

SUBSCRIPTION LICENSE AND SERVICES AGREEMENT

Parties:	"ClearBlade"	"Customer"
<i>Full Legal Name:</i>	CLEARBLADE, INC.	[INSERT LEGAL NAME]
<i>Business Entity Type:</i>	Corporation	_____
<i>Organized In:</i>	State of Delaware	_____
<i>Address:</i>	103 E. 5th Street Suite 203 Austin, Texas 78701	_____
	Attn: Dana K. Wright	Attn: _____
	Phone: 713-822-2904	Phone: _____
	Email address: dwright@clearblade.com	Email address: _____
Agreement Effective Date: _____		

Subject to DIR Contract No. DIR-TSO-4281, this Subscription License and Services Agreement (the "Agreement") sets forth the terms and conditions governing ClearBlade's license to Customer of ClearBlade's proprietary software products, and the provision to Customer of services in connection with those products. The Schedule attached to this Agreement, and additional Schedules entered into by the parties from time to time, sets forth the Software licenses and Services to be purchased by Customer under this Agreement, applicable fees, and other terms. No license rights are granted, and ClearBlade has no obligation to provide Software or Services, except as specified in the applicable Schedule.

DIR Contract DIR-TSO-4281, its Appendices, this Agreement, together with Exhibit A and the attached Schedule, as well as any Schedules and Statements of Work entered into by the parties from time to time, constitutes the entire agreement of the parties and supersedes any prior and contemporaneous oral or written understanding as to the parties' relationship and the subject matter hereof. No amendment or waiver of any provision of this Agreement will be effective unless in writing and signed by Customer and ClearBlade. To the extent of any conflict among the terms of the various documents, the base terms of this Agreement will prevail unless expressly stated otherwise. Additional or different terms in any purchase order or other communication from Customer are void.

This Agreement may be executed in two or more counterparts, each of which will be deemed an original for all purposes, and together will constitute one and the same document. Once signed, both parties agree that any reproduction of this Agreement made by reliable means (for example, a photocopy, facsimile, or PDF file) is an original.

AGREED TO AND ACCEPTED:

"ClearBlade"
CLEARBLADE, INC.

Authorized Signature

Print Name

Title

Date

AGREED TO AND ACCEPTED:

"Customer"
[INSERT LEGAL NAME]

Authorized Signature

Print Name

Title

Date

1. Definitions.

- a. **"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 ownership or control, directly or indirectly, of more than 50% of the voting interests of the subject entity).
- b. **"Documentation"** means the then-current user manuals that describe the functions, operation, and use of the Software, and that ClearBlade makes generally available to licensees of the Software, whether in printed or electronic format.
- c. **"Enhancement"** means an improvement, extension, modification, or new release to the Software (other than Error Corrections) that ClearBlade elects to incorporate into and make a part of the Software for use by all ClearBlade customers and becomes part of the general design of the Software.
- d. **"Error"** means any error or defect in the Software that causes the Software not to conform in material respects with the Documentation.
- e. **"Error Corrections"** are modifications that correct Errors.
- f. **"Licensed Capacity"** is the amount of each Software product licensed as described in the Schedule. For licenses based on the power of a computer, Customer agrees to use ClearBlade's then current computer classification scheme, which will be provided upon request.
- g. **"Technical Services"** means implementation services, integration and development work, training, and other technical services provided by ClearBlade to Customer as described in Statements of Work entered into by the parties.
- h. **"Schedule"** refers to the written or electronic document which details the Software to be licensed or Services to be purchased by Customer under this Agreement, applicable fees, and initial term applicable to Customer's use of the Software. The initial Schedule entered into by the parties is attached to this Agreement. To be effective, other Schedules must be signed by both parties. Each Schedule incorporates this Agreement by reference.
- i. **"Services"** refers, collectively, to the Technical Services and the Support Services.
- j. **"Software"** means ClearBlade's proprietary software product, in executable code form, described in the initial Schedule attached to this Agreement or in a subsequent Schedule, and includes Documentation.
- k. **"Statement of Work"** refers to a type of Schedule that describes the Technical Services provided by ClearBlade to Customer.
- l. **"Support Services"** means ClearBlade's support and maintenance services for the Software.
- m. **"Work Product"** means a work of authorship (other than the Software) that ClearBlade delivers to Customer in the course of providing Technical Services. Work Products may be created during performance of the Services or otherwise (such as those that pre-exist provision of the Services). Examples include app code, interfaces, and other customized code as well as custom reports, logic, and design. A Work Product will be identified in the Statement of Work as either a ClearBlade-Owned Work Product or as a Customer-Owned Work Product. If not specified, a Work Product will be a ClearBlade-Owned Work Product. Notwithstanding the foregoing and for the avoidance of doubt, in no event does the term "Work Product" include Software.

2. License Grants and Rights of Use.

- a. **License Grant.** Subject to the terms of this Agreement, ClearBlade grants Customer a non-exclusive, non-transferable, term-limited license to exercise the following rights to the Software specified on the applicable Schedule: (i) to install the Software on Customer's owned or leased hardware at a facility owned or controlled by Customer, (ii) to use the Software solely for Customer's internal business purposes, (iii) to use the Software by up to the Licensed Capacity specified in the applicable Schedule, and (iv) to make an additional copy of the Software for archival purposes only.
- b. **Scope of Use by Third Parties.** The license granted under Section 2.a ("License Grant") includes the right (i) for Customer to have the Software installed at its third party data center provider for use by that service provider solely in the course and for the purpose of performing services for Customer, (ii) for Affiliates of Customer to use the Software, and (iii) for Customer's agents and contractors to use the Software on Customer's behalf in the course and solely for the purpose of performing services for Customer. Customer will ensure that in their use of the Software, Affiliates, employees, agents, contractors, and providers will comply with the license scope and the terms of this Agreement, and Customer will be responsible for any failure to do so.
- c. **License Restrictions.** Customer agrees: (i) not to distribute or transfer the Software except in connection with an assignment under Appendix A, Section 4D to DIR Contract DIR-TSO-4281 ("Assignment"), (ii) not to use or copy the Software except as expressly allowed under Section 2.a ("License Grant"), (iii) not to reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code of the Software, except and only to the extent expressly required by the law in effect in the jurisdiction in which Customer is located, despite this limitation, (iv) not to modify the Software or create (or attempt to create) derivative works from or based on the Software, (v) not to use or allow the use of the Software for rental or in the operation of a service bureau or time-sharing arrangement, hosting or software as a service (or similar) model, and (vi) to reproduce and include all copyright, trademark and other proprietary rights notices on any copy of the Software made by Customer. Customer further agrees not to remove or obscure any copyright, trademark or proprietary rights notices on any such copies or which is displayed by the Software.
- d. **No Other License.** The Software is licensed and not sold. No use of the terms "sell" or "resell" in or in connection with this Agreement will be deemed to imply otherwise. Except as stated in this Agreement, there are no other licenses, either express or implied, granted to Customer related to the Software or any other intellectual property of ClearBlade. All right, title, and interest in and to the Software, Services,

and ClearBlade-Owned Work Product, including all intellectual property therein, is and at all times will remain the property of ClearBlade. ClearBlade reserves all rights and licenses in and to such intellectual property not expressly granted to Customer under this Agreement.

3. Support Services. During the term of the applicable Schedule, ClearBlade will provide Customer with Support Services under ClearBlade's Support Services policies then in effect. A current copy of ClearBlade's Support Services policies as of the Effective Date is attached to this Agreement as Exhibit A ("Description of Support Services"). ClearBlade may change Exhibit A on written notice (which may include posting such changed Exhibit on ClearBlade's website) if the proposed changes provide for standards of service that are at least as beneficial to Customer as those provided in the then-current Exhibit. All maintenance and support solutions, including Enhancements and Error Corrections, constitute Software and are subject to the terms of this Agreement.

4. Technical Services.

a. Statements of Work. Customer may request that ClearBlade provide Customer with Technical Services to install and deploy the Software, train Customer on the use of the Software, develop apps, or perform other consulting services. If ClearBlade agrees to do so, the parties will enter into a Statement of Work with respect to such Services. Each Statement of Work must be signed by both parties and may include, for example, a description of the Technical Services to be performed by ClearBlade, the obligations of each party, applicable charges, Work Product (if any) to be provided by ClearBlade, and any other terms. If a Statement of Work contains an estimated schedule, each party agrees to make reasonable efforts to carry out its responsibilities according to that schedule. ClearBlade provides Technical Services at its facilities (unless otherwise agreed to in the applicable Statement of Work).

b. Fees for Technical Services. ClearBlade ordinarily bases the fees charged for Technical Services on the hourly rates of the consultants performing the Services under the applicable Statement of Work (referred to as "Time-and-Materials Services"). However, for certain matters, ClearBlade may charge a fixed fee for such Services based on such factors as the results achieved, the novelty or difficulty of the Services to be performed, the amount at stake, or the time limitations under which ClearBlade is to perform (referred to as "Fixed-Fee Services"). All Technical Services provided by ClearBlade under this Agreement are Time-and-Materials Services unless the applicable Statement of Work specifies that Services are Fixed-Fee Services. Customer will reimburse ClearBlade for all reasonable and appropriately documented travel-related and other out-of-pocket expenses incurred by ClearBlade in the performance of the Services (provided Customer has pre-approved the expenses).

c. Acceptance of Technical Services. Acceptance of Technical Services will be deemed to occur when ClearBlade notifies Customer that the Services have been completed, unless Customer notifies ClearBlade in writing of any material nonconformities of the Services with the applicable Statement of Work within five days after ClearBlade has provided the Services to Customer ("Acceptance Period") with sufficient documentation to enable ClearBlade to understand the reasons Customer believes the Services are nonconforming and other pertinent details. ClearBlade will use commercially reasonable efforts to correct the nonconformities and make such correction available to Customer for acceptance testing as provided above. Acceptance will also be deemed to occur if the Technical Services, including any Work Product, are put to productive use on behalf of or by Customer.

d. Modifications to the Statement of Work. Either party may request changes or modifications to a Statement of Work. When the parties agree to change a Statement of Work, ClearBlade will prepare a written description of the agreed-upon change to the Statement of Work which must be signed by both parties to become effective. Any change in the Statement of Work may affect the charges, estimated schedule, or other terms.

e. Ownership of Work Product.

i. Customer-Owned Work Product. If Work Product is Customer-Owned Work Product, subject to ClearBlade's ownership of the Client Libraries and APIs, (A) Customer owns all right, title, and interest (including ownership of copyright) to the Work Product as a work made for hire by ClearBlade for Customer, and (B) if and to the extent any such Customer-Owned Work Product is not considered a work made for hire by ClearBlade for Customer, ClearBlade agrees to assign, and upon creation of each such Customer-Owned Work Product automatically assigns, to Customer ownership of such Work Product.

ii. ClearBlade-Owned Work Product. If Work Product is ClearBlade-Owned Work Product, then ClearBlade (or its licensors) has all right, title, and interest (including ownership of copyright) to the Work Product. ClearBlade will deliver one copy of each such Work Product deliverable to Customer, and hereby grants Customer the non-exclusive, worldwide, fully paid-up, royalty-free license to use copies of each such Work Product solely in connection with its use of the Software to the same extent and pursuant to the same terms and conditions as provided in this Agreement for such Software.

f. Termination of a Statement of Work. Subject to Appendix A, Section 11 to DIR Contract DIR-TSO-4281, either party may terminate a Statement of Work on 30 days' written notice to the other. Upon termination, neither party will have any obligation to the other on account of such termination other than Customer's obligation to pay ClearBlade for Services satisfactorily rendered and non-recoverable reasonable and actual travel or travel-related expenses incurred through the date of termination (except to the extent said non-recoverable travel or travel-related expenses result from ClearBlade's failure to timely cancel them).

5. Customer's Other Responsibilities. Customer agrees to provide ClearBlade with safe and sufficient access to and use of its facilities including a suitable technical environment and necessary operating software and communications resources; system and user documentation; office space; personnel; and services as reasonably required by ClearBlade to enable it to fulfill its obligations under this Agreement. ClearBlade's performance of Services is contingent upon Customer's timely and effective performance of its responsibilities, decisions, and approvals, and ClearBlade may rely on Customer decisions and approvals. Customer is responsible for the results obtained from the use of the Software and Services.

6. Fees and Payment Terms.

a. **Fees.** Customer will pay ClearBlade the fees set forth in the applicable Schedule, in accordance with Appendix C to DIR Contract No. DIR-TSO-4281. For Technical Services, fees may also be specified in the applicable Statement of Work. Any extension of Customer's rights of use, including any additional licenses, will require the payment of additional fees in accordance with ClearBlade's then current terms and fees. ClearBlade may change its fees by notifying Customer in writing at least 30 days in advance of the effective date of the. Changed rates applicable to Technical Services will apply to any Statement of Work entered into after the effective date of the increase but will not affect the rates for Technical Services provided under a Statement of Work signed before the effective date, except as ClearBlade and Customer otherwise agree.

b. **Additional Payment Obligations.** All payments made by Customer are non-refundable (except as expressly set forth herein) and will be made in U.S. dollars. Amounts charged by ClearBlade do not include applicable taxes or similar fees now in force or enacted in the future resulting from any transaction under this Agreement. Customer is responsible for all such amounts and will pay them in full (except for taxes based on ClearBlade's net income). Fees are due within 30 days from the date of ClearBlade's invoice (or as otherwise set forth in the invoice) unless subject to a reasonable and good faith dispute. In addition, Customer will reimburse ClearBlade for all reasonable and actual costs incurred by ClearBlade in collection of delinquent amounts not subject to a reasonable and good faith dispute.

c. **Audit Rights.** If requested by ClearBlade not more than once a year, Customer agrees to deliver to periodic written reports, whether generated manually or electronically, specifying Customer's use of the Software, and allow ClearBlade to perform an audit at Customer's facilities during normal business hours to ensure compliance with the terms of this Agreement. Customer agrees to cooperate during any audit and to provide reasonable access to information and systems. If an audit reveals that Customer has exceeded the Licensed Capacity for Software, Customer agrees to pay the applicable fees for additional capacity. If the understated capacity exceeds 5% of the Licensed Capacity of the applicable Software, then Customer agrees to also pay ClearBlade's reasonable costs of conducting the audit.

7. Limited Warranty; Warranty Disclaimer.

a. **Warranty.**

i. **Software.** ClearBlade warrants to Customer that the Software will perform substantially in accordance with the then-current applicable Documentation. If the Software fails to perform as warranted, ClearBlade will correct the non-conformity as described in Exhibit A ("Description of Support Services").

ii. **Noninfringement.** ClearBlade warrants that it owns or otherwise has sufficient rights in the Software to grant to Customer the rights granted herein, and that the Software does not infringe on the intellectual property rights of any third party. Customer's sole remedy for any failure to comply with this warranty is the indemnification set forth in Section 9 ("Indemnification").

iii. **Technical Services.** ClearBlade warrants that it will provide the Technical Services in a Technical and workmanlike manner consistent with good industry standards and practices, and in conformance to the applicable Statement of Work. If ClearBlade fails to do so, and Customer reports such failure to ClearBlade within ten days after the performance of the Technical Services, ClearBlade will re-perform the Services. If ClearBlade is unable to do so within a reasonable period of time, either party may terminate the affected Statement of Work in which event ClearBlade will refund to Customer amounts paid by Customer for the nonconforming Services under the Statement of Work

b. Warranty Disclaimer. THE PROVISIONS OF THIS SECTION 7 CONSTITUTE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY, AND CLEARBLADE'S SOLE AND EXCLUSIVE LIABILITY, FOR BREACH OF THE WARRANTIES SET FORTH IN THIS AGREEMENT. CLEARBLADE MAKES NO OTHER REPRESENTATION, WARRANTIES OR CONDITIONS OF ANY KIND, WHETHER IMPLIED, STATUTORY OR OTHERWISE, AND EXPRESSLY DISCLAIMS ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. CLEARBLADE DOES NOT WARRANT OR MAKE ANY REPRESENTATIONS THAT (i) THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE OR (ii) REGARDING THE USE OR THE RESULTS OF THE USE OF THE SOFTWARE OR SERVICES IN TERMS OF CORRECTNESS, ACCURACY, RELIABILITY OR OTHERWISE.

8. Confidentiality.

a. **Confidential Information Defined.** "Confidential Information" means all confidential and proprietary information of a party (as the disclosing party) disclosed to the other party (as the receiving party), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure, including business and marketing plans, technology and technical information, product designs, and business processes. In the case of ClearBlade, Confidential Information includes the Software and ClearBlade-Owned Work Product, Services.

b. **Exclusions from Confidentiality.** Confidential Information does not include any information that, without breach of any obligation owed to the disclosing party: (i) is or becomes generally known to the public, (ii) was known to the receiving party prior to its disclosure by the disclosing party, (iii) was independently developed by the receiving party without breach of this Agreement, or (iv) is received from a third party. If the receiving party is compelled by law to disclose Confidential Information of the disclosing party, it will provide the disclosing party with prior notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at the disclosing party's cost, if the disclosing party wishes to contest the disclosure.

c. **Obligations regarding Confidential Information.** The receiving party will not disclose or use any Confidential Information of the disclosing party for any purpose outside the scope of this Agreement, except with the disclosing party's prior written consent. The receiving party will protect the confidentiality of the disclosing party's Confidential Information in the same manner that it protects the confidentiality

of its own confidential information of like kind (but in no event using less than reasonable care). The receiving party will promptly notify the disclosing party if it becomes aware of any actual or suspected breach of confidentiality of the disclosing party's Confidential Information. Upon any termination of this Agreement, the receiving party will continue to maintain the confidentiality of the disclosing party's Confidential Information and, upon request, return to disclosing party or destroy (at the disclosing party's election) all materials containing such Confidential Information.

d. Injunctive Relief. In the event of a breach (or threatened breach) by the receiving party of any of its obligations regarding the disclosing party's Confidential Information, the disclosing party will be entitled to injunctive relief, in addition to any other remedies available to it.

9. Indemnification.

a. Indemnification Obligation. ClearBlade will defend Customer from and against all claims, suits or actions arising out of or resulting from any action against Customer that is based on any third party claim that the Software infringes that party's United States patents, copyrights, or trade secrets, and will pay the amount of any final judgment awarded (including reasonable attorney's fees and costs) or final settlement made with respect to such claim. To qualify for indemnification under this Agreement, Customer agrees to (i) promptly notify ClearBlade in writing of the existence of any such action, (ii) grant ClearBlade sole authority and control for the defense or settlement of such action, and (iii) provide ClearBlade with all reasonable assistance for the defense or settlement of such action. Customer may elect to participate in any such action with an attorney of its own choice and at its own expense. In addition to ClearBlade's obligation of indemnification, if the Software becomes or, in ClearBlade's opinion, is likely to become the subject of a claim of infringement, ClearBlade may, at its option, either procure for Customer the right to continue using the Software or replace or modify the Software to make it non-infringing. If ClearBlade, in its sole discretion, concludes that neither of these alternatives is reasonably available, ClearBlade may terminate Customer's right to use the Software and (I) for any perpetual licenses, issue a refund based upon the applicable license fees paid, prorated over 48 months from the date of the Schedule under which the Software was initially licensed, and (II) for any non-perpetual licenses, release Customer from its obligation to make future payments for the perpetual licensed Software or issue a pro rata refund for any fees paid in advance. The foregoing states the entire obligation and liability of ClearBlade with respect to any infringement claim.

b. Exceptions. ClearBlade's indemnification obligations will not apply to any claim resulting from: (i) the combination of the Software with other products or services if the claim would not have arisen but for such combination, (ii) use of the Software if it has been modified or otherwise changed by a party other than ClearBlade if such claim would not have arisen without such modification or change, (iii) use of the Software in a manner not authorized by this Agreement or provided for in the Documentation, or (iv) use of other than the most current release of the Software, if such claim would have been avoided by use of the most current release.

10. Limitation of Liability. Except with respect to Customer's breach of Section 2 ("License Grants and Rights of Use"), a breach by a party of its obligations of confidentiality under Section 8 ("Confidentiality"), ClearBlade's obligation of indemnification under Section 9 ("Indemnification"), and Customer's obligation to pay amounts due under this Agreement, (a) each party's total liability to the other from any cause whatsoever, whether for breach of contract or other default, negligence, misrepresentation, or other contract or tort claim, is limited to the amount of any actual direct damages or loss, up to the total payments made by Customer to ClearBlade for the Software or Services which were the subject of the claim during the six month period preceding the Claim, and (b) in no event will either party be liable for any special, incidental, indirect, exemplary, punitive or consequential damages, including but not limited to those for business interruption or loss of profits, even if such party knew or should have known of the possibility of such damage. In no event will ClearBlade be liable for third party claims against Customer for losses or damages (other than those for which ClearBlade indemnifies Customer as set forth in Section 9 ("Indemnification")), or for loss of, or damage to, Customer's records or data.

11. Term and Termination.

a. Term. Unless this Agreement is terminated by mutual agreement or as otherwise provided herein, this Agreement commences on the Effective Date and continues until all Schedules under it have been terminated. The effective date and initial subscription term applicable to each Schedule entered into by the parties will be defined in that Schedule. After expiration of the Initial Term of a Schedule, the Schedule will automatically renew for successive twelve month terms (each, a "Renewal Term" and, together with the Initial Term of a Schedule, referred to as the "Term") unless one party elects to terminate the Schedule by giving the other party at least 30 days' written notice prior to the end of the Initial Term or any Renewal Term.

b. Termination for Cause. Either party may terminate this Agreement, a Schedule or a Statement of Work hereunder on written notice to the other party if the other party materially breaches this Agreement and fails to cure the breach within 30 days after delivery of such written notice.

c. Effect of Termination; Survival. Upon termination, Customer will cease all use of the Software. In addition, each party will return to the other the original and all copies of any Confidential Information in the other's possession, custody or control. In lieu of returning the Confidential Information, a party may destroy all copies of the other's Confidential Information (including in the case of Customer, the original and all copies of the Software), and certify to such destruction in a writing signed by its officer. Customer's obligation to pay ClearBlade amounts due hereunder will survive any expiration or termination of this Agreement. The terms of any other Sections that by their nature are intended to extend beyond termination will survive termination of this Agreement for any reason.

12. General.

- a. **Governing Law.** This Agreement will be governed exclusively by the laws of the State of Texas, without regard to its conflicts of laws rules. Any disputes arising under this Agreement between the parties will be resolved by and jurisdiction will be exclusively in the courts of the State of Texas with venue exclusively in the County of Travis, Texas. The United Nations Convention on Contracts for the International Sale of Goods will not apply. The parties also agree that, regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to this Agreement must be filed within two years after such claim or cause of action arose or be forever barred. If either party employs attorneys to enforce any rights arising out of or related to this Agreement, the prevailing party will be entitled to recover its reasonable attorneys' fees and costs from the other party.
- b. **Suggestions.** Customer may from time to time provide suggestions, comments or other feedback ("Feedback") to ClearBlade with respect to the Software or Services. ClearBlade is free to use the Feedback for any purpose, without obligation.
- c. **Publicity.** Customer agrees that ClearBlade may list Customer as a customer in ClearBlade's marketing collateral, including on its websites. At ClearBlade's request, Customer agrees to act as a reference for ClearBlade by speaking with a reasonable number of press contacts, industry analysts, and customer prospects about Customer's implementation and use of the Software. Otherwise, no press releases or other publicity will be issued without the prior written consent of both parties.
- d. **Independent Contractors.** The parties are independent contractors, and no partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties is created hereby. There are no third party beneficiaries to this Agreement. ClearBlade may subcontract a Service, or any part of it, to subcontractors selected by ClearBlade.
- e. **Notices.** All notices required to be given under this Agreement will be given in writing, and sent to the recipient party's address stated in this Agreement, unless otherwise changed in writing. All notices will be given by certified or registered mail, or overnight carrier. Such notices will be deemed given on the date of receipt of delivery of said notice.
- f. **No Waiver.** No failure or delay in exercising any right hereunder will constitute a waiver of such right. Except as otherwise provided, remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, such provision will be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions will remain in effect.
- g. **Force Majeure.** Neither party will be liable to the other for any delay or failure to perform its obligations under this Agreement (excluding payment obligations) if the delay or failure arises from any cause or causes beyond that party's reasonable control or prediction.
- h. **Assignment.** Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other (not to be unreasonably withheld). Notwithstanding the foregoing, either party may assign this Agreement in its entirety (including all Schedules hereunder), without consent of the other party, to (i) its Affiliate, or (ii) its successor in interest in connection with a merger, reorganization, or sale of all or substantially all of its assets or equity; provided, however, that neither (i) nor (ii) involves a direct competitor of the other party. Any attempted assignment in breach of this Section will be void. This Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns.
- i. **Export Laws.** Customer agrees not to import, export, re-export, or transfer, directly or indirectly, any part of the Software or any underlying information or technology except in full compliance with all United States, foreign and other applicable laws and regulations.



**EXHIBIT A
to Subscription License and Services Agreement**

Description of Support Services

This Exhibit describes the Support Services provided by ClearBlade to Customer for the Software.

1. Support Services.

a. Software Problem Reporting and Resolution.

i. Reporting an Error. Customer agrees to test and verify, on an isolated development environment, any suspected Errors in the Software. Customer will report suspected Errors with the Software via ClearBlade’s web-based ticketing system at www.support.clearblade.com.

ii. Severity Level Definitions / Response Time Targets. Customer will assign a Severity Level to the Error which ClearBlade will confirm. Errors are categorized as follows:

- “Severity Level 1 Error” is an Error that has a critical impact by seriously interrupting or preventing Customer from performing regular business operations.
- “Severity Level 2 Error” is an Error that has a serious impact but does not severely impede Customer operations.
- “Severity Level 3 Error” is an Error that has a relatively low impact on Customer operations.
- “Severity Level 4 Error” is an Error that does not have an operational impact on the Customer and is a minor problem or issue with the Software (for example, a Customer request for information).

The table below outlines ClearBlade’s response targets. ClearBlade’s initial response of an Error submitted per ClearBlade’s ticketing system described above will be either by telephone or e-mail acknowledgement as follows:

	Target Time Frames ¹	
Severity Level	Initial Acknowledgement	Resolution ²
1	One hour	Four business hours
2	Four business hours	Eight business hours
3	Eight business hours	Error to be addressed in the next Enhancement
4	Eight business hours	N/A ³

¹ Measured from the assignment of a Severity Level as described above.

² Refers to creation of an Error Correction. Also, since Errors may not be resolvable within a specific timeframe due to complexity of the solution and other factors, resolution targets are goals and not commitments.

³ No guarantee of resolution – If the Error is resolved, the Error Correction will be released in the next Enhancement.

iii. Resolution. After ClearBlade completes its initial investigation of the Error, ClearBlade will label it with one of the following categories and responses. Resolution of reported Errors with the Software will depend upon a complete understanding of the variables unique to each situation. ClearBlade will provide routine updates on resolution efforts.

- Known Defect
 - Error Correction is provided to circumvent or correct the Error.
 - If no Error Correction is available and it is determined that one is required, ClearBlade will work with Customer to find the best feasible workaround.
 - ClearBlade will advise Customer when the Error is resolved and ticket closed.

- New Defect
 - If ClearBlade determines the Error has not been reported before, resolution efforts will be logged into ClearBlade’s ticketing system.
 - If the Error is deemed to be high impact, an Error Correction or other code fix for the Software will be created, tested and released to Customer. ClearBlade will advise Customer on how soon the Error Correction or other code fix will be implemented.
 - If the Error is determined to be of lesser impact not requiring immediate implementation of an Error Correction or other fix, then ClearBlade may defer providing the Error Correction or the fix. In that event, Customer will be apprised accordingly.
 - Once a plan is created for a future Error Correction or code fix, ClearBlade will work as appropriate to resolve the issue.
- Not Product-Related
 - If it is determined that the issue is not related to the Software, the issue resolution will be Customer’s responsibility.
NOTE: Technical Services are available (per an executed Statement of Work) to assist Customer in resolving the issue.
 - Ticket will be closed.

iv. Escalation. Escalation may be initiated from either ClearBlade or Customer (via the following escalation paths):

- Online Support – support.clearblade.com
- E-mail Support – support@clearblade.com
- Phone escalation – **512-686-3037**

Escalation Criteria:

- **Severity Level 1 issue** – If not resolved within 4 hours and no material progress has been made, the issue is escalated within ClearBlade for additional action and resources as needed. Executive management monitors the issue closely until it is resolved.
- **Severity Level 2 issues** – escalated after one business day.

b. Software Product Releases. As part of Support Services, ClearBlade makes Error Corrections and Enhancements available to Customer on ClearBlade’s website and delivered using a file transfer protocol.

c. Technical Assistance. ClearBlade Customer Support will provide up to two Customer-designated operational and field engineering support contacts (each, a “**Designated Support Contact**”) with the information needed to access ClearBlade’s customer support web site and to submit support requests via ClearBlade’s web-based customer support tool. ClearBlade’s customer support center is available to assist the Designated Support Contact during the hours between 8:00 a.m. and 6:00 p.m., Central Standard Time, on regular business days, excluding ClearBlade holidays, to ask questions or seek advice relating to the use and functioning of the Software.

d. Access to Customer Facilities. Customer may need to supply ClearBlade with access to and use of all information and facilities reasonably necessary for ClearBlade to render Support Services, subject to any security requirements or other company procedures of Customer. Resolving some Errors may require ClearBlade to remotely access Customer’s environment. If such access is not permitted, it may result in slower resolution times or inhibit ClearBlade’s ability to resolve an Error.

e. Backup Procedures. Customer is responsible for maintaining procedures external to the Software for reconstruction of lost or altered files, data, or programs to the extent it deems necessary, and for actually reconstructing any lost or altered files, data, or programs.

2. Conditions and Limitations of Service. ClearBlade’s obligations to render warranty and Support Services for the Software are subject to the following conditions and limitations:

a. Problems Caused by Third Party Products, Errors in Use of Software and Modifications to the Software. ClearBlade will have no obligations or responsibilities of any kind hereunder with respect to: (i) problems which are not caused by defects in the Software, (ii) problems caused by the failure to implement and operate the Software in the operating environment specified by ClearBlade in the applicable Documentation and any other written instructions supplied by ClearBlade, (iii) problems resulting from the failure to implement solutions, Error Corrections, and Enhancements supplied by ClearBlade to the Software, (iv) problems in the use or functioning of the Software caused by any hardware or software product (other than the Software) but not including problems which are the result of incompatibility of the Software with such hardware or software if the Software was designed to work with such hardware or software as specified in the Documentation, (v) use of the Software inconsistent with the Documentation, or (vi) any modifications or other alterations of the Software by any person or entity other than one authorized by ClearBlade. If ClearBlade provides warranty or Support Services for any problem caused by any of the foregoing or for troubleshooting with respect to any of the foregoing, or if ClearBlade’s services efforts are increased as a result, ClearBlade may impose charges at its then standard commercial time and materials rates for all such services, including travel and per diem expenses. ClearBlade will notify a caller as soon as the billable status of the call is determined. The caller may terminate the call at that time without charge.

b. Maintenance of Current Releases of the Software. Support Services will be provided only for the most current released version through the previous sequential major release for up to twelve months after the current major version becomes generally available. ClearBlade

will have no obligation to support Customer where Customer is using a version of the Software that is not a then-supported release. ClearBlade recommends that an isolated development environment be replicated outside of the production environment in order to test all new or changed processes and software upgrades prior to making modifications to the live production environment.

SCHEDULE

TO THE SUBSCRIPTION LICENSE AND SERVICES AGREEMENT

This Schedule is entered into pursuant to the Subscription License and Services Agreement (“Agreement”) between Customer and ClearBlade. This Schedule incorporates by reference the terms and conditions of the Agreement. Except as otherwise modified or defined in this Schedule, all of the capitalized terms that are used in it have the same meanings as those in the Agreement. If any terms of this Schedule conflict with the terms of the Agreement, the provisions of the Agreement will be controlling and will govern.

1. Schedule Effective Date. The Effective Date of this Schedule is the same as the Effective Date of the Agreement.
2. Initial Term of this Schedule. The Initial Term of this Schedule commences on the Schedule Effective Date and continues for a period of twelve months (also referred to as “Year One”). After expiration of the Initial Term, this Schedule will renew for up to two successive twelve month terms (each, a “Renewal Term” and also referred to as “Year Two” and “Year Three”) unless terminated as specified in Section 11 (“Term and Termination”) of the Agreement.
3. Description of Software and Services.

Description	Subscription Type	Quantity	Annual Subscription Fee	Initial Purchase – This Schedule
ClearBlade Enterprise Software – Single tenant Production License ¹	Annual	1	\$100,000.00 ²	\$100,000.00
ClearBlade Enterprise Software – Multi Tenant Production License ¹	Annual	0	\$250,000.00 ²	\$0
Enterprise Node ³ (per each additional Node)	Annual	0	\$20,000.00 ⁴	\$0
ClearBlade Edge ⁵	Annual	1	\$950.00 ⁴	\$950.00
ClearBlade Enterprise Software – QA/Testing License ¹	Annual	1	\$0	\$0
ClearBlade Enterprise Software – Development License ¹	Annual	1	\$0	\$0
ClearBlade Installation Services	One Time	N/A	N/A	\$0
Technical Services				N/A
			Total Fees Due	\$100,950.00

¹ This is the total number of Servers on which copies of the ClearBlade Enterprise Software may be installed.

² Base annual subscription fee for the right for Customer to install the ClearBlade Enterprise Software and receive related Support Services each Year by up to the quantity specified.

³ Includes licenses to five Enterprise Nodes with each copy of the ClearBlade Enterprise Software installed on a Server. Licenses for additional Enterprise Nodes may be purchased for the annual fee specified in the table.

⁴ Subscriptions purchased subsequent to Customer’s initial purchase will be co-terminated based on the length of time remaining in the Year of purchase.

⁵ Note that ClearBlade offers quantity pricing for additional license purchases of the ClearBlade Edge Software as follows:

<u>ClearBlade Edge Quantity</u>	<u>Annual License Fee per each License in Tier</u>
For licenses: 1 – 10	Customer will pay \$950.00 per each ClearBlade Edge license
11 – 100	\$720.00 per each ClearBlade Edge license
101 – 250	\$590.00 per each ClearBlade Edge license
251 – 1000	\$360.00 per each ClearBlade Edge license
1001 – 5000	\$180.00 per each ClearBlade Edge license
5001 – 10,000	\$125.00 per each ClearBlade Edge license
10,001+	\$95.00 per each ClearBlade Edge license

For example, if Customer purchases licenses to 22 ClearBlade Edge Software products, the applicable annual license fee would be \$950.00 for each of the first ten licenses and \$720.00 for each of the additional twelve licenses.

Additional Terms are set forth on Attachment A (“Additional Terms”).

4. Subscription and Other Fees.

- a. Base Annual Subscription Fee. The annual Subscription Fee is invoiced and payable annually in advance with the Subscription Fee for Year One due on the Schedule Effective Date.
- b. During a Term. All other fees, including Subscription Fees, for products and services purchased during a Year will be invoiced upon receipt of Customer's order specifying the quantity desired.
- c. Fee Increases. The fees specified in the table in this Schedule will remain in effect through Year Three.

ADDITIONAL TERMS

1. **GENERAL DEFINITIONS:** The following definitions apply to the Schedule and this Attachment A.

“**Application Program**” or “**Application**” or “**App**” refers to a software application designed to run on a laptop, desktop, smartphone, tablet or other mobile or computing device.

“**Client Libraries and APIs**” refers to the executable code version of the application program interfaces (APIs) and library files elements of the Software Platform – Production License which are intended by ClearBlade for redistribution in the app developed by Customer utilizing the Software.

“**Computer**” or “**Server**” has the meaning generally given within the computer industry, which is a single machine, whether a central processing unit, such as a mainframe machine, or a distributed systems machine, such as a Unix or Intel based server. A mainframe machine would be an individual mainframe computer having single or multiple processors or engines.

“**Enterprise**” is the environment consisting of all hardware owned or leased by Customer in the Territory.

“**Licensed Capacity**” is the amount of Software licensed as established in the Software Product and Support Services table, incorporating the license restrictions.

2. **LICENSE SCOPE RESTRICTIONS:** The following scope restrictions apply to certain Software products.

ClearBlade Platform – Production License: The license granted includes use by Customer within Customer’s Enterprise for the purpose of linking or embedding the Client Libraries and APIs with or into a Customer App.

Client Libraries and APIs: Customer may incorporate the Client Libraries and APIs into a Customer App, in which case, the licenses granted include reproducing and distributing the Client Libraries and APIs solely as linked with or embedded into Customer Apps. Customer will ensure that, to the extent technically feasible, the Client Libraries and APIs are linked with or embedded into the App in such a manner that the end user of the App cannot directly link to or use the Client Libraries and APIs other than as part of and solely in connection with the Customer App incorporating the Client Libraries and APIs. Customer will ensure that any Customer App incorporating the Client Libraries and APIs will be governed by a license agreement which is at least as protective of ClearBlade’s proprietary rights in the Client Libraries and APIs as of Customer’s proprietary rights in the Customer Application, but no less protective than this Agreement, including rights and restrictions related to end user’s right to make backup and archival copies.

ClearBlade Platform – QA / Testing License: The license granted is for use by Customer within Customer’s Enterprise for the sole purpose of testing the Customer App into which the Client Libraries and APIs are embedded.

ClearBlade Platform – Development License: The license granted is for use by Customer within Customer’s Enterprise solely to design, develop, test, and support the use of the ClearBlade Platform with the Customer App into which the Client Libraries and APIs are embedded.