



## Appendix E to DIR Contract No. DIR-SDD-1638 Software License and Services Agreement

Deque Contract Number:

**DEQUE**

Deque Systems, Inc.,  
a Virginia corporation ("Deque")  
11130 Sunrise Valley Drive, Suite 140  
Reston, Virginia 20191

Phone: 703.225.0380  
Fax: 703.225.0387

**LICENSEE**

Company Name: \_\_\_\_\_ ("Licensee")  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_

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

Deque and Licensee desire that Deque provide Licensee certain proprietary software and services under the terms of this Software License and Services Agreement (together with all Attachments hereto, the "Agreement"). Accordingly, this Agreement is made and entered into as of the Effective Date by and between Deque Systems Inc. and the Licensee identified above.

This "Agreement" consists of the DIR Contract No. DIR-SDD-1638, this Software License and Services Agreement signature page and the attached Software License and Services Agreement, including all documents provided as attachments or incorporated therein by reference.

**DEQUE**

\_\_\_\_\_  
**Signature**  
\_\_\_\_\_  
**Printed Name**  
\_\_\_\_\_  
**Title**  
\_\_\_\_\_  
**Date**

**LICENSEE**

\_\_\_\_\_  
**Signature**  
\_\_\_\_\_  
**Printed Name**  
\_\_\_\_\_  
**Title**  
\_\_\_\_\_  
**Date**

## DEQUE SOFTWARE LICENSE AND SERVICES AGREEMENT

1. **DEFINITIONS.** In addition to the other defined terms contained in this Agreement, the following terms will have the following meanings.

- (a) "Documentation" means the Deque user guides and manuals for operation of the Software, in written or electronic form, delivered with the Software.
- (b) "Order Schedule" means a Deque order schedule in substantially the form attached as Attachment A, or other document containing substantially the same information in a form accepted by Deque, whether submitted directly by Licensee or through an authorized Deque affiliate, including, in the absence of a Deque Order Schedule, a Licensee purchase order acceptable to Deque.
- (c) "Software" means the Deque software (in executable code format only) described on a duly executed Order Schedule, including Updates provided under a Deque maintenance program for which Licensee contracts with Deque.
- (d) "Update" means any subsequent versions or releases of the Software that Deque makes generally available to its customers who subscribe for maintenance services.

2. **GRANT OF LICENSE.** Subject to the terms and conditions of this Agreement, Deque grants to Licensee the non-exclusive, non-transferable, (subject to divestiture for failure to pay license fees or for violation of the restrictions contained in this Agreement) right to install and use the Software as expressly stated in Attachment A, solely for its own internal business operations. The Software is licensed by Deque, not sold. Deque reserves to itself all rights in the Software and the Documentation that are not expressly granted by this Agreement.

Licensee obtains no right, title or interest in the Software or any of the associated materials, or any right, title or interest to any intellectual property rights in the Software, other than as expressly set forth in this Agreement. Title in and full ownership of the Software and any and all materials relating to the Software and supplied to Licensee by Deque shall remain in Deque.

Licensee shall not publish or disclose to any third party the results of any benchmark tests or other evaluation run on the Software without the prior written consent of Deque.

### 3. COPY AND USE RESTRICTIONS

- (a) Licensee may copy the Software as reasonably necessary for backup, archival or disaster recovery purposes. No copies of the documentation shall be made without the prior written approval of Deque.
- (b) Licensee may not, and may not allow any third party to:
  - (i) Copy any software except to make a backup that is never used in production when the primary copy of the Software is available to Licensee for use
  - (ii) Decompile, disassemble, decrypt, or reverse engineer the Software or attempt to derive the source code for any part of the Software;
  - (iii) Encumber any right in the Software in favor of a third party, whether by agreement, operation of law, or otherwise;
  - (iv) Remove from the Software or Documentation any product identification or proprietary rights notices;
  - (v) Sell, lease, lend, or sublicense the Software or the Documentation to any third party;

- (vi) Use the Software for timesharing or service bureau purposes;
- (vii) Modify or create derivative works of the Software (except that Licensee's code written to published APIs for the Software will not be deemed a derivative work);
- (viii) Where this Agreement states the terms of one or more licenses in terms of named users, concurrent users, concurrent sessions, workstations, processors, or similar metrics, Licensee may not "pool" sessions, use automated routines that are not part of the Software, add processing units or cores in excess of those ordinarily contemplated for and used with workstations and/or servers, or undertake any other act or omission that would circumvent the metric or permit Licensee greater use of the Software than the plain meaning of the metric states or implies; or
- (ix) Otherwise use or copy the Software except as expressly provided herein.

(c) Deque may, at its expense and upon reasonable notice to Licensee, not more than once in any 12 month period, audit Licensee's books, records and facilities associated with the Software with respect to Licensee's compliance with the terms of this Agreement. If the audit reveals that Licensee has underpaid fees to Deque, Licensee shall promptly pay such fees. Deque will pay the costs of each audit unless the audit reveals an underpayment by more than three percent (3%) of the total fees due Deque for any one-year period, in which case Licensee will pay the costs of the audit so finding.

### 4. FEES AND PAYMENT TERMS.

- (a) All fees shall be at the rates set forth in Appendix C of DIR Contract No. DIR-SDD-1638.
- (b) Deque may invoice license fees on or after the Effective Date of the Agreement and/or as new licenses are added.
- (c) Deque may invoice maintenance fees on or after the Effective Date of the Agreement.
- (d) Deque may invoice maintenance fees for subsequent years on the first day of the anniversary month of the Agreement.
- (e) Deque may invoice for technical services monthly in arrears. Deque may invoice for actual hours worked for time-and-materials engagements and may invoice on a percentage-of-completion basis for fixed-fee engagements.
- (f) As per Section 151.309, Texas Tax Code, governmental Customers under this Agreement are exempt from the assessment of State sales, use and excise taxes. Further, governmental Customers under this Agreement are exempt from Federal Excise Taxes, 26 United States Code Sections 4253(i) and (j).
- (g) Payment shall be in accordance with Section 7.C. of Appendix A of the DIR Contract No. DIR-SDD-1638.
- (h) All travel expenses must be pre-approved in writing by the Customer and will be reimbursed in accordance with Section 4.G. of DIR Contract No. DIR-SDD-1638 and State of Texas Travel Regulations.

5. **MAINTENANCE AND TECHNICAL SERVICES.** Deque will provide to Licensee the Maintenance and Technical services, if any, upon the terms, and for the consideration, stated in Attachments to this Software License and Service Agreement.

### 6. ASSIGNMENT AND TRANSFER OF RIGHTS

- (a) Licensee may not transfer, or delegate any right or obligation under this Agreement without the prior written consent of Deque, which consent Deque will not unreasonably

- withhold, delay, or condition. Any transfer or delegation in violation of this Agreement will be voidable at Deque's option.
- (b) Assignment shall be in accordance with Section 4.D. of Appendix A of the DIR Contract No. DIR-SDD-1638.
  - (c) The local list price of Deque Software may vary from geographic area to geographic area and Licensee's use of the Software and/or Documentation may be subject to an additional fee based on list price differences if Licensee installs and/or uses the Software and/or the Documentation in a location outside the country for which the Software was initially licensed. Licensee shall notify Deque in writing prior to moving the Software.

**7. TERMINATION**

- (a) Termination shall be in accordance with Section 10.B. of Appendix A of the DIR Contract No. DIR-SDD-1638. Upon such a termination by Deque for Licensee's violation of the provisions of Section 333 or any restriction contained in an Order Schedule, all of Licensee's right to possess or use the Software will immediately cease and Licensee shall promptly return to Deque, or, to the extent allowed by applicable records retention laws and policies, destroy, all copies of the Software and Documentation in Licensee's possession or control. Termination is not an exclusive remedy.
- (b) Any obligations to pay fees incurred under Sections 444 and 555 prior to termination, and the provisions of Sections 1, 3, 4, 6, 7, 8(d)-8(h) (inclusive), 9, 10, 12, and 13, shall survive indefinitely the termination of the Agreement for any reason.

**8. LIMITED WARRANTY AND DISCLAIMER**

- (a) Deque warrants that, when delivered, and for a period of 30 days thereafter (and for the entire subscription period for subscription-based licenses and for the entire time that Deque hosts the Software, if so provided under Attachment A), the Software (excluding Updates for purposes of this Section 888) will conform in all material respects to Deque's then-current Documentation for such Software.
- (b) The preceding warranty will not apply if, and to the extent that:
  - (i) The Software is not used in accordance with this Agreement or the Documentation;
  - (ii) The Software or any part thereof has been modified by any entity other than Deque; or
  - (iii) A malfunction in the Software has been caused by any of Licensee's equipment or any third-party software.
- (c) To claim the benefit of this Section 8, Licensee must notify Deque before the end of the warranty period, describing in reasonable detail the nature of the nonconformity, and provide to Deque sufficient detail to allow Deque to reproduce the problem.
- (d) DEQUE'S SOLE AND EXCLUSIVE LIABILITY FOR ANY BREACH OF THE ABOVE WARRANTY SHALL BE LIMITED TO REPAIR OR REPLACEMENT OF THE SOFTWARE UNLESS, IN DEQUE'S OPINION, SUCH REPAIR OR REPLACEMENT WOULD BE INADEQUATE OR IMPRACTICAL, IN WHICH CASE DEQUE WILL REFUND THE LICENSE FEE PAID FOR THE APPLICABLE SOFTWARE. DEQUE DOES NOT WARRANT THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE.
- (e) EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, DEQUE PROVIDES THE SOFTWARE AND ALL ASSOCIATED GOODS AND SERVICES WITH ALL FAULTS, THE ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE,

ACCURACY, AND EFFORT IS WITH LICENSEE, AND DEQUE MAKES NO WARRANTY AGAINST INTERFERENCE WITH LICENSEE'S ENJOYMENT OF THE SOFTWARE, GOODS OR SERVICES, AGAINST INFRINGEMENT, OR OF FITNESS FOR ANY PARTICULAR PURPOSE OR OF MERCHANTABILITY.

- (f) The Software, Documentation, and other goods, services, and software provided by Deque are among many tools available for the evaluation of compliance with law. Deque does not represent or warrant that the use of the Software, the Documentation, or any other good, service, or software provided by Deque will itself make any person compliant with any particular law or regulatory regime.
  - (g) Deque does not represent or warrant that the use of any Software, Documentation, or any other good, service, or software provided by Deque will render any website, good, service, or software appropriate or compliant for use by any particular person for any particular purpose. Under no circumstances may Licensee use the Software, Documentation, or any other good, service, or software provided by Deque in connection with any good, service, or software that is to be used for the control of nuclear facilities, aircraft, air traffic control, navigation, or any other application where the failure of noncompliance of such good, service, or software is likely to result in personal injury (including, but not limited to, death) or property damage.
  - (h) The Software operates utilizing the Internet, which is not under the control of Deque and which is inherently insecure. Deque makes no warranties, representations, or guarantees of any kind, express, implied, statutory, or otherwise, oral or written, with respect to the performance or security of the Internet.
9. **CONFIDENTIALITY.** To the extent authorized by the Texas Public Information Act, Licensee will maintain in confidence the Software and the Documentation and not disclose the same to any third party. Licensee will make available the Software and the Documentation only to such of its employees as have an actual need to know about the Software and/or its functioning.
10. **LIMITATION OF REMEDIES AND DAMAGES.** Regardless of the basis of recovery claimed, whether under contract tort, negligence, strict liability or other theory, Deque's aggregate liability with respect to any and all subject matter of the Agreement or any attachment or order placed under its terms will be limited to the amount of the fees paid by Licensee for the Software giving rise to the liability. DEQUE SHALL NOT BE LIABLE FOR LOSS OF OR DAMAGE TO RECORDS OR DATA, COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY, ANY MATTER BEYOND ITS REASONABLE CONTROL, OR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, EVEN IF DEQUE IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. LICENSEE ACKNOWLEDGES AND AGREES THAT THE LIMITATIONS IN SECTION 8, IN THIS SECTION 10, AND OTHERWISE IN THIS AGREEMENT ARE ESSENTIAL ELEMENTS OF THE AGREEMENT BETWEEN THE PARTIES AND THAT, IN THE ABSENCE OF SUCH LIMITATIONS THE PRICES AND TERMS SET FORTH IN THIS AGREEMENT WOULD BE SUBSTANTIALLY DIFFERENT. The limitations above do not apply in the case of bodily injury (including death) or damage to real and tangible personal property.
11. **INTELLECTUAL PROPERTY INDEMNITY**
- (i) Indemnification shall be in accordance with Section 9.A.

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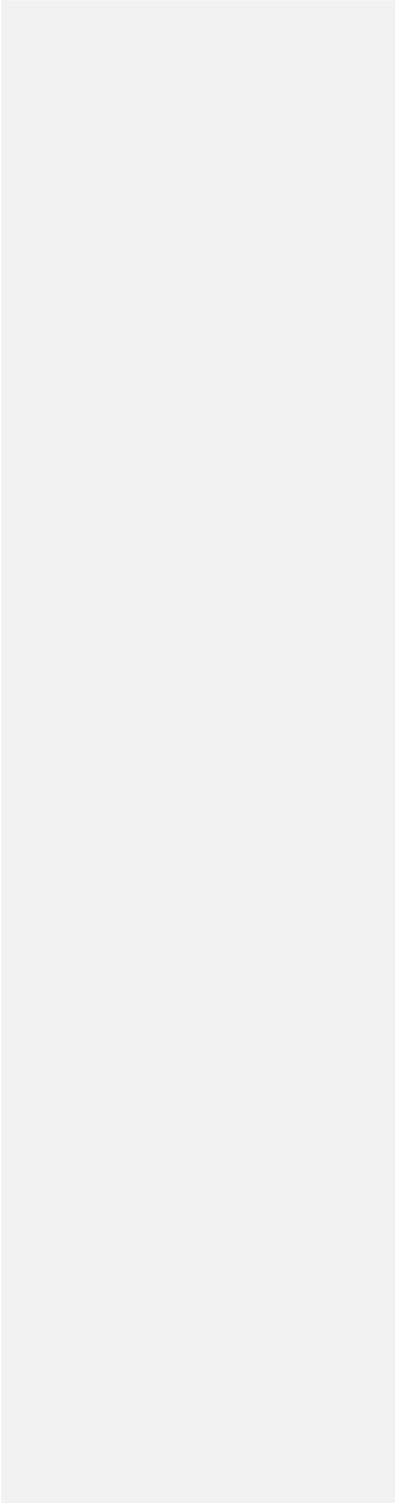
of Appendix A of the DIR Contract No. DIR-SDD-1638.  
(b) The foregoing obligation of Deque does not apply with respect to Software or portions or components thereof:

- (i) Not supplied by Deque;
  - (ii) Used in a manner not expressly authorized by this Agreement
  - (iii) Made in accordance with Licensee's specifications;
  - (iv) if the alleged infringement or misappropriation results from any customizations, modifications, alterations or changes not developed by Deque;
  - (v) Combined with other products (hardware or software), processes or materials where the alleged infringement would not exist but for such combination;
  - (vi) Not the most current Update if infringement would have been avoided by use of the most current Update;
  - (vii) Where Licensee continues the allegedly infringing activity after being notified thereof and provided modifications that would have avoided the alleged infringement; or
  - (viii) To the extent that the rights of any third party asserted with regard to the Software arise out of, or are connected with, claims (whether based in patent law or otherwise) to inventions, technologies, or methods that were in widespread unlicensed use by third parties as of the time the Software was delivered to, or used by, Licensee or any affiliate of Licensee.
- (c) In the event that the Software is held by a court of competent jurisdiction to constitute an infringement or the use of the Software is enjoined (or Deque reasonably believes that any of the foregoing are reasonably likely to occur) Deque may, at its option, do one of the following things.
- (i) Procure for Licensee the right to continue use of the Software;
  - (ii) Provide a modification to the Software so that its use becomes non-infringing, which modification Licensee must immediately implement;
  - (iii) Replace the Software with software that is substantially similar in functionality and performance; or
  - (iv) If none of the foregoing alternatives is reasonably available to Deque, Deque shall refund the residual value of the License fees paid by Licensee for the infringing Software, depreciated using a straight line method of depreciation over a three-year period from the date of delivery of the Software to Licensee.
- (d) This Section 11 states Deque's sole liability and Licensee's exclusive remedy for any claim by a third party that the Software, Documentation, or any other good, service, or software provided by Deque infringes upon, violates, or misappropriates any right of a third party.

12. **U.S. GOVERNMENT USERS.** The Software and Documentation are "Commercial Items," as that term is defined at 48 C.F.R. §2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation," as such terms are used in 48 C.F.R. §12.212 or 48 C.F.R. §227.7202, as applicable. Consistent with 48 C.F.R. §12.212 and 48 C.F.R. §§227.7202-1 through 227.7202-4, as applicable, the Software and User Documentation are being provided to U.S. Government end users (1) only as a Commercial Item, and (2) with only those rights as are granted to all other end users pursuant to the terms and conditions of this Agreement.

13. **GENERAL.**

- (a) The Agreement shall be governed by and construed under the laws of the State of Texas (except the Uniform Computer Information Transactions Act, which will not apply) without regard to the conflicts of law provisions thereof. The United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from application to this Agreement. Any suit or other action arising out of, or related to, this Agreement may be brought only in the state courts of Travis County, Texas. Each of the parties hereby irrevocably consents to the jurisdiction of, and venue in, such courts. Nothing herein shall be construed to waive the sovereign immunity of the State of Texas.
- (b) Notice shall be in accordance with Section 11.A. of Appendix A of the DIR Contract No. DIR-SDD-1638.
- (c) If a provision of the Agreement or portion thereof is found to be invalid or unenforceable under applicable law, it shall be omitted from the Agreement without invalidating the remainder of such provision or the remaining provisions of the Agreement. The waiver by either party of any default or breach of any provision of this Agreement shall not constitute a waiver of any other or subsequent default or breach.
- (d) All materials provided by Deque hereunder shall be delivered to Licensee on a F.O.B. (UCC 2-319) shipping point basis, including electronic posting for download.
- (e) Unless an appropriate license, exemption, or similar authorization has been duly obtained, Licensee will not, nor will Licensee authorize or permit Licensee's employees, agents, successors or any other person to, export or re-export the Software, the Documentation, or any services provided under this Agreement to any country identified as a prohibited destination by any applicable laws or regulations. Furthermore, Licensee will undertake and perform all "denied party screening" or similar obligations imposed by or arising under applicable laws or regulations. To the extent applicable, the commodities, technology, and/or software delivered under this Agreement will be/were exported from the United States or other country of origin in accordance with the United States Export Administration Regulations or other export regulations applicable in the jurisdiction of origin. Any diversion contrary to United States or other applicable law is prohibited.
- (f) The provisions of the Agreement shall be binding upon, and inure to the benefit of, the parties, their successors, and their permitted assigns.
- (g) Except for actions for nonpayment or breach of Deque's proprietary rights in the Software and Documentation, no action, regardless of form, arising out of this Agreement may be brought by either party more than four (4) years after a party knew or should have known of the claim.
- (h) DIR Contract No. DIR-SDD-1638 and this Agreement, represent the entire agreement between the parties with regard to its subject matter and expressly supersede and cancel any other agreements, whether oral or written, with regard to the subject matter of this Agreement. Each party acknowledges that it is not entering into the Agreement on the basis of any representations not expressly contained herein. Other than as specified herein, this Agreement may only be supplemented or modified by an amendment in a writing executed by the party against whom enforcement is sought. When a non-Deque order document is used to place an order or a Deque affiliate or representative places an order on behalf of Licensee, no additional or conflicting term in a purchase order or other document shall have any effect. In the event of a conflict between the DIR Contract No. DIR-SDD-1638 and this Agreement, the DIR Contract will control.



**ATTACHMENT A – ORDER SCHEDULE \_\_\_\_\_**

Licensee hereby orders, and Deque will provide to Licensee, the following goods, services, and/or software.

**SOFTWARE**

Software Name	Version	Hosted?	Limited to use in the following Domain(s)	License Type	License Duration (after the Effective Date)	Unit License Price	Quantity	Subtotal	Maintenance (First Year)
Worldspace Core Server									
Worldspace Accessibility Practice									
Worldspace Security Practice									
Worldspace Quality Practice									
Worldspace Privacy Practice									

A “Domain” is an Internet domain, i.e. all addressable URLs having the same letters and numbers to the left of the period adjacent to the top-level domain and after any period that precedes the period adjacent to the top-level domain. For example, (a) “domainname.com” and “domainname.net” are separate Domains and (b) “domainname.com” and “mail.domainname.com” are parts of the same Domain.

An “Enterprise License” permits Licensee to use the Software and the Documentation in unlimited Instances throughout Licensee’s own business enterprise for the management of compliance, security, or other applicable operations of Licensee itself. Unless specifically stated otherwise in this Order Schedule, Licensee’s own business enterprise is deemed to constitute only the operations of the named Licensee by employees, officers, and directors of the named Licensee and not by or on behalf of contractors, direct or indirect parents, direct or indirect subsidiaries, direct or indirect sister organizations, affiliates, or joint ventures. An Enterprise License remains subject to the export restrictions contained in this Agreement.

An “Instance” of the Software is one session or use of the Software that permits access to substantially all of the functionality of the Software, regardless of whether all of the functionality of the Software is actually used. No pooling or multiplexing (such as permitting multiple sessions through use of a Citrix server or similar system or application) will reduce the number of Instances of the

Software. An Instance exists whenever the Software is loaded on a computer (or proxy for a computer as in the case of pooling or multiplexing) and ready for immediate use, regardless of whether the Software is then actually being used. An Instance will continue to exist until it is actually closed and is no longer actively available on a computer or proxy therefore.

A “Seat License (Anonymous Seat)” permits Licensee to load and execute one instance of the Software on one designated workstation (non-server) computer for use by any person who uses that designated workstation. Licensee may move the Software under a Seat License (Anonymous Seat) from one computer to another, provided that Licensee deletes the Software entirely from the previously-designated computer before loading or executing the Software onto or on another computer.

A “Seat License (Named User)” permits Licensee to load and execute one instance of the Software on one designated workstation (non-server) computer for use by a named individual person who uses that designated workstation. Licensee may move the Software under a Seat License (Anonymous Seat) from one computer to another, provided that Licensee deletes the Software entirely from the previously-designated computer before loading or executing the Software onto or on another computer and that the named individual user is the sole user of the other computer. Licensee may transfer a Seat License (Named User) from one named individual to another, provided that Licensee renders the previous named individual user unable to use the Software (such as by revising the named individual’s user profile or denying such individual access to computers upon which the Software is loaded or executable) prior to making the Software available to the new named individual.

Any license for which a license duration is stated above (and, in any case, that is not expressly designated above as a perpetual license) is a ‘Subscription License.’ Subscription Licenses automatically renew for successive periods of one year each unless either party terminates the license by giving notice to the other at least 30 days prior to the expiration of the then-current term. Notwithstanding the foregoing, Deque may terminate a Subscription License with 6 months notice.

Where the Software is licensed under a Seat License of any kind and the computer upon which the Software is installed contains more than one central processing unit or any central processing unit contains more than one processor core, Licensee must have a number of appropriate Seat Licenses equal to the total number of central processing units plus the total number of processor cores.

A license limited by “Concurrent Instances” permits Licensee to use the Software in such a manner so that up to the licensed number (but not more than the licensed number) of Instances may be used as of any particular moment.

#### **HOSTING**

Where Software is listed above as being hosted, Deque will, for the term of the license, host such Software on its own computers and make such Software available to Licensee at the outermost point on Deque’s firewall connection to the public Internet (the ‘Demarcation Point’). Licensee must provide all hardware, software, and connectivity necessary to access the Software through the public Internet at the Demarcation Point. Deque will use commercially reasonable efforts to cause the Software to be so available at least 98% of 8:00 a.m. to 8:00 p.m. US Eastern Time, not counting scheduled maintenance of which Deque notifies Licensee and not counting time during which Deque is prevented by acts, omissions, or conditions beyond Deque’s reasonable control.

Signature Page to

**Attachment A – Order Schedule**

The parties have executed this Order Schedule as of the Effective Date.

**DEQUE**

**LICENSEE**

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Printed Name**

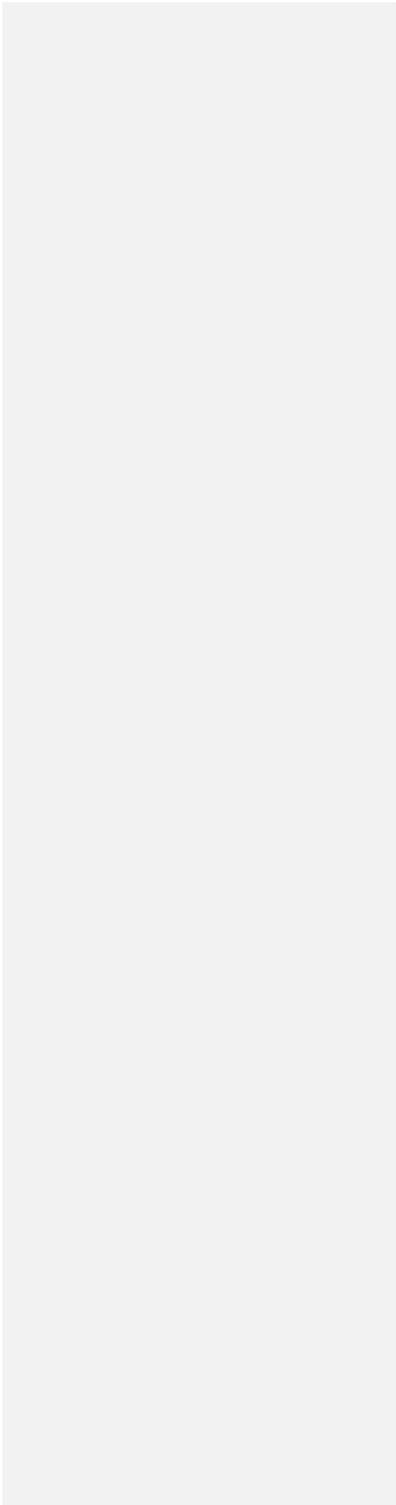
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**Date**



## Attachment B

### Maintenance and Support

Deque will provide the following services for any Software with respect to which maintenance fees are stated in the "Maintenance" column of Attachment A. The services described in this Attachment B are "Maintenance Services."

**STANDARD MAINTENANCE PROGRAM.** Deque shall provide the Maintenance Services for a term of one year beginning on the original delivery date of the Software or, if a renewal, from the maintenance anniversary date for the applicable Software. Maintenance Service is renewed and invoiced on an annual basis unless terminated as provided herein. Deque may change the Maintenance Service offered at any time, effective as of the commencement of any renewal period, provided only that Deque gives to Licensee notice of the increase for an upcoming maintenance year at least 30 days prior to the maintenance anniversary date.

- (a) **Standard Telephone Support.** During the Telephone Support Business Hours listed below (Monday through Friday, holidays excepted), Deque shall provide to Licensee technical assistance by telephone with the installation and use of the Software. Calls received during the business hours listed below will be returned within two hours. Each service request will be evaluated and critical service requests will be escalated as required.

Telephone Support Business Hours:  
8:00 AM to 8:00 PM Eastern Time

(All calls after 8 PM will be returned before 9:00 AM the following morning)

If support is required outside our standard support hours, the support session must be scheduled at least two days in advance. Support provided outside normal support hours will be billed Deque's then-current standard billing rate.

- (b) **Software Updates.** Deque shall make available to Licensee each minor and major functional release of the Software that Deque makes generally available without additional charge to its maintenance licensees to replace a prior Software release ("Updates"). Updates do not include any releases or future products that Deque licenses separately. A major functional release is indicated by a change in the first digit of a version number, e.g. from 4.0.0 to 5.0.0; a minor functional release is indicated by a change in the second digit, e.g. from 4.0.0 to 4.1.0. Maintenance releases, which are indicated by a change in the third digit of a version number, e.g. from 5.0.1 to 5.0.2, are provided as needed.
- (c) **Bug Fixes.** Deque shall exercise commercially reasonable efforts to correct any reproducible malfunction of the Software reported to Deque by Licensee that prevents the Software from performing in accordance with the operating specifications described in the then current Documentation.
- (d) **Retirement of Releases.** Maintenance Service is provided for the current and one previous release of the Software. Releases that are not the current or one previous release will be retired. Deque shall not be responsible for maintaining or supporting retired versions of the Software. In all events, however, telephone support services are provided with respect to "how-to" use questions for a retired version of the Software for one year following its retirement.
- (e) **Termination.** Licensee may terminate Maintenance Service at the end of any maintenance term by giving written notice to Deque at least 30 days prior to the end of any such term. Deque may suspend or cancel Maintenance Service if Licensee fails to pay for such services as required by the Agreement.
- (f) **Backups.** Licensee must ensure critical data has been backed up prior to Deque's personnel providing Maintenance Services.
- (g) **Exclusions.** Deque shall have no obligation to support: (i) Software modified without Deque's written consent, or (ii) use of the Software other than as provided in the Documentation, or (iii) use of the Software other than in accordance with the terms of this Agreement.

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