

CUSTOMER TERMS OF SERVICE

This Customer Terms of Service (“**Customer Terms of Service**” or “**Agreement**”) governs your (“**your**,” “**you**” or “**Customer**”) use of software and services of Elisity, Inc. and its Affiliates (“**Elisity**,” “**we**,” “**us**” and “**our**”). By executing a Software Order for any Elisity Offerings and/or otherwise accessing, using or receiving such Elisity Offerings, you agree to this Customer Terms of Service. Unless already defined, all capitalized terms shall have the meaning in Section A below.

This Customer Terms of Service is structured into the following sections:

- A. **DEFINITIONS** – This describes the defined terms used throughout the Agreement. Please review these defined terms carefully as they provide a roadmap to this Agreement.
- B. **STANDARD SERVICES TERMS** – We offer a combination of Elisity hosted and Customer premise licensed Software including limited Configuration Services related to the planning, design, and implementation of the Software. The definitions and these terms frame the Elisity Offerings.
- C. **PROCUREMENT CHANNELS** – We make the Elisity Offerings available to you through Approved Source(s) and/or Marketplace(s).
- D. **GENERAL LEGAL TERMS** – The remaining legal terms that make up this Customer Terms of Service are standard customary terms that one finds for the identity-based microsegmentation security we provide.

Your use of the Elisity Offerings is governed exclusively by the terms in this Agreement, including when you access a publicly listed Marketplace offer, accept an offer we make to you through a Marketplace, and when you order through an Approved Source. We may provide you with Service Description from time to time for certain Elisity Offerings, as further set forth herein.

A. DEFINITIONS

“**Agreement**” or “**Customer Terms of Service**” means this Agreement, the Data Protection Addendum, any applicable Service Description and any Software Order.

“**Affiliate**” means with respect to a Party, any entity which directly or indirectly controls, is controlled by or is under common control with such Party, where “control”, “controlled by” or “under common control” means the direct or indirect possession of more than fifty per cent (50%) of the equity of the particular entity type.

“**Approved Source**” means an Elisity authorized channel partner such as a value-added reseller or Managed Services Provider, including when such channel partner transacts with you through a Marketplace.

“**Access Appliance**” means an access layer switch or virtual machine where you deploy Access Software. Access Appliance(s) are Third Party Provider products and may include your Cloud Service Provider infrastructure.

“**Access Software**” means the licensed software that is deployed to Access Appliance(s) to discover connected Devices and implement Device security policy groups you have defined in Cloud Control Center. No Customer Data in the form of data plane network traffic routes through the Access Software to any of our systems or other Software component such as Cloud Control Center.

“Cloud Control Center” means a single instance of our cloud hosted management Software that you access via web browser. Cloud Control Center enables you to develop an identity-based inventory of all Devices and to set security group policies that are implemented through the Access Software to define a Device’s communication permissions with other Devices, applications, etc.

“Cloud Services Provider” means a virtual private cloud infrastructure provider. Cloud Service Providers are Third Party Providers with respect to deployment of the Access Software on your virtual private cloud infrastructure.

“Configuration Services” means any configuration related services such as training, planning, design, and implementation that we provide to you in support of your deployment of the Software pursuant to a Software Order.

“Customer Data” means any electronic data, content, information or software of Customer or its licensors that Elisity filters, stores, accesses, transmits or otherwise processes or uses in performing the Elisity Offerings for you, excluding Software Analytics.

“Device” means a unique managed or unmanaged IT, IOT, OT, IOMT device that is connected to an Access Appliance with an IP address and eligible for security group policy. Devices may be discovered in the network and assigned identity using native functionality of the Access Appliance. Device identity may be further enriched through integration with a Supported Ecosystem.

“Documentation” means Elisity published materials that describe the features and functionality of the Elisity Offerings.

“Elisity Offerings” means the Software, Configuration Services, Support Services and Documentation.

“Fees” means the fees you pay for the Elisity Offerings to an Approved Source or Cloud Services Provider through its Marketplace, each as set out on a Software Order..

“Managed Service Provider” means a Customer that is in the regular business of utilizing the Elisity Offerings to provide services to its end customers for a fee.

“Marketplace” means a Cloud Services Provider marketplace where you procure the Elisity Offerings through your respective Marketplace account(s), including through an Approved Source and this constitutes a Software Order.

“Party” or **“Parties”** means Customer and Elisity, individually or collectively, as applicable.

“Software” means, collectively, Cloud Control Center and Access Software.

“Software Analytics” means analytics data generated by your use of the Elisity Offerings to enable Software features and functionality and to provide related Support Services to you pursuant to the Software Order and Documentation.

“Software Order” means a separate document a) we offer to you through a Marketplace, or b) is provided to you by an Approved Source, each that sets forth the specific Software and/or Configuration Services you have ordered. Your signature on the Software Order or acceptance through a Marketplace is binding on us and you, subject to this Agreement, and incorporates its terms and conditions by reference.

“Subscription Term” means the license and use term in effect set out on a Software Order.

“Supported Ecosystem” means a Third-Party Provider ecosystem (CMDB, IDP, etc.) that Elisity supports for integration with Cloud Control Center to enrich Device identity.

“Service Description” means the standard description of service for Configuration Services and Support Services or any other service that may become a part of the Elisity Offerings.

“Support Services” means the Software support and maintenance services that we provide you for no additional Fees as part of the Software Order during the Subscription Term.

“Third-Party Provider(s)” means any third-party provider of products or services to which you have access to, or use of, in relation to the Elisity Offerings and that is subject to your agreement with such third party.

B. STANDARD SERVICES TERMS

1. Elisity Offerings; License and Restrictions of Use.

- a. **Provision of Elisity Offerings.** We will provide you with access to the Cloud Control Center and license to use the Access Software (respectively) and deliver Configuration Services, each as set out on an applicable Software Order along with any applicable Service Description. All Configuration Services you may procure through an Approved Source are on a resold basis only and are provided directly by us and governed solely under the terms of this Agreement. The Elisity Offerings are a clientless solution and Device(s) do not receive any of the Software features when not connected to the Access Appliance.
- b. **Access to Elisity Hosted Software.** You are granted a non-exclusive, non-transferrable, limited right to, during the applicable Subscription Term and up to the number of Devices specified on the Software Order, internally use (unless we authorize your use as a Managed Services Provider) the Software in object code form only solely as necessary to access and use the Cloud Control Center for the purposes for which it is provided and only in accordance with the Documentation.
- c. **License to On Premise Software.** You are granted a non-exclusive, non-sublicensable, non-transferrable, limited license to, during the applicable Subscription Term internally use (unless we authorize your use as a Managed Services Provider) the Access Software in object code form only solely as necessary to access and use the Access Software for the purposes for which it is provided and only in accordance the Documentation. The Software may contain third party code that is subject to its own licensing provisions.
- d. **Restrictions on Your Use of the Elisity Offerings.** You will not: (i) attempt to disable or block the Device reporting functionality of Cloud Control Center, (ii) use the Cloud Control Center to exceed the Devices specified on your Software Order, or promptly pay the Fees due for any consumption in excess of such Devices, (iii) license, sublicense, resell, rent, lease, transfer, assign, distribute, time-share or otherwise commercially exploit or make the Elisity Offerings available to any third party, except in your capacity as an authorized Managed Service Provider, if applicable; (iv) alter, modify or create derivative works of the Elisity Offerings or Documentation; (v) reverse engineer, decompile, disassemble, or otherwise seek to obtain the source code of the Elisity Offerings (or any component thereof) for any purpose; (vi) send to or transmit over the Elisity Offerings any infringing, inappropriate, unlawful or tortious material or content or any malicious code (vii) access the Elisity Offerings to build a product or service,

or copy any ideas, features, functions or graphics of the Elisity Offerings, or permit any third party to do the same; (viii) attempt to gain unauthorized access to the Elisity Offerings or its related systems or networks including for the purposes of security scanning; (ix) remove or obscure any proprietary or other notices contained in or on any Elisity Offerings, including any Documentation; or (x) publicly disseminate information regarding the performance of the Elisity Offerings such as benchmarking results.

- e. **Your Responsibilities.** You will: (i) provide us with Device count reporting through the automated reporting functionality of the Cloud Control Center or as may otherwise be required to establish Device counts on a regular basis; (ii) install Software updates, patches, and fixes as we make them available to you in order to maintain the Software at its current version; (iii) prevent known unauthorized or unlawful access to, or use of, the Elisity Offerings; (iv) maintain and be solely responsible for security precautions for use of any login credentials for the Software (e.g., user IDs, passwords) to prevent disclosure and use by unauthorized persons, and (v) immediately report any known or suspected security breaches that affect or may affect the Elisity Offerings by contacting us through Support Services.
 - f. **Managed Service Providers.** We may authorize you to act in the capacity of a Managed Service Provider pursuant to a Software Order or by separate agreement. Under such authorization, you remain designated as the Customer under this Agreement and your use of the Elisity Offerings is further conditioned by all provisions of this Agreement or a Service Description that reference a Managed Service Provider. As a Managed Service Provider, you must: (i) obligate your end customers to these Customer Terms of Service to the extent that such end customer has direct access to, or use of, the Elisity Offerings; (ii) remain responsible to us for your end customer's non-compliance with these Customer Terms of Service, particularly with respect to subsections (d) and (e) above; and (iii) provide us with Device reporting for each of your end customers on a regular basis as we request.
 - g. **Third-Party Providers.** You may need, or otherwise choose, to engage Third-Party Providers for use with the Elisity Offerings. We assume no responsibility for, and specifically disclaim any liability or obligation with respect to, any Third-Party Providers; and any exchange of data or other interaction between you and such Third-Party Provider is solely between you and such Third-Party Provider.
2. **Support Services.** The Support Services description is located at elisity.com/service-descriptions.
3. **Use of Subcontractors.** We may use subcontractors in our reasonable discretion in the performance of any Elisity Offerings under this Agreement; provided, however, we shall remain fully responsible and liable for the performance of any such subcontractor. Under no circumstances will any Third-Party Provider be construed to be a subcontractor of Elisity.
4. **Data Use and Security.** We will perform our obligations with respect to data use and security in conformation with the Data Protection Addendum located at www.elisity.com/dpa. To provide the basic functionality of the Software, your use of the Elisity Offerings may generate Software Analytics. We may use Software Analytics for the purpose of providing the functionality of the Elisity Offerings and may also freely use Software Analytics that does not identify you or any of your authorized users. You may have the ability within the functionality of the Cloud Control Center to opt out or limit the collection of certain Software Analytics, but in some cases the only way to opt out of Software Analytics collection is to discontinue your use of the Elisity Offerings.

B. PROCUREMENT CHANNELS

5. **Procurement Through Approved Source.** For procurement through an Approved Source, your payment and related purchasing terms are through such Approved Source. We may authorize an Approved Source to offer some or all of the Elisity Offerings to you through a Marketplace from time to time. The Elisity Offerings are resold to you by the Approved Source when procuring through a Marketplace.

Procurement Through Marketplace. We may make offers to you for certain aspects of the Elisity Offerings through a Marketplace at our discretion. In the event you procure the Elisity Offerings through a Marketplace, your payment and related purchasing terms and conditions are with the Cloud Service Provider that operates the applicable Marketplace, provided the billing frequency we may offer you will apply as established on the Software Order.

D. GENERAL LEGAL TERMS

6. Intellectual Property.

- a. **Proprietary Rights.** Elisity and its licensors retain all right, title and interest, including all related intellectual property rights, in and to the Elisity Offerings, its Confidential Information, any technology developed from any services, including Configuration Services and Support Services, performed by us for you herein, and all derivative works, improvements or modifications thereto by whomever made. No rights are granted to you hereunder other than as expressly set forth herein. For clarity, Configuration Services performed by Elisity will not include custom work product or other work for hire deliverables. You retain all right, title and interest in and to all Customer Data. You hereby grant to Elisity a non-exclusive, worldwide, unrestricted and irrevocable right and license to use, copy, store, transmit and otherwise process the Customer Data to the extent necessary to provide the Elisity Offerings in accordance with this Agreement.
- b. **Feedback.** In the event that you or any of your users provide us with any suggestions, ideas, improvements or other feedback with respect to the Elisity Offerings ("**Feedback**"), you hereby grant us, and our successors and assigns, a non-exclusive, perpetual, irrevocable, sub-licensable, transferable, royalty-free, fully paid-up worldwide right and license to copy, reproduce, modify, create derivatives of, display, perform, sell, offer for sale, distribute and otherwise exploit such Feedback for any purpose, including without limitation, using and incorporating such Feedback into the Elisity Offerings, without any obligation of accounting, or any payment of royalties or other consideration, to you. You acknowledge that Elisity Offerings and/or Documentation incorporating Feedback shall be the sole and exclusive property of Elisity.
7. **Confidentiality.** Each Party agrees that all code, inventions, know-how, business, technical and financial information it obtains ("**Receiving Party**") from the disclosing Party ("**Disclosing Party**") constitute the confidential information of the Disclosing Party ("**Confidential Information**"), provided that it is identified as confidential at the time of disclosure or should be reasonably known by the Receiving Party to be Confidential Information due to the nature of the information disclosed and the circumstances surrounding the disclosure. This Agreement, the Elisity Offerings (or any component thereof), Fees and pricing information and any performance information (e.g., benchmarking results) relating to the Elisity Offerings shall be deemed Confidential Information of Elisity. Except as expressly authorized herein, the Receiving Party will (a) hold in confidence (using reasonable methods of protection) the Confidential Information of Disclosing Party, (b) not use any such Confidential Information except in furtherance of this Agreement and (c) not disclose any Confidential Information of the Disclosing Party to any party, except its employees, subcontractors and agents on a need to know basis and subject to terms of confidentiality

no less restrictive than the terms set forth herein. The Receiving Party's nondisclosure obligation shall not apply to information which the Receiving Party can document: (i) was rightfully in its possession or known to it prior to receipt of the Confidential Information; (ii) is or has become generally available to the public through no fault of the Receiving Party; (iii) is rightfully obtained by the Receiving Party from a third party without breach of any confidentiality obligation; or (iv) is independently developed by employees of the Receiving Party who had no access to such information. In the event that a Receiving Party is required to disclose Disclosing Party Confidential Information pursuant to a regulation, law or court order, it shall provide Disclosing Party with prior written notice thereof and reasonably assist Disclosing Party (as Disclosing Party's cost and expense) in contesting such required disclosure. The Receiving Party acknowledges that disclosure or unauthorized use of Confidential Information would cause substantial harm for which damages alone would not be a sufficient remedy, and therefore that upon any such disclosure or unauthorized use by the Receiving Party, the Disclosing Party shall be entitled to seek appropriate equitable relief (without the posting of a bond or similar instrument) in addition to whatever other remedies it might have at law.

8. Warranties.

- a. **Mutual Warranties.** Each Party represents and warrants to the other Party that it has the power and authority to execute, deliver, and perform its obligations under this Agreement.
- b. **Elisity Warranties.** We warrant to you that the Elisity Offerings will operate in conformity in all material respects with the applicable Documentation and that any Configuration Services will be performed in a competent and workmanlike manner consistent with generally accepted industry standards. Your sole and exclusive remedy, and our sole liability, for any breach of this warranty shall be for us to correct or re-perform the applicable Elisity Offerings at our expense. The limited warranty in this Section 9(b) shall not apply a) unless you notify us in writing of a breach of this warranty and or b) if the error or failure in performance was caused by misuse, unauthorized modifications, Third-Party Provider hardware, software or services, or Customer Data.
- c. **Customer Warranties.** You represent and warrant that: (i) your use of the Elisity Offerings and all Customer Data is at all times compliant with your privacy policies and all applicable laws and regulations; and (ii) you have sufficient rights in the Customer Data to grant the rights granted to us herein and that the Customer Data does not infringe or otherwise violate the rights of any third party. If you export Customer Data from one jurisdiction to another jurisdiction, you will ensure that you have all legal rights to do so including, without limitation, in compliance with all applicable data protection laws.
- d. **Disclaimers of Warranty.** EXCEPT FOR THE LIMITED WARRANTY IN THIS SECTION 9, WE PROVIDE THE ELISITY OFFERINGS ON AN "AS IS" AND "AS AVAILABLE" BASIS. NEITHER ELISITY NOR ITS SUPPLIERS MAKES OTHER REPRESENTATIONS OR WARRANTIES OF ANY KIND AND SPECIFICALLY DISCLAIMS ANY AND ALL EXPRESS, IMPLIED, STATUTORY AND OTHER WARRANTIES, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, GOOD TITLE, SATISFACTORY QUALITY OR NONINFRINGEMENT. WE DO NOT WARRANT THAT THE ELISITY OFFERINGS ARE ERROR-FREE OR THAT YOU WILL BE ABLE TO ACCESS OR USE ELISITY OFFERINGS WITHOUT PROBLEMS OR INTERRUPTIONS.

9. **Limitations of Liability.** IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY (I) LOST PROFITS OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES HOWEVER CAUSED AND WHETHER IN CONTRACT, TORT OR UNDER ANY THEORY OF LIABILITY,

WHETHER OR NOT SUCH PARTY OR ITS SUPPLIERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR (II) CUMULATIVE AMOUNTS IN EXCESS OF THE FEES PAID BY YOU FOR THE ELISITY OFFERINGS DURING THE TWELVE (12) MONTH PERIOD (AS MAY BE PRORATED ACROSS A SUBSCRIPTION TERM FOR PREPAID FEES) PRIOR TO THE FIRST EVENT OR OCCURRENCE GIVING RISE TO SUCH LIABILITY. THE FOREGOING LIMITATIONS ON LIABILITY WILL NOT APPLY TO EITHER PARTY'S INDEMNITY OBLIGATIONS, EITHER PARTY'S BREACH OF SECTION 8 (CONFIDENTIALITY), OR YOUR BREACH OF YOUR PAYMENT OBLIGATIONS OR ANY LICENSE OR USE RESPONSIBILITIES OR RESTRICTIONS. FOR THE AVOIDANCE OF ANY DOUBT, UNDER NO CIRCUMSTANCES WILL WE HAVE ANY LIABILITY TO YOU FOR COST OF PROCUREMENT OF REPLACEMENT OR SUBSTITUTE THIRD PARTY-PROVIDER PRODUCTS OR SERVICES.

10. Indemnification.

- a. **Elisity Indemnity.** We ("**Indemnifying Party**") shall defend, indemnify and hold harmless you ("**Indemnified Party**") from and against any and all third party claims asserted against an Indemnified Party and all resulting, to the extent payable to unaffiliated third parties, damages, losses, liabilities, penalties, costs and expenses, including reasonable attorneys' fees and costs ("**Losses**") arising out of the alleged infringement or misappropriation of a copyright, trade secret, trademark or patent by the Elisity Offerings. If any claim which we are obligated to defend has occurred, or in our determination is likely to occur, we may, in our sole discretion and at our option and expense: (a) obtain for you the right to use the allegedly infringing item; (b) substitute a non-infringing replacement for such item; or (c) if in our opinion neither item (a) nor (b) are reasonably available, terminate the Agreement and refund to you the Fees paid by you in an amount prorated for the portion of the Subscription Term for the Elisity Offerings which was paid by you but not rendered by us. Our indemnification obligation herein shall not apply if such claim arises out of: (a) the use of the Elisity Offerings in combination with any software, hardware, network or system not supplied by us where the alleged infringement is caused by such combination; (b) any modification or alteration of the Elisity Offerings other than by us; (c) your continued allegedly infringing activity after being informed of a modification that would avoid the alleged infringement; (d) our compliance with your designs, specifications or instructions; or (e) the use of the Elisity Offerings other than in accordance with the terms and conditions of this Agreement including the Documentation. THIS SECTION 11(A) SETS FORTH OUR SOLE LIABILITY, AND YOUR SOLE AND EXCLUSIVE REMEDY, WITH RESPECT TO ANY CLAIM OF INTELLECTUAL PROPERTY INFRINGEMENT OR MISAPPROPRIATION.
- b. **Customer Indemnity.** You ("**Indemnifying Party**") shall indemnify, defend and hold harmless us ("**Indemnified Party**") from and against any and all Losses arising out of (i) any Customer Data including, without limitation, the violation of any laws, regulations or privacy rights, (ii) your use of the Elisity Offerings, or (iii) any bodily injury or death to any person, or any property damage to tangible property, related to or arising from your business or operations.
- c. **Procedure.** The Indemnifying Party's indemnification obligation is subject to the Indemnifying Party receiving (i) prompt written notice from the Indemnified Party of such claim, but in any event, notice in sufficient time for the Indemnifying Party to respond without prejudice; (ii) the exclusive right to control and direct the investigation, defense, or settlement of such claim; and (iii) all reasonable necessary cooperation of the Indemnified Party at Indemnifying Party's expense.

11. Term and Termination; Suspension of Elisity Offerings.

- a. **Term.** This Agreement begins on the effective date of a Software Order and continues until terminated in accordance with this Section 11. Each Software Order will have an initial Subscription Term set forth therein. For Software Order with a Subscription Term one (1) year or less, you may continue to utilize such Software Order for a maximum period of three (3) months on a month-to-month basis (unless we approve a longer period in writing) as long as you pay the applicable Fees for such use. For Software Order with a Subscription Term greater than one (1) year, the Software Order will automatically renew for an additional Subscription Term of one (1) year, unless either Party provides written notice to the other Party of non-renewal at least sixty (60) days prior to the end of the then-current Subscription Term.
 - b. **Termination.** Either Party may terminate this Agreement as follows: (a) upon thirty (30) days written notice if the other Party breaches any material provision of this Agreement and does not cure such breach during this cure period; (b) effective immediately and without notice if the other Party ceases to do business or otherwise terminates its operations, except as a result of a permitted assignment hereunder; or (c) if the other Party seeks protection under any bankruptcy, receivership, trust deed, creditor's arrangement or comparable proceedings, if such proceeding is instituted against that Party and not dismissed within sixty (60) days thereafter. Any termination of this Agreement will automatically terminate all Software Orders. Software Service Orders are non-cancelable and may not be terminated for convenience.
 - c. **Effect of Termination.** Upon early termination or expiration of this Agreement (i) your access to, and use of, the Elisity Offerings shall immediately cease and (ii) upon Disclosing Party's request, the Receiving Party shall destroy or return all Confidential Information in its possession. Upon any early termination (except for termination for our breach) or expiration of the Agreement, all payment obligations with respect to unpaid Fees for Elisity Offerings, including those payment obligations arising in the then-current Subscription Term, are irrevocable and you are to pay such amounts promptly to us (including as applicable to the Cloud Service Provider) on termination or expiration of the Agreement, and you will not be entitled to any refund of any prepaid amounts. In the event of your termination for our breach, you will be entitled to a refund of any unearned prepaid Fees prorated to the end of the payment period for such Fees. The following Sections shall survive any expiration or termination of this Agreement: Sections 1(d), 4, C, 6, 7, 9, 10, 11, 14, 15, and 16.
 - d. **Suspension.** If your account is overdue (including for non-payment to an Approved Source or a Cloud Service Provider as applicable) or if we in good faith believe that you are engaging in unauthorized conduct in your use of the Elisity Offerings, we reserve the right to, and in addition to any of our other rights or remedies, suspend your access thereto without liability to you until, as applicable, such amounts are paid in full or until you stop engaging in such unauthorized conduct.
- 12. Press Release and Publicity.** Neither Party may issue a press release in connection with this Agreement without the prior written consent of the other Party; provided, however, we may use your name and logo on our website and in our promotional materials as part of a general list of customers.
- 13. Assignment.** Neither Party may assign this Agreement or any of its rights, by operation of law or otherwise, or delegate any of its duties hereunder, in whole or in part, without the other Party's prior written consent; provided, however, we may assign this Agreement without your consent, in connection with a merger, acquisition, corporate reorganization or sale of all or substantially all of Elisity's assets. Any attempt by a

Party to assign its rights or obligations under this Agreement in breach of the previous sentence shall be void and of no effect.

14. Export. Pursuant to all relevant export laws and regulations, including but not limited to the U.S. Export Administration Regulations (collectively, “**Export Controls**”), you expressly agree that you shall not, and shall cause your representatives to agree not to, export, directly or indirectly, re-export, divert, or transfer the Elisity Offerings, Documentation or Elisity Confidential Information to any destination, company or person restricted or prohibited by Export Controls.

15. Government Users. If you are a branch or agency of the United States Government, the Elisity Offerings and any other services provided by us hereunder, are comprised of “commercial computer software” and “commercial computer software documentation” as such terms are used in 49 C.F.R. 12.212, and are provided to you either (i) for acquisition by or on behalf of civilian agencies, consistent with the policy set forth in 48 C.F.R. 12.212 or (ii) for acquisition by or on behalf of units of the Department of Defense, consistent with policies set forth in 48 C.F.R. 227.7202-1 and 227.7202-3.

16. Miscellaneous.

- a. **Independent Contractors.** The Parties to this Agreement are independent contractors. There is no relationship of partnership, joint venture, employment, franchise or agency created hereby between the Parties. Neither Party will have the power to bind the other or incur obligations on the other Party’s behalf without the other Party’s prior written consent.
- b. **Force Majeure.** Neither Party shall be liable to the other Party for any delay or failure to perform any obligation under this Agreement (except for a failure to pay fees) if the delay or failure is due to unforeseen events which occur which are beyond the reasonable control of such Party (“**Force Majeure Event**”), such as a strike, blockade, war, act of terrorism, riot, natural disaster, failure or diminishment of power or telecommunications or data networks or services, or refusal of a license by a government agency. Any Party claiming a Force Majeure Event hereunder shall provide prompt notice thereof to the other Party and make commercially reasonable efforts to overcome the effect of such Force Majeure Event. If such Force Majeure Event prevents the Party from substantially performing its obligations hereunder for a period of thirty (30) days or more, either Party may terminate this Agreement on five (5) days written notice.
- c. **Severability.** If any provision of this Agreement shall be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited to the minimum extent necessary so that this Agreement shall otherwise remain in effect.
- d. **Governing Law; Jurisdiction and Venue.** This Agreement shall be governed by the laws of the United States of America and the State of California, excluding its conflict of laws rules. The United Nations Convention on the International Sale of Goods and the Uniform Computer Information Transactions Act are specifically excluded from application to this Agreement. The Parties hereby submit to the exclusive jurisdiction of, and waive any venue jurisdiction or venue objections against, the state and Federal courts located in Santa Clara County, California.
- e. **Notice.** Any notice or communication required or permitted under this Agreement shall be in writing to the Parties at the addresses set forth on the Software Order or at such other address as may be given in writing by either Party to the other and shall be deemed to have been received by the addressee (i) if given by hand, immediately upon receipt; (ii) if given by overnight courier

service, the first business day following dispatch or (iii) if given by registered or certified mail, postage prepaid and return receipt requested, the second business day after such notice is deposited in the mail.

- f. **Modifications or Waivers.** No modification, or amendment of this Agreement shall be effective and binding, unless in writing signed by the duly authorized representatives of both Parties. No waiver will be implied from conduct or failure to enforce or exercise rights under this Agreement, nor will any waiver be effective unless in a writing signed by a duly authorized representative of the Party claimed to have waived.

- g. **Entire Agreement.** This Agreement, including all Service Description, and each Software Order are the complete and exclusive statement of the mutual understanding of the Parties and supersedes and cancels all previous written and oral agreements and communications relating to the subject matter of this Agreement. Purchase orders and similar documents issued by you are for administrative purposes only such as setting forth the Elisity Offerings ordered and associated Fees, and any additional or different terms or conditions contained in any such order shall not apply even if the order is accepted or performed on by us and such terms are hereby rejected. In the event of a conflict between any Software Order and this Agreement or a Service Description, the Software Order will control. Furthermore, in the event of a conflict between any Service Description and this Agreement, the Service Description will control.

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