

# INTTENSITY

## APPENDIX E TO DIR CONTRACT NO. DIR-SDD-1716 SOFTWARE LICENSE AGREEMENT

This **Software License Agreement** (the "**Agreement**") is made on \_\_\_\_\_, 20\_\_\_\_ ("**Effective Date**") by and between INTTensity Corporation, a Maryland corporation, with its principal place of business at 5523 Research Park Drive, Suite 325 Catonsville, Maryland 21228 ("**INTTensity**"), and \_\_\_\_\_, a \_\_\_\_\_, with its principal place of business at \_\_\_\_\_ ("**Licensee**").

**Whereas**, INTTensity provides certain Natural Language Processing algorithms that allow understanding of massive text sets from social media and internal documents within an organization through pictorial renderings (the "**Software**" as described below); and

**Whereas**, Licensee desires to obtain, and INTTensity desires to grant to Licensee, a license to use the Software pursuant to the terms and conditions defined in this Agreement.

**Now, Therefore**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

### 1. DEFINITIONS.

**1.1** To the extent allowed by the Texas Public Information Act, "**Confidential Information**" shall mean any non-public information of a party (the "**Disclosing Party**") that is designated as confidential, or that the recipient (the "**Receiving Party**") knew or reasonably should have known was confidential under the circumstances surrounding disclosure. Confidential Information shall not include any information which: (a) the Receiving Party can demonstrate was rightfully in its possession prior to the date of disclosure to it by the Disclosing Party; (b) at the time of disclosure or later, is published or becomes part of the public domain through no act or failure to act on the part of the Receiving Party; (c) the Receiving Party has developed independently without reference to any Confidential Information of the Disclosing Party; (d) the Receiving Party can demonstrate came into its possession from a third-party who had a bona fide right to make such information available; or (e) is required to be disclosed pursuant to the Texas Public Information Act.

**1.2 "Designated Site"** means the location(s) at which the Software may be installed as specified in Exhibit A.

**1.3 "Documentation"** means the standard user documentation for the Software that INTTensity makes generally available to its customers.

**1.4 "Intellectual Property Rights"** means patent rights (including patent applications and disclosures), copyrights, trademarks, trade secrets, know-how and any other intellectual property rights recognized in any country or jurisdiction in the world.

**1.5 "Licensed Configuration"** means the authorized configuration of the Software as specified in Exhibit A.

**1.6 "License Term"** means the applicable period of time set forth in Exhibit A during which Licensee is authorized to use the Software, subject to the terms of Section 10.

**1.7 "Maintenance Services"** means the general maintenance and support services provided by INTTensity, as set forth in Exhibit B, attached hereto, and as may be modified as permitted in Section 4.1.

**1.8 "Software"** means (a) the INTTensity software products, in object code form, and related Documentation as described in Exhibit A, and ("**INTTensity Software**") and (b) the INTTensity web-based products and related Documentation as described in Exhibit A ("**INTTensity Service**").

**1.9 "Third Party Software"** means Software or functionality provided as a component or feature of the Software that is subject to a separate third party license agreement.

### 2. LICENSE.

**2.1 Grant of License.** Subject to Licensee's compliance with the terms and conditions of this Agreement (including, without limitation, payment of the applicable fees in accordance with Section 5.1), INTTensity grants to Licensee a limited, nonexclusive, nontransferable, license for the License Term: (a) (i) to install and use, in accordance with the applicable Documentation, the INTTensity Software only in the Licensed Configuration at the Designated Site and only for Licensee's internal use; and (ii) to copy the Software as reasonably necessary to exercise the license rights granted in subsection (a)(i), including making a reasonable number of copies for backup and archival purposes; and (b) to access and use, in accordance with the applicable Documentation, the INTTensity Service only in the Licensed Configuration at the Designated Site and only for Licensee's internal use. All rights not expressly granted to Customer are reserved by INTTensity and its licensors (if any).

**2.2 License Restrictions.** Licensee has no right to transfer, sublicense or otherwise distribute or make available the Software to any third party. Licensee will not copy or modify the Software, in whole or in part, except as expressly authorized in this Agreement. Licensee will not lease, lend or rent the Software, use the Software to provide service bureau, time-sharing or other computer services to third parties, or otherwise provide or make the functionality of the Software available to third parties. Licensee acknowledges that the Software contains patented and copyrighted products and materials as well as trade secrets of INTTensity and its licensors, and, in order to protect such trade secrets and other interests that INTTensity and its licensors may have in the Software, Licensee agrees not to disassemble, decompile or reverse engineer the Software nor permit any third party to do so, except to the extent such restrictions are prohibited by law.

### **2.3 Limited Rights (Reserved)**

**2.4 Government Rights.** Any use, duplication, or disclosure of the Software by the U.S government is subject to restrictions as set forth in this Agreement and as provided in DFARS 227.7202-1(a) and 227.7202-3(a) (1995), DFARS 252.227-7013(c)(1)(ii) (OCT 1988), FAR 12.212(a) (1995), FAR 52.227-19, or FAR 52.227-14 (ALT III), as applicable.

**2.5 Ownership.** Licensee expressly acknowledges that, as between INTTensity and Licensee, INTTensity and/or INTTensity's subsidiaries and INTTensity's licensors, own all worldwide right, title and interest in and to the Software, including all worldwide Intellectual Property Rights therein. Licensee will not delete or in any manner alter the copyright, trademark, and other proprietary rights notices appearing on the Software as delivered to Licensee. Licensee will reproduce such notices on all copies it makes of the Software.

**2.6 License Keys.** Licensee acknowledges that some or all of the Software and/or its components may require license keys that restrict use of the Software that (1) may restrict the number and clock speeds of CPU's licensed, and (2) the number of named users as applicable, and further, that the Software may require activation upon installation and from time to time based on events that include maintenance updates of the Software. Failure to activate within thirty (30) days after installation may cause the Software to cease working.

**2.7 Verification and Audit.** At INTTensity's written request, Licensee will furnish INTTensity with a certification signed by an officer of Licensee verifying that the Software is being used pursuant to the terms of this Agreement. Upon at least thirty (30) days prior written notice, INTTensity may audit Licensee's use of the Software to ensure that Licensee is in compliance with the terms of this Agreement. Any such audit will be conducted during regular business hours at Licensee's facilities and will not unreasonably interfere with Licensee's business activities. Licensee will provide INTTensity with access to the relevant Licensee records and facilities. If an audit reveals that Licensee has underpaid fees to INTTensity during the period audited, then INTTensity will invoice Licensee, and Licensee will promptly pay INTTensity, for such underpaid fees based on INTTensity's prices in effect at the time the audit is completed. INTTensity's personnel conducting the audit must comply with any security measures the Licensee reasonably deems appropriate.

## **3. MAINTENANCE AND SUPPORT.**

**3.1 Maintenance and Support.** INTTensity will provide Licensee with Maintenance Services for the Software, subject to Licensee's payment of INTTensity's Maintenance Services fees. INTTensity's current Maintenance Services and related fees and payment terms are specified in Exhibit A and Exhibit B incorporated as part of this Agreement. Pricing shall be in accordance with Section 4C of DIR Contract No. DIR-SDD-1716. INTTensity reserves the right to amend its Maintenance Services policy and applicable fees at any time, effective no sooner than thirty (30) days after Licensee's receipt of written notice of such change.

**3.2 Exclusions to Maintenance and Support.** INTTensity will have no obligation to provide Maintenance Services for problems in the operation or performance of the Software to the extent caused by any of the following (each, a "**Licensee-Generated Error**"): (a) non-INTTensity software or hardware product or use of the Software in conjunction therewith, including, but not limited to, installation of the Software on any computer hardware that is not supported by INTTensity; (b) altered, damaged or modified Software (excluding customizations made by INTTensity contained in the Software); (c) Licensee's negligence, abuse or misapplication of the Software; (d) use of the Software (i) other than as specified in, or outside the scope of, this Agreement or the Documentation, or (ii) in breach of this Agreement; (e) Licensee's use of other than the current version of the Software or any error corrections or updates thereto provided by INTTensity as described in Exhibit B; or (f) INTTensity's compliance with any designs, specifications or plans provided by Licensee. If INTTensity determines that it is necessary to perform Maintenance Services for a problem in the operation or performance of the Software that is caused by a Licensee-Generated Error, then INTTensity will notify Licensee thereof as soon as INTTensity is aware of such Licensee-Generated Error and INTTensity will have the right to invoice Licensee at INTTensity's then-current time and materials rates for all such Maintenance Services performed by INTTensity. Pricing shall be in accordance with Section 4C of DIR Contract No. DIR-SDD-1716.

## **4. ORDERING AND DELIVERY.**

**4.1 Ordering.** The initial purchase of Software licenses and/or Maintenance Services is set forth in the attached Exhibit A. If Licensee elects to purchase additional Software licenses and/or Maintenance Services, such purchase shall be memorialized in a new Exhibit A executed by both parties in writing and incorporated into this Agreement by reference.

**4.2 Shipping and Handling.** The price to Licensee shall include all shipping and handling fees. Shipments will be FOB Licensee's site. No additional fees shall be charged to the Licensee for standard shipping and handling. If a Licensee requests expedited delivery, Licensee will be responsible for any charges for expedited delivery.

## 5. PAYMENT.

**5.1 Fees and Expenses.** Licensee will pay INTTensity the total fees for all Software, Maintenance Services, and/or other services (such as technical services) as specified in Exhibit A. Payment shall be in accordance with Section 7C of Appendix A, DIR Contract No. DIR-SDD-1716. Travel reimbursement shall be in accordance with section 4.G. of DIR Contract No. DIR-SDD-1716. As per Section 151.309, Texas Tax Code, Governmental Customers under this Contract are exempt from the assessment of State sales, use and excise taxes. Further, Customers under this Contract are exempt from Federal Excise Taxes, 26 United States Code Sections 4253(i) and (j).

## 6. WARRANTY.

**6.1 Limited Warranty.** For a period of thirty (30) days following the date of INTTensity's invoice (the "**Warranty Period**"), INTTensity warrants that (i) the Software will conform substantially to the published Documentation; (ii) the media on which the Software is provided (if any) will operate free of any material defect or error; and (iii) the Documentation will be sufficiently detailed to allow Licensee to operate and use the Software. Licensee's sole remedy and INTTensity sole obligation in the event of a breach of the foregoing warranty is, at INTTensity's option, correction of the substantial non-conformity or a refund of the applicable license fee paid by Licensee for the Software. This warranty applies only to defects for which Licensee has notified INTTensity during the Warranty Period. INTTensity shall have no obligation under the foregoing warranty to the extent a breach thereof is the result of any Licensee-Generated Errors.

**6.2 Warranty Disclaimer.** LICENSEE AGREES AND ACKNOWLEDGES THAT, WITH THE EXCEPTION OF THE LIMITED WARRANTY DESCRIBED IN SECTION 6.1 ABOVE, THE SOFTWARE, SERVICES AND ANY THIRD PARTY SOFTWARE IS PROVIDED BY INTTENSITY AND ITS LICENSOR'S HEREUNDER "AS IS" AND WITHOUT ANY FURTHER WARRANTY OF ANY KIND. INTTENSITY AND ITS LICENSORS DO NOT WARRANT: (1) THAT THE SOFTWARE OR THIRD PARTY SOFTWARE WILL OPERATE IN THE COMBINATIONS THAT LICENSEE MAY SELECT FOR USE, OR (2) THAT THE OPERATION OF THE SOFTWARE, SERVICE OR THIRD PARTY SOFTWARE WILL BE ERROR-FREE OR UNINTERRUPTED OR THAT ALL SOFTWARE ERRORS WILL BE CORRECTED. EXCEPT AS SET FORTH IN THIS AGREEMENT, INTTENSITY AND ITS LICENSORS MAKE NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES ARISING OUT OF COURSE OF DEALING, USAGE OR TRADE. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED FROM INTTENSITY OR LICENSEE OR ELSEWHERE WILL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THIS AGREEMENT.

## 7. INDEMNIFICATION.

**7.1 Infringement Indemnity.** Infringement Indemnity shall be in accordance with Section 9.A.2. of Appendix A to DIR Contract No. DIR-SDD-1716.

**7.2 Injunctions.** If Licensee's use of any of the Software hereunder is, or in INTTensity's opinion is likely to be, enjoined due to the type of claim specified in Section 7.1 above, INTTensity may, at its sole option and expense: (a) procure for Licensee the right to continue using such Software under the terms of this Agreement; (b) replace or modify such Software so that it is non-infringing and substantially equivalent in function to the enjoined Software; or (c) if options (a) and (b) above cannot be accomplished despite INTTensity's reasonable efforts, then INTTensity may terminate Licensee's rights and INTTensity's obligations hereunder with respect to such Software and refund to Licensee the unamortized portion of the license fees paid for such Software, based upon a straight-line five (5) year depreciation commencing as of the date of receipt by Licensee of such Software.

**7.4 Sole Remedy.** Indemnification shall be in accordance with Section 9.A. of Appendix A to DIR Contract No. DIR-SDD-1716.  
**CONFIDENTIALITY.** Except as required by the Texas Public Information Act, the Receiving Party will not, at any time, disclose to any person or use for its own benefit or the benefit of anyone, the Disclosing Party's Confidential Information without prior written consent of the Disclosing Party. The Receiving Party shall limit disclosure of Confidential Information to its employees or agents who have a need to know related to the parties' business relationship. Upon termination of this Agreement, the Receiving Party shall promptly deliver to the Disclosing Party or, except as required by applicable records retention laws and policies, destroy any and all such information in its possession or under its control, and any copies made thereof which the Receiving Party may have made, except as the parties have agreed in writing to retain. The Receiving Party shall not be liable for disclosure of Confidential Information if made in response to a valid order of a court or authorized agency of government; provided that, if available, five (5) days' notice first be given to the Disclosing Party so a protective order, if appropriate, may be sought by such party.

**9. LIMITATION OF LIABILITY.** Limitation of Liability shall be in accordance with Section 9.K. of Appendix A to DIR Contract No. DIR-SDD-1716.

## 10. TERM AND TERMINATION.

**10.1 Term.** This Agreement will begin on the Effective Date and may be extended annually upon thirty (30) days written notice from the Licensee in accordance with the terms of this Agreement. The term of each Software license granted by INTTensity hereunder will begin upon the date of shipment by INTTensity of the Software specified in Exhibit A and will remain in effect during the License Term unless Licensee discontinues use of such Software or unless terminated earlier by either party in accordance with the terms of this Agreement.

**10.2 Termination for Breach.** Each party will have the right to terminate this Agreement or any Software license granted hereunder if the other party breaches any material term of this Agreement and fails to cure such breach within thirty (30) days after written notice thereof. Termination of this Agreement pursuant to this Section 10.2 terminates all Software licenses granted hereunder, but, unless expressly stated in a party's notice of termination pursuant to this Section 10.2, termination of an individual Software license does not terminate this Agreement or any other Software license granted hereunder.

**10.3 Effect of Termination.** Upon termination of this Agreement or of any individual Software license granted hereunder, Licensee will promptly return to INTTensity the applicable Software and all copies and portions thereof, in all forms and types of media, and provide INTTensity with an officer's written certification, certifying to Licensee's compliance with the foregoing.

**10.4 Survival.** The rights and obligations of the parties contained in Sections 1, 2.5, 5, 6.2, 7, 8, 9, 10.3, 10.4, and 11 will survive the termination of this Agreement or of any individual Software license granted hereunder.

## **11. GENERAL.**

**11.1 Remedies are Cumulative.** Unless expressly stated as an exclusive remedy, all remedies available to either party are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy will not be deemed an election of such remedy to the exclusion of other remedies.

**11.2 Assignment.** Neither party may assign this Agreement or any interest herein, or delegate any obligation hereunder without the prior written consent of the other party and such consent will not be unreasonably withheld; provided, however, that such consent shall not be required in the event of an assignment by a party to an acquirer (including, without limitation, an assignment as a result of a merger) of all or substantially all of the business or assets of such party. This Agreement shall bind and inure to the benefit of the parties and their successors and permitted assigns.

**11.3 Force Majeure.** Force Majeure shall be in accordance with Section 10.C. of Appendix A to DIR Contract No. DIR-SDD-1716.

**11.4 Applicable Law.** The laws of the State of Texas shall govern the construction and interpretation of the Contract. Nothing in the Contract or its Appendices shall be construed to waive the State's sovereign immunity.

**11.5 Resolution of Disputes.** Dispute resolution shall be in accordance with Section 10. A. of Appendix A to DIR Contract No. DIR-SDD-1716.

**11.6 Notices.** All notices, requests and demands, other than routine communications under this Agreement, shall be in writing and shall be deemed to have been duly given when delivered, or when transmitted by confirmed facsimile (with a copy provided by another means specified in this Section), or one (1) business day after being given to an overnight courier with a reliable system for tracking delivery, or three (3) business days after the day of mailing, when mailed by United States mail, registered or certified mail, return receipt requested, postage prepaid, and sent to the address on the first page of this Agreement unless otherwise noted on an attachment to this Agreement. Either party may from time to time change the location(s) to receive notices under this Section and by giving the other party prior written notice of the new address and the date upon which the change will become effective.

**11.7 Waiver.** No failure of either party to exercise any power or right granted hereunder to insist upon strict compliance with any obligation hereunder, and no custom or practice of the parties with regard to the terms and performance hereof shall constitute a waiver of the rights of such party to demand full and exact compliance with the terms of this Agreement. No waiver of any provision or right hereunder will be valid unless it is in writing and signed by the party giving it.

**11.8 Severability.** If any portion of this Agreement is held to be unenforceable, the remainder of the Agreement will remain in full force and effect. The unenforceable portion will be modified as necessary to comply with applicable law and, as nearly as possible, to reflect the original intentions of the parties and restore each party as closely as possible to the risks and benefits originally assumed.

**11.9 Entire Agreement; Amendments.** DIR Contract No. DIR-SDD-1716, this Agreement and the Exhibits constitute the entire understanding of the parties with respect to the subject matter hereof, and shall not be amended or modified except by written non-electronic instrument that has been duly executed by the signature of an authorized representative of each of the parties or as otherwise expressly set forth in the Solicitation. Any and all previous agreements and understandings between the parties regarding the subject matter hereof, whether written or oral, are superseded by this Agreement (except for any Confidentiality Agreements to which the parties may have agreed, which shall remain in full force and effect). Any terms and conditions contained in any purchase order or other ordering documents that are inconsistent with or in addition to the terms and conditions of the Solicitation or this Agreement will have no binding effect, unless expressly agreed to in writing by an authorized representative of INTTensity.

**11.10 Relationship of Parties.** Both parties agree that they are independent entities. Nothing in this Agreement shall be construed to create a partnership, joint venture, or agency relationship between the parties. Each party is responsible for the supervision, management and direction of its own employees. Each party is responsible for the payment of compensation to its employees and for any injury to them occurring in the course of their employment for which their employer is responsible and neither party shall be responsible for the supervision, management and direction of the employees of the other party.

**11.11 Export Control.** Licensee agrees to comply fully with all relevant export laws and regulations of the United States ("**Export Laws**") to ensure that neither the Software, nor any direct product thereof are: (a) exported or re-exported directly or indirectly in violation of Export Laws; or (b) used for any purposes prohibited by the Export Laws, including but not limited to nuclear, chemical, or biological weapons proliferation.

**11.12 Counterparts.** This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

**EXHIBIT A**

INNTensity Software: See applicable Purchase Order.

INTTensity Service: See applicable Purchase Order.

License Fees (Site, Configuration): See applicable Purchase Order.

License Term: See applicable Purchase Order.

Maintenance and Other Service Fees: See applicable Purchase Order.

Licensee Representative(s): See applicable Purchase Order.

## EXHIBIT B

Capitalized terms used but not otherwise defined in this Exhibit B shall have the same meaning set forth in the Software License Agreement.

### 1.0 DEFINITIONS

**“Agreement”** shall be defined as the INTTensity Software License Agreement.

**“Business Hours”** means the hours between 9:00 a.m. and 5:00 p.m., Eastern Time, Monday through Friday, other than U.S. federal holidays.

**“Error”** means (a) a failure of the applicable Release to substantially comply with the applicable Documentation that can be reproduced by INTTensity in INTTensity’s designated environment (which will generally require a Workaround (defined below) followed by a code Fix (defined below) distributed via a maintenance release or patch) or (b) a Non-Bugged Case (defined below).

**“Email Support”** means providing an electronic mail address to which Licensee may address messages and questions relating to the Software which will be answered in a timely fashion by INTTensity’s support personnel.

**“Fix”** means the repair or replacement of object or executable code versions of the Software to remedy an Error.

**“Non-Bugged Case”** means available maintenance patches or questions regarding usage of the current Version of the Software or Documentation.

**“Release”** means the Software described in the applicable Exhibit A and includes all applicable Upgrades.

**“Release Designation”** means the number assigned by INTTensity to each release of the Software in accordance with the following format: XX.YY where (i) XX is the Release designation and (ii) YY is the Upgrade designation.

**“Sunset Upgrade”** is defined as the Upgrade prior to the current Upgrade. Maintenance Services will be provided for the current Upgrade and Sunset Upgrade.

**“Telephone Support”** means technical support telephone assistance provided by INTTensity during normal Business Hours from which Licensee may request Software Maintenance Services, and the means of leaving voice messages during periods other than Business Hours.

**“Upgrade”** means a software release in connection with the Software in which either new functionality is added or the architecture is significantly modified from the previous version. An Upgrade shall be designated by a change in the YY variable in the Release Designation.

**“Workaround”** means a change in the procedures followed or data supplied by Licensee to avoid an Error without substantially impairing Licensee’s use of the Software.

### 2.0 SERVICE OFFERINGS

Subject to the terms hereof, during the Maintenance Services Term (defined below) INTTensity will provide Maintenance Services to Licensee. The Maintenance Services are comprised of the following:

- Upgrades for the applicable Release
- Fixes for the applicable Upgrades
- Telephone Support during Business Hours
- Email Support during Business Hours

### 3.0 ERROR CORRECTION SERVICES

**3.1 Correction of Errors.** INTTensity will exercise commercially reasonable efforts to investigate and correct any Errors reported to INTTensity by Licensee in accordance with this Exhibit B. Licensee will inform INTTensity of any Errors by a report (an **“Error**

**Report**”) transmitted to INTTensity via an INTTensity-designated format (which format may include, without limitation, paper, phone, email and/or an INTTensity-designated online portal), which includes, at a minimum, the following information:

- version number of the applicable Software;
- instructions on how to reproduce the Error;
- any other necessary and/or useful information relating to identifying and reproducing the reported Error.

**3.2 Classifications.** INTTensity will, in its commercially reasonable discretion, assign one of the following four (4) severity levels to each Error (or group of Errors) reported by Licensee, and will use commercially reasonable efforts to respond to such Errors in accordance with the response times listed below:

**3.2.1 Severity 1—Critical Impact:** The Software does not function or the functionality of the Software is severely impaired such that Licensee cannot reasonably continue using or accessing such Software, due to the fact that the system hangs or crashes repeatedly or critical functionality is not operative and no workaround is immediately available. Following receipt of notification by Licensee of any Severity 1 Error, INTTensity will use commercially reasonable efforts to confirm the status of such Error within 4 hours. Upon confirmation by INTTensity of a Severity 1 Error, INTTensity will use commercially reasonable efforts to provide Licensee with a workaround. INTTensity will inform Licensee of the status for resolution every two hours unless otherwise agreed by Licensee until a workaround is provided. If no workaround is provided to Licensee on Severity 1 cases, it will be immediately escalated to the Vice President of Worldwide Services within 8 hours. If a workaround is not provided within 24 hours, then the INTTensity CEO will be immediately notified.

**3.2.2 Severity 2—Significant Impact:** Major portions or functionality of the Software do not function in accordance with the functional specifications in the Documentation and/or the Licensee’s use of the Software is significantly impaired or the defect causes an internal error or incorrect behavior causing severe loss of service or severely degraded performance. A customer workaround is available, however operations continue in a restricted fashion. Following receipt of notification by Licensee of any Severity 2 Error, INTTensity will use commercially reasonable efforts to confirm the status of such Error within 8 hours of INTTensity normal business hours. Upon confirmation by INTTensity of a Severity 2 Error, INTTensity will use commercially reasonable efforts to provide Licensee with a Workaround for Non-Bugged Cases within 4 business days. If a Workaround is not provided within 4 business days, then INTTensity will provide Licensee with status reports each business day thereafter. For other than Non-Bugged Cases, a fix will be provided in the next maintenance release.)

**3.2.3 Severity 3—Minor Impact:** Minor portions or functionality of Software do not function in accordance with the functional specifications in the Documentation, Licensee’s use of the Software is slightly impaired and there is a Licensee acceptable Workaround available. Following receipt of notification by Licensee of any Severity 3 Error, INTTensity will use commercially reasonable efforts to confirm the status of such Error within 8 business hours. Upon confirmation by INTTensity of a Severity 3 Error, INTTensity and Licensee joint determination of the correct Workaround, INTTensity will provide a fix in the next subsequent release of the Software.

**3.2.4 Severity 4:** All Errors other than Severity 1, 2 or 3 Errors.

#### **4.0 OBLIGATIONS OF LICENSEE**

**4.1 Licensee Representative.** The Maintenance Services shall be accessed only by the Licensee Representative(s) identified in **Exhibit A**. The Licensee Representative shall be the only person(s) who can submit an Error Report, obtain Telephone Support or otherwise communicate and/or interface with INTTensity regarding the Maintenance Services. The Licensee Representative shall thoroughly research all Errors and related issues in connection with the Software before contacting INTTensity for any Maintenance Services. Licensee, including the Licensee Representative, shall cooperate fully with INTTensity in connection with INTTensity’s provision of the Maintenance Services.

**4.2 Error Documentation.** Upon detection of any Error, Licensee agrees to provide INTTensity a listing of output and other data, including databases and backup systems, which INTTensity may request in order to reproduce operating conditions similar to those present when the Error occurred.

**4.3 Backups.** Licensee acknowledges that it is the sole responsibility of Licensee, at all times, including specifically during all Maintenance Services performed by INTTensity pursuant to this Exhibit B, to protect and maintain an up-to-date and restorable backup of any and all rules, policies, databases, files, utilities, software and other systems of Licensee.

**4.4 Remote Access.** Licensee shall provide INTTensity with remote access to the Software via a virtual private network to Licensee’s network, established and paid for by Licensee, in accordance with the specifications provided by INTTensity (“Remote Access”). All Remote Access by INTTensity will be used only for the purposes of providing the Maintenance Services, including the performance of diagnostics of the Software for the purpose of fault isolation, and auditing Licensee’s compliance with the terms of the Agreement. Licensee acknowledges and agrees that INTTensity may be delayed or prevented from providing certain Maintenance Services when

Remote Access is not available and, therefore, shall have no liability for any such delays or failures to provide the Maintenance Services resulting from the lack of such Remote Access.

**4.5 Facility and Personnel Access.** Licensee agrees to grant INTTensity reasonable access to Licensee's facilities and personnel concerned with the operation of the Software to enable INTTensity to provide certain Maintenance Services. Licensee shall exercise best efforts to obtain any necessary clearances for INTTensity to the extent any such clearances are required for INTTensity to access the applicable facilities. Licensee acknowledges and agrees that INTTensity may be delayed or prevented from providing certain Maintenance Services when such access is not available and, therefore, shall have no liability for any such delays or failures to provide the Maintenance Services resulting from the lack of such access.

## **5.0 TERM; TERMINATION.**

**5.1** The initial term of this Exhibit B shall be one (1) year, commencing on the effective date of the Software License Agreement (or any subsequently executed Exhibit A) (each such initial term, the **"Initial Term"**), and, except as otherwise described herein, the term of this Exhibit B shall be renewed between the parties for successive one (1) year terms thereafter (each such successive term, a **"Renewal Term"**) (the Initial Term and each Renewal Term, collectively, the **"Maintenance Services Term"**) upon thirty (30) days written notice from the Licensee. Invoices and Payment shall be in accordance with Sections 7.B and 7.C. of Appendix A to DIR Contract No. DIR-SDD-1716. **5.2** Either party may terminate this Exhibit B, effective at the end of the Initial Term or at the end of any Renewal Term, by giving written notice to the other party at least sixty (60) days prior to the end of such term.

**5.3** Notwithstanding anything to the contrary herein, this Exhibit B shall terminate automatically and effective immediately with no further action required of either party upon expiration or termination of the Software License Agreement.

**5.4** INTTensity may terminate this Exhibit B upon thirty (30) days prior written notice to Licensee if Licensee has failed to comply with any of the terms and conditions of this Exhibit B or the Software License Agreement and fails to cure its non-compliance within such thirty (30) day period.

**5.5** Notwithstanding any language contained in this Exhibit B to the contrary, INTTensity shall have no obligation to provide Licensee any Maintenance Services at any time during which INTTensity has determined, in its sole and absolute discretion, that Licensee is in breach of any term or condition of this Exhibit B or the Software License Agreement.

**5.6** Termination shall be in addition to, and not in lieu of, any other rights and remedies available to INTTensity.

**5.7** In the event this Exhibit B expires or is terminated for any reason, Licensee agrees that it will not receive any of the Maintenance Services after the effective date of such expiration or termination.

## **6.0 UPGRADES AND FIXES.**

**6.1** INTTensity will, at no additional cost to Licensee, provide Upgrades and Fixes to Licensee when made generally available by INTTensity.

## **7.0 EXCLUSIONS.**

**7.1 INTTENSITY SHALL HAVE NO OBLIGATION TO PROVIDE MAINTENANCE SERVICES, INCLUDING** responding to any inquiries concerning the performance, functionality or operation of the Software or for any Errors resulting or arising from **ANY LICENSEE-GENERATED ERROR OR IN THE FOLLOWING CIRCUMSTANCES:**

- Any cause or causes beyond the reasonable control of HDE (e.g., floods, fires, loss of electricity or other utilities); or
- Changes to Licensee's operating system, network or environment.

**7.2 INTTENSITY SHALL HAVE NO OBLIGATION TO PROVIDE ANY MAINTENANCE SERVICES AT A DESIGNATED SITE OR OTHER LICENSEE LOCATION.**

**7.3** To the extent the parties agree that INTTensity shall provide such Maintenance Services as otherwise expressly excluded under Sections 7.1 and 7.2 above, such Maintenance Services shall be provided at INTTensity's then-current hourly rate and subject to INTTensity's expense reimbursement policy, all of which shall be due and owing to INTTensity with in thirty (30) days after Licensee's receipt of the invoice.

**7.4** For purposes of clarity, the parties agree and understand that INTTensity shall not provide any Releases other than the Release designated in the applicable Exhibit A.

**7.5 THE PARTIES UNDERSTAND AND AGREE THAT, NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, INTENSITY MAKES NO WARRANTIES OR OTHER GUARANTEES AS TO THE MAINTENANCE SERVICES, INCLUDING RESPONSE TIMES TO EMAILS AND PHONE CALLS OR ERROR CORRECTION TIMES.**

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