

THE INFORMATION IN THIS BOX IS NOT A PART OF THE CONTRACT AND IS FOR COUNTY USE ONLY



Contract Number

20-276

SAP Number

Veterans Affairs/ Information Services Department

Department Contract Representative	<u>Rachel Hay</u>
Telephone Number	<u>909-382-3290</u>
Contractor	<u>Ribbon Communications Inc.</u>
Contractor Representative	<u></u>
Telephone Number	<u></u>
Contract Term	<u>May 19, 2020 through May 18, 2023</u>
Original Contract Amount	<u>Non-financial</u>
Amendment Amount	<u>N/A</u>
Total Contract Amount	<u>Non-financial</u>
Cost Center	<u>5400001000</u>

Briefly describe the general nature of the contract: *Ribbon Communications Inc. End User License Agreement for Ribbon Communications software and hardware for Veterans Affairs' RightFax system.*

FOR COUNTY USE ONLY

Approved as to Legal Form

▶ Bonnie O'Leary
County Counsel

Date 4-27-20

Reviewed for Contract Compliance

▶ _____

Date _____

Reviewed/Approved by Department

▶ _____

Date _____

End User License Agreement

PLEASE READ THIS END USER LICENSE AGREEMENT (EULA) CAREFULLY. IT CONTAINS VERY IMPORTANT INFORMATION ABOUT YOUR RIGHTS AND OBLIGATIONS AS WELL AS LIMITATIONS AND EXCLUSIONS WHICH APPLY TO THE LICENSE OF RIBBON COMMUNICATION SOFTWARE AND HARDWARE PRODUCTS. THIS EULA IS A LEGAL AGREEMENT BETWEEN YOU AND RIBBON COMMUNICATIONS. BY INSTALLING AND/OR USING THE SOFTWARE, YOU AGREE TO ABIDE BY ALL OF THE TERMS AND CONDITIONS STATED OR REFERENCED UNDER THIS EULA. IF YOU DO NOT AGREE TO ABIDE BY THESE TERMS AND CONDITIONS, DO NOT INSTALL OR USE THE SOFTWARE. YOU MUST ACCEPT AND ABIDE BY THESE EULA TERMS AND CONDITIONS TO USE THE SOFTWARE. ANY CHANGES, ADDITIONS OR DELETIONS BY YOU TO THESE TERMS AND CONDITIONS WILL NOT BE ACCEPTED BY RIBBON AND WILL NOT BE PART OF THIS EULA.

1. License.

Subject to Customer's compliance with the terms of this EULA (including payment of all applicable fees), the selling entity of Ribbon Communications Inc. ("Ribbon") grants Customer a nonexclusive, perpetual (except for Software licensed on a subscription or limited term basis per the applicable Product or Service description), nontransferable license to use the Product object code solely for its internal business purposes with the Hardware Product with which it is was first supplied or other authorized device for which an entitlement was granted (excluding Software only Products and network-wide license (NWL) Software Products per the applicable Software Product description). Customer may not permit use of the Product by another party (including but not limited to network, remote computing services or timesharing use) without the prior written consent of Ribbon; provided, however, that Customer may use the Products to provide voice, fax, data, video and other communications management services to those clients of Customer that obtain such services from Customer under the provisions of a separate communications services agreement as part of Customer's business. Customer may reproduce one copy of the Products solely for back-up purposes. Customer may not copy, translate, modify or adapt the Products or incorporate them, in whole or any part, in any other product, create derivative works based on the Products, or license others to reproduce any copies of the Products, and may not decompile, disassemble or reverse engineer the Products, or any component thereof. The Products are licensed, not sold. Excepted as expressly licensed hereunder, Ribbon (and its licensors) retain all rights, title and interest, including all intellectual property rights, in the Products. The Products are protected by copyright and other intellectual property laws and treaties. Customer will ensure that all proprietary notices affixed to or displayed on the Products will not be removed or modified. Software licensing information for each Product may be found in the applicable Product description; information that accompanies the Product; and in the quotation (the "Software Licensing Product Information"). Software Licensing Product Information for each Product is available upon request. Customer is not allowed to install, use, or copy any Product for which it does not have a proper license for the Product, nor obtain as applicable future updates to such Products. Third party software, is licensed under the applicable third party software license and subject to such terms and conditions. Ribbon's suppliers and licensors are hereby deemed to be third party beneficiaries of this EULA with the right to enforce the obligations and benefits of the protections with respect to the Customer as set forth herein.

2. Non-U.S. Shipments.

Shipments to non-US destinations must comply with applicable export and import regulations. Customer is solely responsible for securing import license(s), local customs clearance and paying all duties, taxes and other charges. Customer will indemnify and hold Ribbon harmless from and against claims, losses, costs, or liability, due to Customer's breach hereof.

3. US Government Restricted Rights Notice.

Distribution and use of products including computer programs and any related documentation and derivative works thereof, to and by the US Government, are subject to the Restricted Rights provisions of FAR 52.227-19, paragraph (c)(2) as applicable, except for purchases by agencies of the Department of Defense (DOD). If the Product is acquired under the terms of a Department of Defense or civilian agency contract, the Product is "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 of the Federal Acquisition Regulations and its successors and 48 C.F.R. 227.7202-1 through 227.7202-4 (June 1995) of the DoD FAR Supplement and its successors. All U.S. Government end users acquire the software with only those rights set forth herein. Manufacturer is Ribbon Communications, Inc. and its affiliates ("Ribbon"), 4 Technology Park Drive, Westford, MA 01886, USA. Unpublished rights reserved under US copyright laws.

4. Limited Warranty.

Ribbon warrants that Ribbon (a) Hardware Products will be free from material defects in material and workmanship and will conform substantially to Ribbon's published user documentation as of the date of product shipment; (b) Software Products will conform substantially to Ribbon's published user documentation as of the date of Product shipment and (c) media containing Software Products will be free from material defects, in each case for a warranty period as follows from the date of shipment: for Hardware Products, twelve (12) months; for Software Products, ninety (90) days; and for media, thirty (30) days. Provided Customer gives notice to Ribbon's Technical Assistance Center (telephone number 888 391-3434) of an alleged defect during the applicable warranty period and within thirty (30) days of its discovery, Ribbon's Technical Assistance Center will notify Customer whether Ribbon elects to replace the allegedly defective goods or to use commercially reasonable efforts to repair, correct or work around the problem by telephone support. Ribbon will have no obligation hereunder if its tests disclose that the alleged defect is due to causes not within Ribbon's control, including alteration or abuse of the Hardware and/or Software Product. This limited warranty is void if failure of the Hardware and/or Software Product has resulted from accident, abuse, misapplication, including unauthorized third-party software installed by Customer on Ribbon Hardware Products or within the same virtual machine as the Ribbon Software Products, abnormal use or a virus. Any replacement Hardware and/or Software Product will be warranted for the remainder of the original warranty period or thirty (30) days, whichever is longer. Ribbon will use commercially reasonable efforts to provide your remedy within a commercially reasonable time of your compliance with Ribbon's warranty remedy procedures. Neither these remedies nor any product support services offered by Ribbon are available without proof of purchase upon request. Ribbon's sole liability,

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5. Limitation of Liability.

RIBBON IS NOT LIABLE FOR INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES OR LOST PROFITS, FORESEEABLE OR UNFORESEEABLE, OF ANY KIND (INCLUDING, WITHOUT LIMITATION, LOSS OF GOODWILL, LOST OR DAMAGED DATA OR SOFTWARE, LOSS OF USE OF PRODUCTS, OR DOWNTIME) ARISING FROM THE SALE AND DELIVERY OF HARDWARE AND SOFTWARE PRODUCTS OR ANY OTHER ACT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ADDITION, RIBBON'S MAXIMUM LIABILITY FOR DIRECT DAMAGES, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE, WILL NOT EXCEED THE PRICE PAID FOR THE AFFECTED PRODUCT. THE FOREGOING LIMITATIONS SHALL APPLY NOTWITHSTANDING THE FAILURE OF ANY EXCLUSIVE REMEDIES. NO LIMITATION AS TO DAMAGES FOR PERSONAL INJURY IS HEREBY INTENDED. SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF DAMAGES AND THE ABOVE EXCLUSION OR LIMITATION MAY NOT APPLY.

6. Termination.

Ribbon may terminate this EULA if Customer fails to comply with the terms and conditions hereunder. In such event, Customer must immediately cease use of the Product and related documentation and return all copies of such to Ribbon.

7. Audit.

Except as otherwise provided under the applicable Ribbon product or service description, Ribbon reserves the right to audit Customer's use of the Products no more than once annually at Ribbon's expense. Ribbon shall schedule any audit at least thirty (30) days in advance. Any such audit shall be conducted during regular business hours at Customer's facilities and shall not unreasonably interfere with Customer's business activities. If such audit reveals that Customer has underpaid fees to Ribbon, Customer shall promptly pay to Ribbon such fees for any underpayment at the prices previously agreed for such Products. If such audit reveals that Customer has overpaid fees to Ribbon, Ribbon shall promptly credit to Customer any overpayment at the prices previously agreed for such Products.

8. Miscellaneous.

This EULA (including any addendum or amendment to this EULA which is included with the Product including any third party shrink wrap licenses attached or specified) is the entire agreement between Customer and Ribbon relating to the Products and supersede all prior or contemporaneous oral or written

communications, proposals and representations with respect to the Products or any other subject matter covered by this EULA. If any provision of this EULA is held to be void, invalid, unenforceable or illegal, the other provisions shall continue in full force and effect. Customer may not assign or transfer its rights hereunder. This EULA is exclusively governed by and construed in accordance with the substantive and procedural laws of the United States and the State of Massachusetts, except that body of Massachusetts law concerning conflicts, and you agree to submit to the exclusive jurisdiction of, and venue in, the courts of Boston in Massachusetts in any dispute arising out of or relating to this EULA (unless otherwise expressly agreed in writing with Ribbon). The United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act do not apply to this EULA.

The failure of either party to enforce any of the terms hereof will not be construed as a waiver of future enforcement of that or any other term. "Products" or "Software Products" means software products offered for sale by Ribbon. "Hardware Products" mean hardware products offered for sale by Ribbon.

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