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Contract Number

22-861

SAP Number

## San Bernardino County Fire Protection District

Department Contract Representative Telephone Number Dan Munsey 909-387-5779

Contractor Contractor Representative Telephone Number Contract Term Original Contract Amount Amendment Amount Total Contract Amount Cost Center Citrix Systems Inc.

Briefly describe the general nature of the contract: This is to approve a non-financial agreements with Citrix Systems, Inc, including non-standard terms, for software services associated with ADC VPX 200, Citrix Virtual Apps and Desktops, and Citrix Hypervisor, which shall remain in effect for as long as the San Bernardino County Fire Protection District continues to access or use the underlying software, or until terminated in accordance with the provisions of the agreements:

- a. Citrix License Agreement; and
b. Citrix End User Services Agreement.

FOR COUNTY USE ONLY

Table with 3 columns: Approved as to Legal Form, Reviewed for Contract Compliance, Reviewed/Approved by Department. Includes signatures and dates.

Last Revised: August 19, 2020

## CITRIX END USER SERVICES AGREEMENT

THIS IS A LEGAL AGREEMENT BETWEEN CUSTOMER AND CITRIX. BY ACCESSING AND/OR USING THE SERVICES, CUSTOMER IS AGREEING, ON BEHALF OF AN INDIVIDUAL AND/OR A LEGAL ENTITY, TO BE BOUND BY THE TERMS OF THIS AGREEMENT. THIS AGREEMENT DOES NOT APPLY TO THIRD PARTY SERVICES SOLD BY CITRIX, WHICH SHALL BE SUBJECT TO THE TERMS OF THE THIRD PARTY PROVIDER.

1. **DEFINITIONS.** As used in the Agreement, the following defined terms shall apply:
  - 1.1. **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" means the power, directly or indirectly, to direct, or to cause the direction of, the management and policies of an entity, through majority ownership of voting securities or equity interests.
  - 1.2. **Agreement** means this End User Services Agreement and any other documents incorporated herein by reference.
  - 1.3. **Citrix** means the providing Citrix entity specified at <https://www.citrix.com/buy/licensing/citrix-providing-entities.html>.
  - 1.4. **Citrix Marks** means any name, logo, or mark belonging to Citrix or its Affiliates.
  - 1.5. **Customer** means the legal entity or individual that has ordered any Services from Citrix.
  - 1.6. **Customer Account** means an account for Customer that is required to access and utilize the applicable Services.
  - 1.7. **Customer Content** means any data uploaded to Customer's Account for storage or data in Customer's computing environment to which Citrix is provided access in order to perform Services.
  - 1.8. **Device** means a device authorized by you to be used by any individual(s) to access instances of a Service. This applies under the Device licensing model.
  - 1.9. **Fees** means all Citrix fees applicable to the Services.
  - 1.10. **Logs** means records of Services, including, but not limited to, data and information on performance, stability, usage, security, support, and technical information about devices, systems, related software, services or peripherals associated with Customer's use of Services.
  - 1.11. **Open Source Software** means third party software distributed by Citrix under an open source licensing model (e.g., the GNU General Public License, BSD or a license similar to those approved by the Open Source Initiative).
  - 1.12. **Order** means any initial or subsequent ordering document, auto-renewal (if applicable and you have not provided notice of non-renewal), and/or online request for access to the Services submitted to Citrix, a Citrix authorized reseller, and/or through Citrix product websites.
  - 1.13. **PHI** means personal health information covered by US HIPAA regulations. PHI may be uploaded as Customer Content into any Service designated by Citrix as suitable for PHI.
  - 1.14. **Services** means the generally available Citrix software-as-a-service offerings inclusive of any services delivered through any unified, hosted Citrix service delivery platform, including any on-premises components (e.g., client software, tools, on-premises software with hybrid licenses), and Updates, all as further described in the Service Descriptions, as well as technical support services. Services availability is subject to the Citrix

product lifecycle policy on <https://www.citrix.com/>. Citrix may update the Services with Updates at any time in its sole discretion. Services are of an electronic nature delivered to you remotely via a technology infrastructure and with minimal or no human intervention.

- 1.15. **Service Descriptions** means the overview and other terms applicable to the Services, as amended from time to time, as found at <https://www.citrix.com/buy/licensing/saas-service-descriptions.html>.
- 1.16. **Taxes** means all applicable transactional taxes on Services (including but not limited to withholding tax, sales tax, services tax, value-added tax (VAT), goods and services tax (GST), and tariffs and/or duties) imposed by any government entity or collecting agency based on the Services.
- 1.17. **Updates** means any corrections, bug fixes, features or functions added to or removed from the Services, but shall not include any new Service(s) not generally included with the Services purchased. Updates shall not substantially diminish or eliminate the core functionality of the Services subject to the exclusive remedy set forth in Section 4.2.
- 1.18. **Use Level** means the purchased Service entitlement(s) under the license model(s) by which Citrix measures, prices and offers the Services to Customer as set forth at <https://www.citrix.com/buy/licensing/product.html>.
- 1.19. **User** means an individual that is authorized by Customer to access the Services through Customer's assignment of a single user ID. This applies under the User licensing model.

## 2. **RIGHTS.**

- 2.1. **Right to Use Service for Business.** Subject to these terms, Citrix, with the assistance of Citrix third-party service providers, will provide the Services set forth in any Order that Citrix has accepted for Customer's use, in accordance with the Agreement and applicable Use Levels. Customer acknowledges that Services are not intended for use by consumers and are only for business and professional purposes as expressly granted in this Agreement. Citrix hereby grants Customer a limited, personal, non-exclusive, non-transferable worldwide license to use the Services up to the number of subscriptions purchased and in accordance with the license model(s) purchased and identified at <https://www.citrix.com/buy/licensing/product.html>. Technical support for the Services is provided as set forth in the applicable Service Description and at <https://www.citrix.com/support/programs.html>. Updates to the Services are managed by Citrix and included in the Fees. Customer shall use the then-current version of the Services, including any Updates, as made available by Citrix. To the extent that Affiliates use the Services, Customer warrants that it has the authority to bind those Affiliates and will be liable to Citrix in the event any Affiliate fails to comply with this Agreement. Customer may purchase Citrix consulting services in support of Services or may receive them as part of technical support services. With respect to Citrix consulting services, all intellectual property rights in all deliverables, pre-existing works and derivative works of such pre-existing works, as well as developments made, conceived, created, discovered, invented, or reduced to practice in the performance of the consulting services are and shall remain the sole and absolute property of Citrix, subject to a worldwide, non-exclusive license to you for internal use.
- 2.2. **Limitations on Use.** Except to the extent permitted by applicable law, Customer agrees not to (i) modify, distribute, prepare derivative works of, reverse engineer, reverse assemble, disassemble, decompile or attempt to decipher any code relating to the Services and/or Citrix technology; (ii) knowingly or negligently access or use the Services in a manner that abuses or disrupts the Citrix networks, security systems, User accounts, or Services of Citrix or any third party, or attempt to gain unauthorized access to any of the above through unauthorized means; (iii) transmit through or post on the Services any material that is deemed abusive, harassing, obscene, slanderous, fraudulent, libelous or otherwise unlawful; (iv) market, offer to sell, and/or resell the Services (but the Services may be used by Customer in support of Customer's proprietary service offering(s)); (v) if the Customer is a Citrix competitor for the relevant Services, use the Services directly or indirectly for competitive benchmarking or other competitive analysis, unless permitted under applicable law; and (vi) upload any PHI to a Service not designated by Citrix as suitable for PHI. Service application program interfaces are licensed only through the Citrix developer portal at <https://developer.cloud.com>.
- 2.3. **Violations of Limitations on Use.** If Customer becomes aware or receives notice from Citrix that any Customer Content or any User's access to or use of Customer Content violates Section 2.2, Customer must take immediate action to remove the applicable part of the Customer Content or to suspend the User's access

to the Services, as applicable. Citrix may ask Customer to remediate, and if Customer fails to comply with such request, Citrix may suspend the Services pursuant to Section 9.8.

- 2.4. **Proprietary Rights**. Except for the limited use rights expressly granted herein, Customer has no right, title or interest in or to the Services or Citrix Marks or any intellectual property rights related thereto.
- 2.5. **Open Source Software**. Notwithstanding anything set forth in this Agreement, your use of Open Source Software shall in all ways be exclusively governed by the open source license(s) indicated as applicable to the code at <https://www.citrix.com/buy/licensing/open-source.html>.
3. **ORDERS, FEES AND PAYMENT**. Customer may order Services using the Citrix then-current ordering processes. Customer is responsible for all Fees and Taxes on Orders. Payment is due for a Service for the term purchased, including any renewals, pursuant to the payment schedule of the applicable license model. If you purchase a multi-year subscription for any Service, or multi-year renewal, your purchase is for the full value of all years of the subscription, even if required payments are annual. In the event you fail to pay any annual payment on a multi-year subscription, or multi-year renewal, and such default shall continue for a period of thirty (30) days, then any and all remaining amounts for the relevant subscription shall become immediately due and payable. If you purchase a subscription under a consumption-based license model, your purchase constitutes your agreement to be invoiced for and pay for consumption at intervals and pricing as defined in the license model. If you purchase an auto-renewing subscription (which includes consumption models), your purchase constitutes your agreement to auto-renewals for same term as initially purchased, and to auto-renewals for your other Citrix subscriptions, if any, for the same term as initially purchased for each of those. You maintain the right to give e-mail notice of non-renewal to Citrix prior any auto-renewal. Citrix will provide e-mail notice of each subscription renewal (other than those under consumption models) at least sixty (60) days in advance of renewal. Each consumption model invoice shall constitute an auto-renewal notice under consumption models. Renewal options for subscriptions available in your ordering location are identified at <https://www.citrix.com/buy/licensing/citrix-cloud-services-renewals.html>. Ensure you confirm the renewal option for the subscription you purchase prior to purchase. You may view your renewals selection for your purchased subscriptions at any time at <https://www.mycitrix.com/>. Unless you complete a renewal through a Citrix authorized reseller, you understand and agree that a subscription renewal will be through and due and payable to Citrix. Fees may increase and discounts may not apply to renewals. All Orders, including for renewals, are subject to acceptance by Citrix in its discretion. Payments to Citrix are due net thirty (30) days after the date of its invoice. All purchases are final, with no right to a refund, except as expressly provided under Sections 4.2, 6.1 and 7 of this Agreement. Citrix reserves the right, in its discretion, to suspend or terminate the Services or any portion thereof for non-payment of Fees. All Customer information provided by or on behalf of Customer for a subscription must be current, complete and accurate, and Customer is responsible for keeping such information updated.
4. **TERM AND TERMINATION**.
  - 4.1. **Term**. The terms of this Agreement shall apply for the period of Services set forth under accepted Orders, including any renewals, or for the offered period of a Beta, Tech Preview, Labs Services or Trial subscription.
  - 4.2. **Termination for Cause**. Either party may terminate a specific Service if the other party breaches any of its material obligations as to the specific Service, and fails to cure within thirty (30) days of receipt of written notice from the non-breaching party. In the event of termination by Customer for Citrix material breach, Customer shall be entitled to a refund of any unused prepaid Fees, and relief from any subsequent annual payments due, with respect to such Services. With respect to any breach of Section 1.17 by Citrix, Customer must give written notice within thirty (30) days of introduction of the relevant Update, or be deemed to waive its claims as to such Update, and termination with such refund and relief shall be its exclusive remedy. Either party may immediately terminate the Agreement if the other party becomes insolvent or bankrupt, liquidated or is dissolved, or ceases substantially all of its business. Citrix may immediately terminate the Agreement if the Customer breaches Sections 2, 5 or 9.12.
  - 4.3. **Effect of Termination**. Upon termination under Section 4.2, Customer will immediately discontinue all access and use of the specific Service. Neither party shall be liable for any damages resulting from termination, including without limitation unavailability of Customer Content arising therefrom; provided, however, termination shall not affect any claim arising prior to the effective termination date. Citrix shall have the right to

invoice Customer and Customer agrees to pay for any use of the Service past the date of termination other than Customer's access to download Customer Content.

5. **CUSTOMER CONTENT AND CUSTOMER ACCOUNT.**

- 5.1. **Customer Content.** Customer retains all rights to any and all of its Customer Content, subject to a non-exclusive, worldwide, royalty-free, license to Citrix as necessary to provide the Services hereunder. Each party shall apply reasonable technical, organizational and administrative security measures, as appropriate relative to the Services, to keep Customer Content protected in accordance with industry standards, including those identified in Section 9.7 for Citrix. Service interaction with Customer Content varies depending on the nature of the Service. If Citrix reasonably believes a problem with the Services may be attributable to Customer Content or use of the Services, Customer shall cooperate with Citrix to identify the source of and to resolve the problem. Customer shall comply with all intellectual property laws and obligations related to the Customer Content, as well as all legal duties applicable to Customer by virtue of using the Services, including providing all required information and notices and obtaining all required consents. This Agreement states Citrix' exclusive obligations with respect to care of Customer Content. Citrix has no obligation to maintain Customer Content following expiration or termination of the Agreement or the affected Services. For Services that provide for download of Customer Content, Customer shall have thirty (30) days to download Customer Content after expiration or termination and must contact Citrix technical support for download access and instructions.
- 5.2. **Customer Account.** Customer is solely responsible for (i) the configuration of Customer's Account; (ii) the operation, performance and security of Customer's equipment, networks and other computing resources used to connect to the Services; (iii) ensuring all Users and Devices exit or log off from the Services at the end of each session in accordance with Customer's session policy; (iv) maintaining the confidentiality of Customer's Account, User id's, conference codes, passwords and/or personal identification numbers used in conjunction with the Services, including not sharing login information among Users; and (v) all uses of the Services that occur using Customer's password or Account. Customer will notify Citrix immediately of any unauthorized use of its Account or any other breach of security. Ownership of Customer's Account is directly linked to the individual or entity that completes the registration process for the Account. Customer acknowledges that Citrix will rely on the information provided for issues arising with the Customer Account.
- 5.3. **Customer Account Access/Instructions.** The Customer Account owner, and any authorized User or Device, will have access to information in the Customer Account. Citrix will not provide access to any other User or Device at any time. Customer agrees that Citrix may rely on instructions given by the Customer Account owner either through the Account dashboard or via email from the address on file for the Customer Account owner. Customer agrees not to request access to or information about an account that is not owned by the Customer. In the event of a dispute regarding Customer Account data, Citrix will only release information to another party other than the Customer Account owner pursuant to a court order or other notarized waiver and release as determined by Citrix.

6. **WARRANTIES AND WARRANTY DISCLAIMER.**

- 6.1. CITRIX WARRANTS THAT THE SERVICES WILL MATERIALLY CONFORM TO THE SERVICE DESCRIPTIONS. CITRIX' ENTIRE LIABILITY AND CUSTOMER'S EXCLUSIVE REMEDY UNDER THIS WARRANTY WILL BE, AT CITRIX' SOLE OPTION AND SUBJECT TO APPLICABLE LAW, TO PROVIDE CONFORMING SERVICES OR TO TERMINATE THE NON-CONFORMING SERVICES, AND PROVIDE A PRORATED REFUND OF ANY UNUSED PREPAID FEES FROM THE PERIOD OF NON-CONFORMANCE, AND RELIEF FROM ANY SUBSEQUENT ANNUAL PAYMENTS DUE, WITH RESPECT TO SUCH SERVICE. CITRIX SHALL PROVIDE CONSULTING SERVICES, IF PURCHASED, IN A PROFESSIONAL AND WORKMANLIKE MANNER. CITRIX' ENTIRE LIABILITY AND CUSTOMER'S EXCLUSIVE REMEDY UNDER THIS WARRANTY IS RE-PERFORMANCE OF THE CONSULTING SERVICES, OR IF RE-PERFORMANCE IS NOT POSSIBLE, OR CONFORMING, THEN CITRIX SHALL PROVIDE A REFUND THE AMOUNT PAID FOR THE NON-CONFORMING CONSULTING SERVICES.
- 6.2. THE FOREGOING LIMITED WARRANTY DOES NOT COVER PROBLEMS ARISING BY ACCIDENT, ABUSE OR USE IN A MANNER INCONSISTENT WITH THIS AGREEMENT OR RESULTING FROM EVENTS BEYOND CITRIX' REASONABLE CONTROL, INCLUDING, WITHOUT LIMITATION, UNAVAILABILITY OF OR OPERATION IN COMBINATION WITH A THIRD PARTY NETWORK OR SYSTEM, HARDWARE, SOFTWARE, SERVICE OR DATA. TO THE EXTENT PERMITTED BY APPLICABLE LAW, CITRIX AND ITS AFFILIATES, LICENSORS AND SERVICE PROVIDERS DISCLAIM ALL OTHER

REPRESENTATIONS, WARRANTIES AND CONDITIONS, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, TITLE, QUIET ENJOYMENT, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT, AND ANY WARRANTIES ARISING OUT OF ANY COURSE OF DEALING OR USAGE OF TRADE, AND ANY CONDITIONS OF QUALITY, AVAILABILITY, RELIABILITY, SECURITY, OR LACK OF VIRUSES, BUGS OR ERRORS. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES AND CONDITIONS, THEREFORE SOME OF THE ABOVE EXCLUSIONS MAY NOT APPLY IF CUSTOMER IS LOCATED IN SUCH A JURISDICTION.

- 6.3. **AUSTRALIAN CONSUMERS COVERED BY AUSTRALIAN CONSUMER LAW.** Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure. Notwithstanding any other provision of this Agreement and to the extent permitted by applicable law, Citrix' liability arising from or in relation to a claim under or a breach of any warranty or statutory guarantee that cannot be excluded will be limited, at Citrix's option: (i) to the supplying of the Services again; or (ii) the payment of the cost of having the Services supplied again.
7. **INDEMNIFICATION BY CITRIX.** Citrix shall indemnify and defend Customer against any third party Infringement Claim, and pay reasonable attorneys' fees, court costs, damages finally awarded, or reasonable settlement costs, with respect to such Infringement Claim; provided that: (i) Customer promptly notifies Citrix in writing of an Infringement Claim such that Citrix is not prejudiced by any delay of such notification; (ii) Citrix has sole control over the defense and any settlement of any Infringement Claim; and (iii) Customer provides reasonable assistance in the defense of same. For the purposes of these terms, "Infringement Claim" means any claim, suit or proceeding brought against Customer based on an allegation that the Services, excluding any Open Source Software included in any software components distributed to Customer or used in conjunction with the Services, as delivered by Citrix, infringes upon any patent or copyright or violates any trade secret rights of any third party. If Customer's use of any of the Services is, or in Citrix' opinion is likely to be, enjoined as a result of an Infringement Claim, Citrix shall, at its sole option and expense, either (i) procure for Customer the right to continue to use the Services as contemplated herein, or (ii) replace or modify the Services to make their use non-infringing without degradation in performance or a material reduction in functionality. If options (i) and (ii) are not reasonably available, Citrix may, in its sole discretion and upon written notice to Customer, cancel access to the Services and refund to Customer any prepaid, but unused, Fees on the Services. Citrix assumes no liability, and shall have no liability, for any Infringement Claim based on (i) Customer's access to and/or use of the Services following notice of an Infringement Claim; (ii) any modification of the Services by Customer or at its direction; (iii) Customer's combination of the Services with third party programs, services, data, hardware, or other materials; or (iv) any trademark or copyright infringement involving any marking or branding not applied by Citrix or involving any marking or branding applied at Customer's request. **THE FOREGOING STATES CITRIX' SOLE LIABILITY AND CUSTOMER'S EXCLUSIVE REMEDY WITH RESPECT TO ANY INFRINGEMENT CLAIM HEREUNDER.**
8. **LIMITATION OF LIABILITY.** EXCEPT FOR (a) A PARTY'S INDEMNIFICATION OBLIGATIONS, AND (b) A BREACH BY CUSTOMER OF SECTION 2 AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY OR TO ANY OTHER PERSON FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL OR INCIDENTAL LOSSES, OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO, THOSE ARISING OUT OF OR RELATING TO: (i) LOSS OF DATA; (ii) LOSS OF INCOME; (iii) LOSS OF OPPORTUNITY; (iv) LOST PROFITS; and (v) UNAVAILABILITY (EXCLUDING CREDITS DUE FOR ANY SERVICE LEVEL AGREEMENT OBLIGATION) OR NON-PERFORMANCE OF ANY OR ALL OF THE SERVICES, IN EACH CASE, HOWEVER CAUSED AND BASED ON ANY THEORY OF LIABILITY, INCLUDING, BUT NOT LIMITED TO, BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR VIOLATION OF STATUTE, WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SOME JURISDICTIONS DO NOT ALLOW LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY. EXCEPT FOR (a) A PARTY'S INDEMNIFICATION OBLIGATIONS, AND (b) A BREACH BY CUSTOMER OF SECTION 2 AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE TOTAL CUMULATIVE LIABILITY OF EITHER PARTY AND THEIR RESPECTIVE AFFILIATES, LICENSORS AND SERVICE PROVIDERS ARISING OUT OF THIS AGREEMENT AND/OR THE TERMINATION THEREOF, SHALL BE LIMITED TO THE SUM OF THE AMOUNTS PAID FOR THE APPLICABLE SERVICE DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE INCIDENT GIVING RISE TO THE LIABILITY, OR IN THE CASE OF CITRIX CONSULTING SERVICES, THE AMOUNTS PAID FOR THE APPLICABLE CONSULTING SERVICE. THE FOREGOING SHALL NOT LIMIT CUSTOMER'S OBLIGATIONS TO PAY ANY FEES AND/OR OTHER

SUMS DUE UNDER ANY ORDER. THE SERVICE DESCRIPTIONS MAY CONTAIN ADDITIONAL LIMITATIONS OF LIABILITY RELATED TO INDIVIDUAL SERVICES.

9. **ADDITIONAL TERMS.**

- 9.1. **U.S. Government End-Users.** If Customer is a U.S. Government agency, Customer hereby acknowledges and agrees that the software being accessed through Services, as well as any software that is downloaded by any User or Device in connection with the Service, constitutes "Commercial Computer Software" as defined in Section 2.101 of the Federal Acquisition Regulation ("FAR"), 48 CFR 2.101. Therefore, in accordance with Section 12.212 of the FAR (48 CFR 12.212), and Sections 227.7202-1 and 227.7202-3 of the Defense Federal Acquisition Regulation Supplement ("DFARS") (48 CFR 227.7202-1 and 227.7202-3), the use, duplication, and disclosure of the software and related Documentation by the U.S. Government or any of its agencies is governed by, and is subject to, all of the terms, conditions, restrictions, and limitations set forth in this Agreement. If, for any reason, FAR 12.212 or DFARS 227.7202-1 or 227.7202-3 or these license terms are deemed not applicable, Customer hereby acknowledges that the Government's right to use, duplicate, or disclose the software and related Documentation are "Restricted Rights" as defined in 48 CFR Section 52.227-14(a) (May 2014) or DFARS 252.227-7014(a)(15) (Feb 2014), as applicable. Manufacturer is Citrix Systems, Inc., 851 West Cypress Creek Road, Fort Lauderdale, Florida 33309.
- 9.2. **Services Trial.** If a Service offering is identified as a trial ("Trial"), Customer may use the Service for a limited period of time for internal demonstration, test, or evaluation purposes. CITRIX PROVIDES TRIALS "AS IS" AND WITHOUT WARRANTY. ANY CUSTOMER DATA UPLOADED IN A TRIAL WILL BE PERMANENTLY LOST UNLESS CUSTOMER PURCHASES A SUBSCRIPTION TO THE SAME SERVICES AS THOSE COVERED BY THE TRIAL OR EXPORTS SUCH DATA BEFORE THE END OF THE TRIAL PERIOD. These terms supersede any conflicting terms and conditions in this Agreement.
- 9.3. **Beta, Tech Preview or Labs Services.** The Services do not include Beta, Tech Preview or Labs Services. CUSTOMER ACKNOWLEDGES THAT ANY BETA, TECH PREVIEW OR LABS SERVICES ARE OFFERED "AS-IS" FOR INTERNAL DEMONSTRATION, TEST OR EVALUATION PURPOSES AND WITHOUT WARRANTY. SUCH SERVICES MAY CONTAIN BUGS, ERRORS AND OTHER DEFECTS. Citrix does not make any representations, promises or guarantees that such Services will be publicly announced or made generally available. Citrix has no obligation to provide technical support or continued availability, and such Services can be suspended or terminated at any time by Citrix in its sole discretion with or without notice to Customer.
- 9.4. **Third Party Products, Services or Content.** A Service may contain features or functions that enable interoperation with third party products, services or content. Citrix may also provide access to third party products, services or content directly within the Services. Third party products, services or content, and customer content in third party services, are not part of the Services and are not warranted or supported by Citrix. Your use of such third party products, services or content is subject to the terms of the third party provider.
- 9.5. **Copyright.** Citrix reserves the right to delete or disable any allegedly infringing content, to require that Customer terminate the accounts of Users who are repeat infringers, and to forward the information in the copyright-infringement notice to the User who allegedly provided the infringing content.
- 9.6. **Consent to Use Logs.** Citrix and its service providers may collect and use Logs for purposes of facilitating the Services, including securing, managing, measuring and improving the Services. Logs may be used for purposes not specified in this Section only in an aggregated, anonymized form.
- 9.7. **Security and Privacy.** When providing SaaS Services, technical support services or consulting services, Citrix will (i) implement and maintain the administrative, physical and technical security controls as set forth in the Citrix Services Security Exhibit at <https://www.citrix.com/buy/licensing/citrix-services-security-exhibit.html>, and (ii) process personal data on Customer's behalf as set forth in the Citrix Data Processing Addendum at <https://www.citrix.com/buy/licensing/citrix-data-processing-agreement.html>. Customer agrees to provide any notices, obtain any consents or otherwise establish the legal basis necessary for Citrix to access and process personal and other data as specified in this Agreement. The Data Processing Addendum and the Citrix Services Security Exhibit are incorporated herein by reference.
- 9.8. **Suspension of Service.** Citrix reserves the right to suspend Customer's access to a Service if it determines, in its sole discretion, that (i) payment for the Services is not received within 30 days from the date on which payment is due; (ii) Customer's or its Users' use of the Services are in breach of this Agreement and not cured as required by Section 4.2; (iii) Customer failed to timely address Citrix's request to take action pursuant to Section 2.3; (iv) Customer's use of the Services poses a security or other risk to the Services or to other users of the Services; or (v) suspension is required pursuant to a subpoena, court order or other legal process. Citrix

agrees to notify Customer of any such suspension. Customer will remain responsible for all fees incurred before or during any suspension. Citrix reserves the right, in its discretion, to impose reasonable Fees to restore archived data upon Customer request from delinquent accounts.

- 9.9. **High-Risk Use.** Customer acknowledges that the Services are not designed or intended for access and/or use in or with high-risk activities.
- 9.10. **Voice and Data Charges; Customer Connectivity.** Customer is responsible for all fees and charges imposed by Customer's telephone carriers, wireless providers, and other voice and/or data transmission providers arising out of access to and use of the Services. If Customer's broadband connection and/or telephone service fails, or Customer experiences a power or other failure or interruption, the Services may also cease to function for reasons outside of Citrix' control.
- 9.11. **Assignment.** Customer may not assign its rights or delegate its duties under this Agreement either in whole or in part without Citrix' prior written consent, except that Customer may assign this Agreement in whole to an Affiliate, or a successor in interest as part of a corporate reorganization, consolidation, merger, or sale of all or substantially all of its assets. Customer shall provide notice to Citrix upon completion of any permitted assignment. Any attempted assignment in violation of the foregoing shall be void. This Agreement will bind and inure to the benefit of each party's successors or permitted assigns.
- 9.12. **Export Restriction and Compliance with Laws.** Customer acknowledges that the Services are subject to U.S., foreign, and international export controls and economic sanctions laws and regulations and agrees to comply with all such applicable laws and regulations, including, but not limited to, the U.S. Export Administration Regulations ("EAR") and regulations promulgated by the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC"). Customer also specifically agrees not to, directly or indirectly, allow access to or use of the Services in embargoed or sanctioned countries/regions, by sanctioned or denied persons, or for prohibited end-uses under U.S. law without authorization from the U.S. government. Both parties also agree to comply with all other laws, rules and regulations applicable to that party under this Agreement.
- 9.13. **Audit.** To the extent permitted by applicable law, you agree to allow Citrix to audit your compliance with this Agreement pursuant to the terms explained at: <https://www.citrix.com/about/legal/product-license-compliance.html>.
- 9.14. **Notices.** All legal notices required under this Agreement shall be in writing and delivered in person or by certified or registered express mail to the address last designated on the account for Customer, and the Citrix contracting entity as specified below, or such other address as either party may specify by notice to the other party as provided herein. Notice shall be deemed given (i) upon personal delivery; (ii) if delivered by air courier or email, upon confirmation of receipt; or (iii) five (5) days after deposit in the mail. A copy of all legal notices from Customer to Citrix must also be sent to [contract-notice@citrix.com](mailto:contract-notice@citrix.com). Non-legal notices under Section 3.0 may be provided by Customer to the Citrix email address specified on the applicable Renewal Notification and shall be deemed effective as of the date and time stamp on the Customer's email. Citrix may provide Customer with non-legal notices through [www.mycitrix.com](http://www.mycitrix.com) and/or through in-product messaging or dashboards, which shall likewise be deemed effective immediately.
- 9.15. **Entire Agreement; Order of Precedence.** The Agreement sets forth the entire agreement and understanding of the parties relating to the Services and Customer Content and supersedes all prior and contemporaneous oral and written agreements. For any conflict between these terms and any supplementary BAA terms related to PHI, this Agreement shall control. For any conflict between these terms and the Service Descriptions related to a specific Service, these terms shall control. Nothing contained in any Order or other document submitted by Customer shall in any way add to or otherwise modify the Agreement or any Citrix license program terms under which an Order is submitted. The terms of this Agreement and/or Service Descriptions or other referenced documents may be updated by Citrix from time to time without notice (but will be identified by the last updated date) and may be reviewed anytime at [https://www.citrix.com/content/dam/citrix/en\\_us/documents/buy/enterprise-saas-eusa.pdf](https://www.citrix.com/content/dam/citrix/en_us/documents/buy/enterprise-saas-eusa.pdf). Customer's continued access to and use of the Services constitutes acceptance of the then-current terms.
- 9.16. **General Terms.** Captions and headings are used herein for convenience only, are not a part of this Agreement, and shall not be used in interpreting or construing this Agreement. The provisions of Sections 1 (Definitions), 2.2 (Limitations on Use), 2.4 (Proprietary Rights), 2.5 (Open Source Software), 3 (Orders, Fees, and Payments), 4.3 (Effect of Termination), 5 (Customer Content and Customer Accounts), 7 (Indemnification), 8 (Limitation of Liability), 9.14 (Notices), 9.16 (General), and 9.17 (Contracting Party, Choice of Law and Location for Resolving Disputes) shall survive any termination of the Agreement. If any provision of this Agreement is declared by a court of competent jurisdiction to be invalid, illegal, or unenforceable, such provision shall be severed from this Agreement and the other provisions shall remain in full force and effect.

The parties are independent contractors and nothing in this Agreement creates a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between or among the parties. Citrix may subcontract responsibilities under this Agreement, but remains responsible for its breach of this Agreement by the acts or omissions of Citrix or its subcontractors. No person or entity not a party to this Agreement will be deemed to be a third party beneficiary of this Agreement or any provision hereof. Citrix authorized resellers and distributors do not have the right to make modifications to this Agreement or to make any additional representations, commitments, or warranties binding on Citrix. No waiver or amendment of any term or condition of this Agreement shall be valid or binding on any party unless agreed to in writing by such party. Citrix failure to enforce any term of this Agreement will not be construed as a waiver of the right to enforce any such terms in the future. Unless otherwise specified, remedies are cumulative. This Agreement may be agreed to online, by use of the Services and/or executed by electronic signature and in one or more counterparts. Neither party will be responsible or have any liability for any delay or failure to perform its non-monetary obligations hereunder to the extent due to unforeseen circumstances or causes beyond its reasonable control, including acts of God, earthquake, fire, flood, sanctions, embargoes, strikes, lockouts or other labor disturbances, civil unrest, failure, unavailability or delay of suppliers or licensors, riots, terrorist or other malicious or criminal acts, war, failure or interruption of the internet or third party internet connections or infrastructure, power failures, acts of civil and military authorities and severe weather ("Force Majeure"). The affected party will give the other party prompt written notice (when possible) of the failure to perform due to Force Majeure and use its reasonable efforts to limit the resulting delay in its performance.

- 9.17. **Contracting Party, Choice of Law and Location for Resolving Disputes.** The Citrix contracting entity under this Agreement, and governing law and jurisdiction to resolve any dispute, are identified at <https://www.citrix.com/buy/licensing/citrix-providing-entities.html>. The specified state governing law and jurisdiction do not apply to U. S. Government Customers.

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