

APPENDIX D TO DIR CONTRACT NO. DIR-TSO-3783

SOFTWARE LICENSE AND SERVICES AGREEMENT

THIS SOFTWARE LICENSE AND SERVICES AGREEMENT (the "**Agreement**") is made as of the date last written below (the "**Effective Date**") between PMWARE TECHNOLOGY HOLDINGS, LLC ("**PMware** ") and the party listed as Customer on the signature page below ("**Customer**").

The terms of DIR Contract No. DIR-TSO-3783 and this Agreement shall apply to all licenses granted under this Agreement and to all services provided by PMware under this Agreement. Customer may place orders for software and/or services under this Agreement by signing Order Form(s) (as defined below). The terms and conditions set forth in DIR Contract No. DIR-TSO-3783 shall control should Agreement or Ordering documents have terms and conditions in conflict with DIR Contract No. DIR-TSO-3783.

1. DEFINITIONS

1.1 "Documentation" shall mean PMware's then current on-line help, guides, and manuals for the Licensed Software published by PMware and made generally available by PMware.

1.2 "License Start Date" of each Program License shall mean the license start date set forth on the applicable Order Form.

1.3 "License Term" shall mean the term set forth on the applicable Order Form.

1.4 "Licensed Software" shall mean the executable code version of the software as specified in an Order Form and delivered by PMware, including any Updates or Upgrades provided as part of the Maintenance Services.

1.5 "Maintenance Services" shall mean the services provided under PMware's standard maintenance services policy in effect on the date such services are ordered, including the provision of any Updates or Upgrades made generally available by PMware. A copy of PMware's current Maintenance Services policy is attached as Exhibit A.

1.6 "Order Form(s)" shall mean a PMware order form which is executed by the parties by which Customer orders Program Licenses and related services. Each Order Form shall reference DIR Contract No. DIR-TSO-3783 and this Agreement and shall, upon signature by both parties, be incorporated into this Agreement.

1.7 "Program License(s)" shall mean each license granted to Customer for a User to use Licensed Software.

1.8 "Site" means the Customer site set forth in an Order form.

1.9 "Subscription Fees" means, with respect to any Customer who has licensed the Licensed Software on a subscription basis, the subscription fees set forth on the applicable Order Form.

1.10 "Third Party Software" shall mean the third party software embedded in and/or delivered with the Licensed Software.

1.11 "Training Materials" shall mean any training materials provided in connection with any training

courses ordered by Customer and delivered by PMware as set forth in this Agreement.

1.12 "Update(s)" shall mean a version of the Licensed Software containing error corrections or bug fixes. Updates are registered by means of a change of the number to the right of the decimal point, e.g. 3.0 >> 3.1.

1.13 "Upgrade(s)" shall mean a version of the Licensed Software containing functional enhancements, modifications or extensions. Upgrades are registered by means of a change of the number to the left of the decimal point, e.g. 3.0 >> 4.0.

1.14 "User(s)" shall mean the named or specified (by password or other user identification) individuals authorized by Customer to use Licensed Software, regardless of whether the individual is actively using the Licensed Software at any given time. The maximum number of Users that may use or access the Licensed Software is specified in the Order Form. Users may include the employees of Customer or third parties; *provided* that such third party is limited to use of the Licensed Software (i) only as configured and deployed by Customer and (ii) solely in connection with Customer's internal business operations. Customer agrees that it is responsible for ensuring that any third party usage is in accordance with the terms and conditions of this Agreement.

2. LICENSE

2.1 License Grant. Subject to the terms and conditions of DIR Contract No. DIR-TSO-3783 and this Agreement, PMware grants Customer the following nonexclusive, nontransferable (except as expressly set forth in Section 2.4) rights during the License Term solely for its own internal business operations by Users:

A. To Use. (i) to use the Licensed Software for Customer's internal business purposes for up to the number of Users set forth in the applicable Order Form(s); (ii) to use the Documentation solely for purposes of supporting Customer's use of the Licensed Software; (iii) to use the Training Materials solely for purposes of supporting Users; and (iv) to have PMware or PMware - approved third parties install, integrate, and/or implement the Licensed Software for the Customer.

B. To Copy. (i) to copy the Licensed Software to operate on server systems at the Site as reasonably necessary to support the maximum number of named Users; (ii) to copy the PC-based client module of the Licensed Software to operate on the personal computers of Users up to the maximum number of named Users, *provided* that Customer may make one additional copy of each such module for use on one personal computer, per User, so long as such User operates only one copy of such module at any given time; (iii) to make a reasonable number of additional copies of the Licensed Software solely for archival, emergency back-up, or disaster recovery purposes; and (iv) to copy the Documentation as reasonably necessary to support its Users.

2.2 License Restrictions. The rights granted in Section 2.1 are subject to the following restrictions: (i) Customer may use the Third Party Software solely in combination with the Licensed Software and solely for purposes of operating the Licensed Software; (ii) Customer may not use any of the Third Party Software as stand-alone applications; (iii) Customer may not reverse engineer, disassemble, decompile, or otherwise attempt to derive the source code of the Licensed Software or Third Party Software; (iv) Customer may not sublicense or use the Licensed Software or Third Party Software for commercial time-sharing, rental, ASP or service bureau; (v) Customer may not write or develop any derivative software or any other software program based upon the Licensed Software, Third Party Software, Documentation or related information; and (vi) with regard to any and all copies of the Licensed Software, Third Party Software, and Documentation, Customer shall only make exact copies of the versions as originally delivered by PMware and Customer shall ensure that each copy contains all titles, trademarks, and copyright and restricted rights notices as in the original, and all such copies shall be subject to the terms and conditions of this Agreement.

2.3 Retention of Rights. PMware reserves all rights not expressly granted to Customer in this Agreement. Without limiting the generality of the foregoing, Customer acknowledges and agrees that: (i) except as specifically set forth in this Agreement, PMware and its suppliers retain all rights, title and interest in and to the Licensed Software, Third Party Software, Documentation and Training Materials, and Customer acknowledges and agrees that it does not acquire any rights, express or implied, in the foregoing; (ii) any configuration or deployment of the Licensed Software shall not affect or diminish PMware's rights, title, and interest in and to the Licensed Software; and (iii) any new features, functionality, or performance for the Licensed Software suggested by Customer that PMware subsequently incorporates into the Licensed Software shall be the sole and exclusive property of PMware and shall be free from any confidentiality restrictions that might otherwise be imposed upon PMware pursuant to Section 8.1.

2.4 Assignment. Assignments shall be handled in accordance with Appendix A, Section 4D of DIR Contract No. DIR-TSO-3783.

2.5 Verification. PMware reserves the right to audit Customer's use of the Licensed Software at PMware's expense. This audit right may not be exercised more than once during any consecutive 12-month period.

PMware 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 PMware, Customer shall promptly pay to PMware such fees at the prices previously agreed to for such Licensed Software.

3. SERVICES

3.1 Maintenance Services for Licensed Software.

Subject to payment of the fee(s) set forth on the applicable Order Form and in accordance with Appendix C of DIR Contract No. DIR-TSO-3783, PMware agrees to provide any Maintenance Services in accordance with the terms set forth on Exhibit A. PMware reserves the right to alter its standard Maintenance Services policy from time to time using reasonable discretion but in no event shall such alterations result in diminished support from the level of support set forth in Exhibit A or terms be in conflict with DIR Contract No. DIR-TSO-3783. If terms are found to be in conflict with DIR Contract No. DIR-TSO-3783 they shall be deemed null and void.

3.2 Training Services. PMware will provide any training services set forth on an Order Form, subject to availability, in accordance with PMware's training services schedule in effect at the time such training is ordered.

3.3 Technical Services. PMware will provide any technical services set forth on an Order Form, subject to availability, in accordance with PMware's technical services schedule in effect at the time such services are ordered.

4. TERM AND TERMINATION

4.1 Term. Each Program License granted under this Agreement shall commence on the applicable License Start Date and shall remain in effect one (1) year unless terminated in accordance with Appendix A, Section 11B of DIR Contract No. DIR-TSO-3783.

4.2 Effect of Termination. Termination of this Agreement or any Program License shall not limit either party from pursuing other remedies available to it, nor shall such termination relieve Customer of its obligation to pay all fees that have accrued or are otherwise owed by Customer under any Order Form. The parties' rights and obligations under Sections 2.2, 2.3, 4, 5.1, 6, 7 and 8 shall survive termination of this Agreement.

4.2 Handling of Licensed Software Upon Termination.

Subject to record retention laws and policies, if a Program License granted under this Agreement terminates, Customer shall (i) cease using the Licensed Software, Documentation, and related Confidential Information of PMware and (ii) at PMware's request, certify to PMware within thirty (30) days after termination that Customer has destroyed, or has returned to PMware, the Licensed Software, Documentation, related Confidential Information of PMware, and all copies thereof, whether or not modified or merged into other materials.

5. WARRANTIES AND REMEDIES

5.1 Indemnification shall be handled in accordance with Appendix A, Section 11A of DIR Contract No. DIR-TSO-3783.

5.2 Limited Warranties and Disclaimers.

A. Performance Warranty. PMware warrants for a period of ninety (90) days from the License Start Date that the Licensed Software will perform in all material respects the functions described in the Documentation.

B. Media Warranty. PMware warrants for thirty (30) days from the License Start Date that the media upon which PMware delivers Licensed Software to Customer will be free of defects in materials and workmanship under normal use.

C. Services Warranty. PMware warrants for ninety (90) days from the performance of any services by PMware pursuant to this Agreement that such services shall be performed in a technically proficient and competent manner.

D. Anti-Virus Warranty. PMware warrants that to the best of its knowledge after employing reasonable technical means to detect computer viruses, the Licensed Software as delivered by PMware does not contain any virus or computer software code, routines or devices (other than as set forth in the Documentation) designed to disable, damage, impair, or erase the Licensed Software or other software or data.

E. Disclaimers. PMware does not warrant that (i) the Licensed Software will meet Customer's requirements, (ii) the Licensed Software will operate in combinations with other hardware, software, systems or data not provided by PMware (except as expressly specified in writing by PMware in the Documentation), (iii) the operation of the Licensed Software will be uninterrupted or error-free, or (iv) all Program errors will be corrected. THE WARRANTIES ABOVE ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NONINFRINGEMENT, QUIET ENJOYMENT, ACCURACY OR SYSTEM INTEGRATION.

5.3 Exclusive Remedies. Customer must report in writing any breach of the warranties contained in Sections 5.2A, 5.2B, 5.2C and 5.2D to PMware within ten (10) days following expiration of the relevant warranty period, and Customer's exclusive remedy and PMware's entire liability for any breach of such warranties shall be as set forth below:

A. Performance Warranty. To use its commercially reasonable efforts to correct or provide a workaround for reproducible Licensed Software errors that cause a breach of this warranty or if PMware determines that it is unable to make the Licensed Software operate as warranted within a reasonable time considering the severity of the error and its impact on the Customer, Customer shall be entitled to return the Licensed Software to PMware and recover the fees paid to PMware for the Program License

B. Media Warranty. The replacement of the defective media.

C. Services Warranty. The reperformance of the services or if PMware determines that it is unable to perform the services as warranted, Customer shall be entitled to recover the fees paid to PMware for the nonconforming services.

D. Anti-virus Warranty. The immediate replacement of all copies of the affected Licensed Software in the possession of Customer.

6. LIMITATION OF LIABILITY

LIMITATION OF LIABILITY SHALL BE HANDLED IN ACCORDANCE WITH APPENDIX A, SECTION 10K OF DIR CONTRACT NO. DIR-TSO-3783.

7. PAYMENT PROVISIONS

7.1 License Fees. In consideration of the license(s) granted under this Agreement, Customer agrees to make the applicable license fee payments set forth in the applicable Order Form(s) in accordance with Appendix A, Section 8j of DIR Contract No. DIR-TSO-3783. Fees shall be nonrefundable and irrevocable except as otherwise provided in Sections 5.1 and 5.3A of this Agreement.

7.2 Usage Reporting. At the end of each quarter beginning on the License Start Date, Customer agrees to use the User inventory script included with the Licensed Software to generate a report on the number of Users at the Site, and to provide such report to PMware in electronic form via email to the address provided by PMware.

7.3 Maintenance Service Fees. Fees for Maintenance Services shall be payable in accordance with Appendix A, Section 8J of DIR Contract No. DIR-TSO-3783.

7.4 Other Fees. All other applicable fees, if any, shall be payable in accordance with Appendix A, Section 8J of DIR Contract No. DIR-TSO-3783.

7.5 Payment Terms. Unless otherwise provided on the applicable Order Form, all amounts due to PMware shall be paid in accordance with Appendix A, Section 8J of DIR Contract No. DIR-TSO-3783.

7.6 Taxes. Taxes shall be handled in accordance with Appendix A, Section 8E of DIR Contract No. DIR-TSO-3783.

8. GENERAL TERMS

8.1 Confidentiality. To the extent allowable under the Texas Public Information Act, each party may have access to information that is confidential to the other party ("**Confidential Information**"). PMware's Confidential Information shall include, but not be limited to, the Licensed Software, Third Party Software, Documentation, formulas, methods, know how, processes, designs, new products, developmental work, marketing requirements, marketing plans, customer names, prospective customer names and all information clearly identified in writing at the time of disclosure as confidential. Customer's Confidential Information shall include, but not be limited

to, its software, formulas, methods, know-how, processes, designs, new products, developmental work, marketing requirements, marketing plans, customer names, prospective customer names, and all information clearly identified in writing at the time of disclosure as confidential. Confidential Information includes all information received from third parties that either party is obligated to treat as confidential and oral information that is identified by either party as confidential.

A party's Confidential Information shall not include information that: (i) is or becomes a part of the public domain through no act or omission of the other party; (ii) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (iii) is lawfully disclosed to the other party by a third party without restriction on disclosure; or (iv) is independently developed by the other party without use of or reference to the other party's Confidential Information. In addition, this Section 8.1 will not be construed to prohibit disclosure of Confidential Information to the extent that such disclosure is required by law or valid order of a court or other governmental authority; *provided, however*, that the responding party shall first have given notice to the other party.

The parties agree, unless required by law, not to make each other's Confidential Information available in any form to any third party (except third parties who are Users as defined hereunder) or to use each other's Confidential Information for any purpose other than in the performance of this Agreement. Customer shall not disclose the results of any performance tests of the Licensed Software to any third party without PMware's reasonable steps to ensure that Confidential Information is not disclosed or distributed by its employees or agents in breach of this Agreement. Each party acknowledges and agrees that, due to the unique nature of Confidential Information, there can be no adequate remedy at law for breach of this Section 8.1 and that such breach would cause irreparable harm to the non-breaching party.

DIR Contract No. DIR-TSO-3783 and this Agreement constitute the entire understanding of the parties and supersedes all prior or contemporaneous agreements, representations or negotiations, whether oral or written, with respect to Confidential Information.

8.2 Governing Law. This Agreement and all matters arising out of or relating to this Agreement, shall be governed by the laws of The State of Texas excluding its conflict of law provisions and the United Nations Convention on Contracts for the International Sale of Goods.

8.3 Notices. Notices shall be handled in accordance with Appendix A, Section 12 of DIR Contract No. DIR-TSO-3783.

8.4 Severability. In the event any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement will remain in full force.

8.5 Waiver. The waiver by either party of any default or breach of this Agreement shall not constitute a waiver of any other or subsequent default or breach.

8.6 Government Use/Procurement. If the Licensed Software is being licensed under the terms of a proposal or agreement with the U.S. Government or any contractor on its behalf, the Licensed Software is commercial computer software and the Documentation is developed exclusively at private expense, and (a) if acquired by or on behalf of a civilian agency, shall be subject to the terms of this computer software license as specified in 48 C.F.R. 12.212 of the Federal Acquisition Regulations and its successors; and (b) if acquired by or on behalf of units of the Department of Defense ("DOD") shall be subject to the terms of this commercial computer software license as specified in 48 C.F.R. 227.7202-2, DOD FAR Supplement and its successors. If the Licensed Software will be provided or made available to the U.S. Government, any use, duplication, or disclosure by the U.S. Government of the Licensed Software shall be subject to the restrictions applicable to proprietary commercial computer software set forth in subparagraph (c)(1)(ii) of The Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 or subparagraphs (c)(1) and (2) of the Commercial Computer Software - Restricted Rights clause at 48 CFR 52.227-19, as applicable.

8.7 Force Majeure. Force Majeure shall be handled in accordance with Appendix A, Section 8E of DIR Contract No. DIR-TSO-3783.

8.8 Export Controls. Each party agrees to comply fully with all relevant export laws and regulations of the United States to ensure that no information or technical data provided pursuant to this Agreement, including, but not limited to, the Licensed Software and Documentation, is exported or re-exported directly or indirectly in violation of law.

8.9 Relationship Between the Parties. PMware is an independent contractor; nothing in this Agreement shall be construed to create a partnership, joint venture or agency relationship between the parties.

8.10 Press Release. Customer agrees that PMware may issue a press release, subject to Customer's review and pre-approval, indicating Customer's relationship with PMware.

8.11 Entire Agreement. DIR Contract No. DIR-TSO-3783 and this Agreement, together with the attached exhibits which are incorporated by reference, constitutes the complete agreement between the parties and supersedes all prior or contemporaneous agreements or representations, written or oral, concerning the subject matter of this Agreement and such exhibits. This Agreement may not be modified or amended except in writing signed by a duly authorized representative of each party. No other act, document, usage or custom shall be deemed to amend or modify this Agreement.

8.12 Counterparts and Exchanges by Fax. This Agreement may be executed simultaneously in two (2) or more counterparts, each of which will be considered an original, but all of which together will constitute one and the same instrument. The exchange of a fully executed Agreement (in counterparts or otherwise) by fax shall be sufficient to bind the parties to the terms and conditions of this Agreement.

THE PARTIES ACKNOWLEDGE THAT THEY HAVE READ THIS AGREEMENT, AND THEY UNDERSTAND IT AND AGREE TO BE BOUND BY DIR CONTRACT NO. DIR-TSO-3783 AND THE TERMS AND CONDITIONS OF THIS AGREEMENT. THE PARTIES FURTHER AGREE THAT DIR CONTRACT NO. DIR-TSO-3783 AND THIS AGREEMENT ARE THE COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN THE PARTIES AND THAT NO EXHIBIT, SCHEDULE OR ATTACHMENT CAN BE MODIFIED WITHOUT INCORPORATING BY REFERENCE THE GENERAL TERMS. EACH PARTY AND EVERY INDIVIDUAL SIGNING THIS AGREEMENT REPRESENTS AND WARRANTS THAT THEY ARE FULLY AUTHORIZED AND EMPOWERED TO ENTER INTO THIS AGREEMENT.

IN WITNESS WHEREOF, the parties by their duly authorized representatives have executed this Agreement as of the Effective Date.

PMWARE TECHNOLOGY HOLDINGS, LLC

CUSTOMER:

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

Address: 7550 IH 10, Suite 940
San Antonio, TX 78229
Telephone: (210) 340-0098 x116
Facsimile: (210) 340-2190

Address:

Tel:
Fax:

**EXHIBIT A
MAINTENANCE AND SUPPORT**

1. Procedures.

a. PMware shall respond to Defects in accordance with the priority level indicated in the chart below, which priority level shall be determined by PMware. For purposes of this Exhibit A, the term "Defect" shall mean any material non-conformance with the specifications in the Documentation accompanying the Licensed Software.

Priority	Definition	Target Response for Telephone Requests*	Actions
Priority 1	Error that renders the Licensed Software inoperative or causes the Licensed Software to fail catastrophically	Within 4 business hours	PMware shall promptly initiate the following procedures upon confirmation of the defect by PMware: (1) assign a senior Engineer to correct the defect; (2) notify senior PMware management that a Priority 1 defect has been reported and that steps are being taken to correct the defect; (3) provide Customer with periodic reports on the status of the resolution; (4) commence work to provide Customer with a workaround or fix.
Priority 2	Licensed Software error that materially restricts Customers use of the Licensed Software	Within 1 business day	PMware shall assign an Engineer to correct the defect and provide Customer with periodic reports on the status of the resolution.
Priority 3	Licensed Software error that causes only a minor impact on Customer's use of the Licensed Software and/or a defect for which a workaround is available.	Within 3 business days	PMware shall assign an Engineer to correct the defect and/or provide a workaround and shall provide Customer with periodic reports on the status of the resolution.
Priority 4	A cosmetic or documentation error that does not impact use of the Licensed Software	Within 5 business days	PMware shall assign an Engineer to correct the defect and/or provide a workaround and shall provide Customer with periodic reports on the status of the resolution.

* Target response time for support requests by e-mail or other on-line facility is within 1 business day.

b. The response times set forth in the chart above are target response times only. PMware's sole obligation is to use commercially reasonable efforts to respond within such time frames.

2. Exclusions and Limitations.

PMware shall have no obligation to support:

- a. Altered, damaged or modified Licensed Software;
- b. Licensed Software that is not the current release or the most recent previous release;
- c. Licensed Software problems caused by Customer's negligence, changes made by any party other than PMware , hardware malfunction, or other causes beyond the control of PMware ;
- d. Licensed Software installed in an operating or hardware environment not supported by PMware, as indicated in the PMware Documentation.