End User Licence Agreement

TestPlant Terms & Conditions for the licence of Software and provision of associated Services

These Terms and Conditions apply to the exclusion of any other terms that the End User seeks to impose or incorporate(aside from terms agreed to in a Negotiated Purchase Order), or which are implied by trade, custom, practice or course of dealing. These Terms and Conditions shall supersede all and any other terms and constitutes the entire agreement between the parties ("Agreement") and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

1 Interpretation

1.1 In this Agreement the following words and phrases have the following meanings

"Affiliate" includes each and any subsidiary or holding company of the End User and each and any subsidiary of a holding company of the End User OR any business entity from time to time controlling, controlled by, or under common control with the End User;

"Confidential Information" means in respect of either party any and all information relating to the trade secrets, operations, processes, plans, intentions, products, product information, prices (excluding GSA Schedule Pricelist and Purchase Order prices), know-how, designs, customer lists, market opportunities, transactions, affairs and/or business of that party and/or to its customers, suppliers, clients or affiliated companies in or on any medium or format;

"End User" or "Customer" or "Ordering Activity" means the eligible Ordering Activity under GSA Schedule contracts identified in the Purchase Order, Statement of Work, or similar document contracting for the use of the Licenced Software and Services from a TestPlant Partner;

"Deliverable" means those products and/or services to be provided by TestPlant in accordance with the Transaction Particulars.

"Documentation" means the operating manuals, user instruction manuals, technical literature and all other related materials, including on-line help files, supplied by TestPlant, regarding the use of the Licensed Software as updated from time to time and which can be accessed via TestPlant's website;

"Effective Date" means the date on which a Licence Key made available to be downloaded via TestPlant's website to the End User;

"eggBox" means hardware supplied by TestPlant and branded as such;

"Error" means any failure by the Licensed Software to operate in accordance with the Documentation which can be reproduced by TestPlant using unmodified Licensed Software;

"eggPlant Network Hardware" means the hardware supplied by TestPlant upon which eggPlant Network software is pre-loaded.

"Extended Hours" means hours that fall outside of TestPlant's Service Hours;

"Fee or Fees" means the charges payable by the End User to TestPlant Partner as specified in the Transaction Particulars in accordance with the GSA Schedule Pricelist;

"Good Industry Practice" means the standards which would reasonably and ordinarily be expected from a skilled, efficient and experienced provider of the same or similar Services under the same or similar circumstances at the time the Services are provided.

"Intellectual Property Rights" means patents, rights to inventions, copyright and related rights, trademarks, trade names and domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (and rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist, now or in the future, in any part of the world;

"Licence Key" means the numeric code, generated by TestPlant based on information provided to TestPlant by the End User, required in order to use the Licensed Software;

"Licence Period" means (a) the period specified as such in the Transaction Particulars, or (b) any further period granted by TestPlant in accordance with clause 8.2, during which the End User is entitled to use the Licensed Software;

"Licensed Software" means the TestPlant software specified as such in the Transaction Particulars;

"Online Technical Support" means forum, e-mail or other Internet-based means of obtaining assistance service provided by TestPlant during Service Hours including clarification of the functions and features of the Licensed Software, guidance on its operation and the Documentation, but excluding (a) installation or a general consulting service, or (b) telephone assistance, even if the call originates from the Internet;

"Response" means a response from a member of TestPlant's support personnel to a Specified Contact acknowledging a report of an Error and agreeing the severity category to be applied to that Error in accordance with clause 4.4 of this Agreement;

"Services" means implementation, configuration, bespoke development and/or operation and training, Support and Maintenance as more particularly set out in the Transaction Particulars;

"Service Hours" means the hours of support provided by TestPlant for the Licensed Software in the local territory as detailed in TestPlant's website;

"Specified Contact" means either of the two (2) individuals designated as the support contacts for the End User in the Transaction Particulars and/or their replacements notified to TestPlant by the End User from time to time;

"Support and Maintenance" means the services described in clause 4 of this Agreement;

"Telephone-Based Technical Support" means the telephone assistance service provided by TestPlant during Service Hours, including clarification of the functions and features of the Licensed Software, guidance on its operation and the Documentation, but excluding installation or a general consulting service;

"TestPlant" means the GSA Multiple Award Schedule Contractor acting on behalf of TestPlant Inc, a Delaware corporation with its principal place of business at 3000 Pearl Street, Boulder, CO 80301.

"TestPlant Partner" means [   ], who is licenced to resell TestPlant's products and services.

"Transaction Particulars" means the details of the Licensed Software and Services to be provided to the End User as set out in the Purchase Order, or Agreement between the End User and the TestPlant Partner;

"Update" means a release or version of the Licensed Software that may contain minor functional enhancements, modifications, extensions, error corrections or bug fixes. The content of all Updates shall be decided upon by TestPlant at its sole discretion. Updates may be provided by means of electronic download or other formats / media as determined by TestPlant from time to time;

"Upgrade" means a major release that includes significant new functionality and/or other enhancements which TestPlant may in its discretion make available to its customers only on payment of an additional or increased Licence Fee;

"Working Day" means any day from Monday to Friday inclusive which is not a public holiday in the relevant territory.

Unless the context otherwise requires, references to TestPlant and the End User include their permitted successors and assigns.

The headings contained in this Agreement are for convenience of reference only and shall not affect its interpretation or construction.

Unless the context otherwise requires words denoting the singular shall include the plural and vice versa, references to any gender shall include all other genders and references to persons shall include natural persons, bodies corporate, unincorporated associations, governments, states, trusts and partnerships, in each case whether or not having a separate legal personality.

Any reference to "writing" or "written" includes faxes but does not include e-mail or writing on the screen of a visual display unit.

References to any statute, enactment, order, regulation or other similar instrument shall be construed as references to the same as amended by or as contained in any subsequent re-enactment, modification or statutory extension thereof.

1   2   LICENSE

1.1 Subject to the provisions of this Agreement, TestPlant shall in consideration of the payment of the Fees, grant to the Customer a non-exclusive, non-transferable license to use the Licensed Software for the License Period solely in accordance with the Transaction Particulars. TestPlant reserves any rights not expressly granted in this Agreement.

1.2 For the purposes of clause 3.1, use of the Licensed Software shall be restricted to use in object code form only, and solely for use by the Customer for the testing of, or automation of commands in respect of, software or systems:

1.2.1 supplied to or being developed by or on behalf of the Customer or its Affiliates for use in the course of its normal internal business purposes; or

1.2.2 being developed and/or tested by the Customer in the course of services for one of its own customers, provided that such services are not

(a) supplied by the Customer in the capacity of application service provider or service bureau; and/or

(b) in so doing the Licensed Software is not itself used or operated by, or supplied or in any other way made available to, that customer.

1.3 Except as expressly authorized by TestPlant in writing, the Customer:

1.3.1 may not copy any Licensed Software or Documentation except where it is necessary for the purpose of back-up or operational security;

1.3.2 may not rent, lease, sub-license, loan, translate, merge, adapt, vary or modify the Licensed Software or Documentation;

1.3.3 may not make alterations to, or modifications of, the whole or any part of the Licensed Software nor permit the Licensed Software or any part of it to be combined with, or become incorporated in, any other programs;

1.3.4 may not disassemble, de-compile, reverse engineer or create derivative works based on the whole or any part of the Licensed Software, or otherwise attempt to derive or gain access to the source code of the Licensed Materials, nor attempt to do any such things except to the extent that such actions cannot be prohibited because they are essential for the purpose of achieving inter-operability of the Licensed Software with another software program, and provided that the information obtained by Customer during such activities:

(c) is used only for the purpose of achieving inter-operability of the Licensed Software with another software program;

(d) is not disclosed or communicated without the TestPlant's prior written consent to any third party to whom it is not necessary to disclose or communicate it; and

(e) is not used to create any software which is substantially similar to the Licensed Software;

1.3.5 may not remove, delete or alter any trademarks, copyright notices or other Intellectual Property Rights notices of TestPlant or its Affiliates;

1.3.6 may not use the Licensed Software for purposes of competitive analysis, the development of competing software product or any other purpose that is disadvantageous to TestPlant;

1.3.7 shall keep all copies of the Licensed Software secure and to maintain accurate and up-to-date records of the number and locations of all copies of the Licensed Software and shall take all reasonable measures to prevent unauthorized copying;

1.3.8 shall supervise and control use of the Licensed Software and ensure that the Licensed Software is used by Customer's employees and representatives in accordance with these terms; and

1.3.9 shall replace the current version of the Licensed Software with any updated or upgraded version or new releases provided by TestPlant on receipt of such version or release.

1.4 The Customer shall not host the Licensed Software on a server that may be accessed by multiple users unless the Transaction Particulars specifically permit multiple user access to the product. For clarity, the Software branded "Team" DOES permit multiple user access (although not concurrent user access).

1.5 The Customer agrees to permit TestPlant and its authorized professional representatives, at reasonable times and on reasonable advance notice and subject to Government security requirements , to inspect and have access to the premises, and to the computer equipment located there, at which the Licensed Software is being kept or used, for the purpose of ensuring that the Customer is complying with these terms. TestPlant may accept self-certification verified by a 3rd party professional advisor together with supporting evidence to demonstrate compliance with the license terms in lieu of any audit. It is agreed that reasonable times shall include Customer's normal business hours and reasonable advance notice shall be a period no less than 24 hours.

1.6 If an audit reveals that the Customer is using Licensed Software other than in accordance with the license granted by this Agreement, the Customer will pay TestPlant the underpaid License Fee based on TestPlant's then-current GSA Schedule Pricelist rates within thirty (30) days of invoice.

2 SALE OF EGGBOXES AND EGGPLANT NETWORK HARDWARE

2.1 Title to eggBoxes and eggPlant Network Hardware shall pass to Customer upon payment by Customer of all sums owing to TestPlant in relation to the signed quotation or other order purchase documentation relating to the purchase of the eggBox(es) and/or eggPlant Network. Until such payment is received in full, title to the eggBox(es) and the eggPlant Network Hardware shall remain with TestPlant.

2.2 eggBoxes and eggPlant Network Hardware will be supplied with a full parts and labour warranty (an "eggPlant Hardware Warranty") for 1 year (or for the Licence Period of the TestPlant Software that is supplied with the eggBox(es) or eggPlant Network Hardware, up to a maximum of 3 years). The eggPlant Hardware Warranty may be extended without further cost if the Licence Period is extended or renewed up to a maximum total warranty period of 3 years from the date of delivery of the eggBox(es) or eggPlant Network Hardware. Under no circumstances will an eggPlant Hardware Warranty be extended beyond the third anniversary of the delivery of an eggBox or eggPlant Network Hardware .

2.3 In the event that TestPlant are unable to resolve any problems with an eggBox or eggPlant Network Hardware that is under warranty remotely, TestPlant will provide a replacement eggBox or eggPlant Network Hardware, provided that the Customer returns the faulty eggBox or eggPlant Network Hardware to TestPlant. Returns shall be at TestPlant's expense, via Fedex or equivalent service to TestPlant at 3000 Pearl Street, Boulder, CO 80301. In the event that Customer is unable or unwilling to return a faulty eggBox or eggPlant Network Hardware to TestPlant, then the eggPlant Hardware Warranty shall be voided and TestPlant shall be under no further obligation under the terms of the eggPlant Hardware Warranty.

2.4 eggPlant Network Hardware is only licenced for use in the following territories: Any European Union member state; the United States of America; Canada; Mexico; Switzerland; Turkey; UK Crown dependencies; Gibraltar; China (including Hong Kong and Macao); Taiwan; Japan; South Korea; India; Philippines; South Africa; Australia; New Zealand; Brazil and Chile.

3 LICENSE KEYS

3.1 Subject to the terms of this Agreement, TestPlant shall provide Customer with a License Key to access the Licensed Software. For clarification, Customer shall have no right to use the Licensed Software with the Licensed Key or otherwise after the Licensed Period has ended.

3.2 The Customer will comply with TestPlant's process for the generation / issue /exchange of License Keys as notified by TestPlant from time to time.

3.3 The Customer shall only be permitted to exchange a License Key when

3.3.1 It has certified to TestPlant in writing that the current License Key will no longer be used; and

3.3.2 TestPlant has verified that the Customer holds a current license for the use of the Licensed Software.

3.4 Prior to effecting any Exchange TestPlant may require the Customer to update the Licensed Software product for which the License Key is generated where that product is not a currently-supported version or release.

4 **SUPPLY OF SERVICES**

4.1 TestPlant shall supply the Services in accordance with Good Industry Practice, in a timely and professional manner and in accordance with the Transaction Particulars in all material respects.

4.2 TestPlant shall use all reasonable endeavours to meet any agreed performance or delivery dates specified in the Transaction Particulars, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

4.3 TestPlant shall provide the Services in accordance with the warranties set out at clause 10.

4.4 TestPlant shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and TestPlant shall notify the Customer in any such event.

5 **CUSTOMER'S OBLIGATIONS**

5.1 The Customer shall reasonably co-operate with TestPlant in all matters relating to the Services.

5.2 The Customer shall provide TestPlant, its agents, subcontractors, consultants and employees, in the same manner as set forth in Section 3.5 above, with access to the Customer's systems, premises, office accommodation, information and other facilities as reasonably required by TestPlant to provide the Services, or exercise its rights under this Agreement.

5.3 The Customer shall not and shall not allow the Licensed Software and/or the Services to be used in any of the following ways:

5.3.1 for any purpose other than the testing of software without the prior written permission of TestPlant;

5.3.2 in breach of any reasonable instruction given by TestPlant; or

5.3.3 that causes TestPlant to be subject to any criminal prosecution, enforcement action, civil claim or other action or liability.

6 **SUPPORT AND MAINTENANCE**

6.1 Subject to payment by the Customer of all applicable License Fees and Customer's full compliance with this Agreement, TestPlant will provide Support and Maintenance Services in respect of the the most recent release of the Licensed Software for the License period and in respect of earlier releases of the Licensed Software for a period of six (6) months from the date of issue of the immediately subsequent release.

6.2 The Support and Maintenance Services will be provided during the Service Hours, and will comprise the provision of:

6.2.1 Updates and related Documentation;

6.2.2 Telephone-Based Technical Support for Specified Contacts; or

6.2.3 Online Technical Support.

6.3 The Customer will report any Errors in respect of which it requires Support and Maintenance Services:

6.3.1 via email to TestPlant at support@testplant.com or

6.3.2 using the "Help->report a bug" feature in the Licensed Software; or

6.3.3 using the form provided for this purpose on the TestPlant online service portal at http://www.testplant.com/support or

6.3.4 by calling the following number during Service Hours: +1-720-890-0211 Extension 14.

6.3.5 TestPlant will not be obliged to respond to or act on any Error report not made by a Specified Contact.

6.3.6

6.4 TestPlant will use reasonable endeavors to:

6.4.1 provide a Response to all Error reports within four (4) elapsed Service Hours; and

6.4.2 resolve reported Errors according to the severity of their effects as set out as follows:

1 - **CRITICAL**: A system is down which affects business-critical production operations.

TESTPLANT RESPONSE: TestPlant will work the issue until the problem is identified and a workaround is determined

2 - **SEVERE**: Operations are impeded and/or repetitive error conditions are present. Business-critical operations are not affected.

TESTPLANT RESPONSE: TestPlant will work the issue until the problem is identified. A fix or workaround will be provided within a one-week target. The fix will be incorporated into the next product Update.

3 - **SERIOUS**: A feature or function is not operating as specified.

TESTPLANT RESPONSE: TestPlant will work the issue until the problem is identified. A fix or workaround will be determined within a two-week target. The fix will be incorporated into the next product Update.

4 - **ROUTINE**: An error condition has been identified but operations are not impacted.

TESTPLANT RESPONSE: TestPlant will review the issue and attempt to provide a fix in the next product Update.

6.5 The Support and Maintenance Services apply only to the correction of Errors. TestPlant shall not be responsible for the resolution of any other malfunction of the Licensed Software, including any attributable to:

6.5.1 the Customer's failure to implement any Update issued under this Agreement;

6.5.2 changes to the operating system or environment which adversely affect the Licensed Software;

6.5.3 use of the Licensed Software to test software on an operating system other than the operating systems specified in the Documentation;

6.5.4 any alterations of or additions to the Licensed Software performed by parties other than TestPlant or at the direction of TestPlant;

6.5.5 use of the Licensed Software in a manner for which it was not designed or licensed;

6.5.6 accident, negligence, or misuse of the Licensed Software;

6.5.7 operation outside of environmental specifications;

6.5.8 interconnection of the Licensed Software with other software products; or

6.5.9 use of the Licensed Software on equipment other than the equipment for which it was designed and Licensed.

6.5.10

6.6 TestPlant may at its sole discretion provide services in respect of

6.6.1 a problem with the Customer's use of the Licensed Software which is not attributable to an Error; or

6.6.2 unsupported versions of the Licensed Software.

6.6.3 TestPlant shall be entitled to charge the Customer for any such services as consultancy which the Customer has approved of in writing prior to TestPlant providing such services at TestPlant's then current standard charging rates.

6.7 The Customer shall designate as Specified Contacts one (1) or two (2) individuals within the Customer's organization to serve as primary contacts between the Customer and TestPlant and to receive support through TestPlant's telephone support center. All of the Customer's support inquiries shall be initiated primarily through these contacts.

6.8 To enable TestPlant to provide Support and Maintenance, the Customer shall, during normal business hours, provide TestPlant with suitable access to relevant Customer personnel and to equipment upon which the Licensed Software is loaded or operating. This access shall where necessary include the ability to dial-in or connect remotely to equipment on which the

Licensed Software is operating. TestPlant will inform the Customer of the specifications of the equipment needed, and the Customer will be responsible for the costs and use of any such equipment at the Customer's premises. Where the Customer is only able to provide restricted access to the Customer's systems, then TestPlant may only be able to provided limited support and Customer shall bear any additional costs incurred in compliance with additional security requirements.

6.9 The Customer shall

6.9.1 provide supervision, control and management of the use of the Licensed Software;

6.9.2 implement procedures for the protection of systems under test, their information and the implementation of backup procedures for such systems in the event of Errors or malfunction of the Licensed Software or any system on which the Licensed Software is loaded or operates, or with which it interfaces.

6.10 The Customer shall document and promptly report to TestPlant all Errors affecting the Licensed Software, and shall comply with all reasonable TestPlant instructions and procedures for their rectification, as soon as reasonably practicable after notification by TestPlant.

6.11 The Customer shall maintain a current backup copy of all programs and data relevant to its operation of the Licensed Software.

6.12 TestPlant will make available to the Customer standardized training in the use of the Licensed Software as deemed appropriate by TestPlant from time to time. The Customer shall take all reasonable measures to ensure that the Licensed Software is operated by personnel properly trained in its use and the use of any equipment on which it is loaded or operates..

7 FEES AND PAYMENT

7.1 The Customer shall, in consideration of the provision of the Licensed Software and the Services, pay the Fees in accordance with this Agreement and the GSA Schedule Pricelist.

7.2 TestPlant's invoices shall be payable by the Customer not later than the date specified in the Transaction Particulars (the "Due Date").

7.3 TestPlant shall state separately on invoices taxes excluded from the fees, and the Customer agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

7.4 If any Charges are not fully paid by the Due Date, TestPlant shall be entitled to charge interest at the rate governed by the Prompt Payment Act (31 USC 3901 et seq) and Treasury regulations at 5 CFR 1315.

7.5 In the event of any dispute in relation to the License Fee, the Customer shall pay any undisputed sum by the Due Date, and TestPlantshall as soon as reasonably practicable refer the dispute to the cognizant Ordering Activity contracting officer pursuant to the Contract Disputes Act . Any disputed Charges which are subsequently determined to be due and payable by the Customer to TestPlant shall attract interest in accordance with clause 9.4 as from its original Due Date.

7.6 Subject to clause 9.5, the Customer may not exercise any right of set off, retention, deduction or any other withholding against amounts invoiced to it by TestPlant.

8 TESTPLANT WARRANTIES

8.1 TestPlant warrants

8.1.1 that it has the right to grant the Customer a license to use the Licensed Software in accordance with this Agreement; and

8.1.2 that it either owns all right, title and interest to, or has the right to license, the Licensed Software.

8.2 TestPlant warrants that the Licensed Software will conform in all material respects to the Documentation for a period of 60 days from the Effective Date (the "Warranty Period"). If, within the Warranty Period, the Customer notifies TestPlant in writing of any defect or fault in the Licensed Software in consequence of which it fails to conform in all material respects to the

Documentation, and such defect or fault does not result from the Customer, or anyone acting with the authority of the Customer, having amended the Software or used it outside the terms of this Agreement, for a purpose or in a context other than that for which it was designed or in combination with any other software not provided by TestPlant, TestPlant shall, at TestPlant's option, do one of the following:

8.2.1 repair the Software; or

8.2.2 replace the Software; or

8.2.3 terminate this license immediately by notice in writing to the Customer and refund any of the License Fee paid by the Customer as at the date of termination (less a reasonable sum in respect of the Customer's use of the Software to the date of termination) on return of the Licensed Software and all copies thereof,

provided the Customer provides all the information that may be necessary to assist TestPlant in resolving the defect or fault, including sufficient information to enable TestPlant to re-create the defect or fault.

8.3 TestPlant warrants that the Services under this Agreement will be performed with reasonable skill and care; will comply materially with the Transaction Particulars as set out in the Quotation and will operate in accordance with all applicable regulations, using suitably qualified personnel. This limited warranty is valid for a period of 90 (ninety) days from delivery of the relevant Services.

8.4 Where the Customer makes a valid claim under the limited warranty identified in clause 10.2 or 10.3, TestPlant shall, within agreed timescales, and at its option either: correct any defects or re-perform any Service to the extent it reasonably considers necessary to remedy any defect; or refund the Customer the pro rata amount paid for the affected Licensed Software and/or Service for the remaining License Period.

EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, THE LICENSED SOFTWARE AND SERVICES ARE PROVIDED "AS IS" AND TESTPLANT EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, WITH RESPECT TO THE LICENSED SOFTWARE, INCLUDING ALL OPEN-SOURCE COMPONENTS, DOCUMENTATION, MEDIA AND ANY OTHER SERVICES AND MATERIALS PROVIDED TO THE CUSTOMER UNDER THIS AGREEMENT, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, QUALITY, FITNESS FOR A PARTICULAR PURPOSE, WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE. WITHOUT LIMITATION TO THE FOREGOING, TESTPLANT PROVIDES NO WARRANTY OR UNDERTAKING, AND MAKES NO REPRESENTATION OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, THAT THE LICENSED SOFTWARE WILL MEET THE CUSTOMER'S REQUIREMENTS, ACHIEVE ANY INTENDED RESULTS, BE COMPATIBLE OR WORK WITH ANY OTHER MATERIALS, APPLICATIONS, SYSTEMS OR SERVICES (EXCEPT AS EXPRESSLY SET FORTH IN THE QUOTATION), OPERATE WITHOUT INTERRUPTION, MEET ANY PERFORMANCE OR RELIABILITY STANDARDS OR BE ERROR FREE.

9 CUSTOMER WARRANTIES AND ACKNOWLEDGEMENT

9.1 Customer represents and warrants that it has the full right, power and authority to enter into this Agreement and to perform the obligations in connection therewith and (b) the execution, delivery and performance of this Agreement will not constitute a breach or default under, or conflict with, any contract, agreement, commitment or understanding to which Customer is a party or which Customer is bound.

9.2 Customer represents and warrants that it will comply in all material respects to the terms and conditions of this Agreement;

9.3 Customer acknowledges that the Licensed Software has not been produced to meet the Customer's individual requirements, and accepts responsibility for the selection of the Licensed Software to achieve its intended results.

10 INTELLECTUAL PROPERTY RIGHTS

10.1 The Customer acknowledges that all Intellectual Property Rights in the Licensed Software, including any modifications made therein under clause 3.3.4, in the services, in all deliverables and in the Documentation belong and shall remain with TestPlant, and the Customer shall have no rights in or to the Licensed

Software, Deliverables or the Documentation other than the right to use the same in accordance with the terms of this Agreement.

11 DURATION AND TERMINATION

11.1 The Customer is only entitled to use the Licensed Software for the agreed License Period.

11.2 Renewals of the license to use the Licensed Software or extensions of the License Period will require that the Customer sign a quotation for such renewal (together with a valid purchase order if appropriate).

11.3 THE LICENSED SOFTWARE INCLUDES DIGITAL RIGHTS MANAGEMENT PROTECTION, AND THE CUSTOMER IS ON NOTICE THAT FOLLOWING EXPIRY OF ANY LICENSE PERIOD THE LICENSED SOFTWARE MAY BECOME ENCRYPTED OR UNUSABLE AND THE CUSTOMER SHALL HAVE NO RIGHTS OR REDRESS UNLESS IT PURCHASES A FURTHER LICENSE TOGETHER WITH ANY RENEWAL FEE.

11.4 When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, TestPlant shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer:

11.4.1.

11.5 TestPlant reserves the right to temporarily suspend the provision of the Licensed Software or Services to the Customer with immediate effect upon notice to the Customer in the event that:

11.5.1 reserved;

11.5.2 any regulatory authority requires TestPlant to suspend the Services and TestPlant has no other reasonable alternative way to provide the Services; or

11.5.3 reserved.

11.6 Termination by either party in accordance with the rights contained in this clause 13 shall be without prejudice to any other rights or remedies of that party accrued prior to termination.

11.7 On termination for any reason:

11.7.1 all rights granted to the Customer under this Agreement shall cease;

11.7.2 the Customer shall cease all activities authorized by this Agreement;

11.7.3 the Customer shall immediately pay to TestPlant any sums due to TestPlant for services rendered prior to the termination date under this Agreement; and

11.7.4 the Customer shall immediately destroy or return to TestPlant (at TestPlant's option) all copies of the Licensed Software and Documentation then in its possession, custody or control and, in the case of destruction, certify to TestPlant that it has done so.

12 CONFIDENTIALITY

12.1 The provisions of this clause 14 shall remain in full force and effect notwithstanding termination of this Agreement for any reason.

12.2 Each party shall treat in confidence the other's Confidential Information, and shall not disclose any of the other's Confidential Information to any other person other than its own employees under conditions of confidentiality and then only to the extent required for proper performance of its obligations under this Agreement.

12.3 Nothing in this Agreement shall be construed to impose a confidentiality obligation on a party in respect of:

12.3.1 any matter lawfully appearing in public literature or otherwise within the public domain, unless the information is in the public domain as a result of a breach of a Contract by that party; or

12.3.2 any information or knowledge lawfully possessed by that party prior to disclosure to it by the other or rightfully acquired from sources other than the other party; or

12.3.3 any information or knowledge acquired in a bona fide arm's length transaction by the party making the disclosure; or

12.3.4 information which is required by law or a court of competent jurisdiction to be publicly released. TestPlant recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which requires that certain information be released, despite being characterized as "confidential" by the vendor.

12.4 In protecting Confidential Information received from the other party, each party shall employ a reasonable standard of care, which shall be no less than the standard of care employed in protecting its own Confidential Information. Both parties will establish and maintain such security measures and procedures as are reasonably practicable to provide for the safe custody of the other party's Confidential Information in its possession and to prevent unauthorized access thereto or use thereof.

12.5 Upon any termination of this Agreement, each party shall cause all Confidential Information belonging to the other party in whatever medium the same is recorded or held to be returned, deleted or destroyed according to the written instructions of the other party.

12.6 This obligations set out in this clause 14 will survive the termination of this Agreement for a period of five (5) years or until such earlier time as the Confidential Information concerned reaches the public domain other than through the receiving party's own default.

13 LIMITATION OF LIABILITY

13.1 To the maximum extent permitted by applicable law, TestPlant shall not be liable to the Customer, whether in contract, tort) or otherwise for loss of revenue, loss of profit, loss of goodwill, loss of reputation, loss of anticipated savings, loss of business, loss, corruption or destruction of data, loss of contracts or any indirect, special or consequential loss, even though TestPlant was aware of the circumstances in which such indirect or special damage could arise, nor shall TestPlant's liability in any event exceed the amounts paid by Customer to TestPlant under this Agreement. The foregoing limitation of liability shall not apply to (1) personal injury or death resulting from Licensor's negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.

13.2 The Customer agrees that, in entering into this license, either it did not rely on any representations (whether written or oral) of any kind or of any person other that those expressly set out in this license or (if it did rely on any representations, whether written or oral, not expressly set out in this license) that it shall have no remedy in respect of such representations and (in either case) TestPlant shall have no liability otherwise than pursuant to the express terms of this license.

13.3 In no event will TestPlant have any liability for non-provision or delay in the provision of the Services which can be reasonably attributed to the acts or omissions of the Customer or its employees, or third parties outside the control of TestPlant.

13.4 Both Parties shall use their reasonable endeavours to mitigate any loss, damage, liability, expenses and costs suffered by them under or arising out of this Agreement.

14 INDEMNIFICATION

14.1 Reserved.

14.2 TestPlant will at its own expense, indemnify, defend and hold harmless Customer and its employees, officers, directors and agents arising from or related to claims that the Licensed Software (excluding Customer content or modifications, enhancements or alterations thereto) infringe the patent, copyright, trademark or other intellectual property rights of any third party.

14.3 TestPlant will at its own option and expense have the right to intervene to defend or settle any Claim and, subject to clause 16.2 pay any final judgment entered against the Customer with respect to any infringement claim provided that the Customer shall:

14.3.1 notify TestPlant in writing of the claim as soon as reasonably practicable, but in no event later than 10 days after becoming aware of it;

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14.3.2 grant TestPlant sole control of the defense of the claim; and

14.3.3 provide TestPlant with all information and assistance reasonably necessary for the proper defense of the claim.

14.4 In no circumstances will TestPlant be liable for any costs or expenses incurred by the Customer without TestPlant's written authorization.

14.5 In the event that any claim is upheld, threatened or reasonably apprehended, TestPlant may at its sole option and expense:

14.5.1 obtain any license or permission necessary for the Customer's continued use of the Licensed Software, Deliverables and/or Documentation; or

14.5.2 replace or modify the Licensed Software, Deliverables and/or Documentation so that it becomes non-infringing and without reducing the performance and functionality of the Licensed Software,

14.6 TestPlant will have no liability under clause 16.2 in respect of:

14.6.1 any infringement arising from the combination of the Licensed Software or Deliverables with other products not supplied or approved by TestPlant; or

14.6.2 any modification of the Licensed Software or Deliverables not made or expressly approved by TestPlant; or

14.6.3 any information or data supplied to TestPlant by the Customer.

14.7 The provisions of this clause 16 shall constitute the Customer's exclusive remedy in respect of any infringement by the Licensed Software of third party Intellectual Property Rights.

14.8 Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or suit brought against the U.S. pursuant to its jurisdictional statute 28 U.S.C. § 516.

15 FORCE MAJEURE

15.1 Excusable delays shall be governed by FAR 52.212-4(f).

16 INSURANCE

16.1 During the Licensed Period, TestPlant shall have and maintain insurance coverage including, but not limited to:

16.1.1 Employer's Liability Insurance - $2,000,000 per occurrence;

16.1.2 General Liability Insurance - $2,000,000 per occurrence; and

16.1.3 Professional Liability Insurance/Errors and Omissions - $2,000,000;

16.2 The coverage limits identified in this paragraph may be modified by TestPlant in its sole discretion provided that TestPlant continues to maintain insurance coverage at reasonable levels consistent with industry standards.

16.3 Upon written request, TestPlant shall provide to Customer certificates of insurance evidencing coverage within ten (10) business days of receipt of request.

17 WAIVER

17.1 No forbearance or delay by either party in enforcing its rights shall prejudice or restrict the rights of that party, and no waiver of any such rights or of any breach of any contractual terms shall be deemed to be a waiver of any other right or of any later breach.

18 SEVERABILITY

18.1 If any provision of this agreement (or part of a provision) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

18.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

19 AMENDMENTS

19.1 No amendment, waiver or variation of this Agreement shall be binding on the parties unless set out in writing, expressed to

amend this Agreement and signed by or on behalf of each of the parties.

20 THIRD PARTY RIGHTS

20.1 Unless otherwise expressed to the contrary in this Agreement, nothing in this Agreement confers or purports to confer on any person who is not a party to it any right to enforce any of its terms.

21 NOTICES

21.1 Any notice required to be given under or pursuant to this agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post (except in the event of a current industrial dispute affecting the postal service, when the relevant party shall serve by another means permitted in this clause 23) or fax (provided that a confirmation copy is sent by first class post no later than 24 hours after the despatch of the fax) to the other party marked for the attention of the person at the address or fax number set out for such party in the Transaction Particulars, or to such other address as a party may, from time to time, notify to the other party for this purpose:

22 RESERVED

22.1 .

23 ASSIGNMENT AND SUBCONTRACTING

23.1 The Customer shall not sub-license, lease or assign the benefit or burden of this Agreement in whole or in part, or allow the Licensed Software to become the subject of any charge, lien or encumbrance, without the prior written consent of TestPlant.

23.2 The Anti-Assignment Act, 41 USC 6305, prohibits the assignment of Government contracts without the Government's prior approval. Procedures for securing such approval are set forth in FAR 42.1204.

24 NO POACH

24.1 The Customer or its Affiliates shall not during the License Period or for a period of 12 months after the expiry of any License Period or completion of the provision of any Services, without the prior written agreement of TestPlant, employ or offer to employ, or enter into a contract for the services of, any individual who was, at any time during the term of this agreement, an employee or a consultant of TestPlant or entice, solicit or procure any such person to leave the employment of TestPlant (or attempt to do so) whether or not that person would commit any breach of contract in leaving such employment or provision of services; or procure or facilitate the making of any such offer or attempt by any other person provided that solicitations and subsequent hirings initiated through general newspaper or website advertisements and other general circulation materials not directly targeted at such individuals shall not be deemed solicitations in violation of this sentence.

25 GENERAL

25.1 This Agreement and any attached document referred to in it, together with the underlying GSA Schedule Contract, Schedule Pricelist, and Purchase Order(s), constitute the whole and only agreement and understanding between the parties relating to its subject matter and supersedes and extinguishes any drafts, agreements, undertakings, representations, warranties and arrangements of any nature whatsoever, whether or not in writing, between the parties in connection with the subject matter of this Agreement whether existing prior to or at the same time as this Agreement. The express terms of this Agreement are instead of all warranties, conditions, terms, undertakings and obligations implied by statute, common law, custom, trade usage, course of dealing or otherwise, all of which are hereby excluded to the fullest extent permitted by law.

25.2 A negotiated purchase order would take precedence as the negotiated purchase order would demonstrate any changes to these terms to meet the ordering activity's minimum needsNothing in this Agreement shall be construed as establishing or implying any partnership or joint venture between the parties; or to constitute either of the parties as the agent of the other party.

25.3 This Agreement may be executed in any number of counterparts each of which when executed by one or more of the parties hereto shall constitute an original but all of which shall constitute one and the same instrument.

25.4 Nothing in this Agreement will preclude either party from seeking injunctive relief to prevent or stop a breach of confidence or an infringement of intellectual property rights.

26 GOVERNING LAW AND JURISDICTION

26.1 This Agreement shall be governed by and construed in accordance with the Federallaws of theUnited States.

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Section E

TestPlant and Partner Support Obligations and Procedures

1   Partner Support Responsibilities

- Partner shall ensure that any support and maintenance terms agreed with End User are no more onerous than those defined in TestPlant's latest EULA.
- Once a sale has been completed Partner will communicate the standard TestPlant support procedures to End User.
- Partner shall provide TestPlant with contact information about End User employees who may contact TestPlant support.

2   TestPlant Support Responsibilities

- TestPlant shall provide support to End User according to its standard EULA.
- TestPlant shall only be responsible for responding to support requests submitted in English.