

AvePoint Public Sector, Inc.
2111 Wilson Boulevard, Suite 210
Arlington, VA 22201
www.avepointpublicsector.com

Carahsoft Rider to Manufacturer End User License Agreements
(for U.S. Government End Users)

- 1. Scope.** This Carahsoft Rider and the Manufacturer End User License Agreement (EULA) establish the terms and conditions enabling Carahsoft to provide Software and Services to U.S. Government agencies (the "Client" or "Licensee").

- 2. Applicability.** The terms and conditions in the attached Manufacturer EULA [http://www.avepoint.com/license/Master Software License and Support Agreement \(Public Sector\)\(form\).pdf](http://www.avepoint.com/license/Master_Software_License_and_Support_Agreement_(Public_Sector)(form).pdf) are hereby incorporated by reference to the extent that they are consistent with Federal Law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341(a)(1)(B)), the Contracts Disputes Act of 1978 (41 U.S.C. § 601-613), the Prompt Payment Act, the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 U.S.C. 15), 28 U.S.C. § 516 (Conduct of Litigation Reserved to Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent the terms and conditions in the Manufacturer's EULA are inconsistent with the Federal Law (*See* FAR 12.212(a)), they shall be deemed deleted and unenforceable under any resultant orders under Carahsoft's contract #GS-35F-0119Y, including, but not limited to the following:
 - (a) Contracting Parties.** The Government customer (Licensee) is the "Ordering Activity", "defined as an entity authorized to order under GSA contracts as set forth in GSA ORDER 4800.2G ADM, as may be revised from time to time. The Licensee cannot be an individual because any implication of individual licensing triggers the requirements for legal review by Federal Employee unions. Conversely, because of competition rules, the contractor must be defined as a single entity even if the contractor is part of a corporate group. The Government cannot contract with the group, or in the alternative with a set of contracting parties.

 - (b) Changes to Work and Delays.** Subject to GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 200 0) (Deviation I 2010) (AUG 1987), and 52.212 -4 (f) Excusable delays. (JUN 2010) regarding which the GSAR and the FAR provisions shall take precedence.

 - (c) Contract Formation.** Subject to FAR Sections 1.601(a) and 43.102, the Government Order must be signed by a duly warranted contracting officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

 - (d) Audit.** During the term of this Agreement: (a) If Ordering Activity's security requirements included in the Order are met, Manufacturer or its designated agent may audit Ordering Activity's facilities and records to verify Ordering Activity's compliance with this Agreement. Any such audit will take place only during Ordering Activity's normal business hours

contingent upon prior written notice and adherence to any security measures the Ordering Activity deems appropriate, including any requirements for personnel to be cleared prior to accessing sensitive facilities. Carahsoft on behalf of the Manufacturer will give Ordering Activity written notice of any non-compliance, including the number of underreported Units of Software or Services ("Notice"); or (b) **If Ordering Activity's security requirements are not met and upon Manufacturer's request, Ordering Activity will provide a written certification, executed by a duly authorized agent of Ordering Activity, to verify in writing Ordering Activity's compliance with this Agreement.**

- (e) **Termination.** Clauses in the Manufacturer EULA referencing termination or cancellation the Manufacturer's EULA are hereby deemed to be deleted. Termination shall be governed by the FAR 52.212-4 and the Contract Disputes Act, 41 U.S.C. §§ 601-613, subject to the following exceptions:

Carahsoft may request cancellation or termination of the License Agreement on behalf of the Manufacturer if such remedy is granted to it after conclusion of the Contracts Disputes Act dispute resolutions process referenced in Section Q below or if such remedy is otherwise ordered by a United States Federal Court.

- (f) **Consent to Government Law / Consent to Jurisdiction.** Subject to the Contracts Disputes Act of 1978 (41. U.S.C §§ 7101-7109) and Federal Tort Claims Act (28 U.S.C. §1346(b)). The validity, interpretation and enforcement of this Rider will be governed by and construed in accordance with the laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by law, it will not apply to this Agreement, and the governing law will remain as if such law or regulation had not been enacted. All clauses in the Manufacturer EULA referencing equitable remedies are deemed not applicable to the Government order and are therefore deemed to be deleted.
- (g) **Force Majeure.** Subject to FAR 52.212 -4 (f) Excusable delays. (JUN 2010). Unilateral Termination by the Contractor does not apply to a Government order and all clauses in the Manufacturer EULA referencing unilateral termination rights of the Manufacturer are hereby deemed to be deleted.
- (h) **Assignment.** All clauses regarding Assignment are subject to FAR Clause 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements, and all clauses governing Assignment in the Manufacturer EULA are hereby deemed to be deleted.
- (i) **Waiver of Jury Trial.** All clauses referencing waiver of Jury Trial are subject to FAR Clause 52.233-1, Disputes (JUL. 2002), and all clauses governing waiver of jury trial in the Manufacturer EULA are hereby deemed to be deleted.
- (j) **Customer Indemnities.** All Manufacturer EULA clauses referencing Customer Indemnities are hereby deemed to be deleted.

- (k) Contractor Indemnities.** All Manufacturer EULA clauses that (1) violate DOJ's right (28 U.S.C. 516) to represent the Government in any case and/or (2) require that the Government give sole control over the litigation and/or settlement, are hereby deemed to be deleted.
- (l) Renewals.** All Manufacturer EULA clauses that violate the Anti-Deficiency Act (31 U.S.C. 1341, 41 U.S.C. 11) ban on automatic renewal are hereby deemed to be deleted.
- (m) Future Fees or Penalties.** All Manufacturer EULA clauses that violate the Anti-Deficiency Act (31 U.S.C. 1341, 41 U.S.C. 11), which prohibits the Government from paying any fees or penalties beyond the Contract amount, unless specifically authorized by existing statutes, such as the Prompt Payment Act, or Equal Access To Justice Act 31 U.S.C. 3901, 5 U.S.C. 504 are hereby deemed to be deleted.
- (n) Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all federal, state, local taxes and duties.
- (o) Third Party Terms.** Subject to the actual language agreed to in the Order by the Contracting Officer. Any third party manufacturer will be brought into the negotiation, or the components acquired separately under Federally-compatible agreements, if any. Contractor indemnities do not constitute effective migration.
- (p) Installation and Use of the Software.** Installation and use of the software shall be in accordance with the Rider and Manufacturer EULA, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid task order placed pursuant to the Government contract.
- (q) Dispute Resolution and Venue.** Any disputes relating to the Manufacturer EULA and to this Rider shall be resolved in accordance with the FAR, and the Contract Disputes Act, 41 U.S.C. §§ 7101-7109. The Ordering Activity expressly acknowledges that Carahsoft, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.
- (r) Limitation of Liability: Subject to the following:**
- Carahsoft, Manufacturer and Ordering Activity shall not be liable for any indirect, incidental, special, or consequential damages, or any loss of profits, revenue, data, or data use. Further, Carahsoft, Manufacturer and Ordering Activity shall not be liable for punitive damages except to the extent this limitation is prohibited by applicable law. This clause shall not impair the U.S. Government's right to recover for fraud or crimes arising out of or related to this Government Contract under any federal fraud statute, including the False Claims Act, 31 U.S.C. §§ 3729-3733.
- (s) Advertisements and Endorsements.** Unless specifically authorized by an Ordering Activity in writing, such use of the name or logo of any U.S. Government entity is prohibited.
- (t) Public Access to Information.** Manufacturer agrees that the EULA and this Rider contain no confidential or proprietary information and acknowledges the EULA and this Rider will be

available to the public.

(u) Confidentiality. Any provisions that require the Licensee to keep certain information confidential are subject to the Freedom of Information Act, 5 U.S.C. §552, and any order by a United States Federal Court.

MASTER SOFTWARE LICENSE AND SUPPORT AGREEMENT

This Master Software License and Support Agreement (the “Agreement”) is made by and between AvePoint Public Sector, Inc., a Virginia corporation, with offices at 2111 Wilson Boulevard, Suite 210, Arlington, VA 22201 (“AvePoint”), and the company or entity, as identified in the signature block below, using certain of AvePoint’s Licensed Property (“Customer”). The parties hereto acknowledge that this Agreement is intended to be a master agreement under which Customer may license Licensed Property from time to time. Pursuant to the terms of this Agreement, the Technical Architecture Addendum, and the Support Addendum, AvePoint or its Affiliates may license the Licensed Property and provide support to Customer or Affiliates of Customer. This Agreement is effective immediately upon delivery of Licensed Property (the “Effective Date”).

WHEREAS, AvePoint has developed and is the owner of an extensive platform of products (the Software, as defined below);

WHEREAS, Customer desires a non-exclusive license to use some of the products of the Software known as the Licensed Property (as defined below); and

WHEREAS, AvePoint is willing to grant such a license on the terms and conditions set forth below.

NOW, THEREFORE, in consideration of the foregoing and of the mutual promises contained in this Agreement, AvePoint and Customer agree as follows:

1. **DEFINITIONS**

For purposes of this Agreement,

- 1.1 “**Affiliate**” shall mean, with respect to any person, any other person that controls or is controlled by or under common control with such Person; provided, that a person shall be deemed to be an Affiliate only so long as such control exists. For the purposes of this definition, “person” means any individual, corporation, partnership, or limited liability company; and “control,” when used with respect to any Person, means ownership of at least fifty percent (50%) of the voting stock, shares or other equity interest in the controlled Person and possession of the power to direct or cause the direction of the management and policies of the controlled Person.
- 1.2 “**Authorized Users**” shall mean Customer’s employees, and those consultants who have agreed to maintain the Licensed Property in confidence and use it only for the benefit of Customer.
- 1.3 “**Documentation**” shall mean the end user documentation delivered with the Software.

- 1.4 “**Internal Use**” means use of the Licensed Property by employees of Customer in Customer’s internal operations but does not include access of the Licensed Property by, or use of the Licensed Property in the provisions of services to, Customer’s clients or customers. Internal Use also includes use of the Licensed Property by contractors of Customer, including contractors providing outsourcing or hosting services, as long as Customer assumes full responsibility for the compliance with this Agreement in such use. Use of the Licensed Property (or any part thereof) for the benefit of others, whether by means of a software as a service offering, service bureau application, application service provider, outsourcing or other means of providing service to any third party shall not be considered Internal Use.
- 1.5 “**Licensed Property**” shall mean the portion of the Software and the Documentation to which Customer has purchased a License as identified on an applicable invoice by AvePoint. Licensed Property shall include any updates or upgrades to the Licensed Property that AvePoint may at its discretion deliver to Customer.
- 1.6 “**Server**” means each single instance of an operating system, whether physically installed on a computer or within a virtualized environment.
- 1.7 A “**SharePoint Server**” is a Server running a service or component of the Microsoft SharePoint platform. SharePoint Servers shall be classified and counted as per the SharePoint Server Technical Architecture Addendum (“**Technical Architecture Addendum**”) attached hereto.
- 1.8 “**Software**” shall mean the object code (machine readable) version of any computer programs offered by AvePoint and any ancillary data files, modules, libraries, tutorial or demonstration programs or other components and copies of any of the foregoing or portions thereof.
- 1.9 “**Support Addendum**” shall mean the Master Software Support Addendum attached hereto.

2. **GRANT OF LICENSE**

- 2.1 **Grant; Limitations.** Subject to the observance by Customer of the terms and conditions of this Agreement, AvePoint hereby grants to Customer and Customer hereby agrees to pay for a perpetual, non-exclusive, non-transferable (except as set forth in Section 11.5) license to use the Licensed Property solely for Customer’s Internal Use in accordance with the following limitations (the “License”):
- (a) for Licensed Property that is classified as Licensed per SharePoint Server, one License per Server in Tier 1 and Tier 2, as classified and counted per the Technical Architecture Addendum, in each SharePoint environment in which the Licensed Property is run;

- (b) for Licensed Property that is classified as Licensed per specific Server type or per the number of Servers in a particular Tier or Tiers, one License per Server of the specified type or within the specified Tier or Tiers, as classified and counted in the Technical Architecture Addendum, which may include but is not limited to SharePoint Web Servers, User Facing Front-end Web Servers, SharePoint Application Servers, SQL Servers running SharePoint, or other Server types as specified on the applicable invoice by AvePoint, in each environment in which the Licensed Property is run;
- (c) for Licensed Property that is classified as Licensed per Usage, the License granted hereunder is based on the size or amount of data processed by the Licensed Property and is limited to the amount specified on the applicable invoice by AvePoint;
- (d) for Licensed Property that is classified as Licensed per Organization, the License granted hereunder is for use only on Servers owned or controlled by and used exclusively by the Customer (and does not include Servers controlled by or providing services to Customer's Affiliates); and
- (e) for Licensed Property that is classified as part of the DocAve Software Platform, one License per DocAve Manager and per Media Services used, where such usage is limited to the amount specified on the applicable invoice by AvePoint.

Except with respect to Licensed Property that is licensed per Organization as set forth in (d) above, Customer may grant sublicenses hereunder to its Affiliates for use in accordance with the terms of this Agreement, as long as Customer assumes full responsibility for the compliance of such Affiliate with this Agreement. No other sublicensing of use or access is permitted.

2.2 **License Restrictions.** Any use of the Licensed Property not expressly permitted by this Agreement is prohibited. Without limiting the generality of the foregoing, Customer shall not:

- (a) permit persons other than Authorized Users to access or use the Licensed Property (or any part thereof); or
- (b) remove or modify any program markings or any notice of AvePoint or its licensors' proprietary rights; or
- (c) cause or permit reverse engineering (unless required by law for interoperability), disassembly or decompilation of the programs; or
- (d) use the Licensed Property (or any part thereof) in breach of any applicable laws or regulations.

- 2.3 **Back-Up Copies.** Customer may make copies of the Licensed Property as reasonably necessary for back-up (disaster recovery) purposes provided that such copies are used only for such purposes and are not otherwise used on an active system.
- 2.4 **No Other License.** Except as expressly set forth in this Agreement, no license is granted and none shall be deemed granted by implication, estoppel or otherwise.
- 2.5 **Delivery.** Unless otherwise requested by Customer, AvePoint shall provide an electronic link to make available to Customer the Licensed Property by electronic download and a license key to activate the Licensed Property.
- 2.6 **Services.** Except as set forth on the Support Addendum attached hereto, AvePoint is under no obligation to provide any services to Customer with respect to the Licensed Property (including, without limitation, any installation of the Software or Licensed Property, training or maintenance).

3. **FEES**

- 3.1 **Payments.** AvePoint's invoices to Customer are payable within thirty (30) days of the date of Customer's receipt of said invoice.

4. **PROPERTY RIGHTS; PROHIBITIONS AS TO LICENSED PROPERTY**

- 4.1 **Property Rights.** AvePoint or its licensors retain all ownership and intellectual property rights to the Software and Licensed Property. Third party technology that may be appropriate or necessary for use with the Licensed Property is specified in the Documentation. Such third party technology is licensed to you under the terms of the third party technology license agreement specified in the program documentation and not under the terms of this Agreement.
- 4.2 **Trade Secrets.** Customer agrees that the Software and all associated trade secrets, including but not limited to the Licensed Property, its configurations, architecture, communications and performance benchmarks, are the exclusive property of AvePoint. Customer agrees not to disclose, disseminate, transmit via any medium whatsoever, or make available the Software, Licensed Property or any associated trade secrets to any third party without AvePoint's prior written consent.

5. **NO WARRANTY AND DISCLAIMER**

EXCEPT AS MAY BE SET FORTH ON THE SUPPORT ADDENDUM WHILE SUCH SUPPORT ADDENDUM REMAINS IN EFFECT, THE SOFTWARE, INCLUDING WITHOUT LIMITATION THE LICENSED, IS PROVIDED TO CUSTOMER ON AN "AS IS" "WHERE IS" BASIS WITHOUT WARRANTY AND CUSTOMER'S USE THEREOF IS AT ITS OWN RISK. AVEPOINT DOES NOT MAKE, AND HEREBY SPECIFICALLY DISCLAIMS, AND CUSTOMER RELEASES AND WAIVES, ANY AND ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING,

WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE AND PURPOSE, NON-INFRINGEMENT, TITLE, OR ANY WARRANTY ARISING UNDER STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OR TRADE PRACTICE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, AVEPOINT DOES NOT WARRANT THAT THE LICENSED PROPERTY IS ACCURATE OR WILL MEET CUSTOMER'S REQUIREMENTS, WILL OPERATE IN ANY COMBINATION THAT MAY BE SELECTED FOR USE BY CUSTOMER OR IN COMBINATION WITH OTHER SOFTWARE, OR WILL OPERATE UNINTERRUPTED OR ERROR FREE. FURTHERMORE, AVEPOINT DOES NOT WARRANT THAT ANY SOFTWARE ERRORS, DEFECTS OR INEFFICIENCIES WILL BE CORRECTED, NOR DOES AVEPOINT ASSUME ANY LIABILITY FOR FAILURE TO CORRECT ANY SUCH ERROR, DEFECT OR INEFFICIENCY. AVEPOINT MAKES NO WARRANTY, AND CUSTOMER ASSUMES THE ENTIRE RISK, AS TO THE INTEGRITY OF ANY DATA AND THE RESULTS, CAPABILITIES, SUITABILITY, USE, NON-USE OR PERFORMANCE OF THE LICENSED PROPERTY. IN NO EVENT SHALL AVEPOINT BE LIABLE TO CUSTOMER FOR ANY DAMAGES RESULTING FROM OR RELATED TO THE USE OR PERFORMANCE OF THE LICENSED PROPERTY.

6. **LIMITATION OF LIABILITY**

EXCEPT WITH RESPECT TO A BREACH OF SECTION 2 OR 4, OR AS PROVIDED IN SECTION 7 HEREOF, UNDER NO CIRCUMSTANCES SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES SUFFERED BY THE OTHER PARTY, ANY PARTY CLAIMING ON BEHALF OF OR THROUGH THE OTHER PARTY, OR ANY OTHER THIRD PARTY RESULTING FROM OR ARISING OUT OF OR RELATED TO THIS AGREEMENT, ANY ADDENDUM HERETO OR THE PERFORMANCE OR BREACH THEREOF, INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS OR PROFITS, BUSINESS INTERRUPTION, DAMAGE OR LOSS OR DESTRUCTION OF DATA OR LOSS OF USE OF THE LICENSED PROPERTY, EVEN IF SUCH PARTY HAS BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL AVEPOINT HAVE ANY LIABILITY TO CUSTOMER IN EXCESS OF THE AMOUNTS PAID BY CUSTOMER TO AVEPOINT UNDER THIS AGREEMENT OR ANY ADDENDUM HERETO.

7. **INDEMNITY**

AvePoint will, defend Customer from and against any claim or action commenced by a third party alleging that the Licensed Property, when used in accordance with the terms of this Agreement, infringes any patent, copyright or trademark, or is a misappropriation of a trade secret, and AvePoint will indemnify Customer from any costs (including reasonable attorneys' fees) associated with the defense or settlement of and/or damages finally awarded against Customer in any such claim. If such a claim is made or appears likely to be made, AvePoint, at its option, shall have the right to either (i) procure for the

Customer the right to continue to use the Licensed Property, (ii) modify or replace the Licensed Property so that it is no longer infringing (in a manner that substantially retains its functionality and quality), or (iii) require Customer to terminate the use of and return the Licensed Property and refund a pro rata portion, if any, of the amount paid by Customer for the infringing Licensed Property, which pro rata portion shall be a fraction, the numerator of which shall be equal to the number of months, if any, remaining from the date the termination becomes effective until the occurrence of the fifth (5th) anniversary of the Effective Date, and the denominator of which shall be equal to sixty (60). Notwithstanding the foregoing, AvePoint shall have no liability to Customer if the infringement results from use of the Licensed Property in combination with software not provided by AvePoint or from modifications made by AvePoint to conform to specifications provided by Customer. The indemnification obligations in this section are subject to notification in writing of any claim (provided that Customer's failure to provide reasonable written notice shall only relieve AvePoint of its indemnification obligations hereunder to the extent such failure materially limits or prejudices such claim). Pursuant to 28 USC § 516, AvePoint agrees that only the Attorney General, acting through the attorneys of the US Department of Justice, may represent the Customer in litigation. **THIS SECTION STATES CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES FOR INFRINGEMENT OR CLAIMS ALLEGING INFRINGEMENT.**

8. **TERM AND TERMINATION**

Term. This Agreement shall remain in full force and effect from the Effective Date unless terminated pursuant to this Section.

8.1 **Termination of License.** The parties agree that Government contracts are subject to the Contract Disputes Act of 1978 (41 USC §§ 601-613) and that said Act requires a certain process for resolving disputes, and that AvePoint shall proceed diligently with performance of this Agreement, pending final resolution under the terms of the FAR Disputes clause at 52.233-1. Should a final resolution be made that AvePoint may terminate this Agreement, then this Agreement and the License and other rights granted hereunder may be terminated by AvePoint within thirty (30) days of receipt of said final resolution.

8.2 **Effect of Termination of License.** Immediately upon any termination, cancellation or expiration of this Agreement or of any License granted hereunder for any reason:

- (a) all rights and Licenses granted to Customer under this Agreement shall cease and terminate and Customer shall have no right thereafter to use, and shall cease the use of, the Licensed Property or any portion thereof; and
- (b) Customer shall return the Licensed Property (including all copies thereof) to AvePoint.

8.3 **Survival Provisions of the Agreement.** The provisions of Section 3 through 11 of this Agreement and Section 1 of the Support Addendum shall survive the termination, cancellation or expiration of this Agreement for any reason.

8.4 **Termination of Support.** The Support Addendum and the rights granted thereunder may be terminated independently of the Agreement in accordance with Section 6 of the Support Addendum.

9. **FORCE MAJEURE**

Neither party shall be liable to the other party for any delay or failure in the performance of its obligations under this Agreement or the Support Addendum while in effect or otherwise if such delay or failure arises from any cause or causes beyond the control of such party including, without limitation, labor shortages or disputes, strikes, other labor or industrial disturbances, delays in transportation, acts of God, floods, lightning, fire, epidemic, shortages of materials, rationing, utility or communication failures, earthquakes, casualty, war, acts of the public enemy, an act of civil or military authority, sabotage, explosives, riots, insurrections, embargoes, blockades, actions, restrictions, regulations or orders of any government, agency or subdivision thereof, or failure of suppliers.

10. **EXPORT REGULATIONS; U.S. GOVERNMENT RESTRICTIONS**

Customer acknowledges that the Licensed Property may be subject to United States export laws, statutes and regulations and to export laws, statutes and regulations of other countries, and that Customer will at all times comply with the provisions of such laws, statutes and regulations including obtaining any necessary or required licenses. Customer shall not export or re-export or otherwise transmit, directly or indirectly, the Licensed Property or any direct products thereof into, or use the Licensed Property or any direct products thereof in, any country prohibited or restricted under United States export laws, statutes or regulations or any other applicable laws.

11. **MISCELLANEOUS PROVISIONS**

11.1 **Binding Effect.** This Agreement and all of the provisions hereof shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. In accordance with this Section 11.1, Customer here shall mean the Government Agency itself and shall not mean nor bind (i) the individual(s) who utilize the Licensed Property on Customer's behalf, or (ii) any individual users who happen to be employed by, or otherwise associated with, the Customer. AvePoint will look solely to Customer to enforce any violation or breach of this Agreement by such individuals, subject to federal law.

11.2 **Amendment.** This Agreement may be amended only by a writing duly executed by the authorized representatives of the parties hereto which makes specific reference to this Agreement.

- 11.3 **Notices.** All notices, requests, demands, consents, authorizations, claims, and other communications (each a “Notice”) hereunder must be in writing and sent to the other party by overnight delivery. Any Notice shall be deemed duly given one (1) business day following the date sent when sent by overnight delivery. No party may send any Notice to the intended recipient using any other means. Notices to AvePoint shall be sent to AvePoint Public Sector, Inc., 2111 Wilson Boulevard, Suite 210, Arlington, VA 22201, Attn: CEO. Unless otherwise specified by Customer in writing, Notices to Customer shall be sent to the registered agent of the Customer in the jurisdiction in which the Customer is organized or incorporated. Any party may change the address to which Notices are to be delivered by giving the other parties Notice in the manner herein set forth.
- 11.4 **Governing Law.** The validity and construction of this Agreement and all matters pertaining thereto are to be determined in accordance with the laws of the Commonwealth of Virginia, without reference to the conflicts of laws provisions thereof. Customer agrees that any proceedings related to this Agreement, including any suit filed against AvePoint, shall be brought in the Federal Courts located in the City of Richmond, Virginia. Customer waives any objections to personal jurisdiction and venue to that forum. The parties specifically direct and agree that the CISG (UN-Convention on Contracts for the International Sale of Goods) and the Uniform Computer Information Transactions Act (UCITA) are specifically excluded and neither shall apply to this Agreement or to the performance hereof by the parties hereto.
- 11.5 **Assignment.** Customer may not, directly or indirectly, sell, assign, sublicense, lease, rent, distribute, or otherwise transfer the License, the Licensed Property, or any rights therein, or any rights or obligations under this Agreement, to any other person or entity, unless Customer first obtains the written consent of AvePoint, except in conjunction with the sale of all or substantially all of the stock or assets of Customer.
- 11.6 **Waiver.** No party to this Agreement shall be deemed to have waived any of its rights, powers or remedies under this Agreement unless such waiver is expressly set forth in a writing signed by the waiving party. No written waiver of any provision of this Agreement shall be deemed to be, or shall constitute, (i) a waiver of any other provision of this Agreement, whether or not similar, or (ii) a continuing or subsequent waiver of the same or another provision of this Agreement. The failure of either party to enforce at any time any of the provisions of this Agreement, or the failure to require at any time performance by the other party of any of the provisions of this Agreement, will in no way be construed to be a present or future waiver of any such provisions, or in any way affect the validity of either party to enforce each and every such provision thereafter.
- 11.7 **Captions.** The captions and headings of Sections and subsections contained in this Agreement are provided for convenience of reference only and shall not be

considered a part hereof for purposes of interpreting this Agreement, and, way the meaning or intent of this Agreement or any of its terms or provisions.

- 11.8 **Severability.** If any Section or other provision of this Agreement, or the application of such Section or provision, is held invalid, then the remainder of this Agreement, and the application of such Section or provision to persons or circumstances other than those with respect to which it is held invalid, shall not in any way be affected or impaired thereby. In the event that any provision of this Agreement becomes or is declared by a court of competent jurisdiction or panel of arbitrators to be illegal, unenforceable or void, this Agreement shall continue in full force and effect without said provision. The parties agree to negotiate in good faith a substitute valid and enforceable provision that most nearly effects the parties' intent and to be bound by the mutually agreed substitute provision.
- 11.9 **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together will constitute one and the same instrument.
- 11.10 **Remedies.** All remedies shall be cumulative and not alternative and in addition to all other rights and remedies available in law and in equity.
- 11.11 **Entire Agreement.** This Agreement, including the Technical Architecture Addendum and any Support Addendum referenced herein and attached hereto (which shall be deemed incorporated herein by this reference), constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof, and supersedes, supplants, and renders null and void any and all prior and contemporaneous negotiations, discussions, proposals, agreements, understandings, representations or communications, oral or written, of the parties hereto with respect to the subject matter hereof. Notwithstanding the foregoing, a purchase order submitted by Customer and accepted by AvePoint may set forth only the type, description and quantity of Licensed Property and provide for a longer Support Level Term under Section 1 of the Support Addendum and such terms shall be deemed binding. No other purchase order terms or conditions of the Customer shall be deemed to modify this Agreement. There are no representations, agreements, arrangements or understandings, oral or written, between the parties hereto relating to the subject matter of the Agreement which are not fully expressed herein.

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11.12 **Negotiated Agreement.** This Agreement is intended to be a master agreement for licensing. This Agreement is a negotiated agreement between the parties and supersedes and replaces any and all other standard terms of either party set forth in any quote, purchase order, invoice or communication and applies so long as this Agreement remains in effect.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective authorized representatives.

FOR AND ON BEHALF OF
AVEPOINT PUBLIC SECTOR, INC. :

FOR AND ON BEHALF OF CUSTOMER:

(Full Legal Name of Customer)

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Address: _____

Date: _____

Date: _____



MASTER SOFTWARE SUPPORT ADDENDUM

THIS ADDENDUM to the AVEPOINT MASTER SOFTWARE LICENSE AND SUPPORT AGREEMENT (the "Support Addendum"), is made and entered into by and between AvePoint Public Sector, Inc., a Virginia corporation, (hereinafter referred to as "AvePoint") and the Customer as defined in the attached Agreement ("Customer"). The terms and conditions of this Support Addendum shall be binding so long as Customer purchases support as it relates to the Licensed Property and does not materially breach the terms and conditions of this Support Addendum. In accordance with this preamble, Customer here shall mean the Government Agency itself and shall not mean nor bind (i) the individual(s) who utilize the Licensed Property or Support Services on Customer's behalf, or (ii) any individual users who happen to be employed by, or otherwise associated with, the Customer. AvePoint will look solely to Customer to enforce any violation or breach of this Agreement by such individuals, subject to federal law. Any defined term used herein which is not otherwise defined shall have the meaning set forth in the attached AvePoint Master Software License and Support Agreement.

1. **TERM.** This Support Addendum is effective immediately upon delivery of the Licensed Property to which the support services relate (the "Effective Date") and, unless a longer initial period is specified in a quote signed by the Customer or in the absence thereof, a purchase order accepted by AvePoint, continue for an initial period of one (1) year (the "Initial Term") and thereafter for additional periods as determined by Customer, unless terminated pursuant to Section 6 of this Support Addendum. To the extent that there is pre-existing Licensed Property, Customer agrees to align the support schedule for newly acquired Licensed Property to the same support schedule as the pre-existing Licensed Property.
2. **SUPPORT SERVICES.** Support Services are intended to resolve issues experienced by the Customer with the installation, configuration, and operation of the Licensed Property. The Support Services provided to the Customer during the Term are determined by the level of support purchased by the Customer ("Support Level" or "Level"). The Support Level shall be specified in a quote signed by the Customer or in the absence thereof, a purchase order accepted by AvePoint and shall be one (1) of the following Levels: Basic, Standard, or Premier. The Support Level must be the same for all Licensed Property. The Support Levels are set forth below.

2.1 **Program Fix Service.** If the Licensed Property as furnished and without Customer modification fails to function due to an error in the Licensed Property and Customer has reasonably determined that the failure is not due to incorrect or defective data entry or operator performance by Customer, AvePoint will make a prompt and reasonable attempt to provide Customer with a suitable workaround or program change to correct or avoid such error. AvePoint shall have the right to verify the existence of any error reported by Customer and AvePoint shall have no obligation to correct any error or defect unless the error or defect can be re-created with an unaltered version of the Licensed Property. Error verifications shall be conducted at Customer's or AvePoint's place of business, as determined by AvePoint. Customer agrees to provide to AvePoint any data, configuration information, and copies of all programs used by Customer in

making its determination that an error exists. Notification to AvePoint and subsequent follow-up shall be conducted through AvePoint’s Call Center Support.

2.2 **Call Center Support.** AvePoint shall provide email, web support ticket, phone, and web conferencing (each a “Support Channel” or “Channel”) based Support Services to Customer according to the Customer’s Support Level. Support Channels and hours shall be provided as per the Support Level table below, where the “Local Office Time” shall be the given time at the nearest appropriate AvePoint office or Call Center designated to provide support services to Customer at AvePoint’s discretion, and “Business Days” shall be the days such AvePoint office is opened for regular business per locally accepted businesses practices.

SUPPORT PROGRAM FEATURES

<u>Support Level</u>	<u>Basic</u>	<u>Standard</u>	<u>Premier</u>
Support Channels	Email or Web Support Ticket Only	Email, Web Support Ticket, Phone and Web Conferencing	Email, Web Support Ticket, Phone and Web Conferencing
Support Hours	Business Days, 7:00 am–7:00 pm Local Office Time	Business Days, 7:00 am–7:00 pm Local Office Time	24 hours / day, 7 days / week
Email/web support ticket response time	Based on Issue Severity	Based on Issue Severity	Based on Issue Severity, with priority handling within Issue Severity Level

As indicated, email and web support ticket response times shall be based on Issue Severity Level, as defined in the Email and Web Support Ticket Response Times table below. Such Issue Severity Level shall be assigned by AvePoint at the time of receipt of such email or web support ticket request from Customer per the Issue Description guidelines given in the table below at AvePoint’s sole discretion. AvePoint shall make all commercially reasonable efforts to respond to such support requests within the given Response Time. Requests received from Customers with Premier Level Support Services shall receive priority handling over other requests within a given Issue Severity Level.

SUPPORT TICKET RESPONSE TIMES

<u>Issue Severity</u>	<u>Issue Description</u>	<u>Email and Web Response Time</u>	<u>Phone Response Time*</u>
Low	<ul style="list-style-type: none"> Minor issue which does not impact production environment Documentation error that does not directly impact a job on production Feature or suggestion for enhancement 	48 hours or less	Immediate
Medium	<ul style="list-style-type: none"> An issue affecting production environment at a minor level Very limited direct impact on operations 	24 hours or less	Immediate
High	<ul style="list-style-type: none"> An issue affecting production environment at a major level Production environment is operational, but DocAve activities are limited Long-time adverse effects can lead to productivity being hindered 	4 hours or less	Immediate
Very High	<ul style="list-style-type: none"> DocAve activities on production environment are completely inoperable Major restoration or project is at a mission-critical state Severe impact on business operations 	2 hours or less	Immediate

*Phone support is only available for Standard and Premier Level Support Services, in accordance with the Support Hours as set forth on the Support Program Features table above.

2.3 Integration. If Customer has Premier Level Support Services, in the event that an error in installation, configuration, or operation of the Licensed Property is caused by Customer's introduction of a new and unique or unusual configuration, hardware component or components, architecture, network setup, or customization, AvePoint shall integrate the Licensed Property to work for Customer, provided such integration requires less than eight (8) man hours of development work, as determined by AvePoint at its sole discretion. For Customers with Basic or Standard Level Support Services or for Customers with Premier Level Support Services where such integration requires greater than eight (8) man hours of development work, AvePoint shall make its best, commercially reasonable, efforts to offer such Integration to Customer at an additional fee for the man hours required beyond those covered under the Support Addendum and on the same basis and at the same rates as charged by AvePoint to other similarly situated Customers.

2.4 Product Releases. In addition to the Support Services described above, AvePoint may, in its sole discretion, release updates and modifications to the Software ("Product Releases"). Such Product Releases shall be numbered according to AvePoint's

Standard Numbering Convention, defined as follows: in the N1.n2.n3.n4 format, with each number representing a different release type and classified by AvePoint as Hotfixes, Cumulative Update, Service Packs, and Platform Upgrades, as described below.

- (a) A “Hotfix” is an update or modification to the Software designed to address a specific issue identified in the installation, configuration, or operation of the Software. A release that is considered a Hotfix shall be so indicated by an increase or change in the n4 portion of the Standard Numbering Convention.
- (b) A “Cumulative Update” is an update or modification to the Software that may include Hotfixes and may also include performance improvements, Compatibility Updates, and other enhancements, but that does not include new options or feature additions to the Software. A “Compatibility Update” updates or modifies the compatibility of the Software with underlying operating systems and required components. Compatibility Updates do not include updates or modifications that add support for the Software to act upon a new system, platform, or application. A release that is considered a Cumulative Update shall be so indicated by an increase or change in the n3 portion of the Standard Numbering Convention.
- (c) A “Service Pack” is an update or modification to the Software that may include Hotfixes and Cumulative Updates and that adds new options or feature additions to the Software. A release that is considered a Service Pack shall be so indicated by an increase or change in the n2 portion of the Standard Numbering Convention.
- (d) A “Platform Upgrade” is an upgrade or modification to the architecture, user interface, or other significant portion of the Licensed Property. Such Platform Upgrades shall be considered a new generational line of the Licensed Property, and may differ in overall function and use from other generational lines. A release that is considered a Platform Upgrade shall be so indicated by an increase or change in the N1 portion of the Standard Numbering Convention.

Customer access to Product Releases shall be based on Support Services Level as detailed in the table below. For Customers with access to a particular Product Release, AvePoint will provide such Product Releases in such form and with accompanying instructions sufficient to enable Customer to install the Product Releases without the assistance of AvePoint. Customer shall be solely responsible for installation of the Product Releases. If requested by Customer, AvePoint will install the Product Release at AvePoint's daily rates then in effect plus reimbursement for reasonable travel and living expenses incurred by AvePoint and its personnel in providing such installation services. Customer agrees that any Product Releases provided by AvePoint shall be held by Customer upon all of the terms and shall be subject to all of the conditions

contained in the Agreement and this Support Addendum entered into by and between AvePoint and Customer with respect to the Licensed Property. Product Releases may update or modify portions of the Software not included as part of Customer’s Licensed Property. Availability of and access to Product Releases shall not be construed to entitle Customer to new options or features that are sold separately and that are not direct additions to the Licensed Property to which the Customer’s Support Services are associated.

PRODUCT RELEASES INCLUDED IN SUPPORT LEVEL

<u>Product Release</u>	<u>Basic</u>	<u>Standard</u>	<u>Premier</u>
Hotfixes	Yes	Yes	Yes
Cumulative Update	Yes	Yes	Yes
Service Pack	No	Yes	Yes
Platform Upgrade	No	No	Yes

2.5 **Exclusions.** AvePoint shall not be required to provide any support services occasioned by neglect or misuse of the Licensed Property or equipment on which the Licensed Property are run, or unauthorized alterations or modifications of the Licensed Property. In the event that Customer requires maintenance and support for a program, system, application, or hardware outside of the Licensed Property, AvePoint may, at its sole discretion, offer such support to Customer at an additional fee.

3. SUPPORT FEES.

3.1 The payment as provided on a written price quote or invoice by AvePoint to Customer is payable prior to the commencement of any services hereunder.

3.2 In the event of on-site services requested by Customer, Customer agrees to reimburse AvePoint for any and all pre-approved or reasonable and necessary direct expenses incurred by AvePoint for purposes of performing such on-site services (including travel and living expenses).

3.3 AvePoint’s invoices to Customer are payable within thirty (30) days of Customer’s receipt of the invoice therefor. AvePoint, within its reasonable discretion, shall invoice

the Customer approximately forty-five (45) days prior to the beginning of each annual period, as applicable.

4. **WARRANTIES AND LIMITATION OF WARRANTIES.** During the Term, Customer shall be entitled to the following warranties:

4.1 AVEPOINT EXPRESSLY WARRANTS THAT THE LICENSED PROPERTY, AS DELIVERED AND INSTALLED, SHALL PERFORM IN ACCORDANCE WITH THE SPECIFICATIONS CONTAINED IN THE THEN CURRENT DOCUMENTATION SUPPLIED BY AVEPOINT TO CUSTOMER THAT RELATE TO THE VERSION OF THE LICENSED PROPERTY DELIVERED BY AVEPOINT TO CUSTOMER.

4.2 EXCEPT AS TO COMPATIBILITY OF THE LICENSED PROPERTY AS DESCRIBED IN AVEPOINT'S DOCUMENTATION, AVEPOINT MAKES NO WARRANTIES TO CUSTOMER WITH RESPECT TO THE CUSTOMER'S COMPUTER EQUIPMENT OR SYSTEM SOFTWARE OR ITS CAPACITY AND THIS WARRANTY DISCLAIMER IS MADE EXPRESSLY IN LIEU OF ANY AND ALL EXPRESS OR IMPLIED WARRANTIES TO CUSTOMER; INCLUDING, WITHOUT LIMITATION, ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ALL WARRANTIES WITH RESPECT CUSTOMER'S COMPUTER EQUIPMENT AND SYSTEM SOFTWARE OR ITS CAPACITY ARE HEREBY EXPRESSLY DISCLAIMED.

5. **USE.** Customer is solely responsible for determining the appropriate uses and limitations of the Licensed Property in Customer's operations.

6. **TERMINATION.**

6.1 This Support Addendum shall terminate upon the happening of one or more of the following:

- (a) Termination, for any reason, of that certain Agreement for the applicable Licensed Property to which the support services relate;
- (b) The parties agree that Government contracts are subject to the Contract Disputes Act of 1978 (41 USC §§ 601-613) and that said Act requires a certain process for resolving disputes, and that AvePoint shall proceed diligently with performance of this Agreement, pending final resolution under the terms of the FAR Disputes clause at 52.233-1. Should a final resolution be made that AvePoint may terminate this Agreement, then AvePoint shall terminate this Support Addendum upon thirty (30) days after receipt of said final resolution. For the purposes of this Section 6.1(b), Customer's failure to pay the full sums provided for in this Support Addendum shall be considered a material breach of this Support

Addendum. Upon termination by AvePoint for Customer's nonpayment, all remaining payments hereunder shall become immediately due and payable by Customer;

6.2 Customer acknowledges and agrees that any termination of this Support Addendum under Section 6.1(a) shall not permit or entitle Customer to a refund of any monies paid hereunder. If Customer terminates pursuant to Section 6.1(b) for cause, then Customer shall be entitled to a refund of pre-paid fees for the remaining months in the then-current Term, up to a maximum refund of twelve (12) months fees.

7. **Negotiated Addendum.** This Support Addendum is intended to be a master addendum for Support Services. This Support Addendum is a negotiated addendum between the parties and supersedes and replaces any and all other standard terms of either party set forth in any quote, purchase order, invoice or communication and applies so long as this Support Addendum remains in effect.

IN WITNESS WHEREOF, the parties hereto have caused this Support Addendum to be executed by their respective authorized representatives.

FOR AND ON BEHALF OF
AVEPOINT PUBLIC SECTOR, INC. :

FOR AND ON BEHALF OF CUSTOMER:

(Full Legal Name of Customer)

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

**TECHNICAL ARCHITECTURE ADDENDUM
TO THE AVEPOINT MASTER SOFTWARE LICENSE
AND SUPPORT AGREEMENT**

For the purposes of calculating License quantities, Customer's SharePoint Servers shall be classified as and counted as Servers within Tier 1, Tier 2, or Tier 3 as defined below:

- (a) All "SharePoint Web Servers", meaning any Server running the Windows SharePoint Services Web Application service, shall be classified as and counted as Servers within "Tier 1", which may also be referred to as the "Web Services", "Web Server", or "Web" Tier.

"User Facing Front-end Web Servers" are defined as Servers within the Web Tier that directly processes user requests, as shown in Microsoft's SharePoint planning guidance, available from the following link:
<http://technet.microsoft.com/en-us/library/cc261834.aspx>.
- (b) All "SharePoint Application Servers", meaning any Server running a SharePoint service application, including but not limited to Excel Calculation Services, Query and Index Services, Windows SharePoint Services Search, Office SharePoint Server Search, or other SharePoint service applications, shall be classified as and counted as Servers within "Tier 2", which may also be referred to as the "Application Services", "Application Server", "Application", "Job Services", or "Job Server" Tier.
- (c) All "SQL Servers Running SharePoint", meaning any Server running the Windows SharePoint Services Database Service or that is hosting a database required for the operation of Microsoft SharePoint, plus any Servers, storage systems, or platforms storing SharePoint content or associated metadata, shall be classified as and counted as Servers within "Tier 3", which may also be referred to as the "SQL Services", "SQL", "Database", or "Storage" Tier.
- (d) For the purpose of License calculations, any Server that performs multiple functions within the SharePoint platform and that can be classified in more than one Tier, as defined above, shall be counted only once per Licensed Property and shall be classified according to the following:
 - 1) First, if meeting the criteria of the Web Tier, in addition to any other Tier or Tiers, as a Server in Tier 1.
 - 2) Second, if not meeting the criteria of the Web Tier, but meeting the criteria of both the Application Tier and the Storage Tier, as a Server in Tier 2.

- 3) In such instances where the License related to Licensed Property is based solely on the number of Servers in Tier 2, a Server that meets the criteria of the Application Tier shall be classified as and counted as a Server within Tier 2, even if such a Server also performs other functions within the SharePoint platform and can be classified in another Tier or Tiers.

- 4) In such instances where the License related to Licensed Property is based solely on the number of Servers in Tier 3, a Server that meets the criteria of the Storage Tier shall be classified as and counted as a Server within Tier 3, even if such a Server also performs other functions within the SharePoint platform and can be classified in another Tier or Tiers.