

# APPENDIX F TO DIR CONTRACT NO. DIR-TSO-3452

## Software Services Agreement

This Software Services Agreement, effective as of Month, Day, Year (the “Effective Date”), is entered into by and between Eccentex Corporation, a California corporation with a principal place of business at 6101 W. Centinela Avenue, Suite 140, Culver City, California 90230 (“Eccentex”) and Insert Customer Name, a governmental entity with a principal place of business at Insert Customer Address (“Customer”).

This Agreement describes the terms and conditions that will apply to (i) subscription of Eccentex’s proprietary platform, applications templates, or software products that Customer purchases from time to time as set forth in greater detail in one or more subscription schedules, the form of which is attached hereto as Schedule A (the “Subscription Schedule”), (ii) maintenance and support services relating to such products as described in Schedule B, and (iii) technical services and training relating to such products as described in Schedule C ((i), (ii) and (iii) referred to herein collectively as the “Services”).

**1. Privacy & Security.** Eccentex’s privacy and security policies may be viewed at <http://www.eccentex.com>. Eccentex reserves the right to modify its privacy and security policies in its reasonable discretion from time to time. Eccentex occasionally may need to notify all users of Eccentex’s products and services of important announcements regarding the operation of the products and services.

### 2. License Grant & Restrictions

a. Eccentex hereby grants Customer a non-exclusive, non-transferable (except as permitted under Section 23), worldwide right for the number of Users paid for by Customer to use Eccentex’s proprietary platform, applications templates, or software identified on the applicable Subscription Schedule (the “Licensed IP”), solely for Customer’s own internal business purposes set forth on the applicable Subscription Schedule, and subject to the terms and conditions of DIR Contract No. DIR-TSO-3452 and this Agreement, including those provided in the applicable Subscription Schedule. As used herein, “User” means a designated employee or contractor of Customer who is authorized by Customer to use the Licensed IP. Access to the Licensed IP will be via a website operated and hosted by Eccentex and provided under a “Software as a Service” model (“Software Service”).

b. The license granted herein does not include the right to sublicense without the prior written consent of Eccentex, except Customer may sublicense to an affiliate of Customer and to one or more independent contractors retained by Customer, but solely for the benefit of Customer.

c. The license granted above is based on a per User, per case, and per environment subscription basis. Therefore, if Customer desires for additional employees or contractors beyond the number of authorized Users, cases, and/or environments stated in the Subscription Schedule, Customer must purchase additional subscriptions for such individuals, cases and environments.

d. Customer acknowledges that the Licensed IP contains valuable trade secrets of Eccentex and its suppliers. Accordingly, except as expressly permitted under this Agreement, Customer shall not: (i) license, sublicense, sell, resell, transfer, assign, distribute, timeshare, outsource, lease, rent, or otherwise commercially exploit or make available to any third party the Licensed IP or any data, information, graphics, materials, or other content provided to Customer through the use of the Licensed IP (the “Content”) in any way; (ii) modify or make derivative works based upon the Licensed IP or the Content or merge the Licensed IP or the Content with other software or data; (iii) create Internet “links” to the Licensed IP or “frame” or “mirror” any Content on any other server or wireless or Internet-based device; or (iv) reverse engineer, decompile, or access the Licensed IP in order to (a) build a competitive product or service, (b) build a product using similar ideas, features, functions or graphics of the Licensed IP, or (c) copy any ideas, features, functions or graphics of the Licensed IP.

e. User licenses cannot be shared or used by more than one individual User but may be reassigned from time to time to new Users who are replacing former Users who have terminated employment or otherwise changed job status or function and no longer use the Licensed IP. Customer will ensure that each username and password issued to a User will be used only by that individual. Customer is responsible for maintaining the confidentiality of all Users’ usernames and passwords and is solely responsible for all activities that occur under these usernames.

f. Customer may use the Licensed IP only for Customer’s internal business purposes and shall not: (i) send spam or otherwise duplicative or unsolicited messages in violation of applicable laws; (ii) use, send, or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material, including material harmful to children or violate third

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party privacy rights; (iii) send or store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs; (iv) interfere with or disrupt the integrity or performance of the Licensed IP or the data contained therein; (v) attempt to gain unauthorized access to the Licensed IP or its related systems or networks; or (vi) otherwise use the Licensed IP to carry out any infringing or unlawful activities.

**3. Maintenance and Support.** Eccentex will provide the maintenance and support services for the Licensed IP to Customer as set forth in Schedule B.

### 4. Customer Responsibilities

a. Customer is responsible for all activities occurring under Customer's User accounts and shall abide by all applicable local, state, national and foreign laws, treaties and regulations in connection with Customer's use of the Licensed IP, including those related to data privacy, international communications and the transmission of technical or personal data. Customer shall: (i) notify Eccentex immediately of any unauthorized use of any password or account or any other known or suspected breach of security; (ii) report to Eccentex immediately and use reasonable efforts to stop immediately any copying or distribution of Content that is known or suspected by Customer or Customer's Users; and (iii) not impersonate another Eccentex user or provide false identity information to gain access to or use the Licensed IP.

b. To the extent Customer is licensed to use Eccentex's proprietary platform and/or applications templates to develop or configure a customized application ("**Customer Application**"), Customer acknowledges that it shall be responsible and liable for the accuracy, quality, integrity and legality of the Customer Application, content and data and for the quality and configuration of the Customer Application and the performance of the Customer Application.

### 5. Account Information and Data

a. Eccentex does not own any data, information or material that Customer submits to Eccentex in the course of using the Software Service ("**Customer Data**"). Eccentex will not modify the Customer Data or disclose the Customer Data; provided however, Eccentex may retain, use, and disclose to any third parties Customer Data if Customer Data is aggregated with similar data collected from other customers and does not disclose Customer as the source of the Customer Data.

b. Customer, not Eccentex, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of all Customer Data, and Eccentex shall not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any Customer Data.

c. During the term of this Agreement and upon termination, Eccentex will make available to Customer a file of the Customer Data within 30 days of Customer's written request. Customer agrees and acknowledges that Eccentex has no obligation to retain the Customer Data, and may delete such Customer Data, if this Agreement is terminated, unless Customer requests to receive a copy of the Customer Data at the time termination and pays for all outstanding fees owed to Eccentex. Eccentex may charge Customer a modest fee to cover its expenses for providing the Customer Data. Notwithstanding the foregoing, Eccentex reserves the right to withhold, remove and/or discard Customer Data without notice if Customer materially breaches this Agreement, including, without limitation, through non-payment of the required subscription fees. Upon termination of this Agreement by Eccentex for cause, Customer's right to access or use Customer Data immediately ceases, and Eccentex shall have no obligation to maintain or forward any Customer Data thereafter. Customer agrees and acknowledges that Eccentex has no obligation to retain Customer Data and that such Customer Data may be irretrievably deleted if Customer account is 30 days or more delinquent.

d. Upon request, Eccentex will work with Customer to design custom reports designed to give access to all Customer Data. The design and estimated cost of the custom reports will be covered in a time and materials technical services statement of work. Time and material rates shall be included in Appendix C of DIR Contract No. DIR-TSO-3452

**6. Intellectual Property Ownership.** Intellectual property will be handled in accordance with Appendix A, Section 5 of DIR Contract No. DIR-TSO-3452.

### 7. Confidentiality

a. "**Confidential Information**", to the extent allowable under the Texas Public Information Act, means any proprietary or confidential information that a party ("**Discloser**") discloses to the other party ("**Recipient**") and that (i) if disclosed in tangible or electronic form, is marked in writing as "confidential" or "proprietary" or (ii) if disclosed orally or

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visually, is designated at the time of disclosure as “confidential” or “proprietary”. Notwithstanding the foregoing, (a) the Licensed IP will be considered Confidential Information of Eccentex, and (b) Customer Data and the configurations selected by Customer in the course of developing the Customer Application will be considered Confidential Information of Customer, in each case, whether or not identified as “confidential” or “proprietary”.

b. Confidential information will not include any information that is (i) already in possession of Recipient without obligation of confidence, (ii) independently developed by Recipient, as evidenced by written records of Recipient, (iii) becomes publicly available without breach of this Agreement, (iv) rightfully received by Recipient from a third party without obligation of confidence, or (v) required to be disclosed pursuant to a court or government agency order or rule, provided that before disclosing any Confidential Information, Recipient provides reasonable notice of such order or rule giving Discloser opportunity to object to or limit such disclosure.

c. Recipient of Confidential Information agrees to exercise reasonable care to protect Confidential Information from unauthorized disclosure, which care shall not be less than Recipient exercises to protect its own confidential information of similar kind. Recipient may disclose Confidential Information only to its employees, contractors, and agents who need to know such information for purposes of this Agreement and shall contractually require such employees, contractors and agents to comply with the obligations of confidentiality. Customer agrees that Eccentex may use and disclose any Confidential Information of Customer to the extent necessary to operate and provide the Services.

d. Recipient’s duty to hold Confidential Information (other than the Licensed IP) in confidence expires five (5) years after this Agreement terminates. Licensee’s duty to hold the Licensed IP in confidence remains in perpetuity, subject to Section 7(b).

**8. Charges and Payment of Fees.** Customer shall pay all subscription fees and charges applicable to Licensed IP and the Services provided under this Agreement and the applicable Subscription Schedule to Customer’s account in accordance with the fees, charges, and billing terms in effect at the time a fee or charge is due and payable as identified on Appendix C of DIR Contract No. DIR-TSO-3452. The initial annual fees for the subscription of the Licensed IP under any Subscription Schedule will be equal to the current number of total User licenses requested under such Subscription Schedule, multiplied by the User license fee currently in effect, as set forth in such Subscription Schedule, and will be billed upon execution of such Subscription Schedule. Thereafter, payments must be made on the anniversary of each Subscription Schedule. All payment obligations are noncancelable and all amounts paid are nonrefundable. Customer is responsible for paying for all User licenses ordered for the entire term of the Subscription Schedule, whether or not such User licenses are actively used. An authorized license administrator of Customer may add User licenses by contacting Eccentex. Licenses added in the middle of any year will be subject to the following: (i) added licenses will be coterminous with the preexisting term of the applicable Subscription Schedule; (ii) the subscription fees for the added licenses will be the User subscription fee currently in effect for the applicable Subscription Schedule; and (iii) licenses added in the middle of a month will be prorated for that month. Customer may not reduce the number of User licenses during the term of a Subscription Schedule. Unless expressly prohibited in any Subscription Schedule, Eccentex reserves the right to modify its fees and charges and to introduce new charges for renewal terms with DIR approval.

**9. Excess Data Storage Fees.** The maximum disk storage space provided to Customer at no additional charge is 1 (One) GB per User and disk storage space between Users may be shared to the extent that total storage space required for Customer does not exceed maximum space for all Users combined. If the amount of disk storage required exceeds these limits for any particular Software Services, Customer shall be charged the data storage fee set forth in the applicable Subscription Schedule and noted in Appendix C of DIR Contract No. DIR-TSO-3452, for each additional GB of storage added for such Software Service. Eccentex will use reasonable efforts to notify Customer when the average storage used per license reaches approximately 90% of the maximum; however, any failure by Eccentex to so notify Customer shall not affect Customer responsibility for such additional storage charges. Eccentex reserves the right to establish or modify its general practices and limits relating to storage of Customer Data.

### 10. Billing

a. Invoicing and payments will be handled in accordance with Appendix A, Section 8I and 8J of DIR Contract No. DIR-TSO-3452. Eccentex charges and collects in advance for use of the Licensed IP or the Software Services. Eccentex will issue an invoice to Customer for all fees and amounts due on the effective date of each Subscription Schedule and each anniversary thereafter while a Subscription Schedule remains in force. Eccentex will issue additional invoices for any User licenses added in the middle of any year. Fees for other Services will be invoiced on an as-quoted basis. Taxes will be handled in accordance to Appendix A, Section 8E of DIR Contract No. DIR-TSO-3452.

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b. Customer agrees to provide Eccentex with complete and accurate billing and contact information. This information includes Customer legal company name, street address, e-mail address, and name and telephone number of an authorized billing contact and license administrator. Customer agrees to update this information within 30 days of any change to it. If the contact information Customer has provided is false or fraudulent, Eccentex reserves the right to terminate Customer's license to the Licensed IP or access to the Software Services in addition to any other legal remedies.

c. If Customer believes an invoice is incorrect, Customer must contact Eccentex in writing within 60 days of the date of the invoice containing the amount in question to be eligible to receive an adjustment or credit. Any invoice that is not disputed within such 60 day period shall be deemed irrevocably accepted and correct.

### 11. Non-Payment and Suspension

a. In addition to any other rights granted to Eccentex herein, Eccentex reserves the right to suspend or terminate a Subscription Schedule or this Agreement and Customer's license to the Licensed IP or access to the Software Services if Customer's account becomes delinquent (falls into arrears for more than 30 days). Customer will continue to be charged for User licenses during any period of suspension. If Customer or Eccentex initiates termination of a Subscription Schedule or this Agreement, Customer will be obligated to pay the balance due on Customer account computed in accordance with the Charges and Payment of Fees section above up until the date of termination.

b. Eccentex reserves the right to impose a reconnection fee in the event Customer is suspended and thereafter requests access to the Software Service.

**12. Term.** This Agreement commences on the Effective Date and continues for 12 months, unless terminated earlier as in Appendix A, Section 11B of DIR Contract No. DIR-TSO-3452. There will be three (3) one (1) year renewal options exercised by Customer providing 30 day written notice to Vendor prior to the then-expiration date.

**13. Representations & Warranties.** Each party represents and warrants that it has the legal power and authority to enter into this Agreement. Eccentex represents and warrants that: (a) it has the right to grant to Customer the rights to the Licensed IP granted herein; (b) it will provide the Services in a manner consistent with general industry standards reasonably applicable to the provision thereof; and (c) the Software Services will perform substantially in accordance with the online Eccentex help documentation under normal use and circumstances. As Customer's exclusive remedy, and Eccentex's sole and exclusive liability for any breach of the foregoing representations and warranties by Eccentex, Eccentex will promptly repair or replace the non-conforming Licensed IP or Services at no additional charge.

### 14. Indemnification

a. Indemnification will be handled in accordance with Appendix A, Section 10A of DIR Contract No. DIR-TSO-3452

**15. Disclaimer of Warranties.** EXCEPT AS PROVIDED IN SECTION 14, ECCENTEX AND ITS LICENSORS MAKE NO REPRESENTATION, WARRANTY, OR GUARANTY AS TO THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, TRUTH, AVAILABILITY, ACCURACY OR COMPLETENESS OF THE LICENSED IP, THE SERVICES INCLUDING THE SOFTWARE SERVICES, OR ANY CONTENT PROVIDED HEREUNDER. EXCEPT AS PROVIDED IN SECTION 14, ECCENTEX AND ITS LICENSORS DO NOT REPRESENT OR WARRANT THAT (A) THE USE OF THE LICENSED IP OR THE SERVICES INCLUDING THE SOFTWARE SERVICES WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE OR OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM OR DATA, (B) THE LICENSED IP OR THE SERVICES, INCLUDING THE SOFTWARE SERVICES WILL MEET CUSTOMER'S REQUIREMENTS OR EXPECTATIONS, (C) ANY STORED DATA WILL BE ACCURATE OR RELIABLE, (D) ALL ERRORS OR DEFECTS WILL BE CORRECTED, OR (F) THE LICENSED IP, THE SOFTWARE SERVICES OR THE SERVER(S) THAT MAKE THE SOFTWARE SERVICES AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. EXCEPT AS PROVIDED IN SECTION 14, THE LICENSED IP, THE SERVICES (INCLUDING THE SOFTWARE SERVICES) AND ALL CONTENT ARE PROVIDED TO CUSTOMER STRICTLY ON AN "AS IS" BASIS. EXCEPT AS PROVIDED IN SECTION 14, ALL CONDITIONS, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS, AND IMPLIED INDEMNIFICATION ARE HEREBY DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW BY ECCENTEX AND ITS LICENSORS.

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**16. Internet Delays.** THE SOFTWARE SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. ECCENTEX IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS.

**17. Limitation of Liability.** LIMITATION OF LIABILITY WILL BE HANDLED IN ACCORDANCE WITH APPENDIX A, SECTION 10K OF DIR CONTRACT NO. DUR-TSO-3452.

**18. Modification to Terms.** This Agreement and the Software Services are subject to limitations determined by Eccentex's third party providers. In the event any third party provider amends its terms of services applicable to the provision of any Services under this Agreement, Eccentex may amend any and all corresponding and applicable terms in this Agreement with DIR approval. Eccentex may also amend this Agreement to comply with changes in applicable law and as deemed necessary by Eccentex to ensure the security and performance of the Software Services with DIR approval.. Any amendments will be effective 10 days after being provided to Customer, either by email or by posting on the Eccentex website, provided that if Customer objects to any modification to this Agreement, Customer will have the right, as its sole and exclusive remedy, to reject such amendment, in which case the parties agree to negotiate in good faith a resolution.

**19. Force Majeure.** Force Majeure will be handled in accordance with Appendix A, Section 11C of DIR Contract No. DIR-TSO-3452.

**20. Government Use.** The Licensed IP is a "commercial item," as that term is defined at 48 C.F.R. 2.101 (Oct 1995), consisting of "commercial computer software" and "commercial computer software documentation," as such terms are used in 48 C.F.R. 12.212 (Sep 1995) and is provided to the U.S. Government only as a commercial end item. Any technical data provided with such Licensed IP is commercial technical data as defined in 48 C.F.R. 12.211 (Sep 1995). Consistent with 48 C.F.R. 12.211 through 12.212, 48 C.F.R. 227.7202-1 through 227.7202-4 (Jun 1995), and 48 C.F.R. 252.227-7015 (Nov 1995), all U.S. Government End Users acquire the Licensed IP with only those rights set forth herein.

**21. General.** This Agreement will be governed by and construed in accordance with the laws of the State of Texas, without regard to or application of conflicts of law rules or principles. The United Nations Convention on Contracts for the International Sale of Goods will not apply. The parties consent to the exclusive jurisdiction of, and venue in, the state courts of Travis County, Texas. Assignments will be handled in accordance to Appendix A, Section 4D of DIR Contract No. DIR-TSO-3452. Nothing herein shall be construed to waive the sovereign immunity of the State of Texas. All notices or approvals required or permitted under this Agreement will be in writing and delivered by confirmed facsimile transmission, by overnight delivery service, or by certified mail, and in each instance will be deemed given upon receipt. All notices will be handled in accordance with Appendix A, Section 12 of DIR Contract No. DIR-TSO-3452. The failure by either party to enforce any provision of this Agreement will not constitute a waiver of future enforcement of that or any other provision. Any waiver, modification or amendment of any provision of this Agreement will be effective only if in writing and signed by authorized representatives of both parties. If any provision of this Agreement is held to be unenforceable or invalid, that provision will be enforced to the maximum extent possible and the other provisions will remain in full force and effect. DIR Contract No. DIR-TSO-3452 and this Agreement, including all Schedules hereto, is the complete and exclusive understanding and agreement between the parties regarding its subject matter, and supersedes all other proposals, understandings or communications between the parties, oral or written, regarding its subject matter, unless Customer and Eccentex have executed a separate agreement. Any terms or conditions contained in Customer purchase order that are inconsistent with or in addition to the terms and conditions of this Agreement or the Subscription Schedule are hereby rejected by Eccentex and will be deemed null and of no effect. If there is a conflict between DIR Contract No. DIR-TSO-3452, this Agreement and any Subscription Schedule, the terms and conditions of DIR Contract No. DIR-TSO-3452 shall prevail. Sections 2(d), 5, 6, 7, 14, 15, 17, and 21 and all outstanding payments shall survive any termination or expiration of this Agreement.

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**Eccentex Corporation**

**CUSTOMER NAME (Customer)**

By: \_\_\_\_\_

By: \_\_\_\_\_

(Type or print name): \_\_\_\_\_

(Type or print name): \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

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## Schedule A

### Eccentex Subscription Schedule

Contract # \_\_\_\_\_

This Eccentex Subscription Schedule (this “**Schedule**”), dated \_\_\_\_\_, 201\_ (the “**Subscription Effective Date**”), is subject to the terms and conditions of the Software Services Agreement (the “**Agreement**”) between \_\_\_\_\_ (“**Customer**”) and Eccentex Corporation (“**Eccentex**”), dated \_\_\_\_\_. Where there is a conflict between this Schedule and the Agreement, this Schedule will govern.

Customer desires to receive a subscription to certain proprietary platform known as AppBase or application developed by or for Eccentex using such platform. All capitalized terms used herein that are not defined herein have the meanings given to them in the Agreement.

1. Description of the Subscription:

Licensed IP:

a. Delivery Model:

Software Service – access to the Licensed IP hosted by or for Eccentex will be made available to Customer via a restricted website.

b. Summary of the License:

2. Usage Rights: Customer may use the Licensed IP only on the following terms:

a. License to Platform and/or Applications Templates:

**PaaS Service.** If Customer desires to access the Platform and/or Applications Templates through the Software Services, subject to the terms and conditions of the Agreement, including payment of the applicable fees, Eccentex hereby grants Customer during the Term (defined below), a non-transferable (except as permitted under the Agreement), limited, non-exclusive, license for the number of Users stated above to (i) access and use the Platform and/or Applications Templates solely for purposes of configuring and customizing a Customer Application (described below) based on the Platform and/or Applications Templates according to the user guide provided by Eccentex, and (ii) access and use the Customer Application for internal business purposes only. Customer authorizes Eccentex (directly or through a contractor) to host, copy, transmit, display and otherwise use the Customer Application solely as necessary for Eccentex to provide the Software Services in accordance with the Agreement.

Customer Application: **INSERT A DESCRIPTION OF THE CUSTOMER APPLICATION**

License to Application: If Customer desires to access an Application through the Software Services, subject to the terms and conditions of the Agreement, including payment of the applicable fees, Eccentex hereby grants Customer during the Term a non-transferable (except as permitted under the Agreement), limited, non-exclusive, license for the number of Users stated above to access the Application and use the Application for internal business purposes only.

3. Term:

The initial term of this Schedule will be 12 months, beginning on the Subscription Effective Date (the “**Initial Term**”). The Initial Term will automatically renew for additional 12 month terms (each, a “**Renewal Term**”) unless either party provides written notice of termination at least 30 days prior to the expiration of the then-current term. The Initial Term and any Renewal Terms are together referred to as the “**Term.**”

4. Fees and Payment Terms:

Subscription Fees.

In consideration for providing access and a license to the Licensed IP, Customer will pay Eccentex a subscription fee of \$\_\_ per User per month.

Subscription fees will be invoiced monthly and will be payable thirty (30) days from the date of the invoice. Once due, all fees are nonrefundable and non-cancelable.

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This special pricing offer expires on \_\_\_\_\_.

Notwithstanding the foregoing, to the extent a third party provider of a service that is necessary for Eccentex to provide the Services to Customer increases any fees payable by Eccentex to such third party, Eccentex has the right to increase the fees payable by Customer to Eccentex, subject to the discounts listed in Appendix C to DIR Contract No. 3452, to reflect such increase in the fees payable by Eccentex to such third party provider.

5. Additional Purchase Options.

a. During the Term, Customer may purchase additional usage as follows:



b. Purchases of additional usage will be exercised by sending a purchase order or written notice to Eccentex. The term for any additional usage purchased will be co-terminus with the Term of this Subscription. The fees for additional usage that are set forth above are subject to adjustment as provided in the Agreement. The terms of the Agreement will govern any purchase order, and any terms that may be printed on the purchase order will be of no force and effect.

6. Delivery and Acceptance. Eccentex will create and email to Customer a Software User ID and password which will allow Customer to access and use the Development/Test Environment set forth herein. Access and use of the Development/Test Environment, or failure of Customer to reject the Software User ID and password within 10 days following delivery, will be deemed acceptance by Customer of this Schedule. This acceptance is not dependent on any remaining Software Services, conditions or contingencies, and there are no other written or verbal agreements with respect to acceptance.

7. Service Level Agreement. Eccentex will host the Licensed IP and use commercially reasonable efforts to provide the Software Services in accordance with the Service Level Agreement provided on Attachment 1.

**Eccentex Corporation**

**[CUSTOMER NAME]**

By: \_\_\_\_\_

By: \_\_\_\_\_

(Type or print name): \_\_\_\_\_

(Type or print name): \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

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## Schedule 1

### Service Level Agreement

1. **Definitions.** As used in this Service Level Agreement, the following capitalized terms shall have the meanings ascribed thereto:

- i. **“Eligible Credit Period”** is a single calendar month, and refers to the monthly billing cycle in which the most recent Unavailable event for a particular Subscription included in the SLA claim occurred.
- ii. **“Monthly Uptime Percentage”** is calculated by dividing each hour into five minute periods, and then determining during which, if any, of those five minute periods, the Subscription was Unavailable, subtracting that number from the total number of such minute periods in the Subscription Month during which the Subscription was scheduled to be available (the **“Scheduled Availability Number”**) and dividing that number by the Scheduled Availability Number. If Customer has been using the Subscription for less than a full calendar month, the Subscription Month is still the preceding calendar month but any days in such month that are prior to the commencement of use of the Subscription will be deemed to have had 100% availability. Monthly Uptime Percentage measurements exclude downtime resulting from a Subscription Suspension.
- iii. **“SLA”** means a Monthly Uptime Percentage of at least 99% during each Subscription Month.
- iv. **“Subscription”** means the provision of the Instance to Customer on the terms described in the applicable Subscription Schedule.
- v. **“Subscription Month”** means each applicable calendar month in which the Subscription is contracted to be provided.
- vi. **“Subscription Suspension”** means the unavailability of a Subscription: (a) during weekends or on weekdays between 11:00 p.m. and 5:00 a.m. EST with at least 3 days’ notice (provided via email or on Eccentex’ web site) for scheduled downtime to permit Eccentex to conduct maintenance or make modifications to the Subscription; (b) in the event any third party service providers that provide infrastructure for the Subscription cease providing services, in which case Eccentex will provide Customer with thirty days written notice and will use reasonable efforts to restore access to the Subscription as soon as commercially feasible; (c) at any time in the event of a denial of service attack or other event that Eccentex reasonably determines may create a risk to the applicable Subscription; or (d) at any time in the event that Eccentex reasonably determines that suspension is necessary for legal or regulatory reasons.
- vii. **“Unavailable”** or **“Unavailability”** means that all of the running Instances are unresponsive during a five minute period and Customer is unable to launch replacement Instances.

2. **Software Service Levels.** Eccentex will use commercially reasonable efforts to make each Subscription available within the SLA. If the Monthly Uptime Percentage is less than 90% in more than three (3) months during any twelve (12) months period, Customer may terminate this Agreement for material breach under Section 13 of the Agreement.

### 3. **Suspension of Subscription**

- a. Customer acknowledges that (i) Customer’s access to and use of a Subscription may be suspended for the duration of any unanticipated or unscheduled downtime for any reason, including as a result of power outages, system failures or other interruptions outside of Eccentex’s reasonable control, and (ii) Eccentex may suspend access to any portion or all of a Subscription due to a Subscription Suspension.
- b. Eccentex will have no liability for any damage, liabilities, or other losses that Customer may incur as a result of any Subscription Suspension. Eccentex will use reasonable efforts to provide Customer email notice of any Subscription Suspension and updates regarding resumption of the Subscription following any such suspension.

### 4. **Security**

- a. Eccentex agrees that it will use commercially reasonable efforts adhere to the security protocols described on Attachment 2.

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- b. Other than the Eccentex security protocols described on Attachment 2, Customer acknowledges that it is responsible for security, protection and backup of its content, data and Customer Applications. Eccentex strongly encourages Customer, where available and appropriate, to (a) use encryption technology to protect Customer's content and data from unauthorized access, and (b) routinely archive Customer's content and data. Customer is fully responsible for all Customer Applications running on, and traffic originating from, each Instance. Customer should protect its authentication keys and security credentials. Actions taken using Customer's credentials will be deemed to be actions taken by Customer and will be the responsibility of Customer.

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## Attachment 2

### Security Protocols

- a. **Access Control:** Implement access control measures restricting access to applications, data, and software to only those entities that have a documented, current business need. These measures shall meet the requirements of the security policies required by the Customer (HIPAA, SOX, and/or others as required). Access to the controlled systems shall be locked down by subnet, port, protocol, server, role, and user to allow only the access required for the business function.
- b. **Audit Controls:** Implement audit control mechanisms to record, monitor, and examine system activity, including data access activities. Maintain full logs of monitored activities for at least three years trailing.
- c. **Authorization Control:** Implement a mechanism for controlling the authorization of individuals, organizations, and roles to access applications, data, and software. Integrate with Customer's existing identity management solution where one exists to enable single sign-on and centralized identity management. Assure supervision of personnel performing technical systems maintenance activities by authorized, knowledgeable persons. Ensure that system users, including technical maintenance personnel are trained in system security.
- d. **Data Authentication:** Create audit trail providing corroboration that data has not been altered or destroyed in an unauthorized manner.
- e. **Entity Authentication:** Implement entity authentication technologies, including automatic logout and unique user identification through a password or equivalent system. Passwords or other user tokens shall be required to follow robust, documented policy requirements including:
  - a. Periodic reset/renewal every six months or less (Password ageing)
  - b. Complexity and length requirements in the case of passwords
    - i. No dictionary words
    - ii. No dates
    - iii. Mixed character types (at least three of lowercase, uppercase, numerals, and punctuation)
  - c. Lockouts after five unsuccessful authentication attempts
- f. **Encryption at Rest:** Sensitive data shall be encrypted whenever stored in the database or in persisted memory using the highest possible encryption in compliance by the specific country.
- g. **Encryption in Flight:** Communications over a network containing sensitive data shall be encrypted through SSL
- h. **Business Continuity:** Implement and document business continuity and disaster recovery procedures, including but not limited to incremental data backups taken daily and stored for three weeks trailing, and full data backups taken weekly and stored for three years trailing.
- i. **Audits and Policy Compliance:** Documentation and implementation of security policy shall be prepared and supplied to the Customer on demand for ALL of the following policy components:
  - a. A data backup plan
  - b. A disaster recovery plan
  - c. An emergency mode operation plan
  - d. Testing and revision procedures
  - e. Access authorization policies and procedures
  - f. Security testing
  - g. Virus checking
  - h. Security incident response procedures
  - i. Personnel clearance procedures
- j. **Assigned Security Responsibility:** Assign and document the assignment of security responsibility to a specific individual or role within the Software Service provider organization. This responsibility would include the management and supervision of the use of security measures and the conduct of personnel.
- k. **Physical Security:** Implement and document physical access controls (limited access) governing the Software Service provider's location(s) that are used to access Customer's applications, data, and software.

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## Schedule B

### Maintenance and Support Terms

1. **General.** Eccentex includes support and maintenance services with the Software Services. Support and maintenance services are as described below.
2. **Maintenance and Support Services.** Maintenance and Support Services include:
  - (i) **Maintenance Releases and Upgrades:** During the term, Eccentex agrees to deliver to Customer without charge any upgrades containing error corrections or enhancements to the Licensed IP (“**Upgrades**”). Eccentex may also offer to Customer new versions of the Licensed IP, which contain additional functionality, subject to an additional license fee.
  - (ii) **Standard Telephone Support:** Subject to Section 3 below, Eccentex will use commercially reasonable efforts to provide Customer live telephone and email support during normal business hours of Eccentex (Monday – Friday, 8:00 a.m. to 6:00 p.m. Pacific Standard Time, excluding Eccentex holidays), or at such other hours as the parties may mutually agree to, for (a) configuration issues, (b) questions regarding the usability and specific functions of the Licensed IP, (c) problem diagnosis, and (d) provision of work-arounds where feasible.
  - (iii) **Critical Telephone Support:** Subject to Section 3 below, Eccentex will use commercially reasonable efforts to provide Customer live telephone support 24 hours per day, 7 days a week for problems where there is a complete loss of Licensed IP or a mission-critical system is down or sufficiently impaired and usability is severely affected.
  - (iv) **Support Liaisons:** Eccentex will coordinate with up to four Customer employees designated as support liaisons to manage support calls to Eccentex.
3. **Technical Support.** Eccentex offers the Customer a single point of contact for all product support questions. Customer will call the technical support number and the call coordinator will work to address Customer issues, with response and escalation based on the severity of the problem.

Eccentex shall use commercially reasonable efforts to respond to problems in accordance with the “Priority Codes” set forth below. The Priority Codes below depict the priority level to be assigned by Eccentex to each issue or problem phoned in by Customer.

*“A Priority”* - Licensed IP is completely inoperable. Resources assigned within two (2) hours after notice.

*“B Priority”* - Licensed IP error is detected for a system module, which seriously impairs system operations, but does not render it inoperable. Resources assigned within four (4) hours after notice during standard support hours.

*“C Priority”* –Customer has a problem with Licensed IP but there is a known workaround which does not seriously impair the operation of Licensed IP. Resources assigned within eight (8) hours after notice during standard support hours.

*“D Priority”* - Minor problems which Eccentex plans, or will plan to incorporate into a future release of the Licensed IP, to be resolved in connection with the general commercial availability of such future release.

4. **Data Backup.** Eccentex provides ongoing data backup of configuration data as well as overall user generated data. Eccentex will keep a rolling backup of a full data snapshot per day for a timeframe minimum of 2 days.
5. **Conditions.** Maintenance and support apply to the standard Licensed IP made generally available by Eccentex to customers, and not to modifications delivered as part of any Technical services. Eccentex reserves the right to address defects in the next release of the Licensed. Eccentex will not be responsible to provide service or support when the problem is the result of faulty hardware or software that (i) Eccentex did not provide or (ii) Eccentex has not contracted with Customer to support under this Agreement. Eccentex reserves the right to bill Customer for such non-supported service at Eccentex’s standard time and material charges for services that fulfill this criteria. Maintenance services are not on-site services. If Customer needs or desires on-site maintenance services, such services are available at Eccentex’s standard time and material charges.

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## Schedule C: Services Terms and Conditions

1. **Purpose:** Eccentex provides a variety of installation, implementation, consulting, technology and project-related services related to the Software Services (“**Technical Services**”) to its customers. This Schedule describes additional terms and conditions under which Customer may engage Eccentex to perform such services for Customer.
2. **Definitions:** The following definitions apply to this Exhibit and any related Statement of Work.
  - 2.1. **“Deliverable”** means any materials specified in a SOW for delivery by Eccentex to Customer.
  - 2.2. **“Documentation”** means any written materials to be prepared by Eccentex for Customer under a particular SOW.
  - 2.3. **“Statement of Work” (“SOW”)** means a written document executed between the parties that includes at least the following information: (i) a description of the Technical Services and Deliverables; (ii) the parties’ responsibilities; and (iii) the service fees and method of calculation.
3. **Rules of Engagement**
  - 3.1. **Initiating Technical Services.** All Technical Services provided by Eccentex to Customer shall be implemented through individual SOW(s). A SOW will become effective upon execution by authorized representatives of both parties.
  - 3.2. **SOW Integration.** If the SOW contains provisions inconsistent with this Exhibit, the SOW provisions shall prevail with respect to that SOW. This Schedule by itself does not obligate a party to provide any Technical Services or enter into any SOW.
  - 3.3. **Change Order.** Any changes to the obligations of either party or to any other material aspect of a SOW will require a written change order signed by both parties that describes the changes and any related cost adjustments.
  - 3.4. **Acceptance.** Technical Services will be deemed satisfactory to and accepted by Customer unless within ten (10) days after submission to Customer, Customer gives Eccentex written notice of aspects in which the Technical Services do not meet the SOW requirements. Upon receipt of such written notice, Eccentex will use commercially reasonable efforts to make such changes as will be required to correct any deficiencies. In the event such deficiencies are not corrected within sixty (60) days, then Customer may terminate the applicable SOW and receive a refund of any fees paid for the deficient Technical Services.
4. **Responsibilities**
  - 4.1. **Assumptions.** The description of the Technical Services and related compensation amount in each SOW will be based upon information Customer provides to Eccentex and upon any assumptions set forth in the SOW. Customer acknowledges that if the information provided by Customer is incomplete or inaccurate, or if the stated assumptions are not correct, then the parties will modify the SOW pursuant to Section 3.3 above.
  - 4.2. **Customer Assistance.** Customer agrees that it will reasonably cooperate with and assist Eccentex in Eccentex’s performance of Technical Services.
  - 4.3. **Project Managers.** Each party shall appoint a project manager (“**Project Manager**”) for each SOW. Each party may replace its designated Project Manager at any time.
  - 4.4. **Site Regulations.** Eccentex’s employees performing the Technical Services on Customer premises shall observe reasonable safety and security protocols of which Eccentex is notified in writing.
5. **Compensation and Invoicing**
  - 5.1. **Compensation for Technical Services; Expenses.** Customer shall pay all the amounts specified in the relevant SOW, including without limitation, compensation for Technical Services and all reasonable out-of-pocket expenses incurred in the performance of the Technical Services, and for any non-standard expenses incurred at the request of Customer.
  - 5.2. **Invoicing.** Unless otherwise agreed in a SOW, Technical Service fees and expenses shall be calculated by Eccentex on a monthly basis and invoiced to Customer within fifteen (15) days after the end of each month.
6. **Intellectual Property**
  - 6.1. **License.** Subject to payment of all applicable fees for Technical Services and Deliverables provided to Customer, Eccentex grants to Customer, and Customer acquires, a nonexclusive, nontransferable (except

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pursuant to a permitted assignment of the Agreement), worldwide, perpetual, royalty-free license to use the Deliverables in connection with receiving the Software Services and permitted use of the Licensed IP.

- 6.2. Ownership. Eccentex (and/or its licensors) retains on an exclusive basis all right, title and interest in and to any intellectual property developed, delivered and/or used by Eccentex in the performance of the SOW.
- 6.3. Protection of Deliverables. Customer agrees to take all reasonable steps to protect Deliverables under the SOW, and any related Documentation, from unauthorized copying or use.
- 6.4. Restrictions. Except as expressly authorized in the SOW, Customer agrees not to rent, lease, sublicense, distribute, transfer, copy, reproduce, display, modify or time share any Deliverable.

### 7. Termination of SOW

- 7.1. Termination for Cause. A SOW may be terminated by either party effective immediately if a breach of any representation, warranty, covenant, condition or other obligation applicable to the SOW by the other party remains uncured thirty (30) days after notice of such breach is given by the aggrieved party to the breaching party.
- 7.2. Consequences of Termination. In the event of termination of a SOW, Customer shall pay Eccentex the amounts specified in the fees section of each such SOW relating to work performed by Eccentex prior to and including the date of termination, as well as any additional costs or expenses which Eccentex had incurred or contracted for with respect to the Technical Services and is unable to avoid. Additionally, all property of each party in possession of the other party relating to such SOW shall be returned. Customer will return to Eccentex any Deliverable provided to Customer by Eccentex under such SOW but not yet fully paid for by Customer. Except in case of breach by Customer, Customer may retain a license under Section 6.1 to use incomplete Deliverables for which it has paid; however, all warranties regarding such Deliverables shall cease.