



APPENDIX D

DIR CONTRACT NO. DIR-TSO-2247

END USER LICENSE AND NONDISCLOSURE AGREEMENT

THIS END USER LICENSE AND NONDISCLOSURE AGREEMENT, ("Agreement") entered into as of this ____ day of _____, 2011 ("Effective Date"), is by and between Fieldglass, Inc., a Delaware corporation with offices located at 125 South Wacker Drive, Suite 2400, Chicago, Illinois 60606, together with its wholly owned subsidiaries ("Fieldglass"), and _____, a _____ corporation with offices located at _____ ("DIR Customer") (Fieldglass and DIR Customer individually a "Party" and collectively the "Parties").

WHEREAS, Fieldglass and Genesis Networks Enterprises, LLC, a managed service provider ("MSP") have entered into an agreement ("MSP Agreement") whereby Fieldglass will provide MSP with access to certain software products (the "Products") through hosted environments (each a "Hosted Environment") to, among other things, help MSP manage its various clients' and suppliers' subcontracted and temporary labor force; and

WHEREAS, the MSP has entered into DIR Contract No. DIR-TSO-2247 to provide services to the DIR Customer, and in order for MSP to obtain the full value of the Products, it is beneficial for DIR Customer to also have access to a Hosted Environment and the Products.

NOW THEREFORE, in consideration of the mutual benefit to Fieldglass and DIR Customer from allowing DIR Customer to access the Hosted Environments and Products, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, the Parties agree as follows:

1. LICENSE TO ACCESS THE PRODUCTS. During the term of DIR Contract No. DIR-TSO-2247 and this Agreement only, Fieldglass grants to DIR Customer a non-exclusive, non-transferable, non-assignable, royalty-free license to access a single Hosted Environment currently or hereafter established for MSP to enable DIR Customer to use the Products

solely in connection with MSP's provision of services to DIR Customer (the "Permitted Use") and not for distribution, transfer, sale or use for the benefit of any other third party. Such access to the Hosted Environment and the right to use the Products in the Hosted Environment is conditional upon the MSP Agreement being in full force and effect and there being a valid agreement in place between DIR Customer and MSP related to the Permitted Use. If such agreement between DIR Customer and MSP is terminated for any reason then DIR Customer's rights to access the Hosted Environment and use the Products shall cease immediately. Upon termination of this Agreement, Fieldglass shall deliver to DIR Customer all DIR Customer data entered into the Product in CSV or Excel format. For the avoidance of doubt Fieldglass shall be entitled to rely conclusively upon the notification by MSP that its agreement with DIR Customer has been terminated. This license is personal to DIR Customer, and DIR Customer shall not permit any affiliated entity of DIR Customer or any third party to have access to or use the Hosted Environment or Products; provided, however, that, subject to the limitations set forth in Section 11 below, legislative or executive transfer of DIR Customer's contract with MSP will effect a transfer of this license to that entity. Should DIR Customer request, and Fieldglass consent to such access, DIR Customer shall ensure that such affiliated entity or third party is made aware of the terms and conditions of this Agreement. DIR Customer acknowledges that Fieldglass is not responsible for providing a communications line or other equipment necessary to access and use the Hosted Environment via the public Internet, or for the charges associated with such access or use.

2. CONFIDENTIAL INFORMATION. "Fieldglass Confidential Information" means the Products, Hosted Environment and all information and improvements made by either Party related to the Products or Hosted Environment. "DIR Customer Confidential Information" means all DIR Customer-specific data provided by DIR Customer to Fieldglass and used in the Products (DIR Customer Confidential Information and Fieldglass Confidential Information, collectively "Confidential Information"). The term "Confidential Information" does not include (a) information that is or becomes publicly available without a breach of this Agreement, (b) information received from a third party having a right to disclose said information or (c) information which a Party has independently developed without use of or reliance upon the other's Confidential Information. Notwithstanding the foregoing, a Party may disclose the Confidential Information of the other Party if compelled or required to do so by statute, court of law or other legal process; provided that the disclosing Party (i) gives the other prompt written notice of an impending disclosure pursuant to this sentence, (ii) provides commercially reasonable assistance to the other Party at the other Party's expense in opposing or limiting the compelled or required disclosure and (iii) makes only such disclosure as is compelled or required. DIR Customer shall use Fieldglass Confidential Information solely for the Permitted Use. Fieldglass shall use DIR Customer Confidential Information solely as necessary for the purposes of this Agreement, or such purposes as described in Contract No. DIR-TSO-2247, or for the performance of the MSP Agreement, except that Fieldglass may use and disclose the aggregate statistical data relating to the utilization of the Product in a manner non-specific to DIR Customer, or any temporary worker.

3. COVENANT OF NONDISCLOSURE. To the extent allowed by applicable law, upon

request or upon termination of this Agreement, each party will destroy or promptly deliver to the other party all materials that contain the other party's Confidential Information. Notwithstanding the foregoing, Fieldglass is permitted to retain: (a) aggregate statistical data as described in Section 2, and (b) a copy for archival or legal purposes. Upon request, each party will certify as to its compliance with this Section 3. To the extent allowable by the Texas Public Information Act, during and after the term of this Agreement, each Party shall (a) safeguard the other's Confidential Information from unauthorized use and disclosure; (b) disclose the other's Confidential Information to no one other than employees or independent contractors who have a need to have access to and knowledge of the other's Confidential Information solely for the purposes authorized in Section 2 above; and (c) advise all such employees and independent contractors of their obligations with respect to the other's Confidential Information and be responsible for their breach of this Agreement.

4. OWNERSHIP; VIOLATION OF COVENANT. Each Party shall retain all ownership and intellectual property rights in and to their Confidential Information. Each Party shall notify the other immediately upon discovery of any unauthorized disclosure or use of the other's Confidential Information, and will cooperate in every reasonable way to help the other regain possession of its Confidential Information and/or to prevent further unauthorized use or disclosure. To the extent allowable under applicable law, in the event of the threatened or actual breach of this Agreement, if a Party shall have no adequate remedy at law it shall be entitled to seek (a) all equitable remedies, including immediate injunctive and other equitable relief enjoining the other Party and every other party from breaching this Agreement, (b) any other legal remedies that may be available. Nothing herein will waive the immunity of the State or any party claiming through it.

5. WARRANTY AND DISCLAIMER. Each Party represents and warrants that the Confidential Information provided to the other shall be free of any virus, Trojan Horse, cancel bot, timebombs or other devices developed to disable or to erase, damage or corrupt software, hardware or data. Except as otherwise provided in this Agreement, Company acknowledges and agrees that the Products and Hosted Environment including (without limitation) all updates and enhancements are provided "AS IS," without warranty of any kind, and ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT ARE DISCLAIMED. Without limiting the foregoing, Fieldglass does not warrant that the Products or Hosted Environment will be uninterrupted, free of errors, defects or without delay, or that errors or defects are capable of being corrected.

6. LIMITATION OF LIABILITY. Excluding Sections 5 (Warranty and Disclaimer), Section 3 (Covenant of Nondisclosure), breach of third party intellectual property rights, (which shall include obligations to indemnify for intellectual property infringement claims under Section 7), and breach of applicable data protection laws, the total liability of each Party to the other in respect of all claims under or in connection with this Agreement, whether in contract, tort (including negligence) or otherwise shall not exceed one thousand US dollars (US \$1,000). Except for breach of Section 3 (Covenant of Non-Disclosure), breach of third-party intellectual property rights(which shall include

obligations to indemnify for IP infringement claims), and breach of applicable data protection law, to the extent permitted by applicable law, in no event shall either Party be liable for any loss or inaccuracy of data, indirect, incidental, special, punitive, or consequential damages of any kind, even if it is advised of the possibility of such damages, whether or not reasonably foreseeable, incurred by the other Party or a third party relating to use of or inability to use the Confidential Information whether arising in tort (including negligence), breach of contract or otherwise and whether or not reasonably foreseeable. Nothing in this Agreement shall operate to exclude or restrict either Party's liability for death or personal injury arising from that Party's negligence or any other liability due to that Party's fraud or other liability which is not permitted to exclude or limit as a matter of law.

7. INDEMNIFICATION. Each Party ("Indemnifying Party") shall indemnify and hold harmless the other Party ("Indemnified Party"), from any and all third party claims alleging that the Confidential Information provided by the Indemnifying Party infringes any United States patents, copyrights, trade and service marks, and any other intellectual or intangible property rights under this Agreement. Neither Party shall have indemnification obligations for its Confidential Information hereunder where the claim directly or indirectly arises from the other Party's misuse or unauthorized modification of such Confidential Information. The Parties AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. The Indemnifying Party SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY THE INDEMNIFYING PARTY.

If Fieldglass becomes aware of an actual infringement of the Products, Hosted Environments, or related documents, or, in Fieldglass' determination, a likely potential claim, Fieldglass may (or in the case of an injunction against DIR Customer, shall), at Fieldglass' sole option and expense: (i) procure for the DIR Customer the right to continue to use the affected portion of the allegedly infringing products, or (ii) modify or replace the affected portion of the products with functionally equivalent or superior product or service so that Customer's use is non-infringing, or (iii) terminate the Agreement.

8. SUPPORT. Should Fieldglass develop an updated version of the Product and such version is provided as a generic release common to all licensees of such Product, Fieldglass agrees to provide technical support, updates and enhancements to DIR Customer free of charge for the Product licensed hereunder and DIR Customer shall have the right to use updates and enhancements as replacements for existing authorized copies. DIR Customer agrees to migrate to the updated version of the Product on the date the updated version is released and delivered to DIR Customer.

9. TERM. This Agreement shall be effective as of the Effective Date and shall remain in effect (unless terminated earlier) for an initial term of one (1) year, and shall renew for successive one (1) year terms unless either Party provides written notice of its intent not to renew the Agreement at least ninety (90) days prior to the end of the then-current term, and the Agreement shall terminate upon the earlier of: (i) termination of the MSP Agreement, (ii) termination of the relevant agreement between DIR Customer and MSP related to the Permitted Use. Fieldglass may suspend performance of its obligations and DIR Customer's access to the Products and Hosted Environment in the

event of any Misuse. For purposes of this Agreement, "Misuse" shall be defined as use of the Product and/or Hosted Environment that has caused or in Fieldglass' good faith judgment represents (a) a risk of damage to Fieldglass, the Product, Hosted Environment, Confidential Information or other Fieldglass customer or vendor information stored in the Product or Hosted Environment, (b) a security risk thereto, or (c) a violation of Fieldglass' intellectual property and/or proprietary rights. In the event of suspension for Misuse, Fieldglass will notify Customer of such suspension immediately and will cooperate fully with Customer to determine the whether Misuse has, indeed, occurred, and, if so, the source of such Misuse.

Upon termination of this Agreement, all access to and use of the Hosted Environment and Products shall cease, and Fieldglass shall provide DIR Customer with all DIR Customer data entered into the Product in CSV or Excel format. Anything in this Agreement to the contrary, notwithstanding the rights of either Party to terminate this Agreement, are in addition to and shall not limit either Party from pursuing any other remedies available to it. In addition, notwithstanding termination or expiration of this Agreement, the accrued rights of either Party shall not be affected and Sections 2 through 14 shall survive.

10. SEVERABILITY. In the event a court of competent jurisdiction finds that any provision of this Agreement is unlawful or unenforceable, then it is the intent of the Parties that such court apply a rule of reasonableness and modify the provision in question so that it will remain in effect to the greatest extent permitted by law. In the event a court finds such procedure to be inappropriate, then the provision held unlawful or unenforceable shall be excised from this Agreement and the remaining provisions of this Agreement will remain in full force and effect.

11. MISCELLANEOUS. Neither Party shall assign or transfer its rights or obligations pursuant to this Agreement without the prior written consent of either Party, which will not be reasonably withheld, except that (1) Fieldglass may assign or transfer this Agreement: (a) to a successor as a result of a merger, consolidation, acquisition, reorganization or sale of all or substantially all of Fieldglass' assets, or (b) to any direct or indirect wholly owned subsidiary of Fieldglass; and (2) upon written notice, legislative or executive transfer of DIR Customer's contract with the MSP will effect a transfer of this license to that entity, provided such entity is not a competitor of Fieldglass. No such assignment or transfer shall have the effect of increasing the obligations or diminishing the rights of either Party under this Agreement. The terms and conditions of this Agreement will inure to the benefit of, and shall be binding upon, each Party's successors and permitted assigns. No failure or delay by either Party in exercising any right, power or privilege hereunder shall operate as a waiver hereof; all waivers being required to be in writing signed by the waiving Party. This Agreement contains the full and complete understanding of the Parties with respect to the subject matter of this Agreement and supersedes all prior representations (except fraudulent representations), communications and understandings concerning the same subject matter whether they be oral or written, express or implied. This Agreement may be modified only in writing and if signed by authorized representatives of each Party.

12. DISPUTE RESOLUTION. DIR Customer and Fieldglass agree to the following: (i) a

party's failure to require strict performance of any provision of the Contract shall not waive or diminish that party's right thereafter to demand strict performance with that or any other provision, (ii) for disputes not resolved in the normal course of business, the dispute resolution process provided for in Chapter 2260, Texas Government Code, shall be used, and (iii) actions or proceedings arising from the Contract shall be heard in a state court of competent jurisdiction in Travis County, Texas. Disputes arising between DIR Customer and Fieldglass shall be resolved in accordance with a mutually agreeable dispute resolution process that is not inconsistent with this Section. DIR shall not be a party to any such dispute unless DIR, DIR Customer, and Fieldglass agree in writing.

13. NON-EXCLUSIVITY & RELATIONSHIP. This Agreement is non-exclusive and nothing in this Agreement shall be deemed to restrict the right of either Party to enter into similar agreements with any third party (without restriction as to number, location and subject matter of such agreement) or to deal with or provide products and/or services to any third party. Nothing in this Agreement shall be deemed to constitute a partnership, joint venture, association, or fiduciary relationship between the Parties, nor shall anything in this Agreement be deemed to create an agency relationship between the Parties.

14. LAW OF CONTRACT AND VENUE. The laws of the State of Texas shall govern the construction and interpretation of the Contract. Exclusive venue for all actions with be in state court, Travis County, Texas. Nothing herein will be construed to waive the sovereign or official immunity of the State of Texas, any of its subdivisions, or any of its officers or employees.

IN WITNESS WHEREOF, this Agreement has been signed by duly authorized representatives of the Parties on the Effective Date.

Signed for and on behalf of

Signed for and on behalf of

Fieldglass, Inc.

DIR Customer

Signed: _____
Printed: _____
Title: _____
Date: _____

Signed: _____
Printed: _____
Title: _____
Date: _____

Addresses for Notification:

Fieldglass, Inc.
Attn: Chief Financial Officer
125 S. Wacker Drive, Suite 2400
Chicago, IL 60606
Phone: 312-279-8700
Facsimile: 312-759-5555

Company: _____
Attn: _____

Phone: _____
Facsimile: _____