Terms and Conditions
TMA Systems

EXCEPT AS SPECIFICALLY PROVIDED IN A SEPARATE AGREEMENT BETWEEN YOU AND TMA SYSTEMS, LLC AND ITS AFFILIATES, THE ORDER FORM OF THESE SERVICE TERMS AND CONDITIONS (COLLECTIVELY, THE "TERMS") SHALL CONSTITUTE THE ENTIRE AGREEMENT BETWEEN YOU ("CLIENT") AND TMA SYSTEMS, LLC AND ITS AFFILITATES ("PROVIDER"), CONCERNING USE OF THE PROVIDER PRODUCTS OR SERVICES (THE "SOFTWARE"). BY ORDERING OR OTHERWISE USING THE SOFTWARE, YOU AGREE TO AND ACCEPT THESE TERMS IN THEIR ENTIRETY. THE SOFTWARE MAY BE USED ONLY IN ACCORDANCE WITH THESE TERMS. NO OTHER CONTRACT OR TERMS CONCERNING USE OF THE SOFTWARE MAY BE CREATED IN ANY OTHER MANNER, INCLUDING BY MEANS OF PURCHASE ORDERS OR SIMILAR DOCUMENTS, SAVE FOR AMENDMENTS AS SET FORTH IN SECTION 12 (d) AND MUTUALLY AGREED ADDENDUMS.

The Parties agree as follows:

1.   <u>Definitions</u>.

"Affiliate" of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term "control" (including the terms "controlled by" and "under common control with") means the direct or indirect power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract, or otherwise/ownership of more than 51 % of the voting securities of a Person.

"Licensed User" means Client's employees, consultants, contractors, and agents (i) who are authorized by Client to access and use the Services under the rights granted to Client pursuant to this Agreement and (ii) for whom access to the Services has been purchased hereunder.

"Client Data" means information, data, and other content, in any form or medium, that is submitted, posted, or otherwise transmitted by or on behalf of Client or a Licensed User through the Services.

"Documentation" means Provider's user manuals, handbooks, and guides relating to the Services provided by Provider to Client either electronically or in hard copy form.

"License" is defined as set forth below:

   (i) Subscription license means Services as set out on any applicable Order Form that are based on a recurring periodic purchase for a specific duration of term, which can be (a) Provider Hosted, or (b) Client On-Premise

   (ii) Perpetual license means Services purchased for a perpetual term, and supported by Provider on an ongoing basis provided that such support is purchased.

"Technical Environment" means:

   (i) **Provider Hosted** means a cloud instance supplied by Provider on which Client's purchased Services are maintained and hosted.

   (ii) **Client On-Premise** means a locally installed version of the Services stored on Client's systems.

"**Maintenance Release**" means any update, upgrade, release, or other adaptation or modification of the Software, including any updated Documentation, that Provider may provide to Client from time to time during the Term, which may contain, among other things, error corrections, enhancements, improvements, or other changes to the user interface, functionality, compatibility, capabilities, performance, efficiency, or quality of the Software, but does not include any New Version.

"**New Version**" means any new version of the Software that Provider may from time to time introduce and market generally as a distinct licensed product (as may be indicated by Provider's designation of a new version number), and which Provider may make available to Client at an additional cost under a separate written agreement.

"**Order Form**" means a mutually agreed upon order or statement of work ("SOW").

"**Provider IP**" means the Services, the Documentation, any customizations or improvements to the Services or Documentation developed for the Client, and any and all intellectual property provided to Client or any Licensed User in connection with the foregoing. For the avoidance of doubt, Provider IP includes Aggregated Statistics and any information, data, or other content derived from Provider's monitoring of Client's access to or use of the Services, but does not include Client Data.

"**Services**" means the offering described in the Order Form**,** or in additional Order Forms agreed to in writing by the Parties, so that this Agreement and such Order Forms shall be considered one, fully integrated document and agreement.

2.   Access and Use.

        (a)   Provision of Access. Subject to and conditioned on Client's payment of Fees and compliance with all other terms and conditions of this Agreement, Provider hereby grants Client a non-exclusive, non-transferable (except in compliance with Section 12(g) right to access and use the Services during the Term, solely for use by Licensed Users in accordance with the terms and conditions herein. Such use is limited to Client's internal use. Provider shall provide to Client the necessary passwords and network links or connections to allow Client to access the Services.

        (b)   Documentation License. Subject to the terms and conditions contained in this Agreement, Provider hereby grants to Client a non-exclusive, non-sublicensable, non-transferable (except in compliance with Section 12(g) license to use the Documentation during the Term solely for Client's internal business purposes in connection with its use of the Services.

        (c)   Use Restrictions. Provider has and will retain sole control over the operation, provision, maintenance, and management of the Provider IP. Client shall not use the Services for any purposes beyond the scope of the access granted in this Agreement and shall not and shall not permit any other Person to access or use the Services or the Provider IP, except as expressly permitted by this Agreement, or in the case of Third-Party Products, the applicable their-part license agreement. Client shall not at any time, directly or indirectly, and shall not permit any Licensed Users to: (i) copy, modify, or create derivative works of the Services or Documentation, in whole or in part; (ii) rent, lease, lend, sell, license, sublicense, assign, distribute, publish, transfer, or otherwise make available the Services or Documentation, including on or in connection with the internet or any time-share, service bureau, software as a service, clout, or other technology or service; (iii) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to any software component of the Services, in whole or in part; (iv) bypass or breach any security device or protection used by the Services or Provider IP, (v) remove any proprietary notices from the Services or Documentation; (vi) input, upload, transmit, or otherwise provide to or through the Services or Provider Systems, any information or materials that are unlawful or injurious, or contain,

transmit, or activate any harmful code, (vii) damage, destroy, disrupt, disable, impair, interfere with, or otherwise impede or harm in any manner the Services, Provider systems, or Provider's provision of services to any third party, in whole or in part, (viii) remove, delete, alter, or obscure any trademarks, specifications, Documentation, warranties, or disclaimers, or any copyright, trademark, patent, or other intellectual property or proprietary rights notices from any Services or Provider IP, including any copy thereof, (ix) access or use the Services or Provider IP for purposes of competitive analysis of the Services or Provider IP, the development, provision, or use of a competing software service or product or any other purpose that is to the Provider's detriment or commercial disadvantage, (x) access or use the Services or Provider IP in, or in association with, the design, construction, maintenance, or operation of any hazardous environments, systems, or applications, any safety response systems or other safety-critical applications, or any other use or application in which the use or failure of the Services could lead to personal injury or severe physical or property damage; or (xi) use the Services or Documentation in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any person, or that violates any applicable law.

(d)   Reservation of Rights. Provider reserves all rights not expressly granted to Client in this Agreement. Except for the limited rights and licenses expressly granted under this Agreement, nothing in this Agreement grants, by implication, waiver, estoppel, or otherwise, to Client or any third party any intellectual property rights or other right, title, or interest in or to the Provider IP.

(e)   Suspension. Notwithstanding anything to the contrary in this Agreement, Provider may temporarily suspend Client's and any Licensed User's access to any portion or all of the Services if: (i) Provider reasonably determines that (A) there is a threat or attack on any of the Provider IP; (B) Client's or any Licensed User's use of the Provider IP disrupts or poses a security risk to the Provider IP or to any other customer or vendor of Provider; (C) Client, or any Licensed User, is using the Provider IP for fraudulent or illegal activities; (D) subject to applicable law, Client has ceased to continue its business in the ordinary course, made an assignment for the benefit of creditors or similar disposition of its assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution, or similar proceeding; or (E) Provider's provision of the Services to Client or any Licensed User is prohibited by applicable law; (ii) any vendor of Provider has suspended or terminated Provider's access to or use of any third-party services or products required to enable Client to access the Services; or (iii) in accordance with Section 5(a)(iii) (any such suspension described in subclause (i), (ii), or (iii), a "**Service Suspension**"). Provider shall use commercially reasonable efforts to provide written notice of any Service Suspension to Client and to provide updates regarding resumption of access to the Services following any Service Suspension. Provider shall use commercially reasonable efforts to resume providing access to the Services as soon as reasonably possible after the event giving rise to the Service Suspension is cured. Provider will have no liability for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that Client or any Licensed User may incur as a result of a Service Suspension.

(f)   Changes. Provider reserves the right, in its sole discretion, to make any changes to the Services and Provider IP that it deems necessary or useful to: (a) maintain or enhance: (i) the quality or delivery of Provider's services to its Clients; (ii) the competitive strength of or market for Provider's services; or (iii) the Services' cost efficiency or performance; or (b) to comply with applicable laws. In the event that Client desires additions or changes to the Services, the Parties shall enter into a new Order Form detailing such changes and any additional fees related to such changes; however, for any changes that require specialized development, input or other services not normally included as part of the Services, such changes will be performed under Provider's Master Services Agreement for an additional fee.

(g)   Subcontractors. Provider may from time to time in its discretion engage third parties to perform Services.

3.　　Client Responsibilities and Obligations.

(a)　　General. Provider is not responsible or liable for any delay or failure of performance caused in whole or in part by Client's delay in performing, or failure to perform, any of its obligations under this Agreement (each, a "Client Failure").Client is responsible and liable for all uses of the Services and Documentation resulting from access provided by Client, directly or indirectly, whether such access or use is permitted by or in violation of this Agreement. Without limiting the generality of the foregoing, Client is responsible for all acts and omissions of Licensed Users, and any act or omission by a Licensed User that would constitute a breach of this Agreement if taken by Client will be deemed a breach of this Agreement by Client. Client shall use reasonable efforts to make all Licensed Users aware of this Agreement's provisions as applicable to such Licensed User's use of the Services, and shall cause Licensed Users to comply with such provisions.

(b)　　Third-Party Products. Provider may from time to time make Third-Party Products available to Client. For purposes of this Agreement, such Third-Party Products are subject to their own terms and conditions.

(c)　　Data Entry. Client understands and agrees that Client is solely responsible for entering all data, instructions, specifications, and procedures, including without limitation, proper safety procedures, inspection procedures and schedules, and accurate maintenance schedules, and Provider does not and cannot provide, create or enter in any such instructions, specifications and procedures, and that Client is solely responsible for ensuring correct and accurate maintenance instructions, schedules and safety procedures for all facilities, equipment and other service procedures. Client understands and agrees that the Services are not designed or configured to store, or process, protected health information as defined in the Health Insurance Portability and Accountability Act or certain personal information such as social security numbers ("Restricted Data") and Client hereby agrees to not store, enter, upload or otherwise process such Restricted Data using the Services.

(d)　　Non-Solicitation. During the Term and for two years after, Client shall not, and shall not assist any other Person to, directly or indirectly, recruit or solicit (other than by general advertisement not directed specifically to any Person or Persons) for employment or engagement as an independent contractor any Person then or within the prior twelve months employed or engaged by Provider or any subcontractor. In the event of a violation of this Section 3(e), Provider will be entitled to liquidated damages equal to the compensation paid by Provider to the applicable employee or contractor during the last twelve months of such Person's employment or engagement as contractor for Provider.

(e)　　Client Control and Responsibility. Client has and will retain sole responsibility for: (a) all Client Data, including its content and use; (b) all information, instructions, and materials provided by or on behalf of Client or any Licensed User in connection with the Services; (c) Client's information technology infrastructure, including computers, software, databases, electronic systems (including database management systems), and networks, whether operated directly by Client or through the use of third-party services ("**Client Systems**"); (d) the security and use of Client's and its Licensed Users' Access Credentials; and (e) all access to and use of the Services and Provider IP directly or indirectly by or through the Client Systems or its or its Licensed Users' Access Credentials, with or without Client's knowledge or consent, including all results obtained from, and all conclusions, decisions, and actions based on, such access or use.

4.   Service Levels and Support.

(a)   Service Levels. Subject to the terms and conditions of this Agreement, Provider shall use commercially reasonable efforts to make the Services available in accordance with the service levels set out in **Exhibit A (Provider Hosted Schedule)** or **Exhibit B (Client On Premise Schedule)**, as applicable.

(b)   Support. The access rights granted hereunder entitle Client, for the Term of this Agreement, to the support services described on **Exhibit A (Provider Hosted Schedule)** or **Exhibit B (Client On Premise Schedule)**, as applicable.

(c)   Professional Services. The Services include, subject to payment of the fees, scope of professional services defined in an **Order Form**.

(d)   Releases.

(i)   Subscription License. During the Term, Provider will provide Client with all Maintenance Releases and New Versions under the terms and conditions set forth in the Agreement.

(ii)   Perpetual License. During the Term, Provider will provide Client with all Maintenance Releases under the terms and conditions as set forth in the Agreement. Client does not have any right under or in connection with this Agreement to receive any New Versions of the Software that Provider may, in its sole discretion, release from time to time. Client is responsible for installing any such Maintenance Releases. No Maintenance Releases will be provided unless Client is current with all payments and this Agreement is in effect. In the event that this Agreement was terminated by Client and Client desires to receive any Maintenance Release, before providing any Maintenance Release, and subject to approval by Provider, Client may renew this Agreement by paying all Fees for the current year at Provider's current standard rates, and all Fees that would have been paid, had Client continuously been under this Agreement.

5.   Fees and Payment.

(a)   Fees. Client shall pay Provider the fees ("**Fees**") as set forth in the **Order Form** and any subsequent Order Form. Client shall make all payments hereunder in currency defined on invoice and pay all undisputed Fees, by due date of invoice thereof or on or before the due date set forth in the Order Form. Except as set forth in Section 11 (Term and Termination), payment obligations are non-cancellable and Fees are non-refundable. Client shall make all payments to the address or account specified in the Order Form. If Client fails to make any payment when due, without limiting Provider's other rights and remedies: (i) Provider may charge interest on the past due amount at the rate of 1.5% per month calculated daily and compounded monthly or, if lower, the highest rate permitted under applicable law; (ii) Client shall reimburse Provider for all reasonable costs incurred by Provider in collecting any late payments or interest, including attorneys' fees, court costs, and collection agency fees; and (iii) if such failure continues for 45 days or more, Provider may suspend Client's and its Licensed Users' access to any portion or all of the Services until such amounts are paid in full.

(b)   <u>Quantity Based License Fees</u>. Client selected package will be defined on the order form and includes the listed number of licenses based on a defined unit of measure (e.g., named users, work orders, etc.). In order to exceed that included number of licenses, Client must elect to increase the number of allocated licenses in the subscription and the new higher level of licenses prevails for the remainder of the Agreement term.

(c)   <u>Reimbursable Expenses</u>. Client shall reimburse Provider for all out-of-pocket expenses incurred by Provider in connection with performing the Services ("Reimbursable Expenses"). For example, if travel is required to support the implementation, roll-out, or training, Client shall reimburse Provider for all such travel related expenses.

(d)   <u>Taxes</u>. The price of all Services is exclusive of GST except where the price is expressed to be inclusive of GST. Client is responsible for all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, or local governmental or regulatory authority on any amounts payable by Client hereunder, other than any taxes imposed on Provider's income.

(e)   <u>No Deductions or Setoffs</u>. All amounts payable to Provider under this Agreement shall be paid by Client to Provider in full without any setoff, recoupment, counterclaim, deduction, debit, or withholding for any reason or any deduction or withholding of tax as may be required by applicable laws).

(f)   <u>Fee Increases</u>. Provider may increase Fees no more than once annually for any Renewal Term. The fee increase during any such renewal term shall be the greater of: (a) five percent (5%); or (b) the percentage by which the then most-recently published Consumer Price Index ("CPI"), prior to the written notice under this Section 5(e), exceeds the CPI published in the same month of the preceding calendar year, it being understood and agreed that if the CPI is no longer published, Provider and Client will negotiate in good faith to select a new index that best reflects and accounts for cost changes relevant to Provider unless Provider has provided written notice of a different price increase at least sixty (60) days before the end of such prior term, in which case the pricing increase shall be effective upon renewal and thereafter.

6.   <u>Confidential Information</u>. From time to time during the Term, either Party may disclose or make available to the other Party information about its business affairs, products, confidential intellectual property, trade secrets, third-party confidential information, and other sensitive or proprietary information, whether orally or in written, electronic, or other form or media, that is marked, designated, or otherwise identified as "confidential" (collectively, "**Confidential Information**"). Confidential Information does not include information that, at the time of disclosure is: (a) in the public domain; (b) known to the receiving Party at the time of disclosure; (c) rightfully obtained by the receiving Party on a non-confidential basis from a third party; or (d) independently developed by the receiving Party. The receiving Party shall not disclose the disclosing Party's Confidential Information to any person or entity, except to the receiving Party's employees who have a need to know the Confidential Information for the receiving Party to exercise its rights or perform its obligations hereunder. Notwithstanding the foregoing, each Party may disclose Confidential Information to the limited extent required (i) in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the Party making the disclosure pursuant to the order shall first have given written notice to the other Party and made a reasonable effort to obtain a protective order; or (ii) to establish a Party's rights under this Agreement, including to make required court filings. On the expiration or termination of the Agreement, the receiving Party shall promptly return to the disclosing Party all copies, whether in written, electronic, or other form or media, of the disclosing Party's Confidential Information, or destroy all such copies and certify in writing to the disclosing Party that such Confidential Information has been destroyed. Each Party's obligations of non-disclosure with regard to Confidential Information are effective as of the Effective Date and will expire five years from the date first disclosed to the receiving Party; provided, however, with respect to any

Confidential Information that constitutes a trade secret (as determined under applicable law), such obligations of non-disclosure will survive the termination or expiration of this Agreement for as long as such Confidential Information remains subject to trade secret protection under applicable law.

7.   Intellectual Property Ownership; Feedback.

(a)   Provider IP. Client acknowledges that, as between Client and Provider, Provider owns all right, title, and interest, including all intellectual property rights, in and to the Provider IP and any improvements thereto and, with respect to Third-Party Products, the applicable third-party providers own all right, title, and interest, including all intellectual property rights, in and to the Third-Party Products.

(b)   Client Data. Provider acknowledges that, as between Provider and Client, Client owns all right, title, and interest, including all intellectual property rights, in and to the Client Data. Client hereby grants to Provider a non-exclusive, royalty-free, worldwide license to reproduce, distribute, and otherwise use and display the Client Data and perform all acts with respect to the Client Data as may be necessary for Provider to provide the Services to Client, and a non-exclusive, perpetual, irrevocable, royalty-free, worldwide license to reproduce, distribute, modify, and otherwise use and display Client Data incorporated within the Aggregated Statistics.

(c)   Feedback. If Client or any of its employees or contractors sends or transmits any communications or materials to Provider by mail, email, telephone, or otherwise, suggesting or recommending changes to the Provider IP, including without limitation, new features or functionality relating thereto, or any comments, questions, suggestions, or the like ("**Feedback**"), Provider is free to use such Feedback irrespective of any other obligation or limitation between the Parties governing such Feedback. Client hereby assigns to Provider on Client's behalf, and on behalf of its employees, contractors and/or agents, all right, title, and interest in, and Provider is free to use, without any attribution or compensation to any party, any ideas, know-how, concepts, techniques, or other intellectual property rights contained in the Feedback, for any purpose whatsoever, although Provider is not required to use any Feedback.

(d)   Publicity. Subject to Client's approval, Client agrees that Provider may use the Client's name and logo, as well as parent company, to identify Client as a client of Provider as a part of a general list of Provider's clients for use and reference in Provider corporate, promotional, and marketing literature. Additionally, Client agrees that Provider may issue a press release identifying Client as a client and describing Client's intended utilization and the benefits that Client expects to receive from use of Provider Services. Similarly, Client may issue a press release identifying Provider as a provider of Services. In all cases, such press releases are subject to both parties' prior approval. Subject to Client's approval, Client agrees to allow Provider to place Client's Logo, links to the client's web site, and appropriate statements as restricted by this Agreement on Provider's web site for marketing purposes.

8.   Limited Warranty and Warranty Disclaimer.

(a)   TO THE EXTENT PERMITTED BY LAW, EXCEPT AS SET FORTH IN THE AGREEMENT THE PROVIDER IP IS PROVIDED "AS IS" AND PROVIDER HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. PROVIDER SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. PROVIDER MAKES NO WARRANTY OF ANY KIND THAT THE PROVIDER IP, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET CLIENT'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM, OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR FREE. ALL THIRD-PARTY

MATERIALS ARE PROVIDED "AS IS" AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY THIRD-PARTY MATERIALS IS STRICTLY BETWEEN THE CLIENT AND THE THIRD-PARTY OWNER OF DISTRIBUTOR OF THE THIRD-PARTY MATERIALS.

9.   Indemnification.

(a)   Provider Indemnification.

(i)   Provider shall indemnify, defend, and hold harmless Client from and against any and all losses, damages, liabilities, costs (including reasonable attorneys' fees) ("**Losses**") incurred by Client resulting from any third-party claim, suit, action, or proceeding ("**Third-Party Claim**") that the Services, or any use of the Services (excluding Client Data and Third-Party Materials) in accordance with this Agreement, infringes or misappropriates such third party's intellectual property rights, provided that Client promptly notifies Provider in writing of the claim, cooperates with Provider, and allows Provider sole authority to control the defense and settlement of such claim.

(ii)   If such a claim is made or appears possible, Client agrees to permit Provider, at Provider's sole discretion, to (A) modify or replace the Services, or component or part thereof, to make it non-infringing, or (B) obtain the right for Client to continue use. If Provider determines that neither alternative is reasonably available, Provider may terminate this Agreement, in its entirety or with respect to the affected component or part, effective immediately on written notice to Client.

(iii)   This Section 9(a) will not apply to the extent that the alleged infringement arises from: (A) use of the Services in combination with data, software, hardware, equipment, or technology not provided by Provider or authorized by Provider in writing; (B) modifications to the Services not made by Provider; (C) Client Data; or (D) Third-Party Products.

(b)   Client Indemnification. Client shall indemnify, hold harmless, and, at Provider's option, defend Provider from and against any Losses resulting (i) from any Third-Party Claim that the Client Data, or any use of the Client Data in accordance with this Agreement, infringes or misappropriates such third party's intellectual property rights and (ii) any Third-Party Claims based on Client's or any Licensed User's (1) negligence or willful misconduct; (2) use of the Services in a manner not authorized by this Agreement; (3) use of the Services in combination with data, software, hardware, equipment, or technology not reasonably expected to be used; or (4) modifications to the Services not made by Provider, (iii) from any improper data entry by Client and its Licensed Users, and (v) from any errors, omissions or incorrect procedures, schedules, safety protocols, or instructions entered or used by Client and its Licensed Users; provided that Client may not settle any Third-Party Claim against Provider unless Provider consents to such settlement, and further provided that Provider will have the right, at its option, to defend itself against any such Third-Party Claim or to participate in the defense thereof by counsel of its own choice. Client understands and agrees that as Client is creating and entering their own Client Data, Provider could not and would not offer the Services without the indemnification in this Section 9(b).

(c)   Mitigation. If any of the Services or Provider IP is, or in Provider's opinion are likely to be, claimed to infringe, misappropriate, or otherwise violate any third-party intellectual property right, or if Client's or any Licensed User's use of the Services or Provider IP is enjoined or threatened to be enjoined, Provider may, at its option and sole cost and expense:

(i)   obtain the right for Client to continue to use the Services and Provider IP materially as contemplated by this Agreement;

(ii)   modify or replace the Services and Provider IP in whole or in part, to seek to make

the Services and Provider IP (as so modified or replaced) non-infringing, while providing materially equivalent features and functionality, in which case such modifications or replacements will constitute Services and Provider IP, as applicable, under this Agreement; or

(iii)   by written notice to Client, terminate this Agreement with respect to all or part of the Services and Provider IP, and require Client to immediately cease any use of the Services and Provider IP or any specified part or feature thereof.

(d)   <u>Sole Remedy</u>. THIS SECTION 9 SETS FORTH CLIENT'S SOLE REMEDIES AND PROVIDER'S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED, OR ALLEGED CLAIMS THAT THE SERVICES INFRINGE, MISAPPROPRIATE, OR OTHERWISE VIOLATE ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY. IN NO EVENT WILL PROVIDER'S LIABILITY UNDER THIS SECTION 9 EXCEED THE TOTAL AMOUNTS PAID TO PROVIDER UNDER THIS AGREEMENT IN THE TWELVE-MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

10.   <u>Limitations of Liability</u>. TO THE EXTENT PERMITTED BY LAW, IN NO EVENT WILL PROVIDER OR ANY OF ITS LICENSORS, SERVICE PROVIDERS, OR SUPPLIERS BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY: (a) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES; (b) INCREASED COSTS, DIMINUTION IN VALUE OR LOST BUSINESS, PRODUCTION, REVENUES, OR PROFITS; (c) LOSS OF GOODWILL OR REPUTATION; (d) USE, INABILITY TO USE, LOSS, INTERRUPTION, DELAY, OR RECOVERY OF ANY DATA, OR BREACH OF DATA OR SYSTEM SECURITY; OR (e) COST OF REPLACEMENT GOODS OR SERVICES, IN EACH CASE REGARDLESS OF WHETHER PROVIDER WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE. IN NO EVENT WILL PROVIDER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE EXCEED THE TOTAL AMOUNTS PAID TO PROVIDER UNDER THIS AGREEMENT IN THE TWELVE-MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM OR $100,000, WHICHEVER IS LESS.

11.   <u>Term and Termination</u>.

(a)   <u>Term</u>. The initial term of this Agreement begins on the Effective Date and, unless terminated earlier pursuant to this Agreement's express provisions, will continue in effect for the Initial Term, as specified in the Order Form. This Agreement will automatically renew for successive one-year terms unless earlier terminated pursuant to this Agreement's express provisions or either Party gives the other Party written notice of non-renewal at least 60 days prior to the expiration of the then-current term (each a "**Renewal Term**" and together with the Initial Term, the "**Term**").

(b)   <u>Termination</u>. In addition to any other express termination right set forth in this Agreement:

(i)   Provider may terminate this Agreement, effective on written notice to Client, if Client: (A) fails to pay any amount when due hereunder, and such failure continues more than 30 days after Provider's delivery of written notice thereof; or (B) breaches any of its obligations under Section 2(c) or Section 7;

(ii)   either Party may terminate this Agreement, effective on written notice to the other Party, if the other Party materially breaches this Agreement, and such breach: (A) is incapable of

cure; or (B) being capable of cure, remains uncured 30 days after the non-breaching Party provides the breaching Party with written notice of such breach; or

(iii)   either Party may terminate this Agreement, effective immediately upon written notice to the other Party, if the other Party: (A) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (B) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law; (C) makes or seeks to make a general assignment for the benefit of its creditors; or (D) applies for or has appointed a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

(c)   <u>Effect of Expiration or Termination</u>.

(i)   **Subscription License.** Upon expiration or earlier termination of this Agreement, except as expressly otherwise provided in this Agreement for all applicable Subscription purchases:

(A)   all rights, licenses, consents, and authorizations granted by either party to the other hereunder will immediately terminate;

(B)   Provider shall immediately cease all use of any Client Data or Client's Confidential Information and (i) at Client's written request destroy, all documents and tangible materials containing, reflecting, incorporating, or based on Client Data or Client's Confidential Information; and (ii) permanently erase all Client Data and Client's Confidential Information from all systems Provider directly or indirectly controls, provided that, for clarity, Provider's obligations under this Section do not apply to any Aggregated Statistics;

(C)   Client shall immediately cease all use of any Services or Provider IP and (i) promptly return to Provider, or at Provider's written request destroy, all documents and tangible materials containing, reflecting, incorporating, or based on any Provider IP or Provider's Confidential Information; (ii) permanently erase all Provider IP and Provider's Confidential Information from all systems Client directly or indirectly controls; and (iii) certify to Provider in a signed written instrument that it has complied with the requirements of this Section;

(D)   Provider may disable all Client and Licensed User access to the Provider IP;

(E)   if Client terminates this Agreement pursuant to Section 11(b)(ii), Client will be relieved of any obligation to pay any Fees attributable to the period after the effective date of such termination and Provider will: (i) refund to Client Fees paid in advance for Services that Provider has not performed as of the effective date of termination;

(F)   if Provider terminates this Agreement pursuant to Section 11(b)(i) or Section 11(b)(ii), all Fees that would have become payable had the Agreement remained in effect until expiration of the Term will become immediately due and payable, and Client shall pay such Fees, together with all previously accrued but not yet paid Fees and Reimbursable Expenses, on receipt of Provider's invoice therefor;

(ii) **Perpetual License.** Upon expiration or earlier termination of this Agreement, except as expressly otherwise provided in this Agreement for all applicable Perpetual purchase:

(A)   Provider shall immediately cease all use of any Client's Confidential Information and (i) at Client's written request destroy, all documents and tangible materials containing, reflecting, incorporating, or based on Client's Confidential Information; and (ii) permanently erase all Client's Confidential Information from all systems Provider directly or indirectly controls;

(B)   Client shall be permitted to continue to utilize the Services as then-currently installed on Client's On-Premise systems. Provider shall not provide any support or maintenance services, and will no longer update the Services.

(C)   In the event that Client Subscription is Provider Hosted, Provider will provide one (1) backup copy to Client and Client may continue to use the Services hosted on Client Systems. Provider shall not provide any support or maintenance services, and will no longer update the Services

(d)   Survival. This Section 11(d) and Sections 1, 3, 6, 7, 8(b), 9, 10, and 12 survive any termination or expiration of this Agreement. No other provisions of this Agreement survive the expiration or earlier termination of this Agreement.

12.   Miscellaneous.

(a)   Entire Agreement. This Agreement, together with any other documents incorporated herein by reference and all related Exhibits, constitutes the sole and entire agreement of the Parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, and representations and warranties, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements made in the body of this Agreement, the related Exhibits, and any other documents incorporated herein by reference, the following order of precedence governs: (i) first, this Agreement, excluding its Exhibits; (ii) second, the Exhibits to this Agreement as of the Effective Date; and (iii) third, any other documents incorporated herein by reference.

(b)   Notices. All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "**Notice**") must be in writing and addressed to the Parties at the addresses set forth on the first page of this Agreement (or to such other address that may be designated by the Party giving Notice from time to time in accordance with this Section). All Notices must be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile or email (with confirmation of transmission), or certified or registered mail (in each case, return receipt requested, postage pre-paid). Except as otherwise provided in this Agreement, a Notice is effective only: (i) upon receipt by the receiving Party; and (ii) if the Party giving the Notice has complied with the requirements of this Section.

(c)   Force Majeure. In no event shall Provider be liable to Client, or be deemed to have breached this Agreement, for any failure or delay in performing its obligations under this Agreement, if and to the extent such failure or delay is caused by any circumstances beyond Provider's reasonable control, including but not limited to acts of God, flood, fire, earthquake, explosion, war, terrorism, invasion, riot or other civil unrest, strikes, labor stoppages or slowdowns or other industrial disturbances, or passage of law or any action taken by a governmental or public authority, including imposing an embargo.

(d)   Amendment and Modification; Waiver. No amendment to or modification of this Agreement is effective unless it is in writing and signed by an authorized representative of each Party. No waiver by any Party of any of the provisions hereof will be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in this Agreement, (i) no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement will operate or be construed as a waiver thereof, and (ii) no single or partial exercise of any right, remedy, power, or privilege hereunder will preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

(e)   Severability. If any provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the Parties shall negotiate in good faith to modify this Agreement so as to effect their original intent as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

(f)   Governing Law; Submission to Jurisdiction. This Agreement is governed by and construed in accordance with the internal laws of the State of Oklahoma without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of any jurisdiction other than those of the State of Oklahoma. Any legal suit, action, or proceeding arising out of or related to this Agreement or the licenses granted hereunder will be instituted exclusively in the federal courts of the United States or the courts of the State of Oklahoma in each case located in Tulsa County, Oklahoma, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.

(g)   Assignment. Client may not assign any of its rights or delegate any of its obligations hereunder, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without the prior written consent of Provider, which consent shall not be unreasonably withheld, conditioned, or delayed. Any purported assignment or delegation in violation of this Section will be null and void. No assignment or delegation will relieve the assigning or delegating Party of any of its obligations hereunder. This Agreement is binding upon and inures to the benefit of the Parties and their respective permitted successors and assigns.

(h)   Equitable Relief. Each Party acknowledges and agrees that a breach or threatened breach by such Party of any of its obligations under Section 6 or, in the case of Client, Section 2(c), would cause the other Party irreparable harm for which monetary damages would not be an adequate remedy and agrees that, in the event of such breach or threatened breach, the other Party will be entitled to equitable relief, including a restraining order, an injunction, specific performance, and any other relief that may be available from any court, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity, or otherwise.

(i)   Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement.

(j)   Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

EXHIBIT A

PROVIDER HOSTED SCHEDULE

In the event that an applicable Order Form lists a Provider Hosted Technical Environment, this Exhibit A will apply.

1. Definitions.

"**Aggregated Statistics**" means data and information related to Client's use of the Services that is used by Provider in an aggregate and anonymized manner, including to compile statistical and performance information related to the provision and operation of the Services.

"**Services**" means the software and technical environment hosting offering as set forth in an applicable Order Form.

2. Access and Use.
    a. Aggregated Statistics. Notwithstanding anything to the contrary in this Agreement, Provider may monitor Client's use of the Services and collect and compile Aggregated Statistics. As between Provider and Client, all right, title, and interest in Aggregated Statistics, and all intellectual property rights therein, belong to and are retained solely by Provider. Client acknowledges that Provider may compile Aggregated Statistics based on Client Data input into the Services. Client agrees that Provider may (i) make Aggregated Statistics publicly available in compliance with applicable law, and (ii) use Aggregated Statistics to the extent and in the manner permitted under applicable law; provided that such Aggregated Statistics do not identify Client or Client's Confidential Information.

3. Security.
    a. Data Backup. Provider shall conduct or have conducted backups of Customer Data in accordance with Provider's data backup policy.

    b. Information Security and Data Breaches. Provider will employ security measures in accordance with Provider's data privacy and security policy. Provider maintains a data breach plan and shall implement the procedures required under such data breach plan on the occurrence of a data breach (as defined in such plan).

4. Limited Warranty.
    a. Provider warrants that the Services will conform in all material respects to the service levels set forth in **Annex A** when accessed and used in accordance with the Documentation. Provider does not make any representations or guarantees regarding uptime or availability of the Services unless specifically identified in **Annex A**. The remedies set forth in **Annex A** are Client's sole remedies and Provider's sole liability under the limited warranty set forth in this Section 4(a).

ANNEX A

SERVICE LEVELS AND SUPPORT

This Service Level Agreement ("SLA") details the terms for the technical support services provided by Provider during the Initial Term and Subsequent Terms of the Agreement. The SLA specifically addresses service level definitions, measurements, and minimum service standards that will be in effect for the Service.

1. <u>Client Responsibilities.</u> Client shall:

    1.1. Designate Authorized Service Contacts. The support shall only be utilized by Authorized Service Contacts, who have been fully trained on the Services. Client may designate up to the maximum number of Authorized Service Contacts, as defined by the purchased product and service level in the table below, to interact with Provider for Services support. The Authorized Service Contact(s) shall be the sole contact(s) between Client and Provider in connection with day-to-day matters relating to the provision of Services and be responsible for reporting incidents, providing consents and approvals on behalf of Client, and communicating with and providing timely and accurate information and feedback to Provider in connection with the Services. Client shall ensure its Authorized Service Contact(s) have the requisite organizational authority, skill, experience, and other qualifications, including being fully trained regarding the Services, to perform these duties. Client shall use commercially reasonable efforts to maintain the same Authorized Service Contact(s) in place throughout the Term and provide at least ten business days' prior written notice to Provider of any replacement or change in the name or contact information of any Authorized Service Contact. Provider retains the option to withhold support to untrained designated Authorized Service Contacts, which will not be unreasonably withheld.

Product	Max Authorized Service Contacts
Eagle CMMS	2
HEMS Enterprise HEMS One PCX ProCal Direct ProCal V5 RiskPartner MEX Gold Support (standard AMA) Virtual Facility Alarm Triage - Express Virtual Facility Alarm Triage - Complete WebTMA Gold Support	3
HEMS Platinum Support MEX Platinum Support WebTMA Platinum Support	5
HEMS Platinum Support MEX Diamond Support MEX Titanium Support WebTMA Diamond Support	10

1.2. Provide all applicable information to Provider regarding any Service issues in sufficient detail to enable Provider to duplicate the circumstances indicating a reported error.

1.3. Cooperate with Provider with testing, isolating, identifying, documenting, and any other actions necessary, to resolve any Service issues and errors, including the application of a temporary workaround or bypass supplied by Provider, or temporary implementation by Client of a computer or operational procedure, in order to minimize the effect of such issues.

1.4. Maintain the Client network in accordance with any Specifications provided by Provider which may include "whitelisting" the URL and/or IP Addresses for the environments in both client hardware and software.

1.5. Have sole responsibility for all activities that occur under Licensed User accounts. In addition:

(i) have sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Client Data;

(ii) use commercially reasonable efforts to prevent unauthorized access to, or use of, the Service or its related systems and networks, and notify Provider promptly of any such unauthorized use;

(iii) comply with all applicable local, state, federal, and foreign laws in using the Service;

(iv) not send spam or otherwise duplicative or unsolicited messages in violation of applicable laws;

(v) not send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortuous material, including material harmful to children or in violation of third party privacy rights;

(vi) not send or store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs;

(vii) not interfere with or disrupt the integrity or performance of the Services or the data contained therein; and

(viii) not attempt to probe, scan, penetrate or test the vulnerability of a Provider system or network or to breach Provider's security or authentication measures, whether by passive or intrusive techniques, without Provider's express written consent.

2. <u>Service Levels</u>. Subject to the terms and conditions of this Agreement, Provider will use commercially reasonable efforts to make the Services Available at least ninety-nine and one half percent (99.5%) of the time as measured over the course of each calendar month during the Term (each such calendar month, a "Service Period"), excluding unavailability as a result of any of the Exceptions described below in this Section 2.1, Section 2.2 and Section 2.3 (the "Availability Requirement", "Scheduled Downtime" and "System Security").

    2.1. <u>Availability Requirement.</u> "Service Level Failure" means a material failure of the Services to meet the Availability Requirement. "Available" means the Services are available for access and use by Client and its Licensed Users over the Internet and operating in material accordance with the Specifications. For purposes of calculating the Availability Requirement, the following are "Exceptions" to the Availability Requirement, and neither the Services will be considered un- Available nor any Service Level Failure be deemed to occur in connection with any failure to meet the Availability Requirement or impaired ability of Client or its Licensed Users to access or use the Services that is due, in whole or in part, to any: (a) access to or use of the Services by Client or any Licensed User, or using Client's or an Licensed User's Access Credentials, that does not strictly comply with this Agreement and the Specifications; (b) Client Failure (as defined in Section 4(a) of the Agreement); (c) Client's or its Licensed User's Internet connectivity; (d) Force Majeure event; failure, interruption, outage, or other problem with any software, hardware, system, network, facility, or other matter not supplied by Provider pursuant to this Agreement; (f) Scheduled Downtime; or (g) disabling, suspension, or termination of the Services pursuant to Section 11 of the Agreement. Provider is not responsible or liable for any delay or failure of performance caused in whole or in part by Client's delay in performing, or failure to perform, any of its obligations under this Agreement (each, a "Client Failure").

    2.2. <u>Scheduled Downtime.</u> Provider will use commercially reasonable efforts to schedule downtime for server maintenance between the hours of 12 p.m. and 3:00 p.m. (Eastern Time) every other Thursday. During this time, the software may be unavailable and display a maintenance page stating the software is undergoing maintenance. Provider reserves the right to change the regularly scheduled downtime hours, and Provider may request Client's approval for extensions of Scheduled Downtime, which approval may not be unreasonably withheld or delayed.

    2.3. <u>System Security.</u> In the event of a denial of service attack or a security breach of the Service Provider, Provider has the right to halt operations immediately to protect the integrity and security of the system. Upon discovery of such an event requiring a halt of operations, Provider will notify affected client within two (2) hours.

3. <u>Support Services.</u> Provider shall provide maintenance and support services (collectively, "Support Services") for the Services in accordance with the provisions of this Section 3. The Support Services are included in the Services, and Provider shall not assess any additional Fees, costs, or charges for such Support Services.

    3.1. Support Service Responsibilities. Provider shall:

        (a)   correct all Service Errors in accordance with the Support Service Level Requirements, including by providing defect repair, programming corrections, and remedial programming;

        (b)   provide unlimited support during the hours of 8:00 a.m. to 5 p.m. Eastern Time on Business Days;

        (c)   Provide online access to technical support bulletins and other user support information and forums, to the full extent Provider makes such resources available to its other customers for services identical to or substantially similar to the Services.

4. <u>Service Maintenance.</u> Provider shall use commercially reasonable efforts to maintain the Services to optimize Availability that meets or exceeds the Availability Requirement. Such maintenance services shall include providing to Client and its Licensed Users:

        (a)   all Maintenance Releases, and other improvements to the Services, that Provider provides at no additional charge to its other similarly situated customers; and

        (b)   all such services and repairs as are required to maintain the Services or are ancillary, necessary, or otherwise related to Client's or its Licensed Users' access to or use of the Services, so that the Services operate properly in accordance with this Agreement and the Specifications.

5. <u>Support Response Time Service Levels</u>. Response a times will be measured from the time Provider receives a Support Request until the respective times Provider has (i) responded to, in the case of response time means that, as to any Service Error, Provider has provided Client the corresponding Service Error correction and Client has confirmed such correction and its acceptance thereof. Provider shall respond to all Service Errors within the times provided in the chart below, based on the severity of the Service Error:

    5.1. Support Service Level Requirements. Provider shall correct all Service Errors and respond to and Resolve all Support Requests in accordance with the required times and other terms and conditions set forth in the chart below ("Support Service Level Requirements"), this Agreement, and the applicable Order Form.

      (a) Support Requests. Client shall classify its requests for Service Error corrections in accordance with the descriptions set forth in the chart below (each a "Support Request"). The Authorized Service Contact shall notify Provider of Support Requests.

    5.2. Severity Definitions and Response Times. Technical Support Issues are defined as individual problems referred by Clients to Provider Support that are reproducible by Provider. Provider's Support Center creates a Support Ticket for the specific issues and categorizes the Support Ticket. Provider and Client agree to the following severity levels and response times schedule for Problems or Errors reported to Provider utilizing the severity designations detailed below. Provider shall respond to reported problems according to the following protocols:

Severity	Definition	Response Time
Sev1	System Down	The Services is down. This indicates an Issue that materially affects data integrity, critical systems functions, or system security; and/or which materially disrupts operations as assessed by Provider. Initial response within 1 hour of the case being submitted. The designated "Authorized Service Contact" will be updated twice daily on progress. Actions will commence within 1 hour on all calendar days.
Sev2	Major Issue	The Services is operational but has a major functional loss that impedes transactions from being completed. This indicates a major issue that causes a significant business impact, but Client still has access to portions of their site as assessed by Provider. Initial response within 2 hours of the case being submitted. The designated "Authorized Service Contact" will be updated daily on progress. Actions will commence within 4 hours of notification during normal operating hours.
Sev3	Non-Critical	The Services system has a functional loss which includes a small portion of the Services, and where a suitable work around can be employed, or the functionality is not immediately necessary as assessed by Provider. Initial response within 4 hours of notification during normal operating hours. The designated "Authorized Service Contact" will be updated on an as needed basis. Provider will prioritize all client Sev3 requests and schedule accordingly.
Sev4	Minor	The Services has a cosmetic or grammatical error that does not affect performance or stability of the system, or Client has questions regarding use of the product or service as assessed by Provider. Initial response within 1 business day of the case being submitted. The designated "Authorized Service Contact" will be updated on an as needed basis. Provider will prioritize all client Sev4 requests and schedule accordingly.
Enhancement	Product Improvement Request	Request for a new feature or new functionality that does not already exist in the product or service. Requirements will be noted and evaluated for the next release(s). Enhancement requests will be logged and submitted for consideration. The designated "Authorized Service Contact" will be updated on an as needed basis.

* Provider agrees to use "commercially reasonable efforts" to resolve a Severity 1 Issue. For purposes of this Agreement, "commercially reasonable" means that Provider will dedicate its engineering resources who are knowledgeable in the problem which has caused the Severity 1 Issue to provide a fix or a workaround, and such resources will work, as much as reasonably possible, on a continuous effort basis until a fix or workaround is provided, or until it has been determined that the source of the Severity 1

problem is not directly related to the Services. Provider's obligation to provide "commercially reasonable efforts" is contingent upon Client providing technical resources that are knowledgeable in the Severity 1 Issue to work on the resolution on as closely as reasonably possible a continuous commercially reasonable efforts basis.

EXHIBIT B

CLIENT ON PREMISE SCHEDULE

In the event that an applicable Order Form lists an On Premise Technical Environment, this Exhibit B will apply.

1. Definitions.

    "Services" means the On Premises service offering as set forth in an applicable Order Form.

2. Limited Warranty.

    a. Provider warrants that the Services will conform in all material respects to the service levels set forth in **Annex B** when accessed and used in accordance with the Documentation. Provider does not make any representations or guarantees regarding uptime or availability of the Services unless specifically identified in **Annex B**. The remedies set forth in **Annex B** are Client's sole remedies and Provider's sole liability under the limited warranty set forth in this Section 2(a).

ANNEX B

SERVICE LEVELS AND SUPPORT

This Service Level Agreement ("SLA") details the terms for the technical support services provided by Provider during the Initial Term and Subsequent Terms of the Agreement. The SLA specifically addresses service level definitions, measurements, and minimum service standards that will be in effect for the Service.

1.   Client Responsibilities. Client shall:

1.1.   Designate Authorized Service Contacts. The support shall only be utilized by Authorized Service Contacts, who have been fully trained on the Services. Client may designate up to the maximum number of Authorized Service Contacts, as defined by the purchased product and service level in the table below, to interact with Provider for Services support. The Authorized Service Contact(s) shall be the sole contact(s) between Client and Provider in connection with day-to-day matters relating to the provision of Services and be responsible for reporting incidents, providing day-to-day consents and approvals on behalf of Client, and communicating with and providing timely and accurate information and feedback to Provider in connection with the Services. Client shall ensure its Authorized Service Contact(s) have the requisite organizational authority, skill, experience, and other qualifications, including being fully trained regarding the Services, to perform these duties. Client shall use commercially reasonable efforts to maintain the same Authorized Service Contact(s) in place throughout the Term and provide at least ten business days' prior written notice to Provider of any replacement or change in the name or contact information of any Authorized Service Contact. Provider retains the option to withhold support to untrained designated Authorized Service Contacts, which will not be unreasonably withheld.

Product	Max Authorized Service Contacts
Eagle CMMS	2
HEMS Enterprise HEMS One PCX ProCal Direct ProCal V5 RiskPartner MEX Gold Support (Standard AMA) Virtual Facility Alarm Triage - Express Virtual Facility Alarm Triage - Complete WebTMA Gold Support	3
HEMS Platinum Support MEX Platinum Support WebTMA Platinum Support	5
HEMS Diamond Support MEX Diamond Support WebTMA Diamond Support	10

1.2.   Provide all applicable information to Provider regarding any Service issues in sufficient detail to enable Provider to duplicate the circumstances indicating a reported error.

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1.3. Cooperate with Provider with testing, isolating, identifying, documenting, and any other actions necessary, to resolve any Service issues and errors, including the application of a temporary workaround or bypass supplied by Provider, or temporary implementation by Client of a computer or operational procedure, in order to minimize the effect of such issues.

1.4. Maintain the Client network in accordance with any Specifications provided by Provider which may include "whitelisting" the URL and/or IP Addresses for the environments in both client hardware and software.

1.5. Have sole responsibility for all activities that occur under Licensed User accounts.

In addition: (i) have sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Client Data; (ii) use commercially reasonable efforts to prevent unauthorized access to, or use of, the Service or its related systems and networks, and notify Provider promptly of any such unauthorized use; (iii) comply with all applicable local, state, federal, and foreign laws in using the Service; (iv) not send spam or otherwise duplicative or unsolicited messages in violation of applicable laws; (v) not send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortuous material, including material harmful to children or in violation of third party privacy rights; (vi) not send or store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs; (vii) not interfere with or disrupt the integrity or performance of the Services or the data contained therein; and (viii) not attempt to probe, scan, penetrate or test the vulnerability of a Provider system or network or to breach Provider's security or authentication measures, whether by passive or intrusive techniques, without Provider's express written consent.

1.6. Remote Services. Client acknowledges and agrees that Provider may provide Remote Services to Client to assist in analyzing and Resolving any Incident. Client agrees to provide Provider with access to Client's network, system, and or computers to install and use remote access software ("Remote Access Software") necessary for Provider to provide the Remote Services to Client. The Remote Access Software contains technological measures designed to collect and transmit to Provider certain diagnostic, technical, usage, and related information, including information about Client's computers, systems, network, and any Third-Party Materials, relating to or derived from Client's use of Software. Client acknowledges and agrees that: (a) Provider may collect, maintain, process, and use this information in the course of performing the Services under these Terms, provided that Provider shall only access, control, and gather such information that it reasonably believes to be necessary to assist in analyzing and Resolving an Incident; and (b) all or portions of the Remote Access Software may remain on Client's network, system, or computers after an Incident is Resolved.

2. Service Levels. Provider shall provide maintenance and support services (collectively, "Support Services") for the Services in accordance with the provisions of this Section 2. The Support Services are included in the Services, and Provider shall not assess any additional Fees, costs, or charges for such Support Services.

2.1. Support Service Responsibilities. Provider shall:

(a) correct all Service Errors in accordance with the Support Service Level Requirements, including by providing defect repair, programming corrections, and remedial programming;

(b) provide unlimited support during the hours of 8:00 a.m. to 5 p.m. Eastern Time on Business Days;

(c) Provide online access to technical support bulletins and other user support information and

forums, to the full extent Provider makes such resources available to its other customers for services identical to or substantially similar to the Services.

3. <u>Service Maintenance</u>. Provider shall use commercially reasonable efforts to maintain the Services to optimize Availability that meets or exceeds the Availability Requirement. Such maintenance services shall include providing to Client and its Licensed Users:

    (a) all Maintenance Releases, and other improvements to the Services, that Provider provides at no additional charge to its other similarly situated customers; and

    (b) all such services and repairs as are required to maintain the Services or are ancillary, necessary, or otherwise related to Client's or its Licensed Users' access to or use of the Services, so that the Services operate properly in accordance with this Agreement and the Specifications.

4. <u>Support Response Time Service Levels</u>. Response a times will be measured from the time Provider receives a Support Request until the respective times Provider has (i) responded to, in the case of response time means that, as to any Service Error, Provider has provided Client the corresponding Service Error correction and Client has confirmed such correction and its acceptance thereof. Provider shall respond to all Service Errors within the times provided in the chart below, based on the severity of the Service Error:

    (a) Support Service Level Requirements. Provider shall correct all Service Errors and respond to and Resolve all Support Requests in accordance with the required times and other terms and conditions set forth in the chart below ("Support Service Level Requirements"), this Agreement, and the applicable Order Form.

    (b) Support Requests. Client shall classify its requests for Service Error corrections in accordance with the descriptions set forth in the chart below (each a "Support Request"). The Authorized Service Contact shall notify Provider of Support Requests.

    (c) Severity Definitions and Response Times. Technical Support Issues are defined as individual problems referred by Clients to Provider Support that are reproducible by Provider. Provider's Support Center creates a Support Ticket for the specific issues and categorizes the Support Ticket. Provider and Client agree to the following severity levels and response times schedule for Problems or Errors reported to Provider utilizing the severity designations detailed below. Provider shall respond to reported problems according to the following protocols:

Severity	Definition	Response Time
Sev1	**System Down**	The Services is down. This indicates an Issue that materially affects data integrity, critical systems functions, or system security; and/or which materially disrupts operations as assessed by Provider. Initial response within 1 hour of the case being submitted. The designated "Authorized Service Contact" will be updated twice daily on progress. Actions will commence within 1 hour on all calendar days.

Sev2	Major Issue	The Services is operational but has a major functional loss that impedes transactions from being completed. This indicates a major issue that causes a significant business impact, but Client still has access to portions of their site as assessed by Provider. Initial response within 2 hours of the case being submitted. The designated "Authorized Service Contact" will be updated daily on progress. Actions will commence within 4 hours of notification during normal operating hours.
Sev3	Non-Critical	The Services system has a functional loss which includes a small portion of the Services, and where a suitable work around can be employed, or the functionality is not immediately necessary as assessed by Provider. Initial response within 4 hours of notification during normal operating hours. The designated "Authorized Service Contact" will be updated on an as needed basis. Provider will prioritize all client Sev3 requests and schedule accordingly.
Sev4	Minor	The Services has a cosmetic or grammatical error that does not affect performance or stability of the system, or Client has questions regarding use of the product or service as assessed by Provider. Initial response within 1 business day of the case being submitted. The designated "Authorized Service Contact" will be updated on an as needed basis. Provider will prioritize all client Sev4 requests and schedule accordingly.
Enhancement	Product Improvement Request	Request for a new feature or new functionality that does not already exist in the product or service. Requirements will be noted and evaluated for the next release(s). Enhancement requests will be logged and submitted for consideration. The designated "Authorized Service Contact" will be updated on an as needed basis.

* Provider agrees to use "commercially reasonable efforts" to resolve a Severity 1 Issue. For purposes of this Agreement, "commercially reasonable" means that Provider will dedicate its engineering resources who are knowledgeable in the problem which has caused the Severity 1 Issue to provide a fix or a workaround, and such resources will work, as much as reasonably possible, on a continuous effort basis until a fix or workaround is provided, or until it has been determined that the source of the Severity 1 problem is not directly related to the Services. Provider's obligation to provide "commercially reasonable efforts" is contingent upon Client providing technical resources that are knowledgeable in the Severity 1 Issue to work on the resolution on as closely as reasonably possible a continuous commercially reasonable efforts basis.