



End User License Agreement

PLEASE CAREFULLY READ THIS END USER LICENSE AGREEMENT ("AGREEMENT") BEFORE DOWNLOADING, INSTALLING, OR USING THE SOFTWARE. BY BOTH PARTIES EXECUTING THIS AGREEMENT IN WRITING, OR THE ORDERING ACTIVITY EXECUTING A PURCHASE ORDER INCORPORATING THIS AGREEMENT IN WRITING, YOU ARE AGREEING TO BE BOUND BY THE TERMS OF THIS AGREEMENT.

IF YOU AND 3rd Eye Technologies, Inc. HAVE SIGNED A SEPARATE WRITTEN AGREEMENT COVERING YOUR RIGHTS AND DUTIES WITH RESPECT TO THE SOFTWARE, THEN THAT WRITTEN AGREEMENT TAKES PRECEDENCE OVER ANY CONFLICTING TERMS OF THIS AGREEMENT.

IF YOU ARE ACCEPTING THIS AGREEMENT ON BEHALF OF AN ENTERPRISE, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND THAT ENTERPRISE AND ITS END USERS. IT IS YOUR RESPONSIBILITY TO COMMUNICATE THE INFORMATION IN THIS AGREEMENT TO THE ENTERPRISE'S END USERS AND ENSURE THEIR ACCEPTANCE AND COMPLIANCE WITH THE TERMS AND CONDITIONS CONTAINED HEREIN.

BY BOTH PARTIES EXECUTING THIS AGREEMENT IN WRITING, OR THE ORDERING ACTIVITY EXECUTING A PURCHASE ORDER INCORPORATING THIS AGREEMENT IN WRITING, YOU ARE INDICATING THAT YOU UNDERSTAND THIS AGREEMENT AND ACCEPT ALL OF ITS TERMS. IF YOU ARE ACCEPTING THE TERMS OF THIS AGREEMENT



ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT AND WARRANT THAT YOU HAVE THE AUTHORITY TO BIND THAT COMPANY OR OTHER LEGAL ENTITY TO THE TERMS OF THIS AGREEMENT. IF YOU DO NOT HAVE SUCH AUTHORITY OR IF YOU DO NOT AGREE TO THE TERMS OF THIS EULA, DO NOT INSTALL AND/OR USE THE SOFTWARE.

Capitalized terms used in this Agreement are defined in Section 1 (Definitions). 1. Definitions.

The following definitions apply to capitalized terms used in this Agreement: a. "**Agreement**" means this End User License Agreement ("**EULA**").

b. "**Approved Source**" is 3rd Eye Technologies, Inc., or a distributor or reseller authorized by 3rd Eye Technologies, Inc. to distribute Software in the territory in which You are located.

c. "**Beta**" is a version of the Software that (i) is still in its testing phase and has not yet been released commercially.

d. "**Cloud Services**" means those services provided to You by a cloud services provider which pertain to the operation, administration, maintenance, and provisioning of a cloud infrastructure service including activities involved in controlling, planning, allocating, deploying, coordinating, and monitoring the resources of a network, network planning, configuration management, fault management, security management, performance management, bandwidth management, or other such services. Such services may be licensed as a monthly subscription or on a term subscription basis.



e. "**Documentation**" for a particular Software Version or Release means 3rd Eye's published user guide, release notes and feature listings for that Version or Release.

f. "**Effective Date**" is the date set forth in the Purchase Order, Statement of Work, or similar document or otherwise accepting this Agreement through use of the Software.

g. "**License Metric**" is a parameter for the access or use of the Software, as described in Section 5.

h. "**License Metric Unit**" is a unit of measurement for the number of seats for the License Metric that You purchased for access or use of the Software.

i. "**Licensed Server**" is either: (1) a designated environment; (2) a designated service provider cloud environment; or (3) a single server or cluster of servers operating as a single entity at Your facility that You have identified to 3rd Eye at the time of purchase or download which is running a supported operating or computing platform.

j. "**NFR**" means "Not for Resale" and is limited to demonstration use by a reseller.

k. "**Per Instance License**" is a license of each specific realization of the Software used to implement the 3rd Eye product(s), and each implementation is referred to as an "Instance" herein.

l. "**Proof of Entitlement**" is 3rd Eye's acceptance of Your order, as detailed on Your purchase order, for a license to the Software as set forth in an order confirmation or other 3rd Eye-issued written or electronic confirmation. The Proof of Entitlement must identify You, the Software



licensed, any applicable License Metric and, if applicable, the License Metric Units.

m. "**3rd Eye**" means 3rd Eye Technologies, Inc.

n. "**3rd Eye Platform**" means any hardware, network appliance, equipment or devices marketed, and sold by 3rd Eye Technologies, Inc.

o. "**Release**" is a particular object code image of a Software product that is identified by a release naming convention starting with "x.y.z" and optionally followed by an additional image identifying string.

p. "**Software**" means the software product identified in Your Proof of Entitlement, and includes 1) machine-readable instructions and data, 2) components, files, and modules, 3) any accompanying audio-visual content, and 4) accompanying activation keys, if any, and 5) associated Documentation. Except where the context otherwise requires, Software includes any Update of that Software that You rightfully receive under a Subscription.

q. "**Special Purpose License**" means any of the licenses described in Section 6 of the Agreement.

r. "**Subscription License**" means a license to Software for a finite, fixed term of use.

s. "**Update**" a. means software that is an upgrade, bug fix, patch or other Release of Software licensed hereunder that 3rd Eye makes generally available free of incremental charge to customers.

t. "**Version**" means one or more Releases of a particular Software product with a common "x.y" naming convention in the first two places of the Release identifier.



u. "**You**" means the Ordering Activity under GSA Schedule contracts identified in the Purchase Order, Statement of Work, or similar document that is the original end user purchaser of a license to the Software from an Approved Source as set forth in the Proof of Entitlement.

v. "**Your Data**" means the substantive data input by You.

2. License Grant.

a. Grant of License. When You purchase or rightfully receive a license to the Software, 3rd Eye grants You, subject to Your payment of the applicable fees, a limited, non-exclusive, revocable, non-sublicensable, non-transferrable right to install (if necessary) and access and use that Software, only in object code form, for the term stated in Your Proof of Entitlement, solely for internal business operations and subject to the terms of this Agreement and in accordance with the Documentation. You may only use the Software in a manner for which You have purchased and obtained a valid license as indicated in Your Proof of Entitlement. The software image that contains Software that You license might also include additional unlicensed features or functionality that You may not use unless You purchase a separate license at an additional fee. Specific features and functionality are included in Your license to the Software only if 3rd Eye Documentation for that Version of the Software identifies those features and functionality as being included.

b.c - No longer applicable

d. Operating System License Grant. In the event that the Software is loaded on a 3rd Eye Platform, the operating system software installed on the 3rd Eye Platform that You have purchased along with the Software, and their respective Updates, may only be used on said 3rd Eye Platform



and may not be installed or used on any other appliance. 3rd Eye virtual appliances may be used on a supported virtual infrastructure.

e. Disaster Recovery. You may make one copy of the Software You have licensed solely for backup and/or disaster recovery purposes

3. Software Name.

Each Software product is identified by a unique name. This name, when combined with a Version number corresponds to a specific base set of product features and functionality identified for that Version of the Software in the Documentation.

4. Term of License.

a. Subscription License. If Your license is a Subscription License, then the term of the Subscription shall be as specified on Your Proof of Entitlement. The Subscription License term specified in Your Proof of Entitlement is non-cancellable and non-refundable. You may, renew or reinstate Your Subscription license subject to the terms of 3rd Eye policies at the time of the renewal and/or reinstatement.

b. Per Instance License. If Your license is a Per Instance License (whether perpetual, subscription or per usage based), then the term shall be as specified on Your Proof of Entitlement.

c. Special Purpose License. If Your license is a Special Purpose License (see Section 6, below), then its term shall be as stated in Your Proof of Entitlement. If You have no Proof of Entitlement or if Your Proof of Entitlement fails to state a license term, then the term of Your Special Purpose License shall be up to a maximum of eight (8) weeks from the date that You first received the Software, whether via download unless otherwise specified in a separate written agreement which You may have entered into with 3rd Eye.



d. Perpetual License. If You have a valid Proof of Entitlement that clearly states that Your license is "Perpetual", then, except as stated below, Your license is perpetual, subject only to termination for non-payment of license fees or other breach of this Agreement. An otherwise Perpetual license to the operating system software installed on the 3rd Eye Platform, along with the Software, and their respective Updates will nonetheless terminate if and when You sell or otherwise transfer the 3rd Eye Platform on which You use it.

5. License Metrics.

License Metrics include the following:

- a. Named Users - the number of individuals to which You and Your authorized users grant access for one or more services furnished, managed, or provisioned by any Instance of the Software. A Named User who accesses such services through multiple devices is nonetheless counted as a single Named User.
- b. Concurrent Sessions - the number of connections to which You and Your authorized users grant access for one or more services concurrently furnished, managed, or provisioned by any Instance of the Software.
- c. Other Forms of License. Other License Metrics may be defined for specific Software as specified in Your Proof of Entitlement.

6. Special Purpose Licenses.

Special Purpose Licenses are limited, short-term licenses that may not be used for any production or commercial application or similar use.

- a. NFR-based License. If Your Proof of Entitlement for certain Software (or a separate written agreement with 3rd Eye) identifies Your license as "Not for Resale" or with words of like meaning, AND if You are a 3rd



Eye-authorized distributor or reseller, then for the license term (see Section 4, above) You may use the Software, but only to demonstrate features and performance of the Software to prospective buyers, and only while You remain a 3rd Eye-authorized distributor or reseller. The Software provided under this license may not be resold.

b. Evaluation/Beta Use-based License. If Your Proof of Entitlement for certain Software (or a separate written agreement with 3rd Eye) identifies Your license as "Evaluation Use", "Beta Use" or with words of like meaning, then for the license term (see Section 4, above) You may install and use the Software, but only for internal evaluation of the Software.

7. License Restrictions; Limitations and Prohibitions.

This Section 7 supersedes any contrary provision elsewhere in this Agreement and applies to all varieties of licenses, whether Per Instance, Special Purpose, Subscription, Perpetual or otherwise:

a. No Rights or Licenses Implied. Licenses or rights in the Software not expressly granted in this Agreement shall not arise by implication or otherwise.

b. Approved Source. You shall have no right or license in the Software unless You rightfully received the Software from an Approved Source.

c. No Sublicensing or Assignment. You may not sublicense, transfer or assign to another entity, whether voluntarily or by operation of law, any right or license in or to

the Software or under any Proof of Entitlement. Any such attempted sublicense, transfer or assignment shall be void.



d. Restructures. If You are a party to a transaction (or related series of transactions) involving a merger, consolidation or other corporate reorganization where You do not survive the transaction(s), the transaction(s) shall also be deemed a prohibited transfer.

e. You are Sole Licensee. No rights or licenses in the Software shall arise under this Agreement in favor of anyone other than You.

f. No longer applicable

g. Restrictions on Charging a Fee for Access or Use. You shall not allow any authorized user of the Software or other third party to grant anyone else access for a fee or other consideration to services, content or resources that are generated, managed, distributed, provisioned, billed or enabled by the Software, except in the case of vADC where such restrictions may not apply.

h. Other Use Restrictions and Prohibitions. Neither You nor Your Named Users shall, directly or indirectly:

(i) Decompile, disassemble or reverse engineer the Software or modify, unbundle, or create derivative works based on the Software, except as expressly permitted by applicable law without the possibility of contractual waiver. If the law requires 3rd Eye to provide interface information to You to adapt the Software, 3rd Eye, at its option, may either (A) provide the information to You subject to Your acceptance of non-disclosure and use limitation terms that 3rd Eye reasonably requires, or (B) perform that adaptation itself at a reasonable charge for services;

(i) Copy the Software except for archival purposes or as necessary for You to install and make use of the Software as expressly licensed by 3rd Eye;



(iii) Detach or separate any libraries, files, modules or other components embedded within a Software product or within a particular software image You have received even if any such library, file, module or other component is separately licensable, or use any such modules, files or other components separately from the Software product or software image in which it is embedded (except to the extent that a documented feature of the Software product is implemented by doing so);

(iv) Furnish any copy of the Software or other means of access to the Software to any third party other than to Your contractor(s) solely for Your benefit in performing contract services for You and in that case only if that contractor has agreed to adhere to the terms of this Agreement. If You do furnish Software or access to Software to Your contractor(s), You shall remain fully and primarily responsible to 3rd Eye for compliance with all provisions of this Agreement;

(v) Remove (or, if the license includes the right to make copies of the Software, fail to include in those copies) any readme files notices, disclaimers, marks and labels included in the Software as delivered by 3rd Eye;

(vi) Use or allow use of the Software in violation of any applicable law or regulation or to support or facilitate any illegal activity;

(vii) Use the Software or allow anyone else to use the Software for benchmarking or other testing not related to Your internal use;

(viii) Attempt to gain unauthorized access to the Software or its related systems or networks;

(ix) Copy any ideas, features or functions or graphics of the Software; or

i.Reserved.



8. Termination.

a. Early Termination for Breach. When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, 3rd Eye shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer.

b. Effect of Termination or Expiration. If Your license term expires without renewal or reinstatement or otherwise terminates, then You shall promptly destroy or return to 3rd Eye all copies of the Software and related documentation in Your possession or control. In the event You have a paid cloud-based Subscription License, 3rd Eye may permit You to access the Software solely to the extent necessary for You to retrieve a file of Your Data provided You request such access within sixty (60) days prior to the termination of the paid Subscription license. You agree and acknowledge that 3rd Eye has no obligation to retain Your Data and that Your Data may be irretrievably deleted sixty (60) days following the termination of the Subscription License.

c. Survival. The provisions of Sections 1, 7, 8.b, 8.c, and 9-27 shall survive termination or expiration of this Agreement.

9. Confidentiality.

You agree that aspects of the Software and associated documentation are the confidential property of 3rd Eye. As such, You shall exercise all reasonable commercial efforts to maintain the Software and associated documentation in confidence, which, at a minimum includes restricting access to the Software to Your employees and contractors having a need to use the Software for Your internal business purposes. 3rd Eye



recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which may require that certain information be released, despite being characterized as “confidential” by the vendor.

10. Your Data

You shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, exportability, appropriateness, and ownership of Your Data. 3rd Eye treats Your information and Your Data in accordance with its Privacy Policy attached hereto.

11. Ownership.

3rd Eye and 3rd Eye's licensors, respectively, retain exclusive ownership of all right, title, and interest in and to all intellectual property in the Software. Nothing in this Agreement constitutes a sale or other transfer or conveyance of any right, title, or interest in the Software.

12. Limited Warranties/Intellectual Property Indemnification.

a. Software Limited Warranty.

(i) ANY SOFTWARE LICENSED UNDER A SPECIAL PURPOSE LICENSE IS FURNISHED "AS IS" WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED.

(ii) For any other license of Software under this Agreement, 3rd Eye warrants for Your sole benefit that for a period of ninety (90) days from the Effective Date (the "Software Warranty Period"), the Software shall substantially conform to the Documentation. You may not make a software warranty claim after the lapse of the Software Warranty Period. YOUR SOLE AND EXCLUSIVE REMEDY AND THE ENTIRE LIABILITY OF 3rd Eye FOR BREACH OF ANY WARRANTY REGARDING SOFTWARE UNDER THIS SECTION 12 SHALL BE THE REPLACEMENT OF THE DEFECTIVE SOFTWARE.



b. No warranty will apply if the Software (i) has been altered, except by 3rd Eye; (ii) has not been installed, operated, repaired, or maintained in accordance with the Documentation and instructions supplied by 3rd Eye; (iii) has been subjected to unreasonable physical, thermal or electrical stress, misuse, negligence, or accident or (iv) has been licensed pursuant to a Special Purpose License. In addition, Software is not designed or intended for (i) use in the design, construction, operation or maintenance of any nuclear facility, (ii) navigating or operating aircraft; (iii) operating life-support or life-critical medical equipment or (iv) incorporation in a dwelling or for personal, family, or household purposes or otherwise for use as a consumer product. You are solely responsible for backing up its programs and Your Data to protect against loss or corruption

c. Disclaimer of All Other Warranties. EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 12, TO THE EXTENT PERMITTED BY LAW, 3rd Eye DISCLAIMS ALL WARRANTIES IN AND TO THE SOFTWARE (WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE), INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, OR ARISING FROM A COURSE OF DEALING, LAW, USAGE, OR TRADE PRACTICE. 3rd Eye DISCLAIMS ANY WARRANTY, REPRESENTATION OR ASSURANCE THAT THE SOFTWARE, OR ANY EQUIPMENT OR NETWORK RUNNING THE SOFTWARE, WILL OPERATE WITHOUT ERROR OR INTERRUPTION, OR WILL BE FREE OF VULNERABILITY TO INTRUSION OR ATTACK. TO THE EXTENT AN IMPLIED



WARRANTY CANNOT BE EXCLUDED, THAT WARRANTY IS LIMITED IN DURATION TO THE EXPRESS WARRANTY PERIOD. BECAUSE SOME STATES OR JURISDICTIONS DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, THE ABOVE LIMITATION MAY NOT APPLY. YOU MAY ALSO HAVE OTHER RIGHTS THAT VARY FROM JURISDICTION TO JURISDICTION. This disclaimer and exclusion shall apply even if the express warranty fails of its essential purpose.

d. Indemnification. 3rd Eye shall have the right to intervene to defend and indemnify You, at its own expense, from any suit brought against You based upon a claim that the Software infringes any third party trade name, patent or copyright (“IP Claims”) and will pay all damages and costs that a court awards against You as a result of such claim, provided that You: (i) promptly give 3rd Eye written notice of such IP Claim after becoming aware of it and furnish 3rd Eye with a copy of each communication, notice or other document exchanged with the claimant relating to the IP Claim; (ii) give 3rd Eye control of the defense and settlement of the IP Claim; and (iii) fully cooperate with 3rd Eye in the defense or settlement of such claim. 3rd Eye shall have no obligation or liability with respect to any IP Claim, which is based in whole or part upon: (a) the combination, operation or use of the Software with any hardware, software or other device supplied by a party other than 3rd Eye and the claim would not have arisen but for such combination, operation or use; (b) any modification of the Software which is not pre-approved by 3rd Eye in writing; (c) any specifications, designs or instructions provided to 3rd Eye by or on behalf of You; (d) Your failure to promptly modify the Software (e.g., install a supported Release provided by 3rd Eye), if the claim could have been avoided had You followed 3rd Eye’s directions for the implementation of such modification; or (e) use of the Software in a manner other than that for



which it was designed or in a manner other than as specified by 3rd Eye. If use of the Software is enjoined or threatened to be enjoined in connection with an IP Claim, 3rd Eye may, at its expense, either: (y) obtain for You the right to continue to use the Software, or (z) replace the Software with non-infringing software that has substantially similar features and functionality, the use of which is not restricted or prohibited. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516. If in 3rd Eye's sole judgment, neither of the foregoing actions is reasonably available to it, then 3rd Eye will refund the amount paid by You for the Software depreciated on a five year straight-line basis. THE REMEDIES SET FORTH IN THIS SECTION 12.d ARE YOUR SOLE AND EXCLUSIVE REMEDIES FROM 3rd Eye WITH RESPECT TO ANY IP CLAIM.

13. Limitation of Damages. To the extent permitted by law:

a. IN NO EVENT SHALL THE CUMULATIVE LIABILITY OF 3rd Eye, ITS DIRECTORS, OFFICERS, EMPLOYEES, AFFILIATES, SUPPLIERS AND LICENSORS TO YOU FROM ALL CAUSES OF ACTION AND ALL THEORIES OF LIABILITY (WHETHER UNDER CONTRACT OR STATUTE, IN TORT (INCLUDING PRODUCT LIABILITY) OR OTHERWISE), EXCEED THE PRICE PAID BY YOU FOR LICENSED RIGHTS TO THE SOFTWARE, FOR THE CURRENT TERM.

b. IN NO EVENT SHALL ANY BREACH BY 3rd Eye IN CONNECTION WITH ANY REPRESENTATIONS, WARRANTIES OR COMMITMENTS, EXPRESS OR IMPLIED, RELATING TO THE SOFTWARE EXCUSE YOUR UNAUTHORIZED USE OF



SOFTWARE OR IMPAIR 3rd Eye'S RIGHT TO TERMINATE ANY LICENSE BASED ON YOUR BREACH OF THIS AGREEMENT.

c. NEITHER 3rd Eye NOR ITS DIRECTORS, OFFICERS, EMPLOYEES, AFFILIATES, SUPPLIERS OR LICENSORS SHALL BE LIABLE FOR ANY LOST PROFITS, LOSS OF YOUR DATA, OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES ARISING FROM THIS AGREEMENT OR USE OF THE SOFTWARE. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO (1) PERSONAL INJURY OR DEATH RESULTING FROM LICENSOR'S NEGLIGENCE; (2) FOR FRAUD; OR (3) FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW.

d. BECAUSE SOME JURISDICTIONS DO NOT ALLOW LIMITATION OR EXCLUSION OF CONSEQUENTIAL OR INCIDENTAL DAMAGES, SOME OR ALL OF THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU.

e. RESERVED.

f. 3rd Eye has set its prices and entered into this Agreement in reliance upon the disclaimers of warranty and the limitations of liability stated above. Those disclaimers and limitations reflect an allocation of risk between 3rd Eye and You, and they form an essential basis of the bargain between 3rd Eye and You.

14. Compliance with Laws; Export Requirements.

You shall comply with all applicable laws and regulations in connection with the movement and use of the Software. You acknowledge and agree



that the Software as well as related technical data and Documentation may contain encryption or encryption technology and are all subject to legal and regulatory controls and restrictions on export and re-export, including those of the U.S. Department of Commerce. You warrant and represent that You are not on any Denied Persons list or other list published by the US Government of parties to whom exports or re-exports of products subject to export controls are forbidden, that no Software is located in or controlled from a site in a Group E country, and that You are not using any Software or technology furnished hereunder to further activities in support of the development, manufacture or use of nuclear fuel or weapons, missiles, or chemical or biological weapons. You further covenant that You will immediately notify 3rd Eye if at any time those warranties and representation become no longer accurate. Regardless of any disclosure You might make to 3rd Eye of an ultimate destination of the Software, You shall not export,

either directly or indirectly, any Software without first obtaining any and all necessary approvals from the U.S. Department of Commerce or any other agency or department of the United States Government as required.

15. Commercial Computer Software.

The Software is a "commercial item" as defined at Federal Acquisition Regulation (48 C.F.R.) ("FAR") section 2.101 comprised of "commercial computer software" and "commercial computer software documentation" as those terms are used in FAR 12.212. Consequently, regardless of whether You are the US Government or a department or agency thereof, You shall acquire only those rights with respect to the Software that are set forth in this Agreement and the Proof of Entitlement.



16. Federal Provisions.

Notwithstanding any provision of law, regulation or policy, if You are an employee of an agency of the government of the United States of America (“federal agency”) and are using 3rd Eye software or services on behalf of that federal agency, in performance of your official duties, the following sections of the Agreement are amended as follows. (1) Section 19 Governing Law does not apply. This Agreement shall be governed, interpreted and enforced in accordance with the federal laws of the United States of America; to the extent permitted by federal law, the laws of the State of California will apply in the absence of federal law. (2) The entirety of Section 7.i, concerning license restrictions, limitations, and prohibitions, and the second sentence of Section 13.e, concerning the limitation of damages, do not apply to federal agencies. Liability of a federal agency for any breach of the terms of service or this Agreement, or any claim arising from the terms of service or this Agreement, shall be determined under the Federal Tort Claims Act, or other governing authority. Liability of 3rd Eye for any breach of this Agreement, or any claim arising from this Agreement, shall be determined by applicable federal law.

17. Audit.

3rd Eye has the right to inspect and audit You and require You to provide written assurance satisfactory to 3rd Eye to confirm compliance with the EULA, including, without limitation, requesting You to email 3rd Eye a report generated by the Software detailing use of the Software by You. At 3rd Eye’s sole option, 3rd Eye may invoice You, and You agree to pay, for any (i) throughput amounts, and (2) use of Software functions or features and other related software which exceeds or differs from use of the Software in a manner for which You have purchased and obtained a valid license as indicated in Your Proof of Entitlement.



18. Third Party Software.

Any licensor of 3rd Eye whose software is embedded in the Software shall be a third party beneficiary with respect to this Agreement, and that licensor shall have the right to enforce this Agreement in its own name as if it were 3rd Eye. Certain third party software may be provided with the Software and is subject to the accompanying license(s), if any, of its respective owner(s). This Software is licensed subject to open source software licenses.

19. Governing Law.

This Agreement (including all documents incorporated herein) shall be governed by the Federal laws of the United States. The provisions of the U.N. Convention for the International Sale of Goods shall not apply. The provisions of the Uniform Computer Information Transactions Act shall not apply. For any disputes arising under this Agreement that You may have with 3rd Eye, You hereby consent to the personal and exclusive jurisdiction of, and venue in the federal and state courts located in Santa Clara County, California.

20. Force Majeure. Excusable delays shall be governed by FAR 52.212-4(f) .

21. Transition of This Agreement.

If You licensed any Software from 3rd Eye under a different End User License Agreement, then this Agreement shall apply to that Software if and when, the current License Agreement that You are under expires, You either purchase additional License Metric Units for the Software, renew the license at the end of the license term, or reinstate the license after the license expires.

22. Complete Agreement; Modifications.

Except as otherwise provided in a separate agreement between You and



3rd Eye, this Agreement, together with the underlying GSA Schedule Contract, Schedule Pricelist, Purchase Order(s), constitutes the entire agreement between the parties regarding its subject matter and supersedes all prior agreements, commitments or representations, oral or written related to the Software. The terms and conditions of this Agreement will supersede all pre-printed terms and conditions contained on any purchase order, task order or other business form submitted by either party to the other. Except as otherwise provided in a separate agreement between You and 3rd Eye, this Agreement may not be amended or modified except by a writing executed by the duly authorized representatives of both parties.

23. Severability.

If any portion of this Agreement is held invalid, the parties agree that such invalidity shall not affect the validity of the remainder of this Agreement.

24. Notification.

Except as otherwise provided elsewhere in this Agreement, any report or notice under this Agreement shall be given in a writing, if to 3rd Eye by mail to 13800 Coppermine Rd. Suite 149 Herndon, VA 20171 USA, Attn.: Legal Department, provided that the notice identifies

You by name, address and email address; or, if to You, by email to Your contact email address or by mail addressed to Your street address that is associated with Your user account for registration with 3rd Eye. If You have no such user account, then notification shall be deemed given to You by emailing or mailing notice to any office or contact email address for the Approved Source from which You acquired Your license.

25. Waiver.

The failure of 3rd Eye to require Your performance of any provision of



this Agreement shall not affect 3rd Eye's full right to require such performance at any time thereafter; nor shall its waiver of a breach of any provision hereof be taken to be a waiver of the provision itself.

27. Data Use.

3rd Eye may collect, compile or process a variety of statistical and other information about You and end users of the Software and associated hardware including:

- Device identifiers, IP addresses, and other information about computing systems, applications and networks;
- End user names, email addresses, phone numbers, IMEIs;
- Information about activity on computing systems, applications and networks;
- File and communications content and metadata; and
- Information provided to us through cloud services and dashboards associated with the Software.



Subject to applicable contractual and legal restrictions, we use the information described above (sometimes in combination with other information we obtain) for the following purposes:

- To analyze and improve the Software;
- To monitor adoption rates of Updates to the Software;
- To provide maintenance and technical support;
- To provide Updates;
- To manage and renew Subscription Licenses;
- To enforce the legal terms that govern the Software;



- To comply with applicable laws and to protect rights and property;
and
- For other purposes requested or authorized by You.

3rd Eye conducts the above activities on the basis of its legitimate interests in operating our business and protecting our customers. Where appropriate, these activities also are conducted on the basis of consent.

-END OF DOCUMENT-