



## ATTENSITY

### SOFTWARE LICENSE AGREEMENT

This **Software License Agreement** (the "**Agreement**") is made on \_\_\_\_\_, 20\_\_\_\_ ("**Effective Date**") by and between Attensity Corporation, a Delaware corporation, with its principal place of business at 2645 E. Bayshore Road, Suite 300, Palo Alto, CA 94303 ("**Attensity**"), and \_\_\_\_\_, a \_\_\_\_\_ corporation, with its principal place of business at \_\_\_\_\_ ("**Licensee**").

**Whereas**, Attensity provides semantic, content and business analysis tools that enable its customers to, among other things, conduct research and analyze data to develop intelligent reports (the "**Software**" as described below); and

**Whereas**, Licensee desires to obtain, and Attensity desires to grant to Licensee, a license to use the Software pursuant to the terms and conditions defined in this agreement.

**Now, Therefore**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

#### 1. DEFINITIONS.

**1.1 "Confidential Information"** shall mean any non-public information of a party (the "**Disclosing Party**") that is designated as confidential, or that the recipient (the "**Receiving Party**") knew or reasonably should have known was confidential under the circumstances surrounding disclosure. Without limiting the generality of the foregoing, the terms and conditions of this Agreement shall be considered Licensee and Attensity Confidential Information. Confidential Information shall not include any information which: (a) the Receiving Party can demonstrate was rightfully in its possession prior to the date of disclosure to it by the Disclosing Party; (b) at the time of disclosure or later, is published or becomes part of the public domain through no act or failure to act on the part of the Receiving Party; (c) the Receiving Party has developed independently without reference to any Confidential Information of the Disclosing Party; or (d) the Receiving Party can demonstrate came into its possession from a third-party who had a bona fide right to make such information available.

**1.2 "Designated Site"** means the location(s) at which the Software may be installed as specified in Exhibit A.

**1.3 "Documentation"** means the standard user documentation for the Software that Attensity makes generally available to its customers.

**1.4 "Intellectual Property Rights"** means patent rights (including patent applications and disclosures), copyrights, trademarks, trade secrets, know-how and any other intellectual property rights recognized in any country or jurisdiction in the world.

**1.5 "Licensed Configuration"** means the authorized configuration of the Software as specified in Exhibit A.

**1.6 "License Term"** means the period of time set forth in Exhibit A during which Licensee is authorized to use the Software.

**1.7 "Maintenance Services"** means the general maintenance and support services provided by Attensity, as set forth in Exhibit B, attached hereto, and as may be modified as permitted in Section 4.1.

**1.8 "Software"** means the Attensity software products, in object code form, and related Documentation as described in Exhibit A.

**1.9 "Third Party Software"** means Software or functionality provided as a component or feature of the Software that is subject to a separate third party license agreement.

#### 2. LICENSE.

**2.1 Grant of License.** Subject to Licensee's compliance with the terms and conditions of this Agreement (including, without limitation, payment of the applicable fees in accordance with Section 5.1), Attensity grants to Licensee a limited, nonexclusive, nontransferable, license for the License Term: (a) to install and use the Software only in the Licensed Configuration at the Designated Site and only for Licensee's internal use; and (b) to copy the Software as reasonably necessary to exercise the license rights granted in subsection (a), including making a reasonable number of copies for backup and archival purposes.

**2.2 License Restrictions.** Licensee has no right to transfer, sublicense or otherwise distribute the Software to any third party. Licensee will not copy or modify the Software, in whole or in part, except as expressly authorized in this Agreement. Licensee will not lease, lend or rent the Software, use the Software to provide service bureau, time-sharing or other computer services to third parties, or otherwise provide or make the functionality of the Software available to third parties. Licensee acknowledges that the Software contains patented and copyrighted products and materials as well as trade secrets of Attensity



and its licensors, and, in order to protect such trade secrets and other interests that Attensity and its licensors may have in the Software, Licensee agrees not to disassemble, decompile or reverse engineer the Software nor permit any third party to do so, except to the extent such restrictions are prohibited by law.

**2.3 Limited Rights.** Licensee's rights in the Software are limited to those expressly granted in this Agreement. Attensity reserves all rights and licenses in and to the Software not expressly granted to Licensee under this Agreement.

**2.4 Government Rights.** Any use, duplication, or disclosure of the Software by the U.S government is subject to restrictions as set forth in this Agreement and as provided in DFARS 227.7202-1(a) and 227.7202-3(a) (1995), DFARS 252.227-7013(c)(1)(ii) (OCT 1988), FAR 12.212(a) (1995), FAR 52.227-19, or FAR 52.227-14 (ALT III), as applicable.

**2.5 Ownership.** Licensee expressly acknowledges that, as between Attensity and Licensee, Attensity and/or Attensity's subsidiaries and Attensity's licensors, own all worldwide right, title and interest in and to the Software, including all worldwide Intellectual Property Rights therein. Licensee will not delete or in any manner alter the copyright, trademark, and other proprietary rights notices appearing on the Software as delivered to Licensee. Licensee will reproduce such notices on all copies it makes of the Software.

**2.6 License Keys.** Licensee acknowledges that some or all of the Software and/or its components may require license keys that restrict use of the Software that (1) may restrict the number and clock speeds of CPU's licensed, and (2) the number of named users as applicable, and further, that the Software may require activation upon installation and from time to time based on events that include maintenance updates of the Software. Failure to activate within thirty (30) days after installation may cause the Software to cease working.

**2.7 Verification and Audit.** At Attensity's written request, Licensee will furnish Attensity with a certification signed by an officer of Licensee verifying that the Software is being used pursuant to the terms of this Agreement. Upon at least thirty (30) days prior written notice, Attensity may audit Licensee's use of the Software to ensure that Licensee is in compliance with the terms of this Agreement. Any such audit will be conducted during regular business hours at Licensee's facilities and will not unreasonably interfere with Licensee's business activities. Licensee will provide Attensity with access to the relevant Licensee records and facilities. If an audit reveals that Licensee has underpaid fees to Attensity during the period audited, then Attensity will invoice Licensee, and Licensee will promptly pay Attensity, for such underpaid fees based on Attensity's prices in effect at the time the audit is completed. If the underpaid fees exceed five percent (5%) of the license fees paid by Licensee for the Software, then Licensee will also pay Attensity's reasonable costs of conducting the audit.

### **3. MAINTENANCE AND SUPPORT.**

**3.1 Maintenance and Support.** Attensity will provide Licensee with Maintenance Services for the Software, subject to Licensee's payment of Attensity's Maintenance Services fees applicable at the time Licensee orders such services. Attensity's current Maintenance Services and related fees are specified in Exhibit A and Exhibit B incorporated as part of this agreement. Attensity reserves the right to amend its Maintenance Services policy and applicable fees.

**3.2 Exclusions to Maintenance and Support.** Attensity will have no obligation to provide Maintenance Services for problems in the operation or performance of the Software to the extent caused by any of the following (each, a "**Licensee-Generated Error**"): (a) non-Attensity software or hardware products or use of the Software in conjunction therewith; (b) modifications to the Software made by any party without Attensity's express written authorization; (c) Licensee's use of the Software other than as authorized in this Agreement or as provided in the Documentation; or (d) Licensee's use of other than the current versions of the Software, or any error corrections or updates thereto provided by Attensity as described in Exhibit B. If Attensity determines that it is necessary to perform Maintenance Services for a problem in the operation or performance of the Software that is caused by a Licensee-Generated Error, then Attensity will notify Licensee thereof as soon as Attensity is aware of such Licensee-Generated Error and Attensity will have the right to invoice Licensee at Attensity's then-current time and materials rates for all such Maintenance Services performed by Attensity.

### **4. ORDERING AND DELIVERY.**

**4.1 Ordering.** The initial purchase of Software licenses and/or Maintenance Services is set forth in the attached Exhibit A. If Licensee elects to purchase additional Software licenses and/or Maintenance Services, such purchase shall be memorialized in a new Exhibit A executed by both parties in writing and incorporated into this Agreement by reference.

**4.2 Delivery.** Except as otherwise provided in Exhibit A or as otherwise agreed to by the parties in a signed writing, all Software will be shipped FOB Attensity's site. Shipping and handling charges will be invoiced with shipment.

### **5. PAYMENT.**

**5.1 Fees and Expenses.** Licensee will pay Attensity the total fees for all Software, Maintenance Services, and/or other services (such as professional services) as specified in Exhibit A. Such fees are net of all sales, value-added, excise taxes or import duties, if any. Subject to Licensee's prior written consent, Licensee will also reimburse Attensity for any reasonable and customary out-of-pocket travel and



lodging expenses incurred by Attensity in connection with performing any services under this Agreement. At Licensee's request, Attensity will furnish Licensee with receipts and other documentation for all such expenses. All fees and expenses due hereunder will be payable within thirty (30) days after the date of Attensity's invoice therefor.

**5.2 Payment Terms and Taxes.** Licensee will pay all amounts due under this Agreement in U.S. currency. All fees payable under this Agreement are net amounts and are payable in full, without deduction for taxes or duties of any kind. Licensee will be responsible for, and will promptly pay, all taxes and duties of any kind (including but not limited to sales, value added, use and withholding taxes) associated with this Agreement or Licensee's receipt or use of the Software and Maintenance Services, except for taxes based on Attensity's net income. In the event that Attensity is required to collect any tax for which Licensee is responsible, Licensee will pay such tax directly to Attensity. If Licensee pays any withholding taxes that are required to be paid under applicable law, Licensee will furnish Attensity with written documentation of all such tax payments, including receipts.

**5.3 Interest.** All past due amounts will incur interest at a rate of one and one half percent (1.5%) per month or the maximum rate permitted by law, whichever is less. Licensee will reimburse Attensity for all reasonable costs and expenses incurred (including reasonable attorneys' fees) in collecting any overdue amounts.

## 6. WARRANTY

**6.1 Limited Warranty.** For a period of thirty (30) days following the date of Attensity's invoice (the "Warranty Period"), Attensity warrants that (i) the Software will conform substantially to the published Documentation; (ii) the media on which the Software is provided (if any) will operate free of any material defect or error; and (iii) the Documentation will be sufficiently detailed to allow Licensee to operate and use the Software. Licensee's sole remedy and Attensity sole obligation in the event of a breach of the foregoing warranty is, at Attensity's option, correction of the substantial non-conformity or a refund of the applicable license fee paid by Licensee for the Software. This warranty applies only to defects for which Licensee has notified Attensity during the Warranty Period. Attensity shall have no obligation under the foregoing warranty for any Licensee-Generated Errors.

**6.2 Warranty Disclaimer.** LICENSEE AGREES AND ACKNOWLEDGES THAT, WITH THE EXCEPTION OF THE LIMITED WARRANTY DESCRIBED IN SECTION 6.1 ABOVE, THE SOFTWARE, SERVICES AND ANY THIRD PARTY SOFTWARE IS PROVIDED BY ATTENSITY AND ITS LICENSOR'S HEREUNDER "AS IS" AND WITHOUT ANY FURTHER WARRANTY OF ANY KIND. ATTENSITY AND ITS LICENSORS DO NOT WARRANT: (1) THAT THE SOFTWARE OR THIRD PARTY SOFTWARE WILL MEET LICENSEE'S REQUIREMENTS; (2) THAT THE SOFTWARE OR THIRD PARTY SOFTWARE WILL OPERATE IN THE COMBINATIONS THAT LICENSEE MAY

SELECT FOR USE, (3) THAT THE OPERATION OF THE SOFTWARE OR THIRD PARTY SOFTWARE WILL BE ERROR-FREE OR UNINTERRUPTED OR THAT ALL SOFTWARE ERRORS WILL BE CORRECTED. EXCEPT AS SET FORTH IN THIS AGREEMENT, ATTENSITY AND ITS LICENSORS MAKE NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT, AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING, USAGE OR TRADE. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED FROM ATTENSITY OR LICENSEE OR ELSEWHERE WILL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THIS AGREEMENT.

## 7. INDEMNIFICATION.

**7.1 Infringement Indemnity.** Attensity will defend or settle any action brought against Licensee to the extent that it is based upon a third party claim that the Software, as provided by Attensity to Licensee under this Agreement and used within the scope of this Agreement, infringes any U.S. patent or any copyright or misappropriates any trade secret, and will pay any costs, damages and reasonable attorneys' fees attributable to such claim that are awarded against Licensee, provided that Licensee: (a) promptly notifies Attensity in writing of the claim; (b) grants Attensity sole control of the defense and settlement of the claim; and (c) provides Attensity, at Attensity's expense, with all assistance, information and authority reasonably required for the defense and settlement of the claim.

**7.2 Injunctions.** If Licensee's use of any of the Software hereunder is, or in Attensity's opinion is likely to be, enjoined due to the type of claim specified in Section 7.1 above, Attensity may, at its sole option and expense: (a) procure for Licensee the right to continue using such Software under the terms of this Agreement; (b) replace or modify such Software so that it is non-infringing and substantially equivalent in function to the enjoined Software; or (c) if options (a) and (b) above cannot be accomplished despite Attensity's reasonable efforts, then Attensity may terminate Licensee's rights and Attensity's obligations hereunder with respect to such Software and refund to Licensee the unamortized portion of the license fees paid for such Software, based upon a straight-line five (5) year depreciation commencing as of the date of receipt by Licensee of such Software.

**7.3 Exclusions.** Notwithstanding the terms of Section 7.1, Attensity will have no liability for any infringement or misappropriation claim of any kind to the extent that it results from: (a) modifications to the Software made by a party other than Attensity, if a claim would not have occurred but for such modifications; (b) the combination, operation or use of the Software with equipment, devices, software or data not supplied by Attensity, if a claim would not have occurred but for such combination, operation or use; (c) Licensee's failure to use



updated or modified Software provided by Attensity to avoid a claim; (d) Attensity's compliance with any designs, specifications or plans provided by Licensee; or (e) Licensee's use of the Software other than in accordance with this Agreement or the Documentation.

**7.4 Sole Remedy.** THE PROVISIONS OF THIS SECTION 7 SET FORTH ATTENSITY'S SOLE AND EXCLUSIVE OBLIGATIONS, AND LICENSEE'S SOLE AND EXCLUSIVE REMEDIES, WITH RESPECT TO INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS OF ANY KIND.

**8. CONFIDENTIALITY** The Receiving Party will not, at any time, disclose to any person or use for its own benefit or the benefit of anyone, the Disclosing Party's Confidential Information without prior written consent. The Receiving Party shall limit disclosure of Confidential Information to its employees or agents who have a need to know related to the parties' business relationship. Upon termination of this Agreement, the Receiving Party shall promptly deliver to the Disclosing Party or destroy any and all such information in its possession or under its control, and any copies made thereof which the Receiving Party may have made, except as the parties have agreed in writing to retain. The Receiving Party shall not be liable for disclosure of Confidential Information if made in response to a valid order of a court or authorized agency of government; provided that, if available, five (5) days' notice first be given to the Disclosing Party so a protective order, if appropriate, may be sought by such party.

#### **9. LIMITATION OF LIABILITY.**

**9.1 Total Liability.** ATTENSITY'S AND ITS LICENSORS' TOTAL CUMULATIVE LIABILITY TO LICENSEE FROM ALL CAUSES OF ACTION AND UNDER ALL THEORIES OF LIABILITY (INCLUDING BUT NOT LIMITED TO ATTENSITY'S INDEMNITY OBLIGATIONS UNDER SECTION 7) WILL BE LIMITED TO AND WILL NOT EXCEED THE LICENSE FEES PAID TO ATTENSITY BY LICENSEE PURSUANT TO THIS AGREEMENT, AND IF SUCH LIABILITY RESULTS FROM LICENSEE'S USE OF THE SOFTWARE OR FROM SERVICES PROVIDED, SUCH LIABILITY WILL BE LIMITED TO THE ACTUAL FEES PAID BY LICENSEE FOR THE SPECIFIC SOFTWARE OR SERVICES GIVING RISE TO THE LIABILITY.

**9.2 Exclusion of Damages.** EXCEPT FOR EITHER PARTY'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS HEREUNDER, NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT OR ANY EXHIBIT, IN NO EVENT WILL ATTENSITY OR IT'S LICENSORS, OR LICENSEE AND/OR THEIR AFFILIATES BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF USE, DATA, BUSINESS OR PROFITS) OR, INCLUDING BUT NOT LIMITED TO, THE COST OF PROCURING SUBSTITUTE PRODUCTS OR SERVICES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE USE OR PERFORMANCE OF THE SOFTWARE OR THE

MAINTENANCE SERVICES, WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED UPON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, AND WHETHER OR NOT EITHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE. THE PARTIES HAVE AGREED THAT THESE LIMITATIONS WILL SURVIVE AND APPLY EVEN IF ANY LIMITED REMEDY SPECIFIED IN THIS AGREEMENT IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

**9.3 Basis of Bargain.** The parties expressly acknowledge and agree that Attensity has set its prices and entered into this Agreement in reliance upon the limitations of liability specified herein, which allocate the risk between Attensity and Licensee and form a basis of the bargain between the parties.

#### **10. TERM AND TERMINATION.**

**10.1 Term.** This Agreement will begin on the Effective Date and will remain in effect thereafter unless terminated earlier in accordance with the terms of this Agreement. The term of each Software license granted by Attensity hereunder will begin upon the date of shipment by Attensity of the Software specified in Exhibit A and will remain in effect during the License Term unless Licensee discontinues use of such Software or unless terminated earlier by either party in accordance with the terms of this Agreement.

**10.2 Termination for Breach.** Each party will have the right to terminate this Agreement or any Software license granted hereunder if the other party breaches any material term of this Agreement and fails to cure such breach within thirty (30) days after written notice thereof. Termination of this Agreement pursuant to this Section 10.2 terminates all Software licenses granted hereunder, but, unless expressly stated in a party's notice of termination pursuant to this Section 10.2, termination of an individual Software license does not terminate this Agreement or any other Software license granted hereunder.

**10.3 Effect of Termination.** Upon termination of this Agreement or of any individual Software license granted hereunder, Licensee will promptly return to Attensity the applicable Software and all copies and portions thereof, in all forms and types of media, and provide Attensity with an officer's written certification, certifying to Licensee's compliance with the foregoing.

**10.4 Survival.** The rights and obligations of the parties contained in Sections 1, 2.3, 2.5, 5, 6.2, 7, 8, 9, 10.3, 10.4, and 11 will survive the termination of this Agreement or of any individual Software license granted hereunder.

#### **11. GENERAL.**

**11.1 Remedies are Cumulative.** Unless expressly stated as an exclusive remedy, all remedies available to either party are cumulative and may be exercised



concurrently or separately, and the exercise of any one remedy will not be deemed an election of such remedy to the exclusion of other remedies.

**11.2 Assignment.** Neither party may assign this Agreement or any interest herein, or delegate any obligation hereunder without the prior written consent of the other party and such consent will not be unreasonably withheld; provided, however, that such consent shall not be required in the event of an assignment by a party to an acquirer (including, without limitation, an assignment as a result of a merger) of all or substantially all of the business or assets of such party. This Agreement shall bind and inure to the benefit of the parties and their successors and permitted assigns.

**11.3 Force Majeure.** Except for payment obligations, neither party shall be responsible or liable to the other for nonperformance or delay in performance of any terms or conditions of this Agreement due to acts of God, governments, wars, riots or other causes beyond the reasonable control of the nonperforming or delayed party.

**11.4 Applicable Law.** This Agreement, the interpretation hereof, and any disputes arising hereunder, shall be governed by the laws of the State of California, without regard to its choice of law rules. The parties agree that the United Nations Convention on contracts for the International sale of goods shall not apply to this Agreement.

**11.5 Resolution of Disputes.** Prior to the initiation of litigation, the parties shall first attempt to resolve their dispute on an informal basis in accordance with this Section. All communications made in connection with informal dispute resolution hereunder shall be deemed confidential and privileged settlement communications pursuant to the applicable rules of evidence and shall not be admissible in any legal proceedings.

**11.6 Notices.** All notices, requests and demands, other than routine communications under this Agreement, shall be in writing and shall be deemed to have been duly given when delivered, or when transmitted by confirmed facsimile (with a copy provided by another means specified in this Section), or one (1) business day after being given to an overnight courier with a reliable system for tracking delivery, or three (3) business days after the day of mailing, when mailed by United States mail, registered or certified mail, return receipt requested, postage prepaid, and sent to the address on the first page of this Agreement unless otherwise noted on an attachment to this Agreement. Either party may from time to time change the location(s) to receive notices under this Section and by giving the other party prior written notice of the new address and the date upon which the change will become effective.

**11.7 Waiver.** No failure of either party to exercise any power or right granted hereunder to insist upon strict compliance with any obligation hereunder, and no custom or practice of the parties with regard to the terms and

performance hereof shall constitute a waiver of the rights of such party to demand full and exact compliance with the terms of this Agreement. No waiver of any provision or right hereunder will be valid unless it is in writing and signed by the party giving it.

**11.8 Severability.** If any portion of this Agreement is held to be unenforceable, the remainder of the Agreement will remain in full force and effect. The unenforceable portion will be modified as necessary to comply with applicable law and, as nearly as possible, to reflect the original intentions of the parties and restore each party as closely as possible to the risks and benefits originally assumed.

**11.9 Entire Agreement; Amendments.** This Agreement and the Exhibits constitute the entire understanding of the parties with respect to the subject matter hereof, and shall not be amended or modified except by written non-electronic instrument that has been duly executed by the signature of an authorized representative of each of the parties. Any and all previous agreements and understandings between the parties regarding the subject matter hereof, whether written or oral, are superseded by this Agreement (except for any Confidentiality Agreements to which the parties have agreed, which shall remain in full force and effect). Any terms and conditions contained in any purchase order or other ordering documents that are inconsistent with or in addition to the terms and conditions of this Agreement will have no binding effect, unless expressly agreed to in writing by an authorized representative of Attensity.

**11.10 Relationship of Parties.** Both parties agree that they are independent entities. Nothing in this Agreement shall be construed to create a partnership, joint venture, or agency relationship between the parties. Each party is responsible for the supervision, management and direction of its own employees. Each party is responsible for the payment of compensation to its employees and for any injury to them occurring in the course of their employment for which their employer is responsible and neither party shall be responsible for the supervision, management and direction of the employees of the other party.

**11.11 Export Control.** Licensee agrees to comply fully with all relevant export laws and regulations of the United States ("**Export Laws**") to ensure that neither the Software, nor any direct product thereof are: (a) exported or re-exported directly or indirectly in violation of Export Laws; or (b) used for any purposes prohibited by the Export Laws, including but not limited to nuclear, chemical, or biological weapons proliferation.

**11.12 Counterparts.** This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.



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

**ATTENSITY:**

**LICENSEE:** \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_



**EXHIBIT A  
of  
SCHEDULE B  
FEES**

License Fees (Site, Configuration)

License Term

Maintenance and Other Service Fees



**EXHIBIT B**  
**of**  
**SCHEDULE B**  
**MAINTENANCE AND SUPPORT SERVICES**

Capitalized terms used but not otherwise defined in this Exhibit B shall have the same meaning set forth in the Software License Agreement.

**1.0 DEFINITIONS**

**“Agreement”** shall be defined as the Attensity Software License Agreement.

**“Bugged Cases”** shall be defined as requests to modify base products or product lines as the result of product defects. Bugged Cases fall into one (1) of two (2) categories, either Code Bugs or Documentation Bugs defined below.

**“Business Hours”** means the hours between 8:00 a.m., and 5:30 p.m., Mountain time, Monday through Friday, other than U.S. federal holidays

**“Code Bugs”** means a deviation from published specification, documentation, or other clearly accepted standards (including reasonable performance). Code bugs will generally require a workaround followed by a code fix distributed via a maintenance release or patch.

**“Documentation Bugs”** means errors, omissions, or ambiguities in documentation or training materials.

**“Error”** means, collectively, Code Bugs, Documentation Bugs or other reproducible conditions which degrade the Software as compared to the Attensity's published Documentation.

**“Email Support”** means providing an electronic mail address to which Licensee may address messages and questions relating to the Software which will be answered in a timely fashion by Attensity's support personnel.

**“Fix”** means the repair or replacement of object or executable code versions of the Software to remedy an Error.

**“Non-Bugged Cases”** shall be defined, as anything not included as "Bugged" such as requests for known workarounds, available maintenance patch, questions on product usage, or clarification to documentation.

**“Sunset Release”** is defined as the terminal release combination for the Software version that is prior to the current major release. Bugs will be fixed in the most recent maintenance release version for a Sunset Release and no enhancements are made to Sunset Releases.

**“Telephone Support”** means technical support telephone assistance provided by Attensity during normal Business Hours from which Licensee may obtain Software Maintenance Services, and the means of leaving voice messages during periods other than normal business hours.

**“Workaround”** means a change in the procedures followed or data supplied by Licensee to avoid an Error without substantially impairing Licensee's use of the Software.

**2.0 SERVICE OFFERINGS**

Subject to the terms hereof, during the Maintenance Services term (defined below) Attensity will provide Maintenance Services to Licensee according to the terms of the specific option for Maintenance Services selected as defined below, for the Software.

**2.1 Standard Support** contains a comprehensive set of features designed to satisfy most customers' technical support requirements. Standard support includes:

- Product updates and upgrades for licensed Software
- Telephone Support during Business Hours (US and Canada)
- Email Support during Business Hours

**3.0 ERROR CORRECTION SERVICES**

**3.1 Correction of Errors.** Licensor will exercise commercially reasonable efforts to investigate and correct any reproducible Errors reported to Attensity by Licensee in accordance with this Exhibit B, that cause the latest released version of the Software not to operate substantially in accordance with the Documentation. Licensee will inform Licensor of any Errors by a written report (an **“Error Report”**) in electronic or paper format, or by phone which includes, at a minimum, the following information:

- version number of the applicable Software;
- instructions on how to reproduce the Error;
- any other necessary and/or useful information relating to identifying and reproducing the reported Error.

**3.2 Classifications.** Attensity will, in its commercially reasonable discretion, assign one of the following four (4) severity levels to each Error (or group of Errors) reported by Licensee, and will use commercially reasonable efforts to respond to such Errors in accordance with the response times listed below:

**3.2.1 Severity 1—Critical Impact:** The Software does not function or the functionality of the Software is severely impaired such that Licensee cannot reasonably continue using or accessing such Software, due to the fact that the



system hangs or crashes repeatedly or critical functionality is not operative and no workaround is immediately available. Following receipt of notification by Licensee of any Severity 1 Error, Attensity will use commercially reasonable efforts to confirm the status of such Error within four (4) hours. Upon confirmation by Licensor of a Severity 1 Error, Licensor will use commercially reasonable efforts to provide Licensee with a workaround. Attensity will inform Licensee of the status for resolution every two (2) hours unless otherwise agreed by Licensee until a workaround is provided. If no workaround is provided to Licensee on Severity 1 cases, it will be immediately escalated to the Vice President of Worldwide Services within eight (8) hours. If a workaround is not provided within twenty four (24) hours, then the Attensity CEO will be immediately notified.

**3.2.2 Severity 2—Significant Impact:** Major portions or functionality of the Software do not function in accordance with the Documentation and/or the Licensee's use of the Software is significantly impaired or the defect causes an internal Error or incorrect behavior causing severe loss of service or severely degraded performance. A customer workaround is available, however operations continue in a restricted fashion. Following receipt of notification by Licensee of any Severity 2 Error, Attensity will use commercially reasonable efforts to confirm the status of such Error within eight (8) hours of Attensity normal business hours. Upon confirmation by Attensity of a Severity 2 Error, Attensity will use commercially reasonable efforts to provide Licensee with a Workaround for Non-Bugged Cases within four (4) business days. If a Workaround is not provided within four (4) business days, then the Licensor will provide Licensee with status reports each business day thereafter. For other than Non-Bugged Cases, a fix will be provided in the next maintenance release.

**3.2.3 Severity 3—Minor Impact:** Minor portions or functionality of Software do not function in accordance with the Documentation, Licensee's use of the Software is slightly impaired and there is a Licensee acceptable Workaround available. Following receipt of notification by Licensee of any Severity 3 Error, Attensity will use commercially reasonable efforts to confirm the status of such Error within eight (8) business hours. Upon confirmation by Attensity of a Severity 3 Error, Attensity and Licensee joint determination of the correct Workaround, Attensity will provide a fix in the next subsequent release of the Software.

**3.2.4 Severity 4** — All Errors other than Severity 1, 2 or 3 Errors.

#### **4.0 TERM; TERMINATION.**

**4.1** The initial Maintenance Services term shall be for a term of one (1) year, commencing on the effective date of the Software License Agreement or any subsequently executed Exhibit A. Attensity shall send to Licensee written notification, in the form of an invoice, at least sixty (60) days prior to the end of the term, notifying Licensee that the Maintenance Service fees are due for renewal. Except as described in

Section 4.2 below, the Maintenance Services shall be automatically renewed between the parties for additional one (1) year terms.

**4.2** Either party may terminate Maintenance Services at the end of the initial term or at the end of any renewal term by giving written notice to the other party at least sixty (60) days prior to the end of such term.

**4.3** Attensity shall have no obligation to renew the Maintenance Services on versions of the Software issued prior to a Sunset Release of the product.

#### **5.0 FEES AND PAYMENT.**

Upon commencement of Maintenance Services, dependent upon Licensee's election of the specific service offering described in Section 2 above, Licensee shall pay Attensity the annual Maintenance Services Fee set forth in Exhibit A. Payment shall be due thirty (30) days after receipt of invoice from Attensity. Subsequent renewals will be invoiced at the same rate plus an increase not to exceed five percent (5%) per annum and such invoices will be paid within thirty (30) days of the effective renewal date.

#### **6.0 PRODUCT UPDATES AND UPGRADES**

Once an update or an upgrade to a version of the Software is made generally available by Attensity, Licensee may obtain the newest release from Attensity customer technical support. Major releases of the Software are supported after the release of a new major version until the release of the next subsequent version (i.e. release X is supported after the release of X+1 until X+2). Release X is then referred to as the "Sunset Release." Bugs subsequently determined will be fixed in the most current maintenance release for the Sunset Release.

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