except to the extent directly caused from a breach by SDM of its obligation under this Agreement.

9. CONFIDENTIAL INFORMATION

9.1 Each party (the "**Receiving Party**") understands that the other party (the "**Disclosing Party**") has disclosed or may disclose information relating to the Disclosing Party's business, including but not limited to non-public information, know-how and trade secrets in any form that are designated as "confidential," or a reasonable person

knows or reasonably should understand to be confidential (hereinafter referred to as "**Confidential Information**" of the Disclosing Party). The Solution (including Error Corrections, Upgrades and New Versions) and the Documentation constitute Confidential Information of SDM. The Receiving Party agrees: (i) to take reasonable precautions to protect such Confidential Information which are at least as protective as those steps the Receiving Party takes to protect its own Confidential Information and no less than a reasonable standard of care, (ii) not to use or divulge to any third person any such Confidential Information, in each case except as expressly permitted under this Agreement or under the Privacy Policy, and (iii) only use the Disclosing Party's Confidential Information for the purpose of the business relationship between the parties. The Receiving Party agrees to notify the Disclosing Party promptly upon discovery of any unauthorized use or disclosure of Confidential Information of the Disclosing Party.

9.2 The Receiving Party shall not disclose or otherwise make available such Confidential Information to any third party without the prior written consent of the Disclosing Party; provided, however, that the Receiving Party may disclose the Confidential Information of the Disclosing Party to its employees, contractors, consultants, legal and business advisors (collectively, "**Representatives**") who need to know such Confidential Information in connection with the performance of this Agreement and who have been informed of the confidentiality obligations hereunder and have agreed to maintain the confidentiality of such Confidential Information under terms no less restrictive than those set forth herein. The Disclosing Party shall remain responsible for the acts or omissions of its Representatives' use of the Confidential Information. SDM further agrees to use the Subscriber Confidential Information only as necessary for the purpose of performing the Agreement. Subscriber agrees to use the Confidential Information only as necessary for receipt and use of the Solution hereunder.

9.3 Notwithstanding Section 9.1, the obligations set forth in this Section 9 (Confidential Information) herein shall not apply to Confidential Information which: (a) is or becomes a matter of public knowledge through no breach of this Agreement by the Receiving Party, (b) was lawfully in the Receiving Party's possession prior to disclosure by the Disclosing Party without an obligation of confidentiality to the Disclosing Party, (c) subsequent to disclosure, is lawfully obtained by the Receiving Party from a third party who is lawfully in possession of such Confidential Information without restriction, or (d) is independently developed by the Receiving Party without resort to the Confidential Information. In addition, nothing herein shall prevent the Receiving Party from disclosing any of the Disclosing Party's Confidential Information if, and to the extent, such disclosure was specifically approved by the Disclosing Party, in writing, prior to such disclosure by the Receiving Party. Nothing herein shall prevent the Receiving Party from disclosing any of the Disclosing Party's Confidential Information as required by applicable law or judicial order, provided that the Receiving Party shall give the Disclosing Party prompt written notice of such required disclosure in

order to afford the Disclosing Party an opportunity to seek a protective order or other legal remedy to prevent the disclosure, and shall reasonably cooperate with the Disclosing Party's efforts to secure such a protective order or other legal remedy to prevent the disclosure, at the Disclosing Party's cost and expense. Disclosure of any of the Disclosing Party's Confidential Information under the circumstances described in the foregoing sentence shall not be deemed to render such Confidential Information as non-confidential and the Receiving Party's obligations with respect to such Confidential Information shall not be changed or lessened by virtue of any such disclosure.

9.4 Upon request by the Disclosing Party, the Receiving Party agrees to return or destroy Confidential Information in its (or its affiliates' or representative's) possession. Each party acknowledges that money damages may not be sufficient compensation for a breach of this section. Each party agrees that the other may seek court orders to prevent Confidential Information from becoming public in breach of this section.

9.5 Each party acknowledges that the provisions contained in Sections 2, 3, and this Section 9 are reasonable and necessary to protect the legitimate interests of the other. Each party understands and agrees that the remedies at law for the violation of any of such covenants or provisions of this Agreement will be inadequate, that such violations will cause irreparable injury within a short period of time, and that the non-breaching party shall be entitled to preliminary injunctive relief and other injunctive relief against such violation without the necessity of proving actual damages. Such injunctive relief shall be in addition to, and in no way in limitation of, any and all other remedies that the non-breaching party shall have at law and in equity for the enforcement of those covenants and provisions.

10. NOTICES

10.1 SDM may give notice specific to Subscriber by e-mail to Subscriber's address on record in Subscriber's SDM account information or by written communication sent by first class mail or pre-paid post to Subscriber's address on record in Subscriber's SDM account information. If Subscriber has a dispute with SDM, wishes to provide a notice under this Agreement, or becomes subject to insolvency or other similar legal proceedings, Subscriber will promptly send written notice to SDM Software, Inc., 2100 4th Street, #132, San Rafael, California 94901.

11. FORCE MAJEURE

11.1 Except for payment obligations, neither party will be liable for delays in its performance hereunder due to causes beyond its reasonable control ("**Force Majeure Event**"), including but not limited to, acts of God, acts of public enemy, acts of government or courts of law or equity, civil war, insurrection or riots, fires, floods, explosions, earthquakes or other casualties, strikes or other labor troubles, computer, telecommunications, Internet service provider or hosting facility failures or delays involving hardware, software or power systems not within the possession or reasonable control of the party affected by the

Force Majeure Event, or network intrusions or denial of services attacks, always provided that the party so relieved of its obligations hereunder provides notice to the other party and takes all reasonable and necessary steps to resume performance of its obligations as soon as possible.

12. EXPORT RESTRICTIONS; GOVERNMENT USERS

12.1 Export Restrictions. Subscriber agrees to comply with all export and re-export restrictions and regulations of the Department of Commerce or other United States agency or authority ("**Export Control**"). Regardless of any disclosure made by Subscriber to SDM of an ultimate destination of the Solution or technical data (or portions thereof) supplied by SDM ("**SDM Technology**") and, notwithstanding anything contained in this Agreement to the contrary, Subscriber will not (a) modify, export, or re-export, either directly or indirectly, any SDM Technology to any destination restricted or prohibited by Export Control, without first obtaining any and all necessary licenses from the government of the United States or any other country that imposes Export Control, (b) provide SDM Technology to any proscribed party on the United States Treasury Department's Office of Foreign Asset Control list of "specially designated nationals and blocked persons", the United States Commerce Department's "denied parties list", the United States Commerce Department's "BIS Entity List" or such other applicable lists, or (c) export or re-export SDM Technology, directly or indirectly, for end uses prohibited by Export Control (including, but not limited to, nuclear, missile or chemical/biological weaponry end uses). SDM shall have the right to suspend performance of any of its obligations under this Agreement, without prior notice and without any liability to Subscriber if Subscriber fails to comply with this Section 12 (Export Restrictions).

12.2 Government Users. The Solution is a "commercial item", as that term is defined at 48 C.F.R. 2.101 (Oct. 1995, as amended), consisting of "commercial computer software" and "commercial computer software documentation", as such terms are used in 48 C.F.R. 12.212 (Sept. 1995, as amended). Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4 (June 1995) (or an equivalent provision, e.g., in supplements of various U.S. government agencies, as applicable), all U.S. Government users acquire the Solution with only those rights set forth herein. Manufacturer is SDM Software, Inc., 2100 4th Street, #132, San Rafael, California 94901.

13. MISCELLANEOUS PROVISIONS

13.1 SDM may, at its expense, conduct an audit no more often than once every calendar year, or when and if SDM has reason to believe that the terms of this Agreement have been or will be violated, during Subscriber's normal business hours, of Subscriber's use of the Solution and Documentation, to verify compliance with this Agreement. Subscriber shall reimburse SDM for the cost of the audit in the case of non-compliance, and, failing a cure of such non-compliance within thirty (30) days, SDM may terminate this Agreement without any refund due to Subscriber.

13.2 SDM's failure to perform any obligation under this Agreement will not constitute a breach of this Agreement unless SDM has failed to cure such failure within thirty (30) days of written notice thereof.

13.3 Any action, claim or dispute related to this Agreement will be governed by the laws of the State of California, excluding its conflicts of law provisions and the United Nations Convention on Contracts for the International Sale of Goods and any legislation implementing such Convention, if otherwise applicable.

13.4 The failure of either party to enforce any right or provision in this Agreement will not constitute a waiver of such right or provision unless acknowledged and agreed to by such party in writing. The section headings are provided merely for convenience and will not be given any legal import. No joint venture, partnership, employment or agency relationship exists between SDM and Subscriber as a result of this Agreement or use of the Solution.

13.5 This Agreement, and the Exhibits hereto encompass the entire Agreement between Subscriber and SDM with respect to the subject matter hereof and supersede all prior representations, agreements and understandings, written or oral. This Agreement may not be modified except by written instrument signed by the duly authorized representatives of both parties. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then such provision(s) will be

construed to reflect the intentions of the invalid or unenforceable provision(s), with all other provisions remaining in full force and effect.

13.6 No provisions of this Agreement are intended nor shall be interpreted to provide or create any third party beneficiary rights or any other rights of any kind in any other party.

13.7 Subscriber may not assign or otherwise transfer (including by merger, operation of law or change of control) this Agreement without the prior written approval of SDM. Any purported assignment in violation of this Section 13.7 will be void.

13.8 Subscriber and SDM are independent contractors. Neither party has the authority to bind or make any commitment on behalf of the other party. None of either party's employees are entitled to any employment rights or benefits of the other party. There shall be no third party beneficiaries to this Agreement.

13.9 Representatives of SDM are not authorized to make modifications to this Agreement, or to make any additional representations, commitments or warranties binding on SDM, other than in writing signed by an officer of SDM. Accordingly, such additional statements are not binding on SDM and Subscriber should not rely upon such statements.

EXHIBIT A

1. Error Correction. SDM shall furnish available solutions to address verifiable and reproducible errors in the Solution that prevent the Solution from operating in material conformity with the Documentation (an “**Error**”). To address an Error, SDM may provide a workaround or, as applicable, SDM may also address an Error in a subsequent update or release of the Solution at SDM’s discretion (“**Error Correction**”). If erroneous or inadequate information is provided, then SDM cannot be held accountable for delays in, or improper performance of, the Maintenance and Support Services. Under no circumstances does SDM warrant or represent that all Errors can or will be corrected.
2. Upgrades. SDM shall provide Subscriber with Upgrades at no additional charge. Delivery of Upgrades may be in the form of a digital download. Implementation of Upgrades will be the responsibility of Subscriber, except as agreed to by the parties pursuant to a separate professional services agreement. “**Upgrade**” is any minor or major upgrade, update, revision, service pack or patch, or hot fix to the Solution which contains Error Corrections and may also contain certain new or improved functionality.
3. New Versions. SDM reserves the right to charge additional fees for a New Version. A “**New Version**” is a new version of the Solution that includes or adds substantially new features to the Solution, including new modules, new technology and/or any major enhancements.
4. Subscriber Obligations. In order for Subscriber to obtain the Maintenance and Support Services described herein, Subscriber shall fulfill the following obligations, failing which SDM is not responsible for performing Maintenance and Support Services, or their completion or results:
 - a. Subscriber shall promptly provide SDM all information, access and cooperation necessary for diagnosis of reported Errors, including the configuration of hardware and system operating software on the applicable hardware, the communication interfaces, insofar as these are significant for the Solution, a log of components that have been changed by Subscriber since an Error has been identified by Subscriber, and a description of any specific programs which are used in conjunction with the Solution, including software that runs on the host hardware.
 - b. Subscriber shall operate the Solution in accordance with the recommended minimum hardware and third party software configuration provided by SDM, and shall maintain a back-up of the system on which the Solution is installed. Subscriber shall be responsible for procuring, installing and maintaining all applications, equipment, telephone lines, communications interfaces and other hardware and software necessary to operate the Solution and to obtain from SDM the Maintenance and Support Services set forth in this Agreement.
 - c. Subscriber shall appoint a representative responsible for coordinating Maintenance and Support Services, who (or whose proxy) shall be trained regarding the Solution, and shall be available at all times during normal business hours. Subscriber shall notify SDM of the foregoing individuals and their respective ranks. All requests for Maintenance and Support Services shall be transmitted to SDM through such representatives. SDM shall not be obligated to honor any request for support from any person or entity other than such representatives of Subscriber.
 - d. Subscriber must provide experienced IT professionals with training regarding the Solution to collaborate with SDM on fixing Errors and implementing any Error Correction, enhancement, solution, workaround or other such fix.
 - e. Subscriber shall reimburse SDM at SDM’s then current time and material rates for all work of SDM resolving issues that are determined not to be Errors. SDM shall only be obligated to provide Maintenance and Support Services with respect to the Solution. SDM is not responsible for the configuration, maintenance or correction of third-party software, hardware or communications facilities. SDM shall have no liability to any third party.
5. Third Party Products. To the extent that the Solution contains third party software, SDM shall use commercially reasonable efforts to make available to Subscriber the standard maintenance and support services provided to SDM by the vendors of such third party products. SDM does not guarantee, or make any warranty whatsoever with respect to, the delivery of such services.