

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



THIS SOFTWARE LICENSE AGREEMENT, together with all of the Schedules hereto ("Agreement") is made as of the \_\_\_\_ day of \_\_\_\_, 20\_\_ ("Effective Date") by and between Vormetric, Inc. ("Vormetric"), a Delaware corporation with its principal place of business at 3131 Jay Street, Santa Clara, CA 95054-3308, and \_\_\_\_\_, ("Licensee"), with its principal place of business at \_\_\_\_\_.

AGREEMENT:

1 **DEFINITIONS**

1.1 "Appliance" means the Vormetric CoreGuard Server hardware.

1.2 "Appliance Software" means the software installed on the Appliance in executable code.

1.3 "Designated Operating System" means that computer operating system specified in the Order Form.

1.4 "Designated Support Contact" means the individual(s) within Licensee's organization, as listed on the Support Schedule, who will be principally responsible for interfacing with Vormetric's support personnel.

1.5 "Documentation" means the user documentation, release notes, and installation guides provided by Vormetric for the Appliance and the Software.

1.6 "Failure" means a reproducible defect in the Software or Appliance that causes the Appliance or the Software to fail to operate substantially in accordance with the Documentation and that is reported to Vormetric by a Designated Support Contact.

1.7 "Hosting Environment" means Licensee providing to unaffiliated third parties access to the PEM Software including, without limitation, in Licensee's capacity as a service bureau or an application service provider, in connection with Licensee providing application services to Licensee's third party licensees, or in connection with Licensee processing third party data for a fee.

1.8 "Order Form" means each CoreGuard Hardware, Software and Services Quotation and Order Form, supplied by Vormetric, that has been signed by Licensee and Vormetric, that specifies, at a minimum, the number of licenses of the PEM Software being purchased hereunder, the number of units of Appliances being purchased, the PEM Software license fees, the Appliance pricing, the Support Services fees (if purchased), and the effective date of such Order Form.

1.9 "PEM Software" means the thin host-installed CoreGuard Policy Enforcement Module software in executable code.

1.10 "Replacement Appliance" means (i) an Appliance, which can reasonably be installed at the Licensee location, or a pre-tested Appliance that resides at Licensee's location to replace a nonfunctioning Appliance, or (ii) is connected to Licensee's environment but is disengaged and cannot be turned on unless permission to engage the Appliance is granted by Vormetric.

1.11 "Services" means the services to be performed by Vormetric under a Statement of Work, under the terms of the service schedule attached as Exhibit A, or under the terms of this Agreement.

1.12 "Software" means any or all of the PEM Software and Appliance Software, and all updates, upgrades, new versions, new releases, or error corrections that Vormetric may offer to the Licensee or that Licensee is authorized to receive pursuant to this Agreement or, if applicable, the Support Schedule.

1.13 "Support Schedule" means the schedule attached as Exhibit B.

1.14 "Update" means any updates or enhancements to the Software that Vormetric provides to Licensees that receive continuing support services. Updates are releases designated by a number to the left (major) as well as to the right (minor, maintenance) of the first decimal point of the release number for the Software and are provided solely to Licensee so long as no amounts owed by Licensee to Vormetric are past due. Error corrections and Updates provided by Vormetric are subject to the terms and conditions of this Agreement.

2 **LICENSE GRANT**

2.1 **Application Software.** Each CoreGuard Security Server Appliance that Licensee purchases from Vormetric shall include one (1) machine executable copy of the object code of the Appliance Software. Subject to Licensee's

timely payment of the applicable license fee in accordance with the terms of this Agreement, Vormetric grants Licensee a worldwide, non-exclusive, and non-transferable (except as provided in Section 26 ("General")) license to use each copy of the Appliance Software on the Appliance on which such Appliance Software resides.

**2.2 PEM Software.** Each PEM Software license that Licensee purchases from Vormetric will allow Licensee to make one (1) machine executable copy of the object code of the PEM Software from the master copy. Subject to Licensee's timely payment of the applicable license fee in accordance with the terms of this Agreement, Vormetric grants Licensee a worldwide, non-exclusive, and non-transferable (except as provided in Section 26 ("General")) license to reproduce, install and use the number of copies of the PEM Software for which licenses have been purchased by Licensee under this Agreement (as provided on the Order Form(s)). Licensee may reproduce, install and use additional copies of the PEM Software subject to the prior written agreement of Vormetric and Licensee in the form of a mutually executed Order Form and the payment of the applicable license fees by Licensee.

**2.3 Right to Copy.** Licensee may also make one copy of the Software solely for archival or emergency back-up purposes. All copies of the Software must contain all proprietary notices that were included on the original master copy of the Software delivered to Licensee or as subsequently provided in the form of an error correction, Update, or new release. Licensee must provide notice to Vormetric of the number of copies of the Software the Licensee has made upon Vormetric's written request, no more frequently than quarterly.

**2.4 Virtual Sessions.** For each PEM Software license Licensee purchases and provided Licensee has paid the applicable virtual license fee, Licensee may operate no more than one (1) real, and one (1) virtual, session of the PEM Software. Provided that Licensee is not in breach of this Agreement, Licensee may purchase additional licenses to generate virtual sessions of a copy of the PEM Software at such price as may be in effect from time to time.

**3 CERTIFICATION** Within fifteen (15) days following the end of each calendar quarter, or as may be otherwise requested by Vormetric, Licensee agrees to provide Vormetric with a download of the configuration logs indicating the configuration of each appliance, the guard points enabled, and the number of licenses in use, from the Appliance for the prior calendar quarter and a statement, certified to be accurate by an executive officer of Licensee, that the Licensee is in compliance with the limitations on the number of users and other information set forth in Exhibit A.

**4 AUDIT** Vormetric reserves the right to audit Licensee's use of the Software to confirm that each copy of the

Software in use by Licensee is authorized under this Agreement. Any such audit will be performed at any time by Vormetric's employees or representatives, which may be Vormetric's certified public accountants during Licensee's normal business hours upon reasonable prior written notice and subject to Licensee's then-current reasonable procedures regarding access and security. Licensee shall pay to Vormetric any amount disclosed by the audit to be due and owing. Any such audit shall be at Vormetric's expense, but if such audit discloses an underpayment by Licensee of more than five percent (5%) for any year, Licensee shall reimburse Vormetric for the cost of the audit.

**5 DELIVERY OF SOFTWARE AND APPLIANCES**

Vormetric shall ship the initial Appliance units (and associated Appliance Software), and all other ancillary system components listed in the initial Order Form (such as the CoreGuard Host Encryption PCI Subsystem, Media Kit and Accessories, as applicable) with the Appliance, no later than five (5) business days after the Effective Date. Vormetric shall ship the master copy of the PEM Software electronically or with the Appliance, as the parties shall agree. Thereafter, Vormetric agrees to ship to Licensee all additional Appliance units and other ancillary system components within ten (10) business days after receipt of the applicable Licensee purchase order. Shipment of all Appliance units, other ancillary system components and the master copy of the PEM Software under this Agreement will be FOB, Customer's destination. Vormetric agrees to conspicuously label each shipment with the applicable Licensee purchase order number. Hardware items will be deemed delivered to Licensee upon the earlier of Licensee's actual receipt or five business days after submission by Vormetric to a common carrier at Vormetric's facility.

**6 USE AND RESTRICTIONS**

Except as specifically set forth in Section 7, and subject to the limitations set forth in such section, Licensee may use the Software only as described in this Agreement and only for Licensee's own internal operations and data securities management. Except as expressly authorized herein, Licensee shall not cause or permit any of the following: (i) translating, transmitting, modifying, or copying the Software; (ii) exceeding the maximum number of PEM Software licenses or computers and processors permitted to use the PEM Software, as defined in the Order Form, without first receiving written approval from Vormetric; (iii) exceed the number of virtual sessions, as described in Section 2.4; (iv) making copies of the Appliance Software, except as may be specifically permitted under this Agreement for archive or back-up purposes; (v) distributing, sublicensing, renting, or transferring the Software to any third party; (vi) except as otherwise specifically provided in this Agreement, using the Appliance or the Software in a Hosting Environment; or (vii) removing, deleting, or altering any copyright, trademark, or proprietary notices, labels, or marks on the Software, Hardware, or Documentation.

7 **HOSTING RIGHT** Licensee may use the Software in a Hosting Environment, subject to the terms of this Agreement, only if Licensee's core business is providing hosting services to unaffiliated third parties and only if so indicated on the initial Order Form under which this Agreement is delivered. Licensee shall take such actions as are necessary to obligate any Licensee customer to terms and conditions which are at least as protective of Vormetric's rights in the Software and the Appliance including, without limitation, the terms and conditions set forth in Sections 6 (without regard to any right to host), 8, 13, 14, 17.1, 17.3, 20, 21, 22, , and 26.1 of this Agreement. Licensee shall have no right to distribute any Software including, without limitation, any PEM Software, to any third party or install any such Software on any server or other computer hardware outside of the server and Appliance which is used in Licensee's Hosting Environment, except for one copy for back-up purposes. VORMETRIC DISCLAIMS ANY LIABILITY, AND SHALL HAVE NO RESPONSIBILITY, ARISING OUT OF ANY FAILURE OF THE SOFTWARE OR APPLIANCE TO OPERATE AS A RESULT OF ANY HARDWARE OR TECHNOLOGY OTHER THAN THE SOFTWARE OR APPLIANCE INCLUDING, WITHOUT LIMITATION, ANY FAILURE OF DATA TO BE PROPERLY PROCESSED OR TRANSFERRED TO, IN OR THROUGH LICENSEE'S COMPUTER ENVIRONMENT OR ANY FAILURE OF ANY TRANSMISSION HARDWARE, TECHNOLOGY, OR SYSTEM USED BY LICENSEE OR ANY LICENSEE CUSTOMER. LICENSEE SHALL BE SOLELY RESPONSIBLE FOR THE CHOICE OF ANY HARDWARE OR TECHNOLOGY USED IN THE HOSTING ENVIRONMENT IN WHICH THE SOFTWARE MAY BE ACCESSED. TO THE EXTENT AUTHORIZED BY TEXAS LAW AND CONSTITUTION, VORMETRIC SHALL HAVE NO LIABILITY FOR, AND LICENSEE SHALL DEFEND, INDEMNIFY, AND HOLD VORMETRIC HARMLESS FROM AND AGAINST, ANY SHORTFALL IN PERFORMANCE OF THE APPLIANCE, SOFTWARE, OTHER HARDWARE OR TECHNOLOGY, OR FOR ANY INFRINGEMENT OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS, AS A RESULT OF THE USE OF THE APPLIANCE OR THE SOFTWARE IN A HOSTING ENVIRONMENT UNLESS THE SOFTWARE OR THE APPLIANCE WAS THE SOLE CAUSE OF ANY SUCH SHORTFALL OR INFRINGEMENT, AND THEN ONLY TO THE EXTENT EXPRESSLY PROVIDED IN THIS AGREEMENT. LICENSEE SHALL DEFEND, INDEMNIFY, AND HOLD VORMETRIC HARMLESS FROM AND AGAINST ANY COSTS, CLAIMS, OR LIABILITIES ARISING OUT OF ANY AGREEMENT BETWEEN LICENSEE AND ANY THIRD PARTY. NO PROVISION OF ANY AGREEMENT BETWEEN LICENSEE AND ANY THIRD PARTY SHALL BE BINDING ON VORMETRIC.

8 **TITLE AND OWNERSHIP** The Software is licensed, not sold, to Licensee. All right, title, and interest including, without limitation, all intellectual property rights, in and to the Software, in whole and in part and all copies thereof, are, and

shall remain, the sole and exclusive property of Vormetric and/or its licensors. Vormetric hereby reserves all rights not expressly granted to Licensee.

9 **CONFIGURATION** The parties acknowledge that use of the Software allows Vormetric or Licensee, among other things, to configure the Software for Licensee's computing environment, and create security policies (the "Software Output") with respect to Licensee's Confidential Information and other data. The parties agree that to the extent that the Software Output constitutes a Derivative Work, such Software Output, and other modifications to the Software by Licensee, exclusive of any Confidential Information or data of Licensee, shall be deemed to have been assigned by Licensee to, and owned exclusively by, Vormetric, and Licensee shall have a royalty-free nonexclusive right to use such Software Output. In the event of such deemed assignment, Licensee waives all moral rights and any similar rights or principles of law which Licensee may now or hereafter have in the Software Output. Licensee shall execute such documents and perform such other acts and deeds as may be reasonably required by Vormetric or its assignees or licensees to further evidence or effectuate Vormetric's rights hereunder. If Licensee fails to do so, Vormetric may execute such documents as Licensee's attorney in fact, which appointment will be irrevocable and coupled with an interest. Except as set forth in the immediately preceding sentence, Licensee shall not be permitted to make any Derivative Work of the Software.

10 **FEES** The fees for the Software licensed, and Services and support provided, under this Agreement or any schedule or exhibit attached to this Agreement will be as set forth in the Order Form. Pricing shall be in accordance with Section 4C of DIR Contract No. DIR-SDD-1716. Payment shall be in accordance with Section 7C of Appendix A, DIR Contract No. DIR-SDD-1716. Fees for copies of PEM Software determined to be owing as a result of the audit described in Section 4 shall be charged at the rate set forth in Vormetric's then published price list. Pricing shall be in accordance with Section 4C of DIR Contract No. DIR-SDD-1716.

11 **EXPENSES** When, at Licensee's request, Vormetric provides on-site service, or service where travel is required, Licensee will pay the travel expenses approved in advance by Licensee as incurred by Vormetric in conformance with Licensee's travel policy. Travel Reimbursement Expenses shall be in accordance with Section 4G of DIR Contract No. DIR-SDD-1716. Such expenses may be invoiced to Licensee either, at Vormetric's option, on a monthly basis or along with invoices for support fees due hereunder. Vormetric will submit such expenses on expense report forms, accompanied by supporting documentation acceptable to Licensee. No reimbursement will be made for any expenses submitted more than ninety (90) days after completion of the travel.

12 **TAXES** Any and all sales, use and other taxes of any kind, including any VAT and customs levies or charges (other than corporate income taxes payable by Vormetric based on or due as a result of any amounts paid to Vormetric hereunder) shall be paid by Licensee. 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).

13 **REVERSE ENGINEERING** To the extent permitted by applicable law, Licensee shall not, nor shall Licensee assist any third party to, reverse engineer, decompile, disassemble or in any other manner attempt to derive the source code of any component of the Software for any purpose. Licensee shall notify Vormetric if Licensee becomes aware of any person or entity attempting to reverse engineer, reverse compile, or disassemble any of the Software.

14 **CONFIDENTIALITY**

14.1 **Definition.** For purposes of this Agreement, "Confidential Information" shall mean, to the extent authorized by the Texas Public Information Act, the source code of the Software, Licensee's security policies and technical infrastructure, product roadmaps, and all nonpublic information, whether in oral, written or other tangible form that the party disclosing the information (the "Discloser") designates as being confidential or which, under the circumstances surrounding disclosure, the receiving party (the "Recipient") knows or has reason to know should be treated as confidential, whether or not disclosed prior to or after the date of this Agreement. As against Licensee, "Confidential Information" shall also include, to the extent authorized by the Texas Public Information Act, the results of any substance testing of any Vormetric employee or contractor, and any biometric or other personal data pertaining to any such employee or contractor.

14.2 **Nondisclosure.** To the extent authorized by the Texas Public Information Act, recipient agrees not to use, disseminate, or in any way disclose any Confidential Information of Discloser to any person, firm or business, except to the extent necessary for the performance of Recipient's obligations hereunder, and for any other purpose Discloser may hereafter authorize in writing. Recipient agrees to treat all Confidential Information of Discloser with the same degree of care as Recipient accords to Recipient's own Confidential Information, but in no case less than reasonable care. Recipient agrees to disclose Confidential Information of Discloser only to those of Recipient's employees and independent contractors who need to know such information ("Authorized Parties"), and Recipient certifies that Recipient's employees and independent contractors have previously agreed in writing, either as a condition to employment or in order to obtain the Confidential Information of Discloser, to be

bound by terms and conditions substantially similar to those terms and conditions applicable to Recipient under this Agreement. Recipient will take all reasonable measures to ensure that no unauthorized person shall have access to the Proprietary Information and that all Authorized Parties having access refrain from making any unauthorized disclosure in violation of this Agreement. Recipient shall comply with all applicable laws, rules and regulations protecting the Proprietary Information and privacy rights of the Discloser, its customers and suppliers. Recipient shall immediately give notice to Discloser of any unauthorized use or disclosure of Discloser's Confidential Information.

14.3 **Exclusions.** The obligations of Recipient under this Section with respect to any portion of the Confidential Information of Discloser, shall not apply to such portion that Recipient can document: (i) was in the public domain at or subsequent to the time such portion was communicated to Recipient by Discloser through no fault of Recipient, (ii) was developed by employees or agents of Recipient independently of and without reference to any Confidential Information of Discloser; or (iii) must be disclosed pursuant to the Texas Public Information Act. A disclosure of Confidential Information, either (x) in response to a valid order by a court or other governmental body or (y) otherwise required by law, shall not be considered to be a breach of this Agreement by Recipient or a waiver of confidentiality for other purposes; provided, however, Recipient shall provide prompt prior written notice thereof to Discloser.

14.4 **Specific Performance.** The parties acknowledge that it will be impossible to measure in money the damage to the parties hereto of any failure to comply with the obligations of this Article 14, that every such restriction and obligation is material, and that in the event of any such failure, the parties will not have an adequate remedy at law or in damages. To the extent authorized by Texas law and constitution, each party consents to the issuance of an injunction or the enforcement of other equitable remedies against it at the suit of an aggrieved party, without bond or other security, to compel performance of all of the terms of this Article 14. The parties in no way waive their rights to contest any action on the merits or pursue any other remedy which might be available to such party.

15 **TECHNICAL SUPPORT; PROFESSIONAL SERVICES**

Technical support services will be available to Licensee pursuant to the terms of the Support Schedule, if any, between the parties, provided that Licensee is current with all applicable Support Schedule fees. Services will be available to Licensee pursuant to the terms of the Services Agreement, if any, between the parties.

16 **PRODUCT WARRANTY** Vormetric represents and warrants that, for ninety (90) days following Licensee's initial installation of the initial copy of the PEM Software in Licensee's

Formatted: Font: (Default) Arial Narrow, 10 pt, Not Bold

Formatted: Font: (Default) Arial Narrow, 10 pt

production environment, the Software will perform substantially in accordance with the Documentation when operated on the Designated Operating System. Subject to the foregoing, Vormetric does not warrant that the Software will meet Licensee's requirements or that the operation of the Software will be uninterrupted or error-free, or that all Software errors will be corrected. Furthermore, the Software is not intended as a comprehensive solution to information security and may not be effective against all intrusions, viruses, worms, or other malicious code. Vormetric further represents and warrants that the Appliance will perform substantially in accordance with the Documentation and be free of defects in materials and workmanship for a period of ninety (90) days following installation of such Appliance.

#### 17 LIMITATION OF WARRANTY AND REMEDIES

17.1 **Limitations.** The warranties above shall not apply to Software or Appliances that have been (i) improperly installed, (ii) modified by anyone other than Vormetric, (iii) used in a manner other than as authorized under this Agreement or as required by the Documentation, (iv) used with other software, hardware, or telecommunication interfaces not meeting or not maintained in accordance with Vormetric's specifications as described in the Documentation; (v) operated or maintained in environmental conditions outside the parameters designated in the Documentation or elsewhere; (vi) subjected to accident, unusual physical, electrical or electromagnetic stress, neglect, or misuse; or (vii) subjected to extreme power surge or failure, or electromagnetic field. In addition, the warranties above shall not apply to any release of the Software that is other than the current release. In addition, Vormetric shall have no obligation for any errors in performance of the Software or the Appliance that are not reproducible by Vormetric. Any claim submitted under the warranty must be submitted in writing to Vormetric within the specified warranty period set forth in Section 16. Licensee shall give Vormetric prompt written notice of such noncompliance discovered through use of the Software and Appliance in a production environment, together with any available details that may reasonably assist Vormetric to reproduce the noncompliance and effect a cure.

17.2 **Sole Remedy.** In the event that Vormetric and Licensee mutually and reasonably determine that a Failure exists in either the Appliance or the Software, Vormetric's sole and exclusive obligation, and Licensee's sole and exclusive remedy, will be, at Vormetric's option, (i) for Vormetric to use commercially reasonable efforts to promptly correct such Failure in order to make the Appliance or Software, as applicable, operate as warranted or (ii) if the defect concerns solely the Appliance, for Vormetric to deliver to Licensee a replacement Appliance. If Licensee receives a replacement unit, Licensee may retain such unit, at Vormetric's option, in full satisfaction of Licensee's replacement remedy.

17.3 **Disclaimer.** THE WARRANTIES ABOVE ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED. VORMETRIC DISCLAIMS ANY OTHER WARRANTIES INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS, AND ANY WARRANTIES ARISING OUT OF CONDUCT OR INDUSTRY PRACTICE.

#### 18 INDEMNIFICATION AND INFRINGEMENT

Indemnification/Infringement shall be in accordance with Section 9A of Appendix A, DIR Contract No. DIR-SDD-1716.

19 **PRODUCT RESALE** Licensee understands that the Software is not transferable except under the terms of this Agreement. Licensee further understands that any transferee of the Appliance may be able to discover such attributes and configurations of Licensee's computing environment sufficient to enable the transferee or any third party to access Licensee's computing environment or Confidential Information. VORMETRIC SHALL HAVE NO LIABILITY TO LICENSEE OR ANY THIRD PARTY ARISING OUT OF OR RELATING TO ANY RESALE OR TRANSFER BY LICENSEE OF THE APPLIANCE OR SOFTWARE.

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

21 **COMPLIANCE WITH LAWS** Licensee shall comply with all applicable laws and regulations (including local laws of the country where the Software is being used) pertaining to the Software including, without limitation, restrictions on use of products containing encryption, import or export laws and regulations, and domestic and international laws and regulations pertaining to privacy and the protection of financial, medical, or personally identifiable information. Without limiting the generality of the foregoing, Licensee shall not export or re-export the Appliance or the Software, or allow access to the Appliance or the Software to any third party including, without limitation, any customer of Licensee, in violation of United States laws and regulations, including, without limitation, the Export Administration Act of 1979, as amended, and successor legislation, and the Export Administration Regulations issued by the Department of Commerce.

22 **REGULATORY COMPLIANCE** Licensee understands, acknowledges, and agrees that the Software is not intended to dictate Licensee's actions required for Licensee to comply with applicable legal and regulatory matters, but as a computer platform to enable Licensee to automate certain of its data protection functions. Licensee understands, acknowledges, and agrees that it is solely Licensee's responsibility to insure that (i) the requirements imposed on it

under applicable law and regulation are accurately implemented in any Software that Licensee may use to protect its data, and (ii) Licensee will comply strictly with applicable law in connection with all information processed, transmitted, stored, or otherwise disposed of by Licensee or its Affiliates using the Software.

**23 GOVERNMENT RESTRICTED RIGHTS LEGEND**

The Software is a "commercial item" as that term is defined at 48 CFR 2.101, consisting of "commercial computer software" and "commercial computer software documentation", as such terms are used in 48 CFR 12.212 and is provided to the U.S. Government only as a commercial end item. Consistent with 48 CFR 12.212 and DFARS 227.7202-1 through 227.7202-4, all United States government end users acquire the Software with only those rights set forth herein. Vormetric is Vormetric, Inc. at 3131 Jay Street, Santa Clara, CA 95054-3308.

**24 TERM AND TERMINATION**

**24.1 Term.** This Agreement is effective on the Effective Date and remains in effect until terminated as set forth herein.

**24.2 Termination On Material Breach.** This Agreement may be terminated by either party at any time if (i) the other party is notified in writing that it is in material breach of the terms or conditions of this Agreement; and (ii) such other party fails to remedy such breach within thirty (30) days following such notice or three (3) days following such notice if the breach is a failure by Licensee to pay any fees required under Section 10.

**24.3 Termination on Financial Difficulty.** To the extent allowed by law, Vormetric may terminate this Agreement effective immediately upon written notice to Licensee if Licensee (a) files a voluntary petition in bankruptcy or otherwise seeks protection under any law for the protection of debtors; (b) has a proceeding instituted against it under any bankruptcy law that is not dismissed within sixty (60) days; (c) is adjudged as bankrupt; (d) has a court assume jurisdiction of its assets under a reorganization act; (e) has a trustee or receiver appointed by a court for all or a substantial portion of its assets; (f) suspends or ceases to do business if the obligations under this Agreement are not otherwise assumed; or (g) makes an assignment of its assets for the benefit of its creditors. This Agreement is an executory contract. In the event of Licensee's bankruptcy, this Agreement shall be accepted or rejected within a reasonable time, but in no event in less than sixty (60) days from the filing of the bankruptcy petition.

**25 ACTIONS ON TERMINATION** Upon termination of this Agreement, except as expressly provided herein, and in addition to all other rights and obligations each party may have under this Agreement (a) the rights and licenses granted to

Licensee pursuant to this Agreement automatically terminate, and (b) Licensee shall, to the extent authorized by applicable records retention laws and policy, within ten (10) days, ship to Vormetric or destroy (including purging from any system or storage media) all items in its possession proprietary to Vormetric, including but not limited to all Software and the Appliance, and an officer of Licensee shall certify in writing to Vormetric that the Appliance, and all Software and other confidential information of Vormetric have been returned to Vormetric or destroyed. Sections 4 ("Audit"), 8 ("Title and Ownership"), ~~101010~~ ("Fees"), ~~121212~~ ("Taxes"), 13 ("Reverse Engineering"), ~~141414~~ ("Confidentiality"), 17.3 ("Disclaimer"), 18 ("Indemnification and Infringements"), 20 ("Limitation of Liability"), 21 ("Compliance with Laws"), 24 ("Term and Termination"), 25 ("Actions on Termination"), and 26 ("General") will survive termination of this Agreement.

**26 GENERAL**

**26.1 Choice of Law.** The laws of the State of Texas shall govern the construction and interpretation of the Contract. Venue shall be in the state courts of Travis County, Texas. Nothing in the Contract or its Appendices shall be construed to waive the State's sovereign immunity.

**26.2 Entire Agreement.** DIR Contract No. DIR-SDD-1716 and this License Agreement, together with any Order Forms, constitute the entire and complete agreement of the parties with respect to the terms hereof. No acceptance of any purchase order from Licensee, or delivery of any goods or services, shall constitute acceptance by Vormetric of the terms of any purchase order or other document from Licensee. No additional, inconsistent, or conflicting clauses in any purchase order, release, or other written correspondence from either party, shall be deemed to be included in these terms and conditions and shall be of no effect, even if later in time than this form, unless the parties agree otherwise in a writing specifically referring to this form, specifically stating that such writing is modifying this form, and executed by the Chief Executive Officer of Vormetric and an authorized officer of Licensee.

**26.3 Notice.** Any notice required or permitted to be given under this Agreement shall be in writing and shall be deemed given and received on the earlier of when actually received or three (3) business days upon deposit with the United States Mail with delivery confirmation, postage prepaid, or (or for notices given across national boundaries, by Federal Express, DHL, or other comparable delivery service, delivery prepaid), or for notices sent within the continental United States, the next business day if sent by overnight Federal Express or other nationally recognized overnight courier, and addressed to the Chief Executive Officer at the business address of the party as shown on the initial paragraph of this Agreement or to such other address as the party may request by written notice. When notice is required to be given within a

**Formatted:** Font: (Default) Arial Narrow, 10 pt, Not Bold

**Formatted:** Font: (Default) Arial Narrow, 10 pt, Kern at 14 pt

**Formatted:** Font: (Default) Arial Narrow, 10 pt, Not Bold

**Formatted:** Font: (Default) Arial Narrow, 10 pt, Kern at 14 pt

**Formatted:** Font: (Default) Arial Narrow, 10 pt, Not Bold

**Formatted:** Font: (Default) Arial Narrow, 10 pt, Kern at 14 pt

specified time, the notice shall be timely given if it is deposited in the mail or with a courier or transmitted within the specified time, but time periods that begin with the delivery of the notice shall not begin to run until the notice is received or deemed to have been received as provided above. Each party shall make an ordinary, good faith effort to ensure that the person to be given notice actually receives the notice. A party giving notice of a default under this Agreement shall deliver a copy of the notice to the recipient's attorney indicated below, at the same time and in the same or an equivalent manner. A party that has failed to ensure that the other parties to this Agreement have a current address, fax number, telephone number, and electronic mail address for the party and if desired, the party's attorney, for the purpose of giving notice waives any right to complain about the inadequacy of any notice given in accordance with this Section 26.3.

**26.4 Severability.** If any provision of this Agreement is held invalid, the remainder of this Agreement shall continue in full force and effect, and the clause held invalid shall be modified to effect the original intent of the parties, and convey the economic benefits originally intended to be conveyed.

**26.5 Assignment.** Licensee may not assign this Agreement or sublicense the Software without the prior written consent of Vormetric, and any prohibited assignment or sublicense shall be null and void. Without limiting the foregoing, this Agreement may not be assigned if the Appliance is transferred.

**26.6 Waiver.** The failure by a party to exercise any right hereunder shall not operate as a waiver of such party's right to exercise such right or any other right in the future.

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

**26.8 Amounts Not in Dispute.** Payment shall be in accordance with Section 7C of Appendix A, DIR Contract No. DIR-SDD-1716.

**26.9 Construction of Agreement.** The parties have negotiated the terms of this Agreement, and no provision of this Agreement shall be construed against either party as the drafter thereof.

**26.10 Counterparts.** This Agreement may be executed in counterparts, each of which will be deemed an original and collectively will constitute one instrument.

**26.11 Amendments, Waivers, and Consents.** The parties shall not amend or waive any provision of this Agreement except in a writing signed by the parties. No waiver

or consent shall be binding except in a writing signed by the party making the waiver or giving the consent. No course of dealing between the parties shall constitute an amendment of this Agreement.

**In Witness Whereof**, the parties have caused this Agreement and the Support SOW to be executed by their duly authorized representatives as of the Effective Date.

VORMETRIC, INC.		LICENSEE: _____, INC.
(Signature)		(Signature)
RICHARD GORMAN		
(Printed Name)		(Printed Name)
CEO		
(Title)		(Title)
(Date Signed)		(Date Signed)

## Exhibit A

### Services Schedule

This Exhibit to the Master Software License and Hardware Purchase Agreement (the "Agreement") describes the terms under which services will be provided to Licensee by Vormetric under any Statement of Work or otherwise.

1 **Scope of Services.** Subject to the terms and conditions of this Agreement, during the term of this Agreement, Vormetric shall provide to Licensee the Services and any deliverables ("Deliverables") described in a statement of work signed by Vormetric and Licensee (the "Statement of Work"). From time to time, the parties may add new Statements of Work, which, upon execution by both parties, will be subject to the terms and conditions of this Agreement.

2 **Delivery.** Vormetric shall use commercially reasonable efforts to complete the Services and deliver any Deliverables as described, and according to the schedule set forth, in a Statement of Work. Notwithstanding, any date set forth in a Statement of Work for the completion of any Deliverable or Services may be delayed if the delay relates to or will likely arise because Licensee is late in the performance of any of its obligations hereunder. If for any reason Vormetric cannot perform its obligations with respect to the Deliverables or Services in accordance with the schedule set forth in a Statement of Work, the parties will mutually agree upon a revised schedule. Services will be deemed delivered to the Licensee when Vormetric indicates that the Services have been performed.

3 **Manner of Performance.** Vormetric will retain the sole and exclusive right to control and direct the manner and means by which the Services are performed and may subcontract or assign any or all of its obligations and rights under this Agreement. Licensee shall provide, at no charge to Vormetric, office space, information, employees, services and equipment (such as copiers, fax machines, telephones and modems) as Vormetric reasonably requires to perform the Services.

4 **Product Changes.** If Licensee desires to change the scope of Services including, without limitation, the specifications of any Deliverable, Licensee shall notify Vormetric in writing of such change (the "Change Order"). The Change Order shall specify all such changes in the same detail as the original Services or specifications. As promptly as possible, but in no event more than sixty (60) days after receipt of the Change Order, Vormetric shall provide to Licensee a statement of any estimated fees and costs pursuant to the Change Order, and an estimate of when Vormetric could begin performing the Services subject to the changes. Within thirty (30) days thereafter, Licensee shall notify Vormetric of Licensee's acceptance or rejection of Vormetric's response to the Change Order and shall include a copy of the Change Order signed by an authorized officer of Licensee. If Licensee accepts Vormetric's response, Vormetric shall perform the Services including, without limitation, providing the Deliverables, as may be required by Licensee pursuant to the Change Order and this Agreement. Licensee's failure to deliver any such acceptance or rejection within such thirty (30) day period shall be deemed a rejection of Vormetric's response. Vormetric shall have no obligations with respect to any Change Order rejected, or not accepted, by Licensee.

5 **Assistance.** Licensee shall provide Vormetric with reasonable assistance, information, and materials so that Vormetric can effectively perform the Services. Vormetric shall be excused from performing the Services to the extent that Licensee delays providing Vormetric with such requested assistance, information, or materials.

6 **Cancellation or Rescheduling.** Licensee shall pay all fees, plus any non-cancellable costs incurred by Vormetric, associated with Services cancelled by Licensee within forty-five (45) days of the commencement date of such Services. If Licensee desires to reschedule such Services, Licensee shall pay all fees, plus any non-cancellable costs incurred by Vormetric, associated with such Services sought to be rescheduled before such Services are rescheduled.

7 **Rights to Deliverables.** Subject to the terms and conditions of this Agreement and the Statement of Work, Vormetric grants to Licensee a perpetual, non-exclusive, worldwide, non-transferable, non-sublicensable, royalty-free license to internally use the Deliverables. Subject to the foregoing, all Deliverables hereunder and all work products created or developed hereunder shall be the exclusive property of Vormetric. Any ideas, know-how, or techniques that may be developed by Vormetric, including any enhancements or modifications made to the Deliverables and work products created hereunder, shall be the property of Vormetric.

8 **Disclaimer.** EXCEPT AS SPECIFICALLY SET FORTH IN THE AGREEMENT OR STATEMENT OF WORK, ALL DELIVERABLES ARE PROVIDED AS IS, WITH ALL FAULTS, AND VORMETRIC DISCLAIMS ANY WARRANTIES, EXPRESS

OR IMPLIED INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS, TITLE, OR NONINFRINGEMENT, OR ANY WARRANTIES ARISING OUT OF CONDUCT OR INDUSTRY PRACTICE.

**Exhibit B**  
**Support Schedule**

This Exhibit to the Master Software License and Hardware Purchase Agreement (the "Agreement") describes the terms under which technical support will be provided to Licensee by Vormetric.

**1 Definitions.**

All capitalized terms used in this Support Schedule shall have the terms given in the Agreement unless otherwise defined in this Section 1.

1.1 **"Resolution"** means a bug fix, correction, patch, workaround, or modified release of the Software or Documentation provided to Licensee by Vormetric to resolve a Failure.

2 **Support Services.** Vormetric will exercise commercially reasonable efforts to provide the support services described in this Exhibit (the "Support Services"). Vormetric will have no obligation under this Support Schedule if any amounts owed by Licensee to Vormetric are past due. In addition, Vormetric will have no obligation under this Support Schedule with respect to any release of the Software which is not the current release or the immediately preceding release. Vormetric will have no responsibility or obligations under this Agreement with respect to Failures resulting from or related to (i) improper installation; (ii) modification by anyone other than Vormetric; (iii) use in a manner other than as authorized under this Agreement or as required by the Documentation; (iv) use of the Software or Appliance with other software, hardware, or telecommunication interfaces not meeting or not maintained in accordance with Vormetric's specifications as described in the Documentation; (v) operation or maintenance in environmental conditions outside the parameters designated in the Documentation or elsewhere; (vi) accident, unusual physical, electrical or electromagnetic stress, neglect, or misuse; (vii) extreme power surge or failure, or electromagnetic field; or (viii) use of any release of the Software other than the current release or the immediately preceding release. In addition, Vormetric shall have no obligation to provide any technical support under this Agreement or otherwise in connection with any Appliance or Software that is not in a live production environment or in connection with any inability of the Software or Appliance to operate substantially in accordance with the Documentation which is not reproducible. To the extent Vormetric reasonably determines that any Failure is caused other than by the Software or the Appliance, Vormetric may charge Licensee Vormetric's then current hourly fees and costs associated with diagnosing and repairing such Failure.

3 **Designated Support Contacts and Fees.** Licensee may designate no more than one (1) primary contact, and no more than two (2) secondary contacts, as the sole Designated Support Contacts, as follows:

Designated Primary Support Contact	Phone	Email
1.		
Designated Secondary Support Contacts		
1.		
2..		

4 **Certification.** All of the Designated Support Contacts must attend Vormetric training and receive certification within 30 days of the execution of the Agreement. Training will be charged to Licensee at Vormetric's then prevailing training rates and be conducted at the location specified in the applicable order form.

5 **Support Option.** Licensee selects the following support option:

**Circle Desired Option**

<b>OPTION 1 Premium Annual Support</b>	<b>OPTION 2 Standard Annual Support</b>
<b>Telephone Support:</b> 24 hours per day, 7 days per week, 365 days per year.	<b>Telephone Support:</b> 5 days per week, Vormetric holidays excepted, 9:00 a.m. to 5:00 p.m., Vormetric time.
<b>Service Fees Due:</b> Year One: 22% of price paid by Licensee to Vormetric for PEM software and Appliances as delineated in Order Form Number _____, incorporated herein by reference	<b>Service Fees Due:</b> Year One: 18% of price paid by Licensee to Vormetric for PEM software and Appliances as delineated in Order Form Number _____, incorporated herein by reference

6 **Installation.** Licensee will be responsible for installing and implementing all Failure corrections, Updates and Appliance replacements. Licensee understands that failure to incorporate Failure corrections and Updates may cause subsequent Failure corrections and Updates to be unusable including, without limitation, any Updates provided to all licensees under Section 18(3) of the Agreement. Moreover, proper installation of the Appliance is required for proper functioning of the Software.

7 **Response Times.** Vormetric will use reasonable commercial efforts to satisfy the following response and Resolution times:

**Response Times**

<b>Severity Level</b>	<b>Proposed Initial Response Time to issue (*)</b>	<b>Target Resolution Time</b>
<b>Level 1:</b> All use of Software and Appliance on a production platform is lost.	Four (4) Hours	Continuous efforts by both parties.
<b>Level 2:</b> Use of the Software or Appliance on a production platform is severely degraded and/or access to data is impeded with no work around.	Four (4) Hours	Continuous effort by both parties during business hours.
<b>Level 3:</b> Licensed Software or Appliance on a production platform causes or results in substandard or erratic performance with no work around.	One (1) Day	Next maintenance release.
<b>Level 4:</b> Minor problem; or when any of the above categories of Failures has been addressed with a workaround.	Five (5) Days	Next update at Vormetric's discretion.
<b>Level 5:</b> Failure is cosmetic in nature and does not result in reduced performance.	Five (5) Days	Next update at Vormetric's discretion.

The determination of the level of severity will be made by Vormetric in consultation with Licensee. In certain instances Licensee and Vormetric may determine that Resolution of a Failure may be expedited if Vormetric is given remote access to Licensee's live environment. In such case, in Licensee's sole discretion, Licensee may provide remote access to Vormetric, subject to Vormetric's execution of Licensee's security agreements and compliance with Licensee's policies. Notwithstanding any provision to the contrary in any security agreement or Licensee policy, however, Vormetric shall have no responsibility for any adverse impact to Licensee's computer network resulting from any actions of Vormetric taken while having access to such network.

8 **Term.** The term of this Support Schedule will begin on the Effective Date and will extend for an initial period of twelve (12) months. This Support Schedule may then extend for successive renewal terms of twelve (12) months each up to the term of DIR Contract No. DIR-SDD-1716 by issuance of intent to extend no later than 30 days prior to the then-effective expiration date. If

Vormetric receives such notice it may invoice for the next support period. Licensee shall pay for the invoice or issue a Purchase Order, accompanied by proper payment, for support services for the then subsequent renewal term prior to the expiration of the then-current term.

9 **Necessity of Installation.** VORMETRIC WILL HAVE NO LIABILITY TO LICENSEE UNDER THIS SUPPORT SCHEDULE, OR UNDER ANY OF SECTIONS 16 OR 18 OF THIS AGREEMENT, IF LICENSEE NEGLECTS TO INSTALL ANY FAILURE CORRECTION DELIVERED TO LICENSEE, OR ANY UPDATE OR RELEASE OF THE SOFTWARE MADE GENERALLY AVAILABLE AFTER THE EFFECTIVE DATE.

10 **Fee Adjustments.** Unless agreed by the parties in advance and evidenced by a writing executed by Vormetric's Chief Executive Officer, the support fees for subsequent years will be based on Vormetric's then published price list including adjustments for additional copies of PEM Software determined following an audit by Vormetric as further described in the Agreement. Pricing shall be in accordance with Section 4C of DIR Contract No. DIR-SDD-1716. Vormetric will notify Licensee thirty (30) days in advance of the expiration of each Term of any increase in support fees. If Licensee does not agree to the support fee increase by issuing an Order Form prior to expiration of the current term, this Exhibit B will not renew and Vormetric shall have no further obligation to provide any services under this Support Schedule.

11 **Discontinuation of Annual Support.** If subsequent to the first year of support services under this Agreement, Licensee discontinues support on a particular Software or Appliance for a period of more than three (3) months and then seeks to reinstate the support services hereunder with respect to such Software and to receive any Updates released during such elapsed period, then Licensee shall pay the support services fees that would have been due under the terms of this Agreement for the elapsed period plus a delinquent renewal fee of 25% of the list value of that support.

12 **Invoices.** Subsequent to the first year of this Support Schedule, Vormetric will invoice Licensee annually in advance for support fees due under this Agreement. Vormetric will invoice Licensee for additional support service fees relating to new installation of Software and Appliances furnished to Licensee after the beginning of the annual support service period on a pro-rated basis for the remainder of such annual period. Pricing shall be in accordance with Section 4C of DIR Contract No. DIR-SDD-1716.

13 **Order of Precedence.** In the event of any conflict between the terms of this Exhibit and the terms of any of the Agreement, the terms of this Exhibit shall control. In the event of any conflict between the terms of this Exhibit and the terms of Statement of Work, the terms of this Support Schedule shall control. In the event of a conflict between DIR Contract No. DIR-SDD-1716 and this Agreement, the DIR Contract shall control.

(\*) Response time does not denote Resolution time