

**Carahsoft Rider to Manufacturer Commercial Supplier Agreements
(for U.S. Government End Users)
Revised 20161213**

- 1. Scope.** This Carahsoft Rider and the Manufacturer's Commercial Supplier Agreement (CSA) 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's CSA 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 CSA is inconsistent with the Federal Law (*See* FAR 12.212(a)), they shall be deemed deleted and unenforceable under any resultant orders under Carahsoft's Multiple Award Schedule 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 Government contracts as set forth in General Services Administration Order OGP 4800.2I, 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 General Services Administration Acquisition Regulation (GSAR) 552.238-81 Modifications (Federal Supply Schedule) (APR 2014) (Alternate I – APR 2014) and GSAR 552.212 -4 (f) Contract Terms and Conditions – Commercial Items, Excusable Delays (MAY 2015) (Alternate II – JUL 2009) (FAR Deviation – JUL 2015) (Tailored) regarding which of 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 CSA: (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 CSA. 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 run a self-assessment with tools provided by and at the direction of Manufacturer ("Self-Assessment") to verify Ordering Activity's compliance with this CSA.
- (e) Termination.** Clauses in the Manufacturer's CSA referencing suspension, termination or cancellation of the Manufacturer's CSA, the License, or the Customer's Account are hereby deemed to be deleted. Termination, suspension or cancellation shall be governed by the GSAR 552.212-4 and the Contract Disputes Act, 41 U.S.C. §§ 601-613, subject to the following exceptions:
- Carahsoft may request cancellation or termination of the CSA 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 and the CSA will be governed by and construed in accordance with the laws of the United States. All clauses in the Manufacturer's CSA referencing equitable remedies are deemed not applicable to the Government order and are therefore deemed to be deleted.
- (g) Force Majeure.** Subject to GSAR 552.212 -4 (f) Contract Terms and Conditions – Commercial Items, Excusable Delays (MAY 2015) (Alternate II – JUL 2009) (FAR Deviation – JUL 2015) (Tailored). Unilateral Termination by the Contractor does not apply to a Government order and all clauses in the Manufacturer's CSA referencing unilateral termination rights of the Manufacturer's CSA are hereby deemed to be deleted.
- (h) Assignment.** All clauses regarding Assignment are subject to FAR Clause 52.232-23, Assignment of Claims (MAY 2014) and FAR 42.12 Novation and Change-of-Name Agreements, and all clauses governing Assignment in the Manufacturer's CSA 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 (MAY 2014), and all clauses governing waiver of jury trial in the Manufacturer's CSA are hereby deemed to be deleted.

- (j) **Customer Indemnities.** All of the Manufacturer's CSA clauses referencing Customer Indemnities are hereby deemed to be deleted.
- (k) **Contractor Indemnities.** All of the Manufacturer's CSA 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 of the Manufacturer's CSA 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 of the Manufacturer's CSA 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 GSAR 552.212-4(k) Contract Terms and Conditions – Commercial Items, Taxes (MAY 2015) (Alternate II – JUL 2009) (FAR Deviation – JUL 2015) (Tailored) and GSAR 552.212-4 (w) (1) (x) Contract Terms and Conditions – Commercial Items, Taxes (MAY 2015) (Alternate II – JUL 2009) (FAR Deviation – JUL 2015) (Tailored).
- (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's CSA, 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's CSA and to this Rider shall be resolved in accordance with the FAR, the GSAR and the Contract Disputes Act, 41 U.S.C. §§ 7101-7109. See GSAR 552.212-4 (w) (1) (iii) Contract Terms and Conditions – Commercial Items, Law and Disputes (MAY 2015) (Alternate II – JUL 2009) (FAR Deviation – JUL 2015) (Tailored). The Ordering Activity expressly acknowledges that Carahsoft, as the vendor selling the Manufacturer's licensed software, shall have standing under the Contract Disputes Act to bring such claims that arise out of licensing terms incorporated into Multiple Award Schedule Contract GS-35F-0119Y.

(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 CSA and this Rider contain no confidential or proprietary information and acknowledges the CSA 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. The Licensee may provide information to other components of the United States Government pursuant to proper requests for such information as permitted by law, regulation or policy (e.g., disclosures to Congress, auditors, Inspectors General, etc.).

MASTER SOFTWARE LICENSE AND SUPPORT SUBSCRIPTION AGREEMENT

This **MASTER SOFTWARE LICENSE AND SUPPORT SUBSCRIPTION AGREEMENT** (“**Agreement**”) is made as of the date stated in the applicable Order Form (the “**Effective Date**”), by and between Dtex Systems, Inc., a Delaware corporation, with offices at 300 Santana Row, Suite 400, San Jose, CA 95128 (“**Dtex**”) and the Government Ordering Activity identified in the Order Form (“**Customer**”). Any capitalized term used herein shall have the meaning given it in the attached Software License and Support Terms and Conditions attached as **Exhibit A** hereto.

1. AGREEMENT SCOPE. The parties agree to the terms and conditions of this Agreement. This Agreement is a master agreement that provides for the license and supply by Dtex to Customer of Dtex software (“**Software**”) and support services for such Software (“**Support Services**”) as well as any related professional services (“**Professional Services**” which together with Support Services are, the “**Services**”), as set forth on applicable ordering documents (each, an “**Order Form**”) entered into between Customer and Dtex or between Customer and a third party authorized to resell the Software and Services (“**Authorized Reseller**”), pursuant to which Customer has purchased a subscription (“**Subscription**”) for a license to the Software and the right to receive Services. Accordingly, in addition to any Dtex Software and Services to be licensed and provided pursuant to any initial Order Form(s) entered into by the parties, the parties may subsequently enter into additional Order Forms under which Customer may expand an existing Subscription or purchase a new Subscription, under which additional Software rights may be licensed, and/or Services provided.

2. ENTIRE AGREEMENT. This Agreement, together with the terms and conditions of GSA Multiple Award Schedule 70 Contract GS-35F-0119Y, any Exhibits attached hereto, any Order Forms executed by the parties (all of which are hereby incorporated herein by this reference), along with any valid amendments hereto and any documents incorporated herein by reference, completely and exclusively state the entire agreement of the parties regarding the subject matter herein, and supersedes, and its terms govern, all prior proposals, agreements or other communications between the parties, oral or written, regarding such subject matter, and any subsequent orders for Software or Services that are placed by Customer during the Term of this Agreement. For the avoidance of doubt, this Agreement replaces, and its terms and conditions apply in lieu of, any Dtex agreement referenced on any Order Form signed by the parties. Furthermore, the parties hereby expressly acknowledge and agree that if Customer issues any purchase orders or similar documents in connection with the purchase of a Software Subscription and/or any Services, it shall do so only for its own internal, administrative purposes and not with the intent to provide any contractual terms. By entering into this Agreement, whether prior to or following receipt of Customer’s purchase order or any similar document, the parties are hereby expressly showing their intention not to be contractually bound by the contents of any such purchase order or similar document, which are hereby deemed rejected and extraneous to this Agreement, and Dtex’s performance of this Agreement shall not amount to: (i) an acceptance by conduct of any terms set out or referred to in the purchase order or similar document; (ii) an amendment of this Agreement, nor (iii) an agreement to amend this Agreement. This Agreement shall not be modified.

EXHIBIT A

SOFTWARE LICENSE AND SERVICES TERMS AND CONDITIONS

1. LICENSE GRANT AND OTHER RIGHTS.

1.1 License Grant. Subject to the terms and conditions of this Agreement and complete payment of any and all applicable fees, Dtex agrees to grant, and does hereby grant to Customer during the Subscription Term (as defined in Section 9.2 below) and for the restricted scope of this Agreement, solely for Customer's internal business operations, a limited, non-exclusive, non-transferable right and license (without the right to grant or authorize sublicenses) to: (i) install and use the object code version of the Software, subject to any quantitative limitations set forth in the applicable Order Form; (ii) use, and distribute internally a reasonable number of copies of the end user documentation, if any, provided with the Software ("**Documentation**"), provided that Customer must include on such copies all Dtex trademarks, trade names, logos and notices present on the Documentation as originally provided to Customer by Dtex; (iii) permit third party contractors performing services on Customer's behalf, to use the Software and Documentation as set forth in (i) and (ii) above, provided that such use must be solely for Customer's benefit, and Customer shall be responsible for all acts and omissions of such contractors in connection with their use of the Software.

1.2 Reservation of Rights; Restrictions. As between Dtex and Customer, Dtex owns all right title and interest in and to the Software and any derivative works thereof, and except as expressly set forth in Section 1.1 above, no other license to the Software is granted to Customer by implication, estoppel or otherwise. Customer agrees not to: (i) prepare derivative works from, modify, copy or use the Software in any manner except as expressly permitted in this Agreement or applicable law; (ii) reverse engineer or decompile, decrypt, disassemble or otherwise reduce any Software or any portion thereof to human-readable form, except and only to the extent any such restriction is prohibited by applicable law, (iii) transfer, sell, rent, lease, distribute, sublicense, loan or otherwise transfer the Software in whole or in part to any third party; (iv) use the Software for providing time-sharing services, any software-as-a-service offering (sometime referred to as a "**SaaS**" offering), service bureau services or as part of an application services provider or other service offering; (v) alter or remove any proprietary notices in the Software; or (vi) make available to any third party any analysis of the results of operation of the Software, including benchmarking results, without the prior written consent of Dtex. The Software may contain or be provided with open source libraries, components, utilities and other open source software (collectively, "**Open Source Software**"), which Open Source Software may have applicable license terms as identified on a website designated by Dtex or otherwise provided with the Software or Documentation. Notwithstanding anything to the contrary herein, use of the Open Source Software shall be subject to the license terms and conditions applicable to such Open Source Software, to the extent required by the applicable licensor

(which terms shall not restrict the license rights granted to Customer hereunder, but may contain additional rights).

1.3 Delivery; License Key and Acceptance. Dtex delivers all Software electronically. For Dtex's accounting purposes, specific Software shall be deemed "delivered," and the Subscription Term of such Software shall commence, on the date that Dtex provides Customer with a license key enabling use of the Software. Acceptance of the Software will be in accordance with General Services Administration Acquisition Regulation (GSAR) 552.212-4(a) Inspection/Acceptance.

1.4 Government Rights. The Software is "Commercial Computer Software," as that term is defined in 48 C.F.R. 2.101, and as the term is used in 48 C.F.R. Part 12, and is a Commercial Item comprised of "commercial computer software" and "commercial computer software documentation". If acquired by or on behalf of a civilian agency, the U.S. Government acquires this commercial computer software and/or commercial computer software documentation subject to the terms of this Agreement, as specified in 48 C.F.R. 12.212 (Computer Software) and 12.211 (Technical Data) of the Federal Acquisition Regulation ("FAR") and its successors. If acquired by or on behalf of any agency within the Department of Defense ("DOD"), the U.S. Government acquires this commercial computer software and/or commercial computer software documentation subject to the terms of this Agreement as specified in 48 C.F.R. 227.7202-3 and 48 C.F.R. 227.7202-4 of the DOD FAR Supplement ("DFARS") and its successors, and consistent with 48 C.F.R. 227.7202. This U.S. Government Rights clause, consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202 is in lieu of, and supersedes, any other FAR, DFARS, or other clause or provision that addresses Government rights in computer software, computer software documentation or technical data related to the Software under this Agreement and in any Subcontract under which this commercial computer software and commercial computer software documentation is acquired or licensed.

1.5 Export Control. Customer acknowledges that the goods, software and technology acquired from Dtex are subject to U.S. export control laws and regulations, including but not limited to the Export Administration Regulations ("EAR") (15 C.F.R. Parts 730-774) and the sanctions regulations of the U.S. Department of the Treasury, Office of Foreign Assets Control. Customer confirms that it will not export, re-export, otherwise transfer any Dtex goods, software or technology or disclose any Dtex software or technology to any person, entity or destination contrary to such laws or regulations. Customer acknowledges that remote access to the Software may in certain circumstances be considered a re-export of Software, and accordingly, may not be granted in contravention of U.S. export control laws and regulations.

1.6 Customer Data Ownership. Customer retains all right title and interest in and to the customer data and information collected by Dtex in connection with the provision by Dtex of

Services, and Customer's use of the Software (collectively, "**Customer Data**"), including all intellectual property rights therein and thereto, and Dtex acquires no rights with respect to the Customer Data, by implication or otherwise, except for those expressly granted in this Agreement.

1.7 Customer Data License. Customer hereby grants to Dtex a non-exclusive, worldwide, perpetual, royalty-free, right and license (including the right to authorize and grant sublicenses) during the Subscription Term to use Customer Data for the purposes of providing analytical updates and Services to Customer.

1.8 Statistical Data Use. Customer agrees that Dtex may use Customer Data (i) to aggregate information in anonymized form for the purpose of preparing benchmarking reports and improving its Software and Services and (ii) to utilize data capture, syndication and analysis tools and other similar tools to extract, compile, synthesize and analyze any non-personally identifiable data or information ("**Statistical Data**"). Dtex may collect and use Statistical Data for any lawful business purpose, provided that the Statistical Data is used only in aggregated form, without identifying Customer or the specific source of the Statistical Data.

2. SUPPORT SERVICES.

2.1 Provision. During the Subscription Term, Dtex will provide Customer with Support Services for the Software in accordance with Dtex's Customer Support Services policy set forth at www.dtexsystems.com/support-policy/ and attached as Exhibit B, as the same may be reasonably modified by Dtex from time to time ("**Support Services Policy**").

2.2 Customer Support Services Policy. Dtex reserves the right to reasonably modify the Support Services Policy during the Subscription Term. However, Dtex agrees not to materially diminish the level of Support Services during the Subscription Term. The effective date of each version of the Support Services Policy will be stated therein, and Dtex will retain an archived copy of each version that will be made available to Customer upon request. The Support Services Policy is hereby incorporated into these terms and conditions by this reference. At the request of Customer, a current copy of the Support Service Policy may be attached hereto as Exhibit B.

2.3 Restriction. Support Services are provided to Customer solely for Customer's internal use and Customer may not use the Support Services to supply any consulting, support or training services to any third party. Customer agrees and acknowledges that Customer is not obtaining any intellectual property right in or to the Support Services or any Dtex materials other than the rights of use specifically granted in this Agreement.

3. PROFESSIONAL SERVICES.

3.1 Scope and Provision by Dtex. Professional Services may include training, education, systems tuning, creation of non-standard reporting, implementation and other consulting activities. For the avoidance of doubt, custom development, if any, would be performed pursuant to a separate agreement. Dtex will provide Professional Services in accordance with the

terms and for the fees agreed upon by the parties as set forth in an applicable Order Form or Professional Services Schedule.

3.2 Customer Obligations. If the Services are to be provided on Customer's premises (i) Customer shall provide safe and adequate space, power, network connections and other resources as required by Dtex, (ii) Customer will provide subject matter experts and other personnel as required, and (iii) Dtex shall adhere to Customer's established written guidelines, which shall be provided to Dtex, concerning on-site visits by contractors and the use of Customer's computer equipment. Dtex or Authorized Reseller shall invoice Customer for allowable and reasonable travel, lodging and meal expenses for Services performed outside of Dtex's site which Dtex is required to incur in providing the Services.

3.3 License to Customer Materials. Customer acknowledges that in order to perform the Professional Services, Dtex may be required to have access to certain Customer software or other material of Customer or Customer's suppliers ("**Customer Materials**"). Customer grants to Dtex the right to use the Customer Materials solely as required for Dtex's performance of the Professional Services. Customer agrees to indemnify, defend and hold harmless Dtex from and against any and all damages, loss, demands, fees, expenses, fines, penalties and costs (including without limitation reasonable attorneys' fees, costs and disbursements) incurred by Dtex and arising from any claims, suits, actions or proceedings brought against Dtex by any third party that alleges that all or any part of the Customer Materials infringe any patent, copyright, trademark or other intellectual property right of a third party or misappropriate any third party trade secret.

3.4 Project Administration. The contact for Customer shall provide Dtex all assistance and guidance necessary for the performance of the Services.

3.5 Invoices. Dtex shall provide Customer with invoices detailing the consulting hours, fees and expense reimbursements owing to Dtex, and shall itemize and provide receipts for expenses over twenty five (\$25.00) dollars upon request.

3.6 Additional Professional Services. Additional Professional Services may be purchased by entering into additional Professional Services Addenda in substantially the form set forth as **Exhibit B**.

4. PAYMENT, TAXES AND AUDIT RIGHTS.

4.1 Invoicing and Payment. Customer agrees to pay Dtex, or, if applicable, the Authorized Reseller, the fees for the Subscription and/or any Services stated on the applicable Order Form. Invoices for Software Subscriptions will be issued upon execution of an Order Form. Invoices for Professional Services will be issued every two weeks, in arrears. Unless otherwise specified on an Order Form, all invoices will be paid in U.S dollars and are due within thirty (30) days of receipt. Payments will be made without right of set-off or chargeback. If Customer does not pay the invoices when due, Dtex may charge interest at the rate of one percent (1%) per month on the unpaid balance, or the highest rate permitted under applicable law, whichever is less.

4.2 Taxes. In addition, Customer will pay Dtex, or, if applicable, the Authorized Reseller, all sales, use, and excise taxes that are levied upon the delivery or use of the Software and/or Support Services; unless Customer provides Dtex, or, if applicable the Authorized Reseller, a valid state sales/use/excise tax exemption certificate or Direct Pay Permit. Customer will pay all import, export, value added or other tax or duty, and all government permit, withholding or license fees, and custom or similar fees, that are levied upon the delivery or use of the Software and/or Support Services.

4.3 Audit Rights. At all times during the Term, and for at least three (3) years after any termination of this Agreement, Customer will maintain complete and accurate records of all equipment on which it uses the Software and ensure that the Software is used in accordance with the terms and conditions of this Agreement. Dtex will have the right, during normal business hours and upon at least ten (10) business days prior notice, to have a reputable independent accounting firm selected by Dtex, which is subject to reasonable confidentiality obligations, audit Customer's records relating to Customer's use of the Software in order to verify that Customer has complied with the terms of this Agreement. The audit will be conducted at Dtex's expense, unless the audit reveals that Customer has underpaid Fees owed to Dtex by five percent (5%) or more, in which case Dtex or Authorized Reseller will invoice Customer for all reasonable and allowable costs and expenses incurred by Dtex in connection with such audit. Such audits will be conducted no more than once in any period of six (6) consecutive months.

5. WARRANTIES

5.1 Software Performance. During the applicable Subscription Term (the "**Software Warranty Period**"), Dtex warrants that the Software, when used as permitted by Dtex and in accordance with the instructions in the Documentation, including use on Certified Operating Systems identified therein, will operate substantially as described in the Documentation.

5.2 Exclusions. The warranty set forth in Section 5.1 does not apply if the applicable Software or any portion thereof: (i) has been altered, except by or on behalf of Dtex; (ii) has not been used, installed, operated, repaired, or maintained in accordance with this Agreement and/or the Documentation; (iii) has been subjected to abnormal physical or electrical stress, misuse, negligence, or accident; or (iv) is used on equipment, products, or systems not meeting specifications identified by Dtex in the Documentation. Additionally, the warranties set forth herein only apply when notice of a warranty claim is provided to Dtex within the applicable warranty period specified herein and do not apply to any bug, defect or error caused by or attributable to software or hardware not supplied by Dtex. Dtex is not responsible for problems caused by changes in, or modifications to, the operating characteristics of any computer hardware or operating system for which the Software is procured, nor is Dtex responsible for problems with the Software that occur as a result of third party software or hardware that is incompatible with the operating system for which Customer procured the Software.

5.3 Exclusive Remedy. In the event of a breach of the warranty set forth in Section 5.1 above, Dtex will, as its sole obligation and entire liability and the exclusive remedy of Customer, use commercially reasonable efforts to correct any reproducible or reasonably documented errors in the Software reported to Dtex by Customer in writing during the Software Warranty Period.

5.4 Services Warranty. Dtex warrants that it will perform the Services in a professional, workmanlike manner, consistent with generally accepted industry practice. In the event of a breach of the foregoing warranty, Dtex's sole obligation, and Customer's exclusive remedy, shall be for Dtex to re-perform the applicable Services.

5.5 Disclaimers. THE EXPRESS WARRANTIES IN SECTIONS 5.1 AND 5.4 ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, REGARDING THE SOFTWARE, SERVICES AND SUPPORT, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS. DTEX DOES NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE SOFTWARE WILL MEET THE REQUIREMENTS OF CUSTOMER OR AUTHORIZED USERS OR THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE. CUSTOMER ACKNOWLEDGES THAT IT HAS RELIED ON NO WARRANTIES OTHER THAN THE EXPRESS WARRANTIES PROVIDED HEREIN AND THAT NO WARRANTIES ARE MADE HEREIN BY ANY OF DTEX'S SUPPLIERS.

6. INFRINGEMENT CLAIMS.

6.1 Obligation. Dtex will, at its expense (i) defend, or at its option settle, a claim brought against Customer by an unaffiliated third party alleging that Customer's use of the Software during the Subscription Term infringes such party's patent registered in the United States, or any copyright or trademark of such party registered in the jurisdiction of Customer's use of the Software, or makes intentional, unlawful use of such third party's trade secret (each an "**Infringement Claim**") and (ii) pay, hold harmless and indemnify Customer against any (1) amount agreed to be paid as settlement of such Infringement Claim consented to by Dtex or (2) damages finally awarded to such third party by a court of competent jurisdiction as the result of such Infringement Claim.

6.2 Certain Remedies. If an Infringement Claim occurs, or in Dtex's opinion is reasonably likely to occur, Dtex, at its expense and at its sole discretion, may, in addition to its obligations under Section 6.1, either: (i) procure the right to allow Customer to continue to use the applicable Software; or (ii) modify or replace the applicable Software or infringing portions thereof to become non-infringing; or (iii) if neither (i) nor (ii) is commercially practicable, terminate Customer's Subscription to the applicable Software and refund to Customer any pre-paid, unused fees paid by Customer to Dtex for such Subscription.

6.3 Exclusions. Dtex will have no obligation to Customer under this Section 3 to the extent any Infringement Claim or resulting award is based upon or results from: (i) Customer's use of any version of the Software not obtained directly from Dtex; (ii) the failure of Customer to use an update of the Software made available by Dtex that would have avoided the Infringement Claim; (iii) a modification of the Software that is not performed by Dtex; (iv) the combination, operation, or use of the Software with any other products, services or equipment not provided by Dtex; (v) specifications Customer provides to Dtex for any services or (vi) any third party software. Customer will reimburse Dtex for any expenses, costs and/or damages that result from any of the actions or situations described in 6.3(i) – (v) above.

6.4 Conditions. The obligations of Dtex in Section 6 are conditioned upon Customer (i) notifying Dtex promptly of any threatened or pending Infringement Claim, provided that failure to provide such notice will only relieve Dtex of its obligations under this Section 6 to the extent its ability to defend or settle an applicable Infringement Claim is prejudiced by such failure to provide notice (ii) tendering to Dtex sole control over the defense and settlement of the Infringement Claim and (iii) giving Dtex, at Dtex's expense, reasonable assistance and information requested by Dtex in connection with the defense or settlement of the Infringement Claim. Customer's counsel will have the right to participate in the defense of the Infringement Claim, at Customer's own expense. Customer will not, without the prior written consent of Dtex, make any admission or prejudicial statement, settle, compromise or consent to the entry of any judgment with respect to any pending or threatened Infringement Claim.

6.5 Exclusive Remedy. THE FOREGOING PROVISIONS OF THIS SECTION 6 STATE THE ENTIRE LIABILITY AND OBLIGATIONS OF DTEX, AND THE EXCLUSIVE REMEDY OF CUSTOMER, WITH RESPECT TO ANY ACTUAL OR ALLEGED INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADE SECRET, TRADEMARK OR OTHER INTELLECTUAL PROPERTY RIGHT BY THE SOFTWARE AND/OR THE SERVICES.

7. LIMITATION OF LIABILITY.

7.1 Excluded Damages. IN NO EVENT SHALL CUSTOMER OR DTEX BE LIABLE FOR ANY LOSS OF PROFITS, LOSS OF USE, BUSINESS INTERRUPTION, LOSS OF DATA, COST OF SUBSTITUTE GOODS OR SERVICES, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND IN CONNECTION WITH OR ARISING OUT OF THE PERFORMANCE OF OR FAILURE TO PERFORM THIS AGREEMENT, WHETHER ALLEGED AS A BREACH OF CONTRACT OR TORTIOUS CONDUCT, INCLUDING NEGLIGENCE, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

7.2 Damages Cap. EXCEPT WITH RESPECT TO A BREACH OF ITS OBLIGATIONS UNDER SECTION 5, IN NO EVENT SHALL DTEX'S TOTAL, CUMULATIVE LIABILITY UNDER THIS AGREEMENT EXCEED THE

AMOUNT PAID BY CUSTOMER TO DTEX OR AN AUTHORIZED RESELLER UNDER THIS AGREEMENT IN THE TWELVE (12) MONTHS IMMEDIATELY PRIOR TO THE EVENT GIVING RISE TO LIABILITY.

7.3 Basis of the Bargain. THE ALLOCATIONS OF LIABILITY IN THIS SECTION 7 REPRESENT THE AGREED AND BARGAINED FOR UNDERSTANDING OF THE PARTIES, AND THE COMPENSATION OF DTEX FOR THE SERVICES PROVIDED HEREUNDER REFLECTS SUCH ALLOCATIONS. THE FOREGOING LIMITATIONS, EXCLUSIONS AND DISCLAIMERS WILL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EVEN IF ANY REMEDY FAILS IN ITS ESSENTIAL PURPOSE.

8. CONFIDENTIALITY.

8.1 Confidential Information. Each party (the "Disclosing Party") may from time to time disclose to the other party (the "Receiving Party") certain information regarding the business of the Disclosing Party and its suppliers, including business or financial affairs, such as financial results, business methods, pricing, competitor and product information, marketing, technical, employee, planning and all other information designated as confidential or proprietary. ("Confidential Information"). Any information that the Receiving Party knew or should have known, under the circumstances, was considered confidential or proprietary by the Disclosing Party will be considered Confidential Information of the Disclosing Party. The Software, including without limitation any routines, subroutines, directories, tools, programs, or any other technology included therein, shall be Dtex's Confidential Information.

8.2 Protection of Confidential Information. The Receiving Party will only use Confidential Information of the Disclosing Party for the purpose of obtaining the authorized benefits of the Software or providing Support or professional services, as applicable, and will disclose the Confidential Information of the Disclosing Party only to the employees or contractors of the Receiving Party who have a need to know such Confidential Information for such purposes and who are under a duty of confidentiality no less restrictive than the Receiving Party's duty hereunder. The Receiving Party will protect the Disclosing Party's Confidential Information from unauthorized use, access, or disclosure in the same manner as the Receiving Party protects its own confidential or proprietary information of a similar nature and with no less than reasonable care.

8.3 Exceptions. The Receiving Party's obligations under Section 8.2 with respect to any Confidential Information of the Disclosing Party will terminate if such information: (a) was already known without restriction to the Receiving Party at the time of disclosure by the Disclosing Party; (b) was disclosed to the Receiving Party by a third party who had the right to make such disclosure without any confidentiality restrictions; (c) is, or through no fault of the Receiving Party has become, generally available to the public; or (d) was independently developed by the Receiving Party without access to, or use of, the Disclosing Party's Confidential Information. In addition,

the Receiving Party will be allowed to disclose Confidential Information of the Disclosing Party to the extent that such disclosure is (i) approved in writing by the Disclosing Party, (ii) necessary for the Receiving Party to enforce its rights under the Agreement in connection with a legal proceeding; or (iii) required by law or by the order of a court of similar judicial or administrative body, provided that the Receiving Party notifies the Disclosing Party of such required disclosure promptly and in writing and cooperates with the Disclosing Party, at the Disclosing Party's request and expense, in any lawful action to contest or limit the scope of such required disclosure.

8.4 Return of Confidential Information. Upon the expiration or termination of the Agreement, the Receiving Party will return to the Disclosing Party or destroy all Confidential Information of the Disclosing Party in the Receiving Party's possession or control and permanently erase all electronic copies of such Confidential Information promptly upon the written request of the Disclosing Party. The Receiving Party will certify in writing signed by an officer of the Receiving Party that it has fully complied with its obligations under this Section 8.4.

8.5 Confidentiality of Agreement. Neither party will disclose any terms of the Agreement to anyone other than its attorneys, accountants, and other appropriate personnel except (a) as required by law, (b) pursuant to a mutually agreeable press release, or (c) in connection with a contemplated transfer of such party's business permitted by Section 10.1 (provided that any third party to whom the terms of the Agreement are to be disclosed signs a confidentiality agreement reasonably satisfactory to the other party).

9. TERM AND TERMINATION

9.1 Term. The initial term of this Agreement shall commence upon the Effective Date of this Agreement and continue for a period of one (1) year thereafter, unless sooner terminated in accordance with the terms of this Agreement. Thereafter, this Agreement shall automatically renew for successive one (1) year periods, unless Customer notifies Dtex in writing of its intent not to renew at least ninety (90) days prior to the expiration of the then-current term. Notwithstanding the foregoing, if this Agreement expires while there is an active Subscription Term, the Agreement will continue to govern any such Subscription until it is terminated or expires.

9.2 Subscription Term. The initial term of Customer's Subscription shall be as set forth in the applicable Order Form. Thereafter, the term of Customer's Subscription shall automatically renew for additional one (1) year periods unless either party gives written notice to the other of its intention not to renew the Subscription at least thirty (30) days prior to the expiration of the then-current term. The initial term of a Subscription, plus any subsequent renewal term a Customer's Subscription, shall be the "Subscription Term".

9.3 Termination. Either party may terminate the Agreement if the other party breaches any material provision of the Agreement and does not cure such breach within thirty (30)

days after receiving written notice in accordance with Section 10.7 thereof.

9.4 Effects of Termination. Upon termination of the Agreement for any reason: (a) any amounts owed to Dtex under this Agreement before such termination or expiration will be immediately due and payable; (b) all license rights granted in the Agreement will immediately cease to exist; and (c) Customer must promptly discontinue all use of the Software, erase all copies of the Software from Customer's computers, and return to Dtex or destroy all copies of the Software and Documentation on tangible media in Customer's possession.

9.5 Survival. Upon the expiration or termination of this Agreement, (i) Customer shall immediately cease use of the Software and have no further rights to receive the Support Services; and (ii) all payment obligations as well as Sections 1.2, 1.5, 1.6, 4.3, 5, 6, 7, 8, 9.4, 9.5 and 10 of this Agreement will survive.

10. GENERAL

10.1 Assignment. Neither party may assign this Agreement, in whole or in part, without the prior written consent of the other party, except that either party may assign this Agreement in its entirety to a successor in interest in connection with a merger, acquisition or sale of all or substantially all of a party's assets. Any assignment in violation of this Section 9.1 shall be void, *ab initio*, and of no effect. Subject to the foregoing, this Agreement is binding upon, inures to the benefit of, and is enforceable by, the parties and their respective permitted successors and assigns.

10.2 Force Majeure. Except with respect to payment obligations, neither party will be liable for, or be considered to be in breach of, or in default under, this Agreement, as a result of any cause or condition beyond such party's reasonable control.

10.3 Governing Law, Jurisdiction and Venue.

(a) Customers in California. This Agreement will be governed by Federal law.

(b) Customers Outside of California. This Agreement will be governed by Federal law.

(c) All Customers. This Agreement shall not be governed by the 1980 UN Convention on Contracts for the International Sale of Goods. The parties hereby irrevocably waive any and all claims and defenses either might otherwise have in any action or proceeding in any of the applicable courts set forth in (a) or (b) above, based upon any alleged lack of personal jurisdiction, improper venue, *forum non conveniens*, or any similar claim or defense.

(d) Equitable Relief. A breach or threatened breach, by either party of Section 8 may cause irreparable harm for which the non-breaching party shall be entitled to seek injunctive relief without being required to post a bond.

10.4 Language. This Agreement is in the English language only, which language shall be controlling in all respects, and all versions hereof in any other language shall not be binding

to the parties hereto. All communications and notices to be made or given pursuant to this Agreement shall be in the English language.

10.5 Notices. Any notice or other communication under this Agreement given by either party to the other will be deemed to be properly given if given in writing and delivered in person or facsimile, if acknowledged received by return facsimile or followed within one day by a delivered or mailed copy of such notice, or if mailed, properly addressed and stamped with the required postage, to the intended recipient at its address specified below the signatures on this Agreement. Either party may from time to time change its address for notices by giving the other party notice of the change in accordance with this Section 10.7.

10.6 Non-waiver. Any failure of either party to insist upon or enforce performance by the other party of any of the provisions of this Agreement or to exercise any rights or remedies under this Agreement will not be interpreted or construed as a waiver or relinquishment of such party's right to assert or rely upon such provision, right or remedy in that or any other instance.

10.7 Severability. If any provision of this Agreement is held to be invalid or unenforceable, the remaining portions will remain in full force and effect and such provision will be enforced to the maximum extent possible so as to give effect the intent of the parties and will be reformed to the extent necessary to make such provision valid and enforceable.

Exhibit B

DTEX CUSTOMER SUPPORT SERVICES

This document describes the support services Dtex provides to customers that are licensing Dtex software and services under a Master Software License and Support Subscription Agreement (the “**Agreement**”). All capitalized terms not defined in this document have the meaning given in the Agreement.

HELPDESK

The Dtex Help Desk will provide Support Services for the Software for U.S.-based customers during Dtex’s normal support business hours of 8:00 a.m.- 6:00 p.m. (Pacific Time), Monday through Friday, excluding company holidays (“**Normal Business Hours**”). Support Services are provided in English. Support Services include assistance in identifying and diagnosing problems with the Software (such as error messages, bug fixes, basic “how-to” functionality questions, installations, Software updates and upgrades). Customers may initiate a Support Services request by sending an email to the Help Desk at support@dtexsystems.com, or for customers with portal access, by creating a new ticket at dtexsystems.freshdesk.com. Any other method of requesting support (e.g., direct calls or emails to a Dtex representative) may result in delays in addressing the support issue. All Help Desk tickets will, as necessary, be prioritized according to the severity of the support request, as determined by Dtex in its discretion. Support Services do not include training, setup assistance, diagnosis of customer interface problems or integration or programming services for customized Software, consulting, equipment operation/problem support, or data correction. Dtex may provide support for the excluded services at Dtex’s then-current rates at its option. Help Desk hours, time zones, and policies are subject to change at the option of Dtex.

SUPPORTED ENVIRONMENTS

The Software functionality is dependent on certain third party software (e.g., database software and operating systems). Dtex Support Services agents can provide general troubleshooting support to the extent such third party software products relate to the Dtex solution, but Dtex support should not be considered an alternative to vendor support for general issues relating to third party software. Dtex certifies the Software to run on certain versions of third party supporting software. Dtex may at its discretion decline to provide Support Services for customers that choose to run versions of supporting software packages for which the Software is not certified.

SENDING SENSITIVE DATA

Dtex will safeguard data you send to our Help Desk in the same manner in which we protect our own similar confidential information. However, Dtex cannot guarantee that your data will be handled in compliance with all regulatory standards applicable to such data. Accordingly, please do not send to Dtex any data subject to government regulations that prescribe special handling requirements. If your data file contains such regulated information, please contact us before sending it so we may discuss masking, obfuscation, or other available methods to convert your data set to a format that Dtex can manage.

CUSTOMER ASSISTANCE

Customers must promptly advise Dtex of any error or defect with Software for which Dtex provides Support Services under this document and must provide reasonable assistance and cooperation to allow Dtex to define and resolve such error or defect. This customer assistance and cooperation includes providing (i) a detailed problem description; (ii) reasonable efforts to reproduce the problem; and (iii) reasonable access to authorized customer support contacts.

REMOTE DIAGNOSTICS

Customers must allow Dtex reasonable remote access through protected firewall environments to the customers’ computer systems and Software in order to enable Dtex to provide the requested Support Services and to verify license status.

SOFTWARE ERRORS

Dtex will use reasonable efforts to provide corrections to any errors in the Software in the form of patches, fixes, workarounds, updates and upgrades or other corrections within a commercially reasonable time depending on the severity of the error as determined by Dtex, and provided the customer is entitled to Support Services. Correction of errors in customized Software will be billed at Dtex's then-current service rates. Customers must not attempt to correct errors in the Software except under the direction of Dtex.

SOFTWARE UPDATES AND UPGRADES

Dtex will provide updates and/or upgrades to the Software that are commercially released during the term of the Agreement for no additional license fees; however, any installation, education, training or other services provided by Dtex may be subject to additional charges. Software updates and upgrades do not include any new Software modules that Dtex may from time to time introduce and market generally as a distinct licensed product (as may be indicated by Dtex's designation of a new version number), which Dtex may make available to customers at an additional cost under a separate Order Form. Software updates and upgrades may not include or accommodate customized Software. Dtex will provide Support Services for the current Software release and one prior version of the Software ("**Supported Versions**"). Dtex is not obligated to provide Support Services for Software versions that are not Supported Versions or for problems or errors caused by or related to customized Software, or the addition of, or integration with, incompatible equipment/software; provided, however, that Dtex may, at its option, provide such support on a chargeable basis. New Software updates and upgrades are subject to the terms and conditions of the Support Services document. If a customer's Support Services are terminated for any reason, the customer will not be entitled to any further Software updates or upgrades until Support Services are reinstated and the customer pays any applicable reinstatement fee. Nothing in this Support Services document obligates Dtex to develop or create Software updates or upgrades.

EXCLUSIONS

Dtex has no support or maintenance obligations with respect to (i) any Software that has been subject to misuse, failure to comply with applicable operating instructions, improper installation, repair alteration or damage, whether by the customer, by users or by third parties for which the customer is responsible, or (ii) any Software with respect to which the customer has failed to install the most recent Software release that, in the opinion of Dtex, would address the subject of the maintenance support issues raised by the customer.

SEVERITY LEVEL CLASSIFICATIONS, TARGETED RESPONSE AND RESOLUTION TIMES

Dtex will assign Severity levels and targeted response and resolution times in accordance with their current Support Services policies, together with a customer escalation process to facilitate unresolved customer issues. The current Dtex Support Services severity level classifications and response and resolution policies are indicated in Tables 1 and 2 below. Dtex reserves the right to review and change these policies from time to time.

Table 1. Severity Levels

Severity I	Severity II	Severity III	Severity IV
A condition whereby the Software is substantially inoperable.	A condition whereby a substantial Software feature noted in the Documentation is not working, or a substantial Software-related performance problem exists which causes the Software performance to deviate from the Documentation.	A condition whereby the Software malfunctions in deviation from the Documentation in such case and to such degree that user operation is not substantially impacted.	A condition whereby a cosmetic Software or Documentation error exists and user operation is not substantially impacted.

Table 2. Targeted Response/Resolution Times

Severity Level	Targeted Response Time	Targeted Resolution Time
Severity I	Within 2 hours during Normal Business Hours	Within 5 business days
Severity II	Within 4 hours during Normal Business Hours	Within 10 business days
Severity III	Within 1 business day	Within 20 business days
Severity IV	Within 5 business days	Within 30 business days