



Dell Enterprise License Agreement

1. **General.** This Enterprise License Agreement ("ELA") sets forth the legal agreement between _____ and its affiliates who are legally bound by these terms ("Customer") and Dell Products L.P. or Dell Global B.V. (Singapore Branch) on behalf of Dell Inc. and its worldwide affiliates ("Company"). Customer and Dell are each referred to individually as a "party" and collectively as the "parties." The "Software" shall mean collectively the software program described in Exhibit A, the associated media, printed materials, online or electronic documentation, and any copies thereof. Customer acknowledges and agrees that the license provided herein is being granted in consideration of the payment required under Exhibit A. Whenever the Customer is the U.S. Federal Government, or any prime contractor or subcontractor (at any tier) under any contract, grant, cooperative agreement, or other activity with the U.S. Federal Government, the terms and conditions with respect to Customer's use and disclosure of the Software and Documentation shall be set forth in an attached Exhibit B.
2. **License.** Subject to the terms, conditions and limitations of this ELA and timely payment by Customer of the amounts due under Exhibit A, Dell hereby grants Customer a limited, nonexclusive, nontransferable, non-assignable license, without rights to sublicense, to (A) install or have installed, display and use the Software (in object code only) only on as many computers, devices and/or in such configurations as Customer is expressly entitled under Exhibit A, and (B) only for such period as Customer is entitled under Exhibit A. The terms and conditions of this ELA will govern use of the Software and any upgrades, updates, patches, hotfixes and/or additional versions of the Software provided by Dell, at Dell's sole discretion, that replace and/or supplement the original Software (collectively, "Update"), unless such Update is accompanied by or references a separate license agreement, in which case the terms and conditions of that agreement will govern. If this ELA governs Customer's use of an Update, such Update shall be considered Software for purposes of this ELA. Unless earlier terminated as provided herein, the term of each individual license granted under this ELA begins on the date of execution by Customer of this ELA, and continues only for such period as indicated in Exhibit A. Each party recognizes that Dell grants no licenses except for the license expressly set forth herein.
3. **License Limitations.** Customer may not copy the Software except for a reasonable number of copies solely as needed for backup or archival purposes or as otherwise expressly permitted in Section 2 "License" above. Customer may not modify or remove any titles, trademarks or trade names, copyright notices, legends, or other proprietary notices or markings on or in the Software. The rights granted herein are limited to Dell's and its licensors' and suppliers' intellectual property rights in the Software and do not include any other third party's intellectual property rights. If the software was provided to Customer on removable media (e.g., CD, DVD, or USB drive), Customer may own the media on which the Software is recorded but Dell, Dell's licensor(s) and/or supplier(s) retain ownership of the Software itself and all related intellectual property rights. Customer is not granted any rights to any trademarks or service marks of Dell. This ELA does not apply to any third party software that is not included as part of the Software or addressed in Exhibit A. The use of any other software, including any software package or file, whether licensed to Customer by Dell or by a third party, is subject to the terms and conditions that come with or are associated with such software.
4. **Rights Reserved.** THE SOFTWARE IS LICENSED, NOT SOLD. Except for the license expressly granted in this ELA, Dell, on behalf of itself and its licensors and suppliers, retains all right, title, and interest in and to the Software and in all related content, materials, copyrights, trade secrets, patents, trademarks, derivative works and any other intellectual and industrial property and proprietary rights, including registrations, applications, renewals, and extensions of such rights (the "Works"). The rights in these Works are valid and protected in all forms, media and technologies existing now or hereinafter developed and any use other than as contemplated herein, including the reproduction, modification, distribution, transmission, adaptations, translation, display, republication or performance of the Works, except as specifically permitted herein, is strictly prohibited. Dell, on behalf of itself and its licensors and suppliers, retains all rights not expressly granted herein.
5. **Restrictions.** Except as otherwise provided herein or expressly agreed by Dell, Customer may not, and will not allow a third party to: (A) sell, lease, license, sublicense, assign, distribute or otherwise transfer or encumber in whole or in part the Software; (B) provide, make available to, or permit use of the Software in whole or in part by, any third party, including contractors, without Dell's prior written consent, unless such use by the third party is subject to the terms and conditions of this ELA and Customer is liable for any breach of this ELA by such third party; (C) copy, reproduce, republish, upload, post, transmit or distribute the Software in any way; (D) decompile, disassemble, reverse engineer, or otherwise attempt to derive source code (or underlying ideas, algorithms, structure or organization) from the Software program, in whole or in part; (E) modify or create derivative works based upon the Software; (F) use the Software on a service bureau, rental or managed services basis or permit other individuals or entities to create Internet "links" to the Software or "frame" or "mirror" the Software on any other server or wireless or Internet-based device; or (G) use the Software to create a competitive offering. Customer may not, and will not allow a third party to, use the Software program in excess of the number of licenses expressly authorized by Exhibit A. In addition, Customer may not share the results of any benchmarking activities without Dell's prior written consent.
6. **Compliance.** Customer will certify in writing, upon reasonable request by Dell, Customer's compliance with the terms of this ELA, indicating the number of Software licenses deployed at that time. Customer grants Dell or an agent selected by Dell, the right to perform an audit of Customer's compliance with this ELA during normal business hours. Customer agrees to cooperate and provide Dell with all records reasonably related to Customer's compliance with this ELA. If, as a result of the audit, a deficiency of greater than five percent (5%) is found in the licensee fees paid, then Customer shall bear the total cost of the audit, in addition to any other liabilities Customer may have.

7. **Support and Subscription Services Not Included.** Dell does not provide any maintenance or support services under this ELA. Maintenance and support services, if any, are provided under a separate agreement. Additionally, this ELA, in and of itself, does not entitle Customer to any Updates at any time in the future.
8. **Termination.** Dell may terminate this ELA immediately and without prior notice if Customer fails to comply with any term or condition of this ELA or if Customer fails to timely pay for the licenses to the Software. In addition, Dell may terminate any license associated with Software distributed for free at any time in its sole discretion. In the event of termination of this ELA, all licenses granted hereunder shall automatically terminate and Customer must immediately cease use of the Software and return or destroy all copies of the Software. The parties recognize and agree that their obligations under Sections 4, 5, 11, 12, 13, 15, 16, 18 and 19 of this ELA, as well as obligations for payment, survive the cancellation, termination, and/or expiration of this ELA and/or the license granted hereunder.
9. **Export, Import and Government Restrictions.** Customer is advised that the Software is subject to U.S. export laws as well as the laws of the country where it is delivered or used. Customer agrees to abide by these laws. Under these laws, the Software may not be sold, leased, or transferred to restricted countries (currently Cuba, Iran, North Korea, Sudan and Syria), restricted end-users, or for restricted end-uses. Customer specifically agrees that the Software will not to be used for activities related to weapons of mass destruction, including but not limited to, activities related to the design, development, production or use of nuclear materials, nuclear facilities, or nuclear weapons, missiles or support of missile projects, or chemical or biological weapons. Customer understands that certain functionality of the Software, such as encryption or authentication, may be subject to import restrictions in the event Customer transfers the Software from the country of delivery and Customer is responsible for complying with applicable restrictions.
10. **Limited Warranty.** Dell has the right to grant the licenses to the Software, and such Software will substantially conform in material respects to the functional specifications and current documentation provided by Dell with the Software. This limited warranty is not transferable and extends only for thirty (30) days from the date of delivery of the Software. This limited warranty does not cover damages, defects, malfunctions or failures caused by any unauthorized modification by Customer, or Customer's agents, of the Software; any abuse, misuse or negligent acts of Customer; modification by Customer of any interfaces or any software or hardware interfacing with the Software; or any failure by Customer to follow Dell's installation, operation or maintenance instructions. EXCEPT FOR THE PRECEDING EXPRESS LIMITED WARRANTY, DELL MAKES, AND CUSTOMER RECEIVES, NO OTHER WARRANTIES RELATED TO THE SOFTWARE WHETHER EXPRESS, IMPLIED OR STATUTORY, AND DELL SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. DELL DOES NOT WARRANT THAT THE FUNCTIONS OF THE SOFTWARE WILL MEET CUSTOMER'S REQUIREMENTS OR THAT OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE. CUSTOMER ASSUMES RESPONSIBILITY FOR SELECTING THE SOFTWARE AND

THE RESULTS ACHIEVED. CUSTOMER'S SOLE AND EXCLUSIVE REMEDY, AND DELL'S ENTIRE LIABILITY FOR BREACH OF THE WARRANTIES PROVIDED HEREIN, IS FOR DELL, AT ITS SOLE DISCRETION, TO EITHER USE COMMERCIALY REASONABLE EFFORTS TO REMEDY ANY NON-CONFORMANCE OR TO PROVIDE A REFUND OF THE LICENSE FEES PAID BY CUSTOMER TO DELL FOR THE SOFTWARE. THIS DISCLAIMER OF WARRANTY MAY NOT BE VALID IN SOME JURISDICTIONS AND CUSTOMER MAY HAVE WARRANTY RIGHTS UNDER LAW WHICH MAY NOT BE WAIVED OR DISCLAIMED -- ANY SUCH WARRANTY EXTENDS ONLY FOR THIRTY (30) DAYS FROM THE DATE OF DELIVERY OF THE SOFTWARE.

11. **Limitation of Liability.** DELL WILL NOT BE LIABLE FOR ANY INCIDENTAL, INDIRECT, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES, ARISING OUT OF OR IN CONNECTION WITH THIS ELA AND/OR THE SOFTWARE. DELL SHALL HAVE NO LIABILITY FOR THE FOLLOWING: (A) LOSS OF REVENUE, INCOME, PROFIT, OR SAVINGS, (B) LOST OR CORRUPTED DATA OR SOFTWARE, LOSS OF USE OF SYSTEM(S) OR NETWORK(S), OR THE RECOVERY OF SUCH, (C) LOSS OF BUSINESS OPPORTUNITY, (D) BUSINESS INTERRUPTION OR DOWNTIME, (E) LOSS OF GOODWILL OR REPUTATION, OR (F) SOFTWARE NOT BEING AVAILABLE FOR USE OR THE PROCUREMENT OF SUBSTITUTE SOFTWARE OR GOODS.

NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH IN THIS ELA, DELL'S TOTAL LIABILITY FOR ANY AND ALL CLAIMS ARISING OUT OF OR IN CONNECTION WITH THIS ELA AND/OR THE SOFTWARE SHALL NOT EXCEED THE TOTAL AMOUNT RECEIVED BY DELL FOR THE PARTICULAR SOFTWARE GIVING RISE TO SUCH CLAIM(S). THIS PARAGRAPH SHALL NOT LIMIT CUSTOMER'S PAYMENT OBLIGATIONS OR LIABILITY FOR MISAPPROPRIATION OR INFRINGEMENT OF DELL'S INTELLECTUAL PROPERTY. DELL SHALL NOT BE LIABLE TO CUSTOMER FOR ANY CLAIM BROUGHT MORE THAN TWO YEARS AFTER THE CAUSE OF ACTION FOR SUCH CLAIM FIRST AROSE.

The foregoing limitations, exclusions and disclaimers shall apply, regardless of whether the claim for such damages is based in contract, warranty, strict liability, negligence, tort or otherwise, for any claim. Insofar as applicable law prohibits any limitation on liability herein, the parties agree that such limitation will be automatically modified, but only to the extent so as to make the limitation compliant with applicable law. The parties agree that the limitations on liabilities set forth herein are agreed allocations of risk and such limitations will apply notwithstanding the failure of essential purpose of any limited remedy and even if a party has been advised of the possibility of any such liability.

12. **Indemnification.** Dell shall defend and indemnify Customer against any third-party claim or action that the Software (specifically excluding third-party and open source software) infringes or misappropriates that third party's patent, copyright, trade secret, or other intellectual property rights ("Indemnified Claims"). In addition, if Dell receives prompt notice of an Indemnified Claim that, in Dell's reasonable opinion, is likely to result in an adverse ruling, then Dell shall at its sole discretion, (A) obtain a right for Customer to continue using such Software; (B) modify such Software; (C) replace such Software with a non-infringing substitute; or (D) provide a reasonable depreciated or pro rata refund for the allegedly infringing

Software. Notwithstanding the foregoing, Dell shall have no obligation under this Section for Indemnified Claims resulting or arising from: (i) modifications of the Software that were not performed by or on behalf of Dell; (ii) the operation, use, or combination with a third-party product, software or service (the combination of which causes the claimed infringement) of the Software; or (iii) Dell's compliance with Customer's specifications or directions, including the incorporation of any software or other materials or processes provided by or requested by Customer (collectively, "Excluded Indemnified Claims"). Dell's duty to indemnify and defend is contingent upon: (a) Customer providing Dell with prompt written notice of the third-party claim or action, (b) Dell having the right to solely control the defense and settlement of such claim or action, and (c) Customer's cooperation with Dell in defending and resolving such claim or action. This section states Customer's exclusive remedies for any third-party intellectual property claim or action, and nothing in this ELA or elsewhere will obligate Dell to provide any greater indemnity to Customer. Customer, at Customer's expense, shall defend and indemnify Dell against any claim, action or proceeding brought against Dell which arises from or is in any manner connected with Excluded Indemnified Claims.

13. **Confidentiality.** Customer agree to: (A) refrain from using Confidential Information except as necessary to exercise the rights herein and (B) use best efforts to preserve and protect the confidentiality of the Confidential Information. "Confidential Information" means any oral, written, graphic or machine-readable information disclosed by Dell that is (i) identified as confidential; (ii) designated in writing to be confidential or proprietary; or (iii) should be reasonably understood to be confidential. Confidential Information includes the Software and its trade secrets, including but not limited to source code, the development status of the Software, the appearance, content and flow of the user interface of the Software, and the content and documentation of the Software. Confidential Information does not include information that is (a) publicly available other than through a breach of this ELA; (b) known to Customer prior to such disclosure; or (c) subsequently lawfully obtained by Customer from a third party that has no obligations of confidentiality. Customer agrees that, without Dell's prior written consent, Customer will not grant access to any Dell Confidential Information to any persons or entities except for Customer's employees and agents who have a business need to have such access and who are obligated to maintain the confidentiality thereof as set forth herein. In some, limited circumstances, Dell may need to engage a third party to fulfill its obligations to Customer under this license. By using this software Customer agrees that Dell may provide Customer's information to such third party for that purpose. Any feedback or other information that is provided to Dell relating to the Software or this ELA shall be considered Dell Confidential Information. Such feedback shall be treated by Dell on a non-confidential and unrestricted basis, and Dell shall have full rights, title and ownership of such feedback.
14. **Open Source and Third Party Software.** A portion of the Software may contain or consist of open source or third party software, which Customer may use under the terms and conditions of the specific license under which the open source or third party software is distributed. THIS OPEN SOURCE AND THIRD PARTY SOFTWARE IS

PROVIDED "AS IS" WITHOUT ANY WARRANTY, EXPRESS, IMPLIED, OR OTHERWISE, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. AS IT RELATES TO ANY AND ALL CLAIMS ARISING OUT OF OR IN CONNECTION WITH OPEN SOURCE OR THIRD PARTY SOFTWARE, DELL SHALL HAVE NO LIABILITY FOR ANY DIRECT, INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES. Under certain open source software licenses, Customer is also entitled to obtain the corresponding source files. Customer may find corresponding source files for the Software at <http://opensource.dell.com> or other locations that may be specified to Customer by Dell.

15. **Jurisdiction/Injunction.** This ELA is governed by the laws of the State of Texas, U.S.A. without regard to conflict of law principles. The United Nations Convention for the International Sale of Goods shall not apply. Customer agrees that money damages would be an inadequate remedy for Dell in the event of a breach or threatened breach by Customer of the provisions set forth in this ELA; therefore, in the event of a breach or threatened breach of any such provisions, Dell may, in addition to any other remedies afforded to it by law or equity, immediately obtain and enforce an injunction from any court of law or equity prohibiting Customer from breaching such provisions. All rights and remedies afforded Dell by law shall be cumulative and not exclusive. THE PARTIES HEREBY UNCONDITIONALLY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION ARISING DIRECTLY OR INDIRECTLY OUT OF, RELATED TO, OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OR BREACH OF THIS ELA, AND/OR THE RELATIONSHIP THAT IS BEING ESTABLISHED AMONG THEM.
16. **No Waiver.** No waiver of breach or failure to exercise any option, right, or privilege under the terms of this ELA on any occasion shall be construed to be a waiver of a subsequent breach or right to exercise any option, right, or privilege.
17. **No Assignment.** Customer may not assign or transfer Customer's interests, rights or obligations under this ELA by written agreement, merger, consolidation, operation of law or otherwise, without the prior written consent of an authorized executive officer of Dell. Any attempt to assign this ELA by Customer shall be null and void.
18. **Entire Agreement.** Unless Customer has entered into another written agreement with respect to the Software which has been signed by Customer and an authorized representative of Dell and which conflicts with the terms of this ELA, Customer agrees that this ELA supersedes all prior written or oral agreements, warranties or representations, including any and all other click-wrap, shrink-wrap or similar licenses or agreements, with respect to the Software. No amendment to or modification of this ELA, in whole or in part, will be valid or binding unless it is in writing and executed by authorized representatives of both parties. If any term of this ELA is found to be invalid or unenforceable, the remaining provisions will remain effective. Customer agrees that any principle of construction or rule of law that provides that an agreement shall be construed against the drafter shall not apply to the terms and conditions of this ELA. Customer represents that it has read this ELA, has had the opportunity to review

it with local counsel, understands it, and agrees to be bound by all terms and conditions stated herein.

19. **Notices.** Notice to Dell under this ELA must be in writing and sent to the address below or to such other address

(including facsimile or e-mail) as specified in writing, and will be effective upon receipt.

Dell Inc., Attn: Dell Legal
One Dell Way, Round Rock, Texas 78682

Exhibit A

Description of Licensed Software

1. Operating, diagnostics and other software for Dell-branded information technology products, including, but not limited to the following named Dell product lines:

- AppAssure
- Compellent
- EqualLogic
- Force 10
- KACE
- SonicWall
- Wyse

2. Use of the software is subject to the terms and conditions of the Dell Enterprise License Agreement to which this Exhibit A is attached ("ELA").

3. Purchase of the software is subject to the terms and conditions of Exhibit B of the ELA.

Exhibit B

Terms & Conditions Applicable to the Purchase or Use of Licensed Software by the U.S. Government

1. This Section applies whenever the Customer is the U.S. Federal Government, or any prime contractor or subcontractor (at any tier) under any contract, grant, cooperative agreement, or other activity with the U.S. Federal Government. In such case, the terms and conditions of this Exhibit B shall pertain to the Customer's use and disclosure of the Software and Documentation, and shall supersede any conflicting contractual terms or conditions. To the extent that it is held by a court or board of competent jurisdiction that any part of any provision of the ELA is invalid or unenforceable under applicable law, said part shall be ineffective to the extent of such invalidity or unenforceability only, without in any way affecting the remaining parts of said provision or the remaining provisions of said license agreement.
2. The software and documentation are "commercial items" as that term is defined at 48 C.F.R. 2.101; consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, all U.S. Government end users acquire the software and documentation with only those rights set forth herein. Sections 13 and 16 of this ELA shall not apply to the U.S. Federal Government but shall continue to apply to prime contractors and subcontractors of the U.S. federal government. Disputes with the U.S. Federal Government shall be subject to resolution pursuant to the Contract Disputes Act of 1978, as amended. All other provisions of this ELA remain in effect as written.
3. Purchase of Software licenses is subject to the terms and conditions of (a) U.S. General Services Administration Multiple Award Schedule 70 Contract GS-35F-4076D; or (b) other such U.S. Government Federal Acquisition Regulation Part 12 Commercial Item prime and/or subcontracts in which the Dell Enterprise License Agreement to which this Exhibit B is attached is incorporated either in its entirety or by reference, and all Delivery Orders and Task Orders issued thereunder which include the Exhibit A software.
4. Use of the software is subject to the terms and conditions of the Dell Enterprise License Agreement to which this Exhibit B is attached.
5. Changes to the Dell Enterprise License Agreement applicable to the purchase of licensed Software by the United States Government.

ELA Section

1. **General.** The definition of "Company" is Dell Products L.P. on behalf of Dell Marketing L.P. and / or Dell Federal Systems L.P.
5. **Restrictions.** In subsection (B), the phrase "and Customer is liable for any breach of this ELA by such third party" is deleted. The Government has no liability to third-parties under this ELA.
6. **Compliance.** Any auditor selected by Dell or an agent of Dell is subject to approval of the Government, which shall not be unreasonably withheld. In the event the audit finds a deficiency of greater than five percent (5%) in the licensee fees paid, then such shall be considered a change and resolved under the Changes clause of the applicable contract. And in the event such a change cannot be negotiated in a commercially reasonable time, the same shall be considered a dispute under Contract Disputes Act of 1978, as amended ("CDA").
8. **Termination.** The termination provision is deleted and replace with the following:
"This ELA and the license granted to Customer to use the Software hereunder shall be terminated (i) by Company, if such remedy is granted after conclusion of the Contract Disputes Act dispute resolution process referenced in Section 10 or if such remedy is

otherwise available to Company under United States federal law; or (ii) by Customer, at its option in accordance with FAR 52.212-4. Upon any termination, Customer shall promptly return the Software and any copies thereof in any form. Company will not have any obligation to refund any portion of any license fee upon the termination of this ELA if the End User materially breached any provision of this ELA. Sections 4, 5, 11, 12, 13, 15, 16, 18, 19 of this ELA, as well as Exhibit A payment obligations, shall survive termination, cancellation, and/or expiration of this ELA and/or the license granted hereunder."

11. Limitation of Liability. The language in this Section 11 is deleted and replaced with the following:

"IN NO EVENT SHALL COMPANY BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR SIMILAR DAMAGES OF ANY KIND ARISING UNDER OR IN ANY WAY RELATED TO THE SOFTWARE OR THIS ELA. EXCEPT AS IT RELATES TO INDEMNIFICATION FOR INFRINGEMENT REFERENCED IN SECTION 13, IN NO EVENT SHALL COMPANY'S AGGREGATE LIABILITY ARISING UNDER OR IN ANY WAY RELATED TO THE SOFTWARE OR THIS ELA EXCEED THE AGGREGATE LICENSE FEES PAID FOR THE LICENSE GRANTED HEREUNDER. THE FOREGOING LIMITATIONS SHALL APPLY REGARDLESS OF THE FORM OF ANY CLAIM HEREUNDER, WHETHER FOR BREACH OF ANY WARRANTY, FOR BREACH OR REPUDIATION OF ANY OTHER TERM OR CONDITION OF THIS AGREEMENT OR ANY RELATED WRITING, FOR NEGLIGENCE, ON THE BASIS OF STRICT LIABILITY, OR OTHERWISE. This clause shall not impair the U.S. Government's right to recover for fraud or crimes arising out of or related to Company's Multiple Award Schedules Contract under any federal fraud statute, including the False Claims Act, 31 U.S.C. §§ 3729-3733."

12. Indemnification. This section does not apply to the Government, but shall apply to prime and subcontractors to the Government. Disputes with the Government shall be subject to resolution pursuant to the CDA.

15. Jurisdiction/Injunction. This section does not apply to the Government, but shall apply to prime and subcontractors to the Government. Disputes with the Government shall be subject to resolution pursuant to the CDA.

17. No Assignment. This paragraph is deleted and number 17 is marked "Reserved."

18. Entire Agreement. The language in this Section 18 is deleted and replaced with the following:

"This ELA (a) constitutes the entire agreement between the parties with respect to the licensing of the Software and supersedes any prior negotiations, proposals, representations and agreements relating specifically thereto; (b) may only be changed by a writing signed by the parties specifically referencing this ELA; (c) shall be interpreted in accordance with the federal laws of the United States of America; and (d) is not assignable, in whole or in part, by either party. Any prohibited assignment is null and void. Failure by either party to enforce any term hereof shall not be deemed a waiver. All claims arising out of or relating to this ELA shall be resolved in accordance with the Contracts Disputes Act of 1978. In the event any provision of this EULA is declared invalid, the remainder shall continue in binding effect."