DLT RIDER TO MANUFACTURER END USER TERMS
(For Public Sector End Users)

1. <u>**Scope.**</u> This DLT Rider to Mesosphere, Inc. ("Manufacturer") End User Terms ("DLT Rider") establishes the terms and conditions enabling DLT Solutions, LLC ("DLT") to provide Manufacturer's Offerings to Public Sector Government Agencies to include the Federal, State and Local entities (the "Licensee" or "Customer").

2. <u>**Applicability.**</u> The terms and conditions in the attached Manufacturer Terms are hereby incorporated by reference to the extent that they are consistent with Public Sector Laws (e.g., the Anti-Deficiency Act, the Contracts Disputes Act, the Prompt Payment Act, the Anti-Assignment statutes). To the extent the terms and conditions in the Manufacturer's Terms or any resulting Customer Order are inconsistent with the following clauses, they shall be deemed deleted and the following shall take precedence:

    a. **Advertisements and Endorsements.** Unless specifically authorized by Customer in writing, use of the name or logo of Customer is prohibited.

    b. **Assignment.** All clauses regarding Assignment are subject to Assignment of Claims and Novation and Change-of-Name Agreements. All clauses governing Assignment in the Manufacturer Terms are hereby deemed to be deleted.

    c. **Audit.** During the term of a Customer order subject to this Rider: (a) If Customer's security requirements included in the Order are met, Manufacturer or its designated agent may audit Customer's facilities and records to verify Customer's compliance with this Agreement. Any such audit will take place only during Customer's normal business hours contingent upon prior written notice and adherence to any security measures the Customer deems appropriate, including any requirements for personnel to be cleared prior to accessing sensitive facilities. DLT on behalf of the Manufacturer will give Customer written notice of a desire to verify compliance ("Notice"); (b) If Customer's security requirements are not met and upon Manufacturer's request, Customer will provide a written certification, executed by a duly authorized agent of Customer, verifying in writing Customer's compliance with the Customer order; or (c) discrepancies in price discovered pursuant to an audit may result in a charge by the commercial supplier to the Customer however, all invoices must be: i) in accordance with the proper invoicing requirements of the Customer; ii) if there is a dispute then no payment obligation may arise on the part of the Customer until the conclusion of the dispute process, and iii) the audit, if requested by the Customer, will be performed at the Manufacturer's expense.

    d. **Confidential Information.** Any provisions that require the Licensee to keep certain information confidential are subject to the Freedom of Information Act, and any order by a Court with appropriate jurisdiction.

    e. **Consent to Government Law / Consent to Jurisdiction.** The validity, interpretation and enforcement of this Rider will be governed by and construed in accordance with the laws of the United States and/or the respective Customer's state. Any Manufacturer Terms that identify the jurisdiction in which a lawsuit may be brought, the law which shall apply to such lawsuit, or the requirements to pursue Alternative Dispute Resolution prior to such lawsuit are deemed to be deleted. All clauses in the Manufacturer Terms referencing equitable remedies are deemed to be deleted.

    f. **Contractor Indemnities.** DLT shall not be required to indemnify Customer except as explicitly stated in the contract. Any such indemnification requirement shall vest control over the matter with the United States and shall give DLT or the Manufacturer the right to intervene in the proceeding at its own expense through counsel of its own choice.

v.061518

g. **Customer.** Customer is the "Ordering Activity", defined as any entity authorized to use government sources of supply. An individual person shall not be the Licensee or Customer.

h. **Customer Indemnities.** Customer shall not be required to indemnify DLT except as in accordance with federal statute that expressly permits such indemnification.

i. **Installation and Use of the Software.** Installation and use of the software shall be in accordance with the Rider and Manufacturer Terms, unless a Customer determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid order placed by Customer.

j. **Force Majeure.** Clauses in the Manufacturer Terms referencing Force Majeure and unilateral termination rights of the Manufacturer are hereby deemed to be deleted.

k. **Future Fees or Penalties.** All fees and charges are as explicitly set forth in the Customer's order. Additional fees or penalties such as liquidated damages or license, maintenance or subscription reinstatement fees be incorporated into the contract only by bilateral written agreement of the parties. Any clauses imposing additional fees or penalties automatically in Manufacturer's Terms are hereby deemed to be deleted.

l. **Renewals.** All Manufacturer Terms clauses that violate the Anti-Deficiency Act or which permit automatic renewal are hereby deemed to be deleted.

m. **Taxes.** Taxes are subject to applicable jurisdiction regulations, which provides that the contract price includes all federal, state, local taxes and duties.

n. **Termination.** Clauses in the Manufacturer Terms referencing termination or cancellation are hereby deemed to be deleted. Both DLT and Customer's termination rights shall be governed by Contract Dispute Acts of the jurisdiction in which the transaction occurs.

o. **Third Party Terms.** No entity shall have privity of contract with the United States with respect to any third-party product or service, referenced in the Manufacture's Terms unless expressly stated in Customer's order. Absent agreement by Customer to the contrary, third parties shall have no rights or obligations with respect to such agreements vis-à-vis the United States.

p. **Waiver of Jury Trial.** All clauses referencing waiver of jury trial in the Manufacturer Terms are hereby deemed to be deleted.

Incorporation of Manufacturer Terms. Attached hereto are the Manufacturer Terms. As part of this Rider, the following Terms are incorporated by reference and made a part of this Rider except as modified as set forth above.

MESOSPHERE MASTER LICENSE AND SUPPORT AGREEMENT

This Master License and Support Agreement (the "Agreement") is entered into as of _____, 20__ (the "Effective Date") between **Mesosphere, Inc.**, a Delaware corporation, with a principal address at 225 Bush Street, 7th Floor, San Francisco, CA 94104 ("Mesosphere"), and [INSERT CUSTOMER ENTITY NAME], a [INSERT CUSTOMER ENTITY TYPE/JURISDICTION], with a principal address at [INSERT CUSTOMER ENTITY ADDRESS] ("Customer").

1. Definitions. The following defined terms and definitions, together with any defined terms and definitions contained in the body of this Agreement shall apply:

    a. "Customer Affiliate" means any entity controlling or controlled by or under control by Customer, at the time of execution of this Agreement and any time thereafter. For purposes of this definition, "control" means the direct or indirect beneficial ownership of over fifty percent (50%) of the voting interests (representing the right to vote for the election of directors or other managing authority) in an entity.

    b. "Licensed Software" means the proprietary closed-source Mesosphere software components identified in a Order Form, including any software updates, revisions, error corrections, and enhancements to the foregoing which are provided to Customer by Mesosphere pursuant to the Support Services provided hereunder.

    c. "Open Source Stack" means the Mesosphere open source software and third-party open source software (i) which are listed under the Open Source Stack heading on an applicable Order Form and (ii) for which Mesosphere offers Support Services.

    d. "Node" means a single server (either physical or virtual) that is owned, operated or controlled by Customer operating the Licensed Software or Open Source Stack (as applicable) whether or not in a Production Environment.

    e. "Production Environment" means any live or production use of the Licensed Software (whether internal or external), including, without limitation, beta tests and limited releases of production applications for testing purposes.

    f. "Support Services" means the Support Level listed in an Order Form, as described in Mesosphere's then-applicable standard Support and Maintenance Terms available at https://mesosphere.com/mesosphere-support-terms.

2. Order Forms. An "Order Form" is a document for the purchase of services or licenses that (i) is mutually executed by authorized representatives of Mesosphere and Customer (or a Customer Affiliate) and (ii) incorporates by reference this Agreement. Each Order Form constitutes a bilateral agreement between Mesosphere and Customer or the Customer Affiliate executing such Order Form, and in such circumstances, references to "Customer" in this Agreement shall be read, for purposes of such Order Form, to mean Customer or the Customer Affiliate identified in such Order Form. Customer is jointly and severally liable for any breach by a Customer Affiliate.   A sample form of Order Form is attached hereto as Exhibit A. In the event that Customer's business practices require a purchase order number be issued prior to payment of any Mesosphere invoices issued pursuant to an Order Form, then such purchase order number must be provided to Mesosphere prior to the effective date of such Order Form. Customer's execution and return of applicable Order Form to Mesosphere without designating a purchase order number shall be deemed an acknowledgement that no purchase order number is required for payment of invoices hereunder. Additionally, terms, provisions or conditions on any purchase order, acknowledgement, or other business form or writing that Customer may provide to Mesosphere will have no effect on the rights, duties or obligations of the parties hereunder, regardless of any failure of Mesosphere to object to such terms, provisions or conditions.

3. Support & Services. During the Order Form Term (as defined in Section 10 of this Agreement), and provided that all applicable fees have been timely paid, Mesosphere will use reasonable commercial efforts to provide the Support Services indicated on the applicable Order Form for the Open Source Stack and, if applicable, the Licensed Software. If and as indicated on an applicable Order Form, and subject to the terms set forth in therein and payment of all fees, Mesosphere will use reasonable commercial efforts to provide the additional services as set forth in as described in such Order Form and, if applicable, a statement of work.

4. Open Source. Customer acknowledges that the components of the Open Source Stack are, and elements of the Licensed Software may be, provided pursuant to various open source licenses (as may be identified to Customer by Mesosphere from time to time, including at https://docs.mesosphere.com/open-source-attribution/), and Customer's use of such components shall be governed solely by (and nothing herein shall limit any of Customer's rights under) the applicable open source licenses.

5.   Grant of License. Upon execution of a Order Form for Licensed Software, and subject to Customer's compliance with all of the terms and conditions of the Agreement (including, without limitation, any limitations or restrictions set forth on the Order Form, payment of all fees, and any applicable use limitations), Mesosphere grants Customer a personal, nonsublicensable, nonexclusive right during the Order Form Term (as defined below) to use the Licensed Software in object code form only for Customer's internal business purposes and in accordance with Mesosphere's generally published technical documentation regarding the Licensed Software (the "Documentation"), which may be updated by Mesosphere from time to time. Customer may only use the Licensed Software to manage the maximum aggregate number of Nodes set forth on the Order Form; provided that Customer may not use more than one instance of the Licensed Software on any Node.

6.   Provision of the Licensed Software. Upon execution of an Order Form, Mesosphere will, at its expense, make the Licensed Software available for download. The Licensed Software will be deemed delivered when the electronic download is available. Customer agrees that its purchases are not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by Mesosphere regarding future functionality or features.

7.   Non-Mesosphere Software & Services. Mesosphere or third parties may make available third-party products or services. Any acquisition by Customer of such non-Mesosphere products or services, and any exchange of data between Customer and any non-Mesosphere provider, is solely between Customer and the applicable non-Mesosphere provider. Mesosphere does not warrant or support non-Mesosphere products or services, whether or not they are designated by Mesosphere as "certified" or otherwise, except as specified in an Order Form.

8.   Ownership; Restrictions. Customer agrees and acknowledges that, as between the parties, Mesosphere and its licensors are the owners of all right, title and interest in and to the Licensed Software, the Documentation, all updates, upgrades, and derivative works of the Licensed Software and Documentation, and all intellectual property rights therein, and that Customer shall not obtain or claim any ownership interest in the foregoing. Customer agrees and acknowledges that the Licensed Software and Documentation contain the valuable trade secrets and proprietary information of Mesosphere and its licensors, which have been developed at great expense. Customer shall not and shall not cause or permit any third party to obscure, alter or remove any patent, copyright, trademark or service mark, marking or legend contained on or in any Licensed Software or Documentation. In addition, Customer will not (and will not cause or permit any third party to) (i) reverse engineer or attempt to discover any source code or underlying ideas or algorithms of any Licensed Software (except to the extent that applicable law prohibits reverse engineering restrictions), (ii) sell, assign, distribute, provide, lease, lend, disclose, use for timesharing or service bureau purposes, or otherwise use or allow others to use for the benefit of any third party, any Licensed Software (except as expressly and specifically authorized by Mesosphere), (iii) possess or use any Licensed Software, or allow the transfer, transmission, export, or re-export of any Licensed Software or portion thereof in violation of any export control laws or regulations administered by the U.S. Commerce Department, U.S. Treasury Department's Office of Foreign Assets Control, or any other government agency, (iv) disclose to any third party any benchmarking or comparative study involving any Licensed Software without Mesosphere's written consent (not to be unreasonably withheld), or (v) modify, adapt, translate or create derivative works based on any Licensed Software. Prior to disposing of any media or apparatus containing any part of the Licensed Software, at the termination or expiration of the applicable Term and upon the termination or expiration of any license, Customer shall non-recoverably erase any Licensed Software contained therein, and, upon request, provide certification of such erasure from an officer of Customer that supervised the erasure.   All the limitations and restrictions on Licensed Software in this Agreement also apply to Documentation. CUSTOMER ACKNOWLEDGES THAT THE LICENSED SOFTWARE MAY INCLUDE FEATURES TO PREVENT USE AFTER THE APPLICABLE ORDER FORM TERM AND/OR USE INCONSISTENT HEREWITH.

9.   Fees, Payment, and Taxes. Customer shall pay all license, support and other fees as set forth on each Order Form ("Fees"). Unless otherwise set forth on an applicable Order Form, all Fees shall be payable within thirty (30) days of the date of Mesosphere's invoice therefor. If Customer requires the use of a third party electronic processing platform, Customer agrees to either: (i) cooperate with Mesosphere to establish an account with such platform that is free of charge, or, failing that (ii) reimburse Mesosphere for the applicable third-party fees for Mesosphere's use of the electronic processing platform. Should Customer be unwilling or unable to achieve (i) or (ii), Customer agrees to accept invoices via email. All payments shall be made in United States Dollars, and within the borders of the United States. Any payments that are more than thirty (30) days overdue will bear a late payment fee of 1.5% per month, or, if lower, the maximum rate allowed by law. The Fees payable hereunder are exclusive of any sales, use, excise, value added, import, or other applicable taxes, tariffs or duties ("Taxes"). Customer is solely responsible for payment of all Taxes except for any taxes based solely on Mesosphere's net

income. If Customer is required to pay any Taxes, Customer shall pay such Taxes with no reduction or offset in the Fees payable to Mesosphere hereunder. If Mesosphere has the legal obligation to pay or collect Taxes for which Customer is responsible, Customer agrees to pay such Taxes and Mesosphere will invoice the appropriate amount to be paid by Customer and Customer shall pay each such invoice in accordance with the payment terms herein. Mesosphere reserves the right to raise or change the Fees upon at least (60) days' prior notice (which may be sent by email) before the beginning of any subsequent Renewal Term (as defined in Section 10 of this Agreement). Except as expressly stated in this Agreement, all Fees paid are non-refundable. Customer will reimburse Mesosphere for all reasonable travel and other related expenses incurred by Mesosphere in its performance hereunder; provided, however, that such expenses shall have been pre-approved by Customer.

10. Term and Termination. The term of this Agreement shall commence as of the Effective Date and continue until the expiration of all Order Form Terms. If no Order Form has been mutually executed by the parties within one (1) year of the Effective Date, this Agreement shall automatically terminate. For each Order Form, unless otherwise specified therein, the term of the Order Form shall begin as of the Order Form Effective Date set forth on such Order Form, and, unless earlier terminated as set forth herein, shall continue for the initial term specified on such Order Form (the "Initial Term"). Following the Initial Term, the Order Form shall automatically renew for additional successive periods equal to the Initial Term (each, a "Renewal Term(s)") (the Initial Term and Renewal Term(s) shall collectively be the "Order Form Term") unless either party notifies the other party of such party's intention not to renew no later than thirty (30) days prior to the expiration of the Order Form Initial Term or then-current Order Form Renewal Term, as applicable. If immediately following the expiration of the then-current Order Form Term, the parties are negotiating a renewal of such Order Form, the Order Form Term will remain in effect for a reasonable period of time (not to exceed one month) to allow the parties to effect such renewal. This Agreement and any applicable Order Form may be terminated (i) by either party, if the other party breaches any material provision of this Agreement (including, without limitation, any payment obligations hereof), and such breach remains uncured for at least thirty (30) days following receipt of notice thereof from the non-breaching party, (ii) by either party upon written notice to the other if any assignment is made by such other party for the benefit of creditors, or if a receiver, trustee in bankruptcy or similar officer shall be appointed to take charge of any or all of such other party's property, or if such other party files a voluntary petition under federal bankruptcy laws or similar state or foreign statutes or such petition is filed against such other party and is not dismissed within one hundred twenty (120) days. Except as expressly provided herein, upon any expiration or termination of this Agreement, all rights, licenses and obligations of the parties shall immediately cease and terminate. The provisions of Sections 1, 2, 4, 7, 8, 9 (with respect to amounts incurred prior to termination or expiration) and 10 through 18 shall survive the termination or expiration of this Agreement in accordance with their terms. Termination is not an exclusive remedy and all other remedies will be available whether or not termination occurs.

11. Confidentiality. 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 technology or business in the course of this Agreement that should reasonably be considered to be confidential given the nature of the information disclosed or the circumstances of disclosure (hereinafter referred to as "Proprietary Information" of the Disclosing Party). Customer shall not provide any Proprietary Information to Mesosphere that is not necessary for Mesosphere to perform its obligations under this Agreement. The Receiving Party agrees: (i) not to divulge to any third person any such Proprietary Information, (ii) to give access to such Proprietary Information solely to those employees and contractors with a "need-to-know the Proprietary Information to perform of its obligations under this Agreement and whom have entered into agreements with such employees and contractors that are just as protective of the Proprietary Information as the terms of this Agreement, (iii) to use such Proprietary Information only to the extent necessary to exercise its rights or perform its obligations under this Agreement, and (iv) to take the same security precautions to protect against disclosure or unauthorized use of or access to the Proprietary Information that the Receiving Party takes with its own Proprietary Information, but in no event will a party apply less than reasonable precautions to protect such Proprietary Information. The Disclosing Party agrees that the foregoing will not apply with respect to any information that the Receiving Party can document (a) is or becomes generally available to the public without any action by, or involvement of, the Receiving Party, (b) was in its possession or known by it prior to receipt from the Disclosing Party, (c) was rightfully disclosed to it without restriction by a third party, or (d) was independently developed without access to or use of any Proprietary Information of the Disclosing Party. Nothing in this Agreement will prevent the Receiving Party from disclosing the Proprietary Information pursuant to any judicial or governmental order, provided that the Receiving Party gives the Disclosing Party reasonable prior notice of such disclosure (to the extent legally permitted) and the opportunity to contest such order.

12. Data. Mesosphere may collect data relating to the use and performance of the Licensed Software and Open Source Stack. Mesosphere is free to collect, analyze such data and other information relating to the provision, use and performance

of the Licensed Software and Open Source Stack provided that Customer cannot be identified and such data is used **solely** in an aggregate or other de-identified form. Mesosphere does not collect, and Customer shall not provide, personally identifiable information in the course of Customer's use of the Licensed Software.

13. Feedback. Customer may, though has no obligation to, provide Mesosphere with feedback related to the Licensed Software or Open Source Stack (e.g., feedback related to usability, performance, interactivity, bug reports and test results of the Licensed Software or Open Source Stack) ("Feedback"). If Customer provides Feedback, Customer hereby grants Mesosphere a nonexclusive, irrevocable, worldwide, perpetual, royalty free, fully paid-up license to use disclose, reproduce, license or otherwise distribute and exploit any Feedback as it sees fit, entirely without obligation or restriction of any kind.

14. Audit. Mesosphere reserves the right to audit Customer's use of the Licensed Software and Customer's compliance with this Agreement, including any Node restrictions or support limitations in an applicable Order Form, upon five (5) days' notice, but no more frequently than once every twelve (12) months. Customer will provide reasonable information, access, and assistance in connection with such audit. Should Mesosphere find that Customer has exceeded relevant Node or other restrictions in an applicable Order Form, or otherwise not using the Licensed Software in accordance with the terms and conditions of this Agreement, then, (i) in addition to paying any additional fees attributable such use (which shall be based on Mesosphere's current price list then in effect from the date that Customer exceeded the relevant Node limitations), if the Node usage exceeds five percent (5%) of what is specified in the Order Form, then Customer agrees to reimburse Mesosphere for the cost of the audit without limiting Mesosphere's other rights under this Agreement or in law or equity, and (ii) Mesosphere will have the right to audit Customer again on the same terms every three (3) months for the remainder of the Term. Provided it does not identify Customer, Mesosphere will be free to use for development, diagnostic and corrective purposes any data and information it so collects relating to diagnosis, problems, systems, performance, use or functionality, and may allow others to do so.

15. Indemnification. Mesosphere shall defend Customer from any third party claim or action brought against Customer to the extent based on the allegation that the use of Licensed Software in accordance with this Agreement infringes any United States patent, copyright or trademark, or misappropriates any trade secret. Mesosphere's obligation to defend the claims described in this Section shall be limited to: (i) the payment for the cost of defense of the third party claim incurred by Mesosphere, (ii) the payment of any settlements agreed to by Mesosphere in a writing signed by an officer of Mesosphere, and/or (iii) final judgments awarded to the third party claimant by a court of competent jurisdiction. Mesosphere's obligation to defend the claims described in this Section is conditioned on Customer (a) providing Mesosphere with prompt written notice of any claim (provided that failure to give prompt notice shall only limit Mesosphere's obligations under this Section to the extent that such failure prejudices Mesosphere in its defense of the claim), (b) granting Mesosphere sole control of the defense and settlement of the claim (provided that Mesosphere will not settle any claim that requires Customer to pay any amounts not covered by Mesosphere or make any admission of wrongdoing), and (c) providing reasonable information and assistance to Mesosphere in the defense or settlement of the claim at Mesosphere's expense. Mesosphere's obligations under this Section shall not apply with respect to any infringement arising from or related to: (i) the Open Source Stack or open source software components; (ii) any method or process in which the Licensed Software may be used; (iii) any compliance with Customer's designs or specifications; (iv) use of any version of the Licensed Software other than the current unaltered release of the Licensed Software; (v) the combination, operation or use of the Licensed Software with the Open Source Stack or any software, data or hardware that is not provided by Mesosphere; (vi) any modifications to the Licensed Software that are not made by Mesosphere; or (vii) Customer continuing allegedly infringing activity after being notified thereof or after being informed of modifications that would have avoided the alleged infringement; or (viii) Customer's using such Licensed Software in a manner that is not strictly in accordance herewith. THIS SECTION SETS FORTH MESOSPHERE'S SOLE LIABILITY (AND CUSTOMER'S SOLE REMEDY) FOR ANY CLAIM OF INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS.

16. Warranty and Warranty Disclaimer. Each party represents and warrants that: (i) it is validly existing and in good standing under the laws of the place of its establishment or incorporation; (ii) it has full corporate power and authority to execute, deliver and perform its obligations under this Agreement; (iii) the person signing this Agreement (or an Order Form adopting this Agreement) on its behalf has been duly authorized and empowered to enter into this Agreement; and (iv) this Agreement is valid, binding and enforceable against it in accordance with its terms. EXCEPT AS OTHERWISE PROVIDED HEREIN, MESOSPHERE DISCLAIMS ALL WARRANTIES, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE LICENSED SOFTWARE, OPEN SOURCE STACK, SUPPORT SERVICES, AND DOCUMENTATION, INCLUDING ALL IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE, ALL OF WHICH ARE HEREBY EXPRESSLY DISCLAIMED. WITHOUT LIMITING THE FOREGOING, MESOSPHERE SPECIFICALLY DISCLAIMS ANY WARRANTY

THAT THE FUNCTIONS CONTAINED IN THE LICENSED SOFTWARE OR OPEN SOURCE STACK WILL MEET CUSTOMER'S REQUIREMENTS OR WILL OPERATE IN COMBINATIONS OR IN A MANNER SELECTED FOR USE BY CUSTOMER, OR THAT THE OPERATION OF THE LICENSED SOFTWARE OR OPEN SOURCE STACK WILL BE UNINTERRUPTED OR ERROR FREE.

17. Limitation of Liability. NOTWITHSTANDING ANYTHING ELSE HEREIN OR OTHERWISE, AND EXCEPT FOR BODILY INJURY, NEITHER MESOSPHERE NOR ANY OF ITS LICENSORS SHALL BE LIABLE OR OBLIGATED WITH RESPECT TO THE SUBJECT MATTER HEREOF OR UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY (I) FOR ANY DAMAGES IN AMOUNTS IN EXCESS, IN THE AGGREGATE, OF THE FEES PAID TO IT HEREUNDER WITH RESPECT TO THE APPLICABLE LICENSED SOFTWARE DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT THAT GAVE RISE TO SUCH DAMAGES; (II) FOR ANY COST OF PROCUREMENT OF SUBSTITUTE GOODS, TECHNOLOGY, SERVICES OR RIGHTS; (III) FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES; (IV) FOR INTERRUPTION OF USE OR LOSS OR CORRUPTION OF DATA; OR (V) FOR ANY MATTER BEYOND ITS REASONABLE CONTROL. THE LICENSED SOFTWARE IS NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USE IN HAZARDOUS ENVIRONMENTS REQUIRING FAIL-SAFE PERFORMANCE WHERE THE FAILURE OF THE LICENSED SOFTWARE COULD LEAD DIRECTLY TO DEATH, PERSONAL INJURY, OR SIGNIFICANT PHYSICAL OR ENVIRONMENTAL DAMAGE ("HIGH RISK ACTIVITIES"). USE OF THE LICENSED SOFTWARE IN HIGH RISK ACTIVITIES IS NOT AUTHORIZED. THE PARTIES AGREE THAT THIS SECTION REPRESENTS A REASONABLE ALLOCATION OF RISK AND THAT MESOSPHERE WOULD NOT PROCEED IN THE ABSENCE OF SUCH ALLOCATION.

18. Miscellaneous. Neither this Agreement nor any rights, obligations or licenses granted hereunder may be assigned or delegated by either party without the prior written consent of the other party; provided that either party may assign this Agreement without such consent to a successor-in-interest in connection with a sale of substantially all of such party's business relating to this Agreement. Customer acknowledges and agrees that (i) Mesosphere may use Customer's name and logo to identify Customer as a customer of Mesosphere on its website and in case studies, press releases, and other advertising, marketing and promotional materials, any such statements will conform with the trademark use guidelines provided by Customer to Mesosphere, and (ii) Customer shall make itself reasonably available for reference calls and to provide quotes for marketing and publicity purposes. The provisions hereof are for the benefit of the parties only and not for any other person or entity. For all purposes hereof and in the performance of its obligations under this Agreement, Mesosphere is and shall remain an independent contractor and nothing in this Agreement shall be deemed or construed to create an employment relationship between Customer and any employee, agent or independent contractor of Mesosphere. Neither party shall have any authority to, nor shall a party attempt to, insure any obligations on behalf of the other party or to make any promise, representation or contract of any nature on behalf of the other party. Any notice, report, approval, authorization, agreement or consent required or permitted hereunder shall be in writing; notices shall be sent to the addresses set forth herein, or to any updated address that a party may provide by written notice. No failure or delay in exercising any right hereunder will operate as a waiver thereof, nor will any partial exercise of any right or power hereunder preclude further exercise. If any provision shall be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable. This Agreement shall be deemed to have been made in, and shall be construed pursuant to the laws of the State of California and the United States without regard to conflicts of laws provisions thereof, and without regard to the United Nations Convention on the International Sale of Goods or the Uniform Computer Information Transactions Act. This Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements and communications relating to the subject matter hereof and any waivers or amendments shall be effective only if made in writing; however, any pre-printed or standard terms of any purchase order, confirmation, or similar form, even if signed by the parties after the effectiveness hereof, shall have no force or effect. The substantially prevailing party in any action to enforce this agreement will be entitled to recover its attorney's fees and costs in connection with such action. The Licensed Software is a "commercial item" as that term is defined at 48 C.F.R. 2.101. Any use, modification, derivative, reproduction, release, performance, display, disclosure or distribution of the Licensed Software by any government entity is prohibited, except as expressly permitted by the terms hereunder. Additionally, any use by U.S. government entities must be in accordance with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4. Contractor/manufacturer is Mesosphere, Inc. with offices at 225 Bush Street, 7th Floor, San Francisco, CA 94104.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date:

Mesosphere, Inc.   **[Insert Customer Entity Name]**

By:_____   By:_____

Name:_____   Name:_____

Title:_____   Title:_____

Date:_____   Date:_____

MESOSPHERE

Exhibit A
Order Form

Prepared By:
Prepared For:
Offer Valid Through:
Order Number:

Address Information

Bill To: **Ship To:**

,   ,

Billing Company Name: **Billing Phone:**
Billing Company Contact: **Billing Fax:**
Billing Contact Email:

Contract/Payment Terms

Payment Terms: **Payment Method:**
Billing Frequency: **Billing Method:**
PO Required: **PO Number:**

Product Name	SKU	Start Date	End Date	Qty	List Price	Sales Price	Disc.	Total Price
							%	

Total:

TERMS AND CONDITIONS

GENERAL TERMS

This Order Form is entered into and made effective as of the last date of signature below (the "Order Form Effective Date") pursuant to the terms of the Mesosphere Master License and Support Agreement, located at https://mesosphere.com/mesosphere-enterprise-terms/, between Mesosphere and Customer listed above (unless there is currently another agreement for Licensed Software in force and effect between Customer and Mesosphere, in which case the terms of that agreement will govern this Order Form) (the "Agreement"), which are hereby incorporated by reference. If a Statement of Work ("SOW") is attached, this Order Form incorporates such SOW. Each party's acceptance of this Order Form was and is expressly conditional upon the other's acceptance of the terms contained in the Agreement to the exclusion of all other terms. There will be no force or effect to any different terms of any related purchase order or similar form even if signed by the parties after the date hereof.

MESOSPHERE, INC.

_____
SIGNATURE

_____
SIGNATURE

_____
NAME

_____
NAME

_____
TITLE

_____
TITLE

_____
DATE

_____
DATE