ANCILE Software License Terms - Federal

1.   LICENSE

1.1   Perpetual Licenses. In consideration of Customer's payment of any perpetual license fees, ANCILE hereby grants to Customer, and Customer accepts from ANCILE, a limited, non-transferable, non-exclusive license, without the right to sublicense or further distribute, to use the ANCILE software in object code in the specified Territory solely for support of Customer's internal business operations up to the number of Users identified in the order documents. Perpetual Licenses require the periodic purchase of Maintenance and Support Services as described herein.

1.2   Term License. In consideration of Customer's payment of any term license fees, ANCILE hereby grants to Customer, and Customer accepts from ANCILE, a limited, non-transferable, non-exclusive license, without the right to sublicense or further distribute, to use the ANCILE software in object code in the specified Territory solely for support of Customer's internal business operations up to the number of Users identified in the order documents for the duration of the Subscription Term.

1.3   SaaS License. In consideration of Customer's payment of any software as a service fees, ANCILE hereby grants to Customer a non-exclusive, non-transferable right to access the features and functions of the ANCILE hosted application services and as applicable, the ANCILE software to access such application services, in the specified Territory solely for support of Customer's internal business operations up to the number of Users identified in the order documents for the duration of the Subscription Term. Customer shall ensure that all access to the application services or ANCILE software by Users complies with ANCILE's privacy policies and terms of use provided to Customer or posted on the ANCILE website from time-to-time by ANCILE.

1.4   General License Provisions. Customer is also hereby licensed to use the software documentation in connection with its use of the ANCILE software. The ANCILE software is licensed on a non-concurrent, individual User basis, though Customer shall not be required to provide names of the Users to ANCILE, except if requested for verification purposes under Paragraph 1.5 herein. A "User" is any human person that uses the ANCILE software, accesses the application services, consumes Work Product generated by the ANCILE software in any form, including electronic or print, or that has access to the Work Product as defined herein, in any manner, even if such access is not utilized. Except as otherwise provided herein, neither Customer nor its Users are granted any right to (i) copy, modify, disassemble, decompile, translate, reverse engineer or otherwise attempt to derive the source code or affect a functional equivalent of the ANCILE software; (ii) transfer, sell, lease, lend, disclose, sublicense or use the ANCILE software for commercial time-sharing, rental, or service bureau use, or to train persons other than the Users, unless separately agreed to in writing with ANCILE; or (iii) use, provide, or allow others to use the application services, the Work Product, or the ANCILE software for the benefit of any third party. Except for a reasonable number of backup or archival copies, Customer agrees that it shall not copy or otherwise distribute the ANCILE software. Nothing in this Agreement grants Customer any right, title, license or interest in or relating to the source code of the ANCILE software. Any third-party software embedded, included or otherwise provided by ANCILE for use with the ANCILE software may be only used with such software.

1.5   Verification. ANCILE has the right to conduct an annual audit of the number of Users. To the extent that an audit discloses use of the ANCILE software, or access to the Work Product and/or application services that exceed the number of Users identified in the order documents, Customer shall be deemed to have amended the order documents to increase the number of Users to equal the number disclosed in the audit, and ANCILE shall invoice Customer for such additional Users.

1.6   Work Product and Customer Content. ANCILE agrees that title to and ownership of all documentation, simulations, writings, material, writings, copy, html and text files, and help files created by Customer using the ANCILE software, application services, and documentation for Customer's use (collectively, the "Work Product), including without limitation all intellectual property rights therein and thereto, are and shall remain the exclusive property of Customer. Notwithstanding the foregoing, except as specifically authorized herein, all Work Product created using the ANCILE software and/or application services, or distributed using the application services, is restricted to Customer's internal use only and Customer agrees not to distribute such Work product externally or to persons that are not Users without ANCILE's prior written consent unless otherwise permitted by operation of law.

2   INSTALLATION, CONFIGURATION, AND TRAINING SERVICES; MAINTENANCE SERVICES

2.1   Each services purchase entitles the Customer to remote or onsite assistance from ANCILE personnel as described in the agenda for the services package. Customer will provide the necessary facilities and access to Customer personnel and equipment which are necessary in order for ANCILE to provide the services. ANCILE is not responsible for the provision of any third-party software, hardware or operating systems required in connection with the Services. Any use by Customer of work produced by ANCILE will be deemed a final acceptance of that particular deliverable. All training services are deemed accepted at the conclusion of the week in which they are delivered. ANCILE shall retain ownership at all times of any and all concepts, inventions, methodologies, technologies, development tools, or other works provided to Customer that existed or were known to ANCILE

prior to the date of this Agreement and can be shown to exist prior to such date; or which are developed by ANCILE for use with its other customers in the general course of business (referred to herein as "ANCILE Property"). ANCILE warrants only that it will provide professional quality services that conform to generally accepted industry standards and that the work provided to Customer will be developed generally in accordance with the specifications described in the agendas. All travel and miscellaneous expenses incurred for services provided in a services package will be charged at cost or in accord with Customer's travel policies.

2.2 For any Perpetual Licenses purchased, Customer shall pay all annual maintenance fees set forth in the order documents in advance to receive the Maintenance and Support Services, which include access to the ANCILE support portal, knowledge base, software updates, and support services. If Customer elects at any time to not pay its Maintenance Fee and renew its Maintenance and Support Services, then Customer may later re-enroll only upon payment of the annual Maintenance Fee for the then-current twelve (12) month period and all prior annual Maintenance Fees that would have been paid had Customer not terminated Maintenance and Support Services. Customer may be required to upgrade to a newer release of the ANCILE software in order to continue Maintenance and Support services from time to time. ANCILE's provision of Maintenance and Support Services to Customer will commence on the effective date of any order documents and will renew on January 1 of each year. At the end of the initial term and any subsequent term, Maintenance and Support Services may be renewed for a renewal term of twelve (12) months by payment of ANCILE's invoice for the applicable annual Maintenance Fee. ANCILE reserves the right, upon 90 days' notice to Customer to change or cease to provide Maintenance and Support Services at any time after the first year of Maintenance and Support Services.

3 TECHNICAL SUPPORT AND SERVICE LEVELS

3.1 ANCILE provides certain limited service and availability levels as part of the hosted application services provided to Customer if applicable, as shown in Schedule A attached hereto. ANCILE also provides certain support services to Customer and its Users as part of the ANCILE software Subscription or Maintenance Services. Customer will direct all support communications as may be required by its Users via its key Users and in the event that any User who is not a key User contacts ANCILE directly for purposes of requesting any such support services, ANCILE may decline to provide such services and will redirect and/or refer such User to such named key Users as Customer may hereafter designate in writing to ANCILE.

4 REPRESENTATIONS AND WARRANTIES

4.1 **General Representations.** Each Party hereby represents and warrants (i) that it is duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation or organization; (ii) that the execution and performance of this Agreement will not conflict with or violate any provision of any law having applicability to such Party; and (iii) that this Agreement, when executed and delivered, will constitute a valid and binding obligation of such Party and will be enforceable against such Party in accordance with its terms.

4.2 **Application Warranty.** ANCILE warrants that the Application Services will, for a period of sixty (60) days from the date of first access by Customer's Users (the "Warranty Period") perform substantially in accordance with the applicable software documentation.

4.3 **Remedies for Breach of Warranty.** Customer agrees to report to ANCILE, in writing, during the applicable Warranty Period, any non-conformance with the warranty set forth in Section 4.2 (Application Warranty). ANCILE will use reasonable commercial efforts to provide a workaround for or correct any reproducible error in the application services promptly. Errors will be reported to ANCILE in the form reasonably requested by ANCILE with supporting information and materials so as to enable ANCILE to reproduce, verify, diagnose, and correct the reproducible error. If ANCILE is unable to provide a workaround for or correct the error, ANCILE may refund any fees paid by Customer for the application services. The remedies set forth in this Section 4.3 are the sole and exclusive remedies of Customer for a breach of the Application Warranty.

5 DISCLAIMERS, EXCLUSIONS AND LIMITATIONS OF LIABILITY

5.1 EXCEPT AS EXPRESSLY REPRESENTED OR WARRANTED IN SECTION 4, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE APPLICATION SERVICES AND INTELLECTUAL PROPERTY RIGHTS RELATED THERETO, THE APPLICATION DOCUMENTATION, AND ALL SERVICES PERFORMED BY ANCILE ARE PROVIDED "AS IS," AND ANCILE DISCLAIMS ANY AND ALL OTHER PROMISES, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, QUIET ENJOYMENT, SYSTEM INTEGRATION, DATA SECURITY, AND/OR DATA ACCURACY. ANCILE DOES NOT WARRANT THAT THE APPLICATION SERVICE OR ANY OTHER SERVICES PROVIDED BY ANCILE WILL MEET CUSTOMER'S REQUIREMENTS OR THAT THE OPERATION OF THE APPLICATION SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ALL ERRORS WILL BE CORRECTED.

ANCILE'S SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. ANCILE IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS.

5.2   IN NO EVENT WILL ANCILE BE LIABLE TO CUSTOMER FOR ANY INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, REGARDLESS OF THE NATURE OF THE CLAIM, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, COSTS OF DELAY, ANY FAILURE OF DELIVERY, BUSINESS INTERRUPTION, COSTS OF LOST OR DAMAGED DATA OR DOCUMENTATION, OR LIABILITIES TO THIRD PARTIES ARISING FROM ANY SOURCE, EVEN IF ANCILE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION UPON DAMAGES AND CLAIMS IS INTENDED TO APPLY REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT PRODUCT LIABILITY OR OTHERWISE AND EVEN IF ANCILE HAS BEEN INFORMED OF THE POSSIBILITY OF ANY SUCH DAMAGE IN ADVANCE, AND WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED OR HAVE PROVEN INEFFECTIVE. ANCILE'S MAXIMUM AGGREGATE LIABILITY TO CUSTOMER OR ANY THIRD PARTY FOR DAMAGES ARISING FROM OR RELATING TO THIS AGREEMENT OR ANY ANCILE SOFTWARE, APPLICATION SERVICES, APPLICATION DOCUMENTATION OR OTHER SERVICES WHICH ARE THE SUBJECT MATTER OF THIS AGREEMENT, WHETHER FOR BREACH OF CONTRACT OR WARRANTY, STRICT LIABILITY, NEGLIGENCE OR OTHERWISE, WILL NOT EXCEED THE TOTAL AMOUNT OF FEES PAID TO ANCILE BY CUSTOMER FOR THE TWELVE-MONTH PERIOD PRECEDING THE DATE ANY CLAIM IS MADE. THIS LIMITATION OF LIABILITY IS INTENDED TO APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED OR HAVE PROVEN INEFFECTIVE.

6   TERM AND TERMINATION

6.1   **Term.** The term of this Agreement will commence on the effective date and will continue until the expiration of all Subscription Terms or Maintenance Services as the case may be under all outstanding order documents and addenda (the "Term," as may be renewed from time to time as provided herein), unless earlier terminated in accordance with this Section 6.

6.2   **Termination for Breach.** Either Party may, at its option, terminate this Agreement in the event of a material breach by the other Party, if such other Party fails to cure such breach upon thirty (30) days prior written notice by the non-breaching Party specifying the nature of the breach and the actions required to cure the breach (except that any failure by Customer to pay any amount due hereunder to ANCILE shall constitute a material breach of this Agreement and shall require only ten (10) days prior written notice).

6.3   **Suspension of Access.** At its election, ANCILE may suspend access to the application services, or the use of the ANCILE software in the event any amount due under this Agreement is not received by ANCILE within ten (10) days after it was due. The exercise of ANCILE's right to suspend access under this Section 6.3 shall in no way affect ANCILE's right to terminate this Agreement in accordance with the terms of Section 6.2. ANCILE may also suspend access to the application services, and/or the use of the ANCILE software, immediately upon written notice to Customer in the event of a material breach by Customer or any of its authorized Users of the security provisions of this Agreement that comprises the integrity of ANCILE's computer systems or networks until any such issue is fully resolved to ANCILE's satisfaction.

6.4   **Effect of Termination.** Upon any termination of this Agreement: (i) Customer will immediately discontinue all use of the application services, the application documentation, Work Product, and the ANCILE software; (ii) Customer will remove the ANCILE software from all Customer computers and servers; and (iii) promptly pay to ANCILE all amounts due and payable hereunder, including but not limited to any outstanding obligations for the remaining Term or Subscription Term.

7   MISCELLANEOUS

7.1   **Entire Agreement.** This Agreement sets forth the entire Agreement and understanding between the Parties hereto with respect to the subject matter hereof and, except as specifically provided herein, supersedes and merges all prior oral and written agreements, discussions and understandings between the Parties with respect to the subject matter hereof, and neither of the Parties will be bound by any conditions, inducements or representations other than as expressly provided for herein.

7.2   **Independent Contractors.** In making and performing this Agreement, Customer and ANCILE act and will act at all times as independent contractors, and, except as expressly set forth herein, nothing contained in this Agreement will be construed or implied to create an agency, partnership or employer and employee relationship between them. Except as expressly set forth herein, at no time will either Party make commitments in the name of the other Party.

7.3   **Notices.** All notices required by or relating to this Agreement will be in writing and will be sent by means of certified mail, postage prepaid, to the Parties at their respective addresses as the receiving Party may have given by written notice in accordance with

this provision. All notices required by or relating to this Agreement may also be communicated by electronic communications provided that the sender receives and retains confirmation of successful transmittal to the recipient. Such notices will be effective on the date indicated in such confirmation. In the event that either Party delivers any notice by means of facsimile transmission or other electronic means in accordance with the preceding sentence, such Party will promptly thereafter send a duplicate of such notice in writing by means of certified mail, postage prepaid, to the receiving Party, addressed as set forth above or to such other address as the receiving Party may have previously substituted by written notice to the sender.

7.4   **Amendments; Modifications.** This Agreement may not be amended or modified except in a writing duly executed by authorized representatives of both Parties.

7.5   **Assignment; Delegation.** Customer shall not assign or otherwise transfer any of its rights or delegate any of its duties under this Agreement without the express, prior written consent of ANCILE, and, absent such consent, any attempted assignment, transfer or delegation will be null, void and of no effect.

7.6   **Severability.** If any provision of this Agreement is invalid or unenforceable for any reason in any jurisdiction, such provision will be construed to have been adjusted to the minimum extent necessary to cure such invalidity or unenforceability. The invalidity or unenforceability of one or more of the provisions contained in this Agreement will not have the effect of rendering any such provision invalid or unenforceable in any other case, circumstance or jurisdiction, or of rendering any other provisions of this Agreement invalid or unenforceable whatsoever.

7.7   **Waiver.** No waiver under this Agreement will be valid or binding unless set forth in writing and duly executed by the Party against whom enforcement of such waiver is sought. Any such waiver will constitute a waiver only with respect to the specific matter described therein and will in no way impair the rights of the Party granting such waiver in any other respect or at any other time. Any delay or forbearance by either Party in exercising any right hereunder will not be deemed a waiver of that right.

7.8   **Force Majeure.** Except with respect to payment obligations hereunder, if a Party is prevented or delayed in performance of its obligations hereunder as a result of circumstances beyond such Party's reasonable control, including, by way of example, Internet access outside of ANCILE's control, war, terror, riot, fires, floods, epidemics, or failure of public utilities or public transportation systems, such failure or delay will not be deemed to constitute a material breach of this Agreement, but such obligation will remain in full force and effect, and will be performed or satisfied as soon as reasonably practicable after the termination of the relevant circumstances causing such failure or delay, provided that if such Party is prevented or delayed from performing for more than ninety (90) days, the other Party may terminate this Agreement upon thirty (30) days' written notice.

7.9   **U.S. Government End-Users.** Each of the Application Documentation and the software components that constitute the Application Service is a "commercial item" as that term is defined at 48 C.F.R. 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, all U.S. Government end Users acquire the application services and the application documentation with only those rights set forth therein.

7.10   **Counterparts.** This Agreement may be executed in any number of counterparts, each of which when so executed will be deemed to be an original and all of which when taken together will constitute one Agreement.

7.11   **Headings.** The headings in this Agreement are inserted merely for the purpose of convenience and will not affect the meaning or interpretation of this Agreement.

7.12   **Publicity.** In consideration for the rights granted under the terms of this Agreement, Customer hereby grants ANCILE the right to reference the Customer as a customer of ANCILE on the ANCILE web site and issue a press release to that effect.

SCHEDULE A
SERVICE LEVEL ADDENDUM

1. DEFINITIONS

Certain capitalized terms, not otherwise defined in this Service Level Addendum, will have the meanings set forth in the Agreement. The following capitalized terms will have the definitions set forth below:

1.1 "*System Uptime*" will mean the total amount of time during any calendar month, measured in minutes, during which an Authorized User can login to the Application Service according to the Access Protocols.

1.2 "*Scheduled Downtime*" will mean the total amount of time during any calendar month, measured in minutes, during which Authorized User is not able to access the Application Service, according to the Access Protocols, due to planned system maintenance performed by ANCILE, as set forth in the table below. ANCILE will exercise reasonable efforts to perform scheduled system maintenance between the hours of 9:00 PM (Saturday) and 6:00 AM (Sunday) Eastern Standard Time. ANCILE reserves the right to change the aggregated times set forth in the table below, provided that ANCILE provides reasonable prior notice prior to modifying such Scheduled Downtime.

Purpose of Scheduled Downtime
Software Updates / System Changes
Maximum Duration of Scheduled Downtime
7.2 hours per month

1.3 "*Unscheduled Downtime*" will mean the total amount of time during any calendar month, measured in minutes, that ANCILE experiences a Critical Defect. Critical Defect means a catastrophic failure of core ANCILE features that do not have a viable workaround. Failure includes complete inaccessibility to the Customer Site or Application Services.

1.4 "*System Availability*" will mean, with respect to any particular calendar month, the ratio obtained by subtracting Unscheduled Downtime during such month from the total time during such month, and thereafter dividing the difference so obtained by the total time during such month.

2. SYSTEM PERFORMANCE

2.1 System Availability: ANCILE will undertake commercially reasonable measures to ensure that System Availability equals or exceeds ninety-nine percent (99%) during each calendar month (the "*Service Standard*"), provided that any Unscheduled Downtime occurring as a result of circumstances beyond ANCILE's range of reasonable control including, without limitation, (i) Customer's breach of any provision of this Agreement; (ii) non-compliance by Customer with any provision of this Addendum; (iii) incompatibility of Customer's equipment or software with the Application Service; (iv) poor or inadequate performance of Customer's systems; (v) equipment failures; (vi) acts or omissions of ANCILE suppliers; (vii) transportation difficulties; or (viii) force majeure (as contemplated in the Agreement), shall not be considered toward any reduction in System Availability measurements.

2.2 Access to Support; Response Times: Customer may report Unscheduled Downtime anytime by contacting ANCILE online via the Product Support Website. ANCILE will exercise commercially reasonable efforts to respond to reports of Unscheduled Downtime by telephone or email acknowledgement. In the event of a Critical Defect, ANCILE may post notice via the support website to inform Customers that the support team is aware of the situation and working on a resolution.

3. MEASUREMENT AND REPORTS

3.1 System Monitoring and Measurement: ANCILE will provide for monitoring of System Availability on an ongoing basis. All measurements of System Availability will be calculated on a monthly basis for each calendar month during the Term.

3.2 System Performance Reports: Upon Customer's request, ANCILE will provide reports to Customer on a quarterly basis setting forth measurements of Unscheduled Downtime and a calculation of System Availability for the relevant preceding quarter. If Customer disagrees with any measurement or other information set forth in any such report, it must so inform ANCILE in writing within five (5) calendar days after receipt thereof, provided that the accuracy of any such report shall be deemed conclusive unless such notice is provided by Customer. Any such notice must indicate specific measurements in dispute and must include a detailed description of the nature of the dispute. ANCILE and Customer agree to attempt to settle any such disputes regarding System Availability and/or related measurements in a timely manner by mutual good faith discussions.

4. CUSTOMER REQUIREMENTS

4.1 Minimum System: The service standards set forth in this Schedule assume that Authorized Users meet the browser, bandwidth, and OS requirements posted on the Product Support Website.

4.2 Additional Customer Obligations: Except as otherwise agreed between the Parties in a separate written agreement, Customer is responsible for (i) maintenance and management of its computer network(s), servers, software, Web site(s), and any equipment or services related to maintenance and management of the foregoing; and (ii) correctly configuring Customer's systems in accordance with the Access Protocols.

4.3 Reporting of Unscheduled Downtime: Customer must promptly notify ANCILE in the event Unscheduled Downtime occurs. Unscheduled Downtime will be deemed to begin when ANCILE receives accurate notification thereof from Customer, or when ANCILE first becomes aware of such Unscheduled Downtime, whichever occurs first.

4.4 Non-Performance by Customer: The obligations of ANCILE set forth in this Schedule will be excused to the extent any failures to meet such obligations result in whole or in part from Customer's or its Users' failure(s) to meet the foregoing requirements.

5. REMEDIES.

In the event Unscheduled Downtime occurs, ANCILE will undertake commercially reasonable efforts to remedy such Unscheduled Downtime within a commercially reasonable timeframe. If ANCILE is unable to meet the System Availability standards set forth in Section 2.1, Customer shall be entitled to service credits, provided that the maximum number of service credits to be issued by ANCILE to Customer for any and all Unscheduled Downtime shall not exceed one month of service.