



ATTACHMENT III

**TERMS AND CONDITIONS APPLICABLE TO TERM SOFTWARE LICENSES (SPECIAL ITEM NUMBER 132-32), PERPETUAL SOFTWARE LICENSES (SPECIAL ITEM NUMBER 132-33) AND MAINTENANCE AS A SERVICE (SPECIAL ITEM NUMBER 132-34) OF GENERAL PURPOSE COMMERCIAL INFORMATION TECHNOLOGY SOFTWARE
For
Service-now.com Products**

1. INSPECTION/ACCEPTANCE

Triad Technology Partners (the "Contractor") shall only tender for acceptance those items that conform to the requirements of this contract. Items delivered shall be considered accepted upon delivery. The ordering activity reserves the right to inspect or test any software that has been delivered. The ordering activity may require repair or replacement of nonconforming software at no increase in contract price ("Post Acceptance Rights"). The ordering activity must exercise its Post Acceptance Rights (1) within the warranty period; and (2) before any substantial change occurs in the condition of the software, unless the change is due to the defect in the software.

2. GUARANTEE/WARRANTY

a. The Contractor's standard commercial guarantee/warranty as stated in the contract's commercial pricelist will apply to this contract.

b. Limitation of Liability.
Except as otherwise provided by an express or implied warranty, neither the Contractor nor Service-now.com will be liable to the ordering activity for loss of profits, loss of use, business interruption, loss of data, or indirect, special, punitive, incidental, or consequential damages resulting from any defect or deficiencies in accepted items. Except for the indemnification obligations contained herein or a legal finding of gross negligence or willful misconduct resulting in personal injury, neither Contractor's liability nor Service-now.com's liability shall exceed the license fee paid by ordering activity under the particular order.

3. TECHNICAL SERVICES

Subject to payment of Software Subscription, Service-now.com, without additional charge to the ordering activity, shall provide a hot line technical support number as indicated in the price list for the purpose of providing user assistance and guidance in the use of the software.

4. SOFTWARE MAINTENANCE

a. Software Maintenance Is not offered as a standalone item.



5. PERIODS OF TERM LICENSES (SIN 132-32)

- a. The Contractor shall honor orders for periods for the duration of the contract period or a lesser period of time.
- b. Term licenses and/or maintenance may be discontinued by the ordering activity on ninety (90) calendar days written notice to the Contractor.
- c. Annual Funding. When annually appropriated funds are cited on an order for term licenses and/or maintenance, the period of the term licenses and/or maintenance shall automatically expire on September 30 of the contract period, or at the end of the contract period, whichever occurs first. Renewal of the term licenses and/or maintenance orders citing the new appropriation shall be required, if the term licenses and/or maintenance is to be continued during any remainder of the contract period.
- d. Cross-Year Funding Within Contract Period. Where an ordering activity's specific appropriation authority provides for funds in excess of a 12 month (fiscal year) period, the ordering activity may place an order under this schedule contract for a period up to the expiration of the contract period, notwithstanding the intervening fiscal years.
- e. Ordering activities should notify the Contractor in writing thirty (30) calendar days prior to the expiration of an order, if the term licenses and/or maintenance is to be terminated at that time. Orders for the continuation of term licenses and/or maintenance will be required if the term licenses and/or maintenance is to be continued during the subsequent period.

6. CONVERSION FROM TERM LICENSE TO PERPETUAL LICENSE

- a. Term License conversion is not offered.

7. TERM LICENSE CESSATION

- a. Term License cessation is not offered.

8. UTILIZATION LIMITATIONS - (SIN 132-32, SIN 132-33, AND SIN 132-34)

- a. **Software acquisition is limited to commercial computer software defined in FAR Part 2.101.** The Software is "commercial computer software" as that term is described in 48 C.F.R. 252.227-7014(a)(1). 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 Contractor's commercial license and maintenance agreement as specified in 48 C.F.R. 12.212 (Computer Software) and 48 C.F.R. 12.211 (Technical Data) of the Federal Acquisition Regulations ("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 Contractor's commercial license and maintenance agreement as specified in 48 C.F.R. 227.7202-3 of the DOD FAR Supplement ("DFAR") and its successors.
- b. When acquired by the ordering activity, commercial computer software and related documentation so legend shall be subject to the following unless otherwise restricted by the terms of or referenced in 8a above:



(1) Title to and ownership of the software and documentation shall remain with the Service-now.com and manufacturer, unless otherwise specified.

(2) Software licenses are licensed by ordering activity. An ordering activity is defined as an independent ordering activity. The software may be used by any subdivision of the ordering activity (service, bureau, division, command, etc.) that has access to the site the software is placed at, even if the subdivision did not participate in the acquisition of the software. Further, the software may be used on a sharing basis where multiple agencies have joint projects that can be satisfied by the use of the software placed at one ordering activity's site. This would allow other agencies access to one ordering activity's database. For ordering activity public domain databases, user agencies and third parties may use the computer program to enter, retrieve, analyze and present data. The user ordering activity will take appropriate action by instruction, agreement, or otherwise, to protect Service-now.com's proprietary property with any third parties that are permitted access to the computer programs and documentation in connection with the user ordering activity's permitted use of the computer programs and documentation. For purposes of this section, all such permitted third parties shall be deemed agents of the user ordering activity.

(3) Except as is provided in paragraph 8.b(1) and 8.b(2) above, the ordering activity shall not provide or otherwise make available the software or documentation, or any portion thereof, in any form, to any third party without the prior written approval of the Contractor. Third parties do not include prime Contractors, subcontractors and agents of the ordering activity who have the ordering activity's permission to use the licensed software and documentation at the facility, and who have agreed to use the licensed software and documentation only in accordance with these restrictions. This provision does not limit the right of the ordering activity to use software, documentation, or information therein, which the ordering activity may already have or obtains without restrictions.

(4) The ordering activity shall have the right to use the computer software and documentation with the computer for which it is acquired at any other facility to which that computer may be transferred, or in cases of Disaster Recovery, the ordering activity has the right to transfer the software to another site if the ordering activity site for which it is acquired is deemed to be unsafe for ordering activity personnel; to use the computer software and documentation with a backup computer when the primary computer is inoperative; to copy computer programs for safekeeping (archives) or backup purposes; to transfer a copy of the software to another site for purposes of benchmarking new hardware and/or software; and to modify the software and documentation or combine it with other software, provided that the unmodified portions shall remain subject to these restrictions.

(5) "Commercial Computer Software" may be marked with the Contractor's standard commercial restricted rights legend, but the schedule contract and schedule pricelist, including this clause, "Utilization Limitations" are the only governing terms and conditions, and shall take precedence and supersede any different or additional terms and conditions included in the standard commercial legend.

Service-now.com's subscription license agreement terms and conditions are specified in Exhibit A of this price list.

9. SOFTWARE CONVERSIONS - (SIN 132-32 AND SIN 132-33)

Full monetary credit will be allowed to the ordering activity when conversion from one version of the software to another is made as the result of a change in operating system, or from one computer system to another. Under a perpetual license (132-33), the purchase price of the new software shall be reduced by the amount that was paid to purchase the earlier version.



10. DESCRIPTIONS AND EQUIPMENT COMPATIBILITY

The Contractor shall include, in the schedule pricelist, a complete description of each software product and a list of equipment on which the software can be used. Also, included shall be a brief, introductory explanation of the modules and documentation which are offered.

11. RIGHT-TO-COPY PRICING

Right to copy licenses are not offered.

TRIAD TECHNOLOGY PARTNERS
GSA CONTRACT NUMBER: GS-35F-0298W
Attachment III
Exhibit A

On Demand Software
Subscription License Agreement

This On Demand Subscription License Agreement (“**Agreement**”) is entered into between Service-now.com (“**Service-now.com**”) a California corporation having its principal place of business at 120 S. Sierra Ave, Solana Beach, California 92075 and [Customer], (“**Customer**”), a [State] corporation having its principal place of business at [Address] and is effective as of [Date] (“**Effective Date**”).

WHEREAS, Customer wishes to license the Internet-based Service-now.com Applications from Service-now.com listed on the Order Form, Attachment A; and

WHEREAS, Customer wishes to engage Service-now.com to provide all necessary and appropriate infrastructure for the operation, management and maintenance of the Service-now.com Applications (“**Hosting Services**”); and

WHEREAS, Service-now.com wishes to provide the aforementioned Service-now.com Applications and Hosting Services to Customer; and

It is hereby acknowledged that both parties agree as follows:

1. Definitions

“**Anniversary End Date**” shall mean the final date of the term of this Agreement and end of the availability of the System to the Customer and the end of the License Term.

“**Anniversary Start Date**” shall mean the date in which fees begin accruing for use of the System by the Customer and the beginning of the License Term.

“**Applications**” shall mean the Service-now.com application modules, generally referred to as the *Service-now.com Enterprise, Professional, Asset Management* or *Custom* editions in marketing and sales literature.

“**Confidential Information**” means any information whether oral, or written, of a private, secret, proprietary or confidential nature, concerning either party or its business operations, including without limitation: (a) business plans, marketing plans, financial data, employee data, and technical information, (b) the Service-now.com System and technology (c) Customer Data and (d) the terms of this Agreement including Customer specific license pricing.

“**Customer Data**” shall mean all information submitted to and managed by, the System.

“**Defect**” means an (i) Application source code bug; (ii) Deliverable error; or (ii) failure or malfunction in the Hosting Services provided by Service-now.com that produces an incorrect or unexpected result, or causes the System to operate in unintended ways.

“**Deliverable(s)**” shall mean the work product(s) generated as a result of a Statement of Work.

“**Discovery**” shall mean the Service-now.com discovery technology generally referred to as *Service-now.com Discovery* in marketing and sales literature.

“Discovered” shall mean the information collected from the applications and servers probed by the System.

“End User” shall mean any User of the System with no defined Role. End Users do not require a paid License and shall be able to:

- Create a task
- Check on the status of a task they have created
- Shop a Service Catalog
- View knowledge articles, reports and other general published information

“License” shall mean (i) authorized access to the Applications by a User and (ii) Servers Discovered by the Discovery technology. All Process Users shall have an assigned Role, and all Process Users shall require a License. The Process User License is a named or fixed License, assigned to a specific individual and may be periodically re-assigned by the Customer, but not shared by multiple individuals at any one time. The Server License is a named or fixed License, assigned to a uniquely Discovered Server.

“License Term” shall mean the period of time for which Customer will have access to the System as listed on the Order Form, Attachment A.

“Order Form” shall mean the ordering documents representing the initial and subsequent licensing of the System as to the number of allowed Process Users, Application access, and License Term of the Agreement.

“Planned Maintenance Downtime” shall mean the time for which the System is unavailable to the Customer for Service-now.com to perform maintenance for security and system integrity purposes and provide System upgrades.

“Process User” shall mean any User of the System with an assigned Role. The Process User shall have full access to the System and capable of performing, but not limited to, the following tasks within the System:

- Open, update, assign, categorize or close a task such as an incident, change, release or problem
- Create, assign or approve an approval request
- Actively manage inventory items
- Actively manage contracts and software licenses
- Build or manage service catalog items
- Build or manage knowledge articles and news
- Create or modify a report
- Maintain, monitor, customize and manage the System and access to the System

“Role” shall mean a specific level of access or functionality within the System, technically defined by the Customer.

“Server” shall mean any non-virtual machine whose operating system is one of the following: Linux, Unix or any Windows version intended for Servers.

“Service-now.com Technology” means any methodologies, technology and software (source and object format) that is supplied by Service-now.com or one of its permitted subcontractors in performance of the Services and incorporated into the Deliverables that was developed or created by, or licensed to Service-now.com or such subcontractor and all derivative works, extensions or improvements of Service-now.com Technology conceived or developed under this Agreement (unless otherwise agreed by the parties), to the extent that such derivatives, extensions or improvements do not contain Customer's Confidential Information.

“Services” shall mean the professional, technical, project management or other services required by each Statement of Work.

“Statement of Work” or **“SOW”** means the document specifying, without limitation, the scope, objective and time frame of the Deliverables and Services that Service-now.com will perform for Customer.

“**System**” shall mean the internet-based, Service-now.com Applications and Discovery technology including the operating system and database.

“**User**” shall mean any Customer employee, consultant, contractor, service provider or agent who is authorized by the Customer’s system administrator to access and use the System with a unique logon ID and password

2. System

2.1 System Availability: The System shall be available 99.97% of the time per month via a secure password protected site(s) hosted by Service-now.com on the World Wide Web except for: (i) Planned Maintenance Downtime not to exceed two (2) hours per month for which the Customer shall have at least five (5) days advanced notice and will be planned for Customer non-core business hours as much as practicable; (ii) downtime caused by circumstances beyond Service-now.com’s control including acts of God, acts of government, flood, fire, earthquakes, acts of terror, war, third party strikes and other labor problems, computer and telecommunications failures and delays not within Service-now.com’s control, and network intrusions or denial of service attacks, but only to the extent the unavailability was the result of Service-now.com’s failure to take reasonable and commercial care to mitigate or prevent such an attack or intrusion.

In the event of a failure of Service-now.com to maintain the availability of the System as defined in this section, Customer shall be entitled to a credit of service equal to the number of minutes the System was unavailable as a credit on their next invoice or extension of the Agreement.

2.2 Service Credits: Customer must (i) request all service credits in writing to Service-now.com within thirty (30) days of the availability failure; (ii) identify the relevant incident number or date and time relating to the failure; and (iii) indicate their preference of a credit on their next invoice or an extension of the Agreement. Service-now.com will issue a credit memo within thirty (30) days of Customer’s written service credit request.

2.3 Use Limits: Customer shall use the System solely for its internal business process as contemplated by this Agreement and shall not: (i) license, sub-license, sell, re-sell, rent lease, transfer, assign, distribute time share or otherwise commercially exploit or make the System available to any third party, other than as contemplated by this Agreement; (ii) intentionally utilize the System to violate the law or rights of any person or entity, including sending spam, unlawful or tortious material; (iii) intentionally send or store software viruses, worms Trojan horses or other harmful computer code, files, scripts, agents or programs; (iv) intentionally interfere with or disrupt the integrity of the System or the data contained therein; or, (v) intentionally attempt to gain unauthorized access to the System or its related systems or networks.

2.4 Restrictions: Customer shall not (i) modify, copy or create derivative works based on the System or Service-now.com Technology; (ii) create Internet "links" to or reproduce any content forming part of the System, other than for its own internal business purposes; or (iii) disassemble, reverse engineer, or decompile the System or Service-now.com Technology or part thereof, or access it in order to copy any ideas, features, content, functions or graphics of the System or Service-now.com Technology. Customer acknowledges that except for the limited right to use the System or Service-now.com Technology granted herein, no other right title or interest in the intellectual property rights or technology of Service-now.com is granted and all such licenses and rights are hereby expressly reserved.

2.5 Customer Support: Service-now.com shall provide general customer support and technical guidance as part of this Agreement. Prioritized means of customer support shall be:

- a) Online documentation found at <https://wiki.service-now.com/>
- b) Submission of incidents and service requests online at the Service-now.com Customer Support Portal <https://hi.service-now.com/>
- c) Telephone support at +1 858-345-1444:
 - in the case of P1 – Critical Outages: twenty-four (24) hours a day, three hundred and sixty-five (365) days a year (24 x 365)
 - in all other cases Monday through Friday inclusive with the exception of US Federal holidays.

2.6 Service Level Agreement / Response Times: Service-now.com shall provide support response to Defects as set forth below. Service-now.com shall use all reasonable efforts to resolve Defects according to the Target Resolution Time set forth below, however, Customer acknowledges that such metrics are only targets and cannot be guaranteed.

INCIDENT SEVERITY LEVEL	RESPONSE TIME	TARGET RESOLUTION TIME
P1 – Critical Outage	Thirty (30) minutes	One (1) hour
P2 – High Priority	Two (2) Business Day hours	Eight (8) Business Day hours
P3 – Medium Priority	Eight (8) Business Day hours	Within three (3) Business days
P4 – Low Priority	Within three (3) Business days	Within two (2) weeks

P1 – Critical Outage Incident: A P1 incident is applicable when the issue impacts more than 20% of Users in the production instance, and the situation is an emergency for the Customer, and any one or more of the following is the case: 1. Inability for all Users to connect to the production instance. 2. A critical function within the Application ceases to operate.

P2 – High Priority Incident: A P2 incident is applicable when the issue impacts or affects a function within the production instance and in which the Application affected is mission critical, and any one or more of the following is the case: 1. Severe impact to a critical function that materially impacts Customer’s ability to conduct routine business or to meet customer’s own service levels. 2. A subset of Users is negatively impacted causing an extreme degradation in productivity.

P3 – Medium Priority Incident: A P3 incident is applicable when the issue affects any Customer business process or function that does not qualify as a Critical Outage or High Priority Incident.

P4 – Low Priority Incident: A P4 incident is a minor issue that does not adversely impact any process or function that may be seen more as an inconvenience that requires a minor workaround to restore functionality.

2.7 Supported Versions: Service-now.com will provide full customer support to meet the Service Levels stated in 2.6 for the current and prior generally available releases and interim releases between the two. Service-now.com will provide limited customer support and may not be able to provide code fixes or rework for releases older than the prior generally available release.

3. Data Protection

3.1 Protection of Confidential Information: Each party agrees to hold the other party’s Confidential Information in the strictest confidence in accordance with this clause and any separate non-disclosure agreement signed between the parties. Both parties shall preserve the confidentiality of such Confidential Information with at least the same degree of care that it protects its own most confidential business information. Without limiting the foregoing, neither party shall sell, transfer, publish, disclose, display or otherwise make available to any third party, the other party’s Confidential Information without the prior written consent of the other party. Customer shall not disclose the terms and conditions of this Agreement, including the commercial structure, related pricing and payment terms to any third party or otherwise disinterested third parties such as consultants and industry or financial analysts.

Each party may only disclose the Confidential Information of the other party to employees or subcontractors with a need to know. Confidential Information will not include information that: (i) was rightfully in the public domain prior to receiving such information, or (ii) becomes publicly available without breach of this Agreement, or (iii) becomes known to the receiving party after rightful disclosure from a third party not under an obligation of

confidentiality; or (iv) was disclosed to the minimum extent necessary to comply with a lawful court order or government regulation, provided that in the case of (iv) each party shall provide the other parties with advance written notice thereof, and reasonably cooperate with the other parties to seek confidential or other protective treatment of such information.

Each party's confidentiality obligations shall remain in effect with respect to the Confidential Information of the other party after the cessation or termination of this Agreement for a period of one (1) year.

3.2 Security of Customer Data: As between Service-now.com and Customer, all Customer Data is owned exclusively by Customer. Customer Data shall be considered Confidential Information subject to the terms of this Agreement. Service-now.com may access Customer's Process User accounts, including Customer Data, solely to respond to System or technical problems or at Customer's request, and for the purposes of hosting such Customer Data in connection with the provision of the System to Customer and Customer's authorized Users. Service-now.com shall use industry standard security measures, including standard encryption protocols, to protect and guard the availability and security of all Customer Data and shall be strictly prohibited from using the Customer Data in any fashion other than that defined above.

3.3 Customer Data Backup: Service-now.com shall back up all Customer Data nightly from the Customer production server to a storage device at Service-now.com's production datacenter for data recovery purposes. Additionally, Service-now.com shall back up all Customer Data to a storage server at a separate datacenter for disaster recovery purposes. Customer Data shall be stored for seven (7) days at the production facility and at the disaster recovery facility for thirty (30) days.

3.4 Intellectual Property Rights: Service-now.com acknowledges and agrees that Customer may develop its own best practices and intellectual property using the Applications which may include, but shall not be limited to, scripts, forms, applications, modules or other system elements ("Customer Work Products") to support Customer's business operations as contemplated by this Agreement. All rights of patent, copyright, trademark, trade secret and other proprietary rights to such Customer Work Products will be the sole and exclusive property of Customer (excluding the System or Service-now.com's Technology) upon its inception, conception, creation, fixture, development or reduction to practice. To the extent the System or any Service-now.com Technology is used or embodied in the Customer Work Products, Service-now.com shall not be deemed to have assigned its intellectual property rights in the System or such Service-now.com Technology to Customer. Customer Work Product shall not include and the assignment of obligations in this section shall not apply to any Deliverables created on behalf of the Customer by Service-now.com. Further, Service-now.com will at all times have and retain sole and exclusive ownership of and all right, title, and interest in and to the System, Service-now.com Technology and the Documentation, and all Intellectual Property Rights therein.

3.5 Export Control: Customer acknowledges that the System is subject to the export and re-export control laws and regulations of the United States of America, which prohibit export, or diversion of certain products and technologies to certain countries. Customer shall in all respects comply with all applicable United States export control laws and regulations. Customer shall not distribute or supply or allow access to the System to any person or entity if there is reason to believe that such person or entity intends to export or re-export or otherwise to take the System or to use the System outside of the United States in violation of applicable export control laws and regulations.

4. Subscription Licenses and Fees

4.1 License Grant: Subject to the terms and conditions of this Agreement, Service-now.com grants Customer a worldwide, non-exclusive, non-transferable (except in connection with a permitted assignment of this Agreement), non-sublicenseable right to access and use the System in accordance with the terms of this Agreement, solely in connection with the operation of the business of Customer and not for the purpose of licensing the System to others.

4.2 Application License Requirements: Customer shall limit the number of Process Users accessing the System to the number of Process Users licensed under this, and any subsequent license transactions, for the

full License Term listed on the Order Form, Attachment A. Service-now.com will perform Process User license compliance checks no more than quarterly and Customer may be subject to additional Subscription License Fees should the number of Process Users accessing the System exceed the number of Process Users licensed.

4.3 Discovery License Requirements: Customer shall limit the number of Servers Discovered through the use of the Service-now.com Discovery technology to the number of Servers licensed under this and subsequent license transactions, for the full License Term listed on the Order Form, Attachment A. Customer may be subject to additional Subscription License Fees, should Customer exceed the number of Servers Discovered and managed within the Service-now.com configuration management database, or other inventory repository, in excess of the number of Servers licensed under this Agreement.

4.4 Invoicing and Payment: Payment for the Subscription License Fee shall be due and payable as set forth on the Order Form upon executing this Agreement. Subscription License Fees for the System shall be invoiced in advance and in accordance with the terms set forth on the Order Form. All fees are quoted and invoiced in US dollars.

4.5 Tax: All payments required by this Agreement are exclusive of federal, state, local and foreign taxes, duties, tariffs, levies and similar assessments and Customer agrees to bear and be responsible for the payment of all such applicable charges imposed on the use by Customer of the System, Service-now.com Technology, Documentation or any Service-now.com service, excluding taxes based upon Service-now.com's domestic and foreign net income. If Customer is a tax-exempt entity, Customer shall provide a certificate of exemption upon execution of this Agreement and Service-now.com will not charge Customer any taxes from which it is exempt. If Customer is required to withhold any foreign withholding taxes from amounts payable to Service-now.com, under this Agreement, Customer shall advise Service-now.com of such requirement at the time of signing this Agreement, shall timely remit such foreign withholding taxes to the appropriate taxing authority, and shall deliver to Service-now.com proof of each such remittance (in a form acceptable to the U.S. Internal Revenue Service so that Service-now.com can claim applicable U.S. federal tax credits) within sixty (60) days of such remittance.

4.6 Suspension of System Access: Service-now.com reserves the right to suspend access to Customer with an account more than thirty (30) days past due, without liability to the Customer, until all accounts are paid in full. A one percent (1%) per month interest fee will be charged on all past due invoices.

5. Consulting Services

5.1 General: The parties may, from time to time, enter into mutually agreed upon Statement(s) of Work. Each Statement of Work shall set forth the specific Services and Deliverables that Service-now.com will provide to the Customer. Each SOW shall only become effective upon execution by both parties' authorized representatives and upon such execution shall be attached to this Agreement as an Exhibit and incorporated herein by this reference. Service-now.com agrees to perform the Services and provide the Deliverables pursuant to any SOW in accordance with the terms of such SOW and this Agreement.

5.2 Service-now.com Performance: Service-now.com and Customer shall ensure that a sufficient number of personnel of suitable experience, training and skills are assigned in accordance with each SOW. Service-now.com shall be solely responsible for all payments to and claims by its personnel. Subject to compliance with Service-now.com's obligations hereunder, Service-now.com shall retain the sole control and discretion to determine the methods by which Service-now.com performs the Services; provided, however, that Service-now.com may subcontract or otherwise delegate its obligations under any SOW to a third party with Customer's prior written consent, not to be unreasonably withheld.

5.3 Subcontractors: Subcontractors approved by the Customer hereunder, if any, shall be subject to any and all terms applicable to Service-now.com regarding or relating to the Services and Deliverables under this Agreement and any applicable SOW; provided, however, that Service-now.com shall at all times remain responsible for its obligations under this Agreement and for any subcontractor's performance of any of the Services.

5.4 Changes in Services: Service-now.com shall adjust the Services for any SOW upon Customer's request; provided, however that if any such requested adjustment represents a material increase or decrease in the scope, nature or type of the Services, the parties shall, in good faith, first mutually agree on a revised SOW description in writing.

5.5 Reporting and Review of Services: During the course of any SOW, Service-now.com shall, within five (5) business days of the Customer's request, provide a report on Service-now.com's performance of the Services for that SOW. In addition, a Service-now.com SOW engagement manager shall meet with the Customer, at no cost to the Customer, at any reasonable time upon the Customer's request during the course of any SOW to discuss and evaluate Service-now.com's performance of the Services.

5.6 Deliverables: For any Deliverable under a SOW, Service-now.com shall create such Deliverable so that it materially conforms to the specifications for such Deliverable as set out in the SOW and is free from material errors or other defects. If the Customer rejects any Deliverable for failing to comply with the specifications or material error, the Customer will provide reasons for its rejection, and Service-now.com will promptly modify such Deliverable to remedy the deficiencies identified by the Customer. Service-now.com will at all times have and retain sole and exclusive ownership of and all right, title and interest in and to any Deliverable (excluding any interest in Customer Work Product and Customer Data).

6. Hosting Services

Service-now.com agrees that it shall perform the Hosting Services in a manner consistent with the following requirements:

- (a) provide a hypertext link from the Customer site or sites on the World Wide Web to a site on the World Wide Web that is hosted by Service-now.com and seamlessly integrated into and framed by Customer World Wide Web site or sites;
- (b) host all Customer Data and maintain and implement procedures to segregate Customer Data from Service-now.com's data and data belonging to Service-now.com's other customers.
- (c) establish and maintain appropriate environmental, safety and facility procedures, data security procedures and other safeguards against the destruction, corruption, loss or alteration of the Hosting Services and any Customer Data, and to prevent unauthorized access, alteration or interference by third parties of the same.
- (d) utilize industry best practices and technology (including appropriate firewall protection, intrusion prevention tools, and intrusion detection tools) to protect, safeguard, and secure the System and Customer Data against unauthorized access, use, and disclosure. Service-now.com shall constantly monitor for any attempted unauthorized access to, or use or disclosure of, any of such materials and shall immediately take all necessary and appropriate action in the event any such attempt is discovered, promptly notifying Customer of any material or significant breach of security with respect to any such materials.
- (e) when software vulnerabilities are revealed and addressed by a vendor patch, Service-now.com will obtain the patch from the applicable vendor and categorizes the urgency of application as either "critical" or "non-critical" in nature. The determination of the critical versus non-critical nature of patches is solely at the reasonable discretion of Service-now.com. Service-now.com will apply all critical security patches, hot fixes, or service packs as they are tested and determined safe for installation to Service-now.com's customer base.

7. Warranties, Infringement and Indemnification

7.1 Warranties: Each party represents and warrants to the other that it has the legal power to enter into this Agreement. Service-now.com further represents and warrants to Customer that (i) it will provide the System in a manner consistent with general industry standards and (ii) the System will not infringe or otherwise violate any intellectual property or proprietary rights of any third party; and, no third party has asserted, is asserting or, to

Service-now.com's knowledge, has threatened or has or will have any reasonable basis to assert a claim of any of the foregoing.

7.2 Infringement: In addition to its obligations set forth above, if the System becomes the subject of a claim of infringement, Service-now.com shall use its best efforts to obtain such licenses, or make such replacements or modifications, as are necessary to permit Customer to continue use of the System without infringement and in compliance with this Agreement. If, despite use of their best efforts, Service-now.com is unable to achieve either of the foregoing within sixty (60) days (or such longer period as Customer may determine in good faith) after the holding of infringement or the entry of the injunction, as applicable, Service-now.com will refund to Customer the unused portion of any license fees for the System or parts of the System for which the use is legally prohibited.

7.3 Infringement Indemnification: Service-now.com shall: (i) defend Customer, its officers, directors and employees against any third party suit, claim, action or demand (a "**Claim**") alleging that the System infringes any valid and issued patent, copyright, or trademark of a third party; and (ii) indemnify and hold Customer harmless from any final award of damages or settlement amount, (including reasonable attorney fees, except as expressly set forth below), arising in connection with any such Claim. No indemnity with respect to any other product is provided by Service-now.com to Customer hereunder.

7.4 Limitations: Service-now.com shall have no obligation under this section for any Claim which results from or arises in connection with: (i) any use of the System in combination with third party software or third party hardware or other technology not provided by Service-now.com to the extent such infringement would not have occurred but for such combination; (ii) any use of the System which exceeds the scope of the license granted to Customer; or (iii) use of the System not in compliance with applicable laws. Service-now.com shall have no liability under this Section for increased damages for intentional or willful infringement by Customer (or any attorneys fees associated with such intentional or willful infringement) if the basis for the increased damages award, as determined by the court, is the result of the conduct, acts or omissions of Customer.

7.5 Disclaimer of Warranty. EXCEPT AS PROVIDED IN THIS SECTION 7, SERVICE-NOW.COM MAKES NO OTHER WARRANTIES, EXPRESS, STATUTORY OR IMPLIED, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH REGARD TO ANY PRODUCT, SERVICE OR RELATED MATERIALS PROVIDED UNDER THIS AGREEMENT.

8. Limitation of Liability

8.1 Limitation of Liability: EXCEPT FOR A PARTY'S LIABILITY UNDER SECTION 3.1, 3.2, 3.4 and 7, IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY EXCEED THE ANNUAL AMOUNT ACTUALLY PAID BY AND DUE FROM CUSTOMER HEREUNDER.

8.2 Exclusion of Consequential and Related Damages: EXCEPT FOR A PARTY'S LIABILITY UNDER SECTION 3.1, 3.2, 3.4 and 7, IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS, LOSS OF USE, COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SYSTEMS, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES HOWEVER CAUSED AND, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

9. Insurance

Service-now.com shall maintain, through the term of this Agreement, at its own expense, the appropriate levels of insurance coverage for all services being provided and comply with all insurance requirements. Such insurance shall be written with reputable and financially responsible insurance carriers. Certificates (and any other appropriate documentation) evidencing such policies shall be furnished to Customer, upon request.

10. Term and Termination

10.1 Term of Agreement: This Agreement commences on the Effective Date and continues until the Anniversary End Date defined on the original or subsequent Order Form(s).

10.2 Termination for Cause: Either party may terminate this Agreement for cause with thirty (30) days written notice to the other party: (i) for material breach of this Agreement, granted the breached party provides notice of the breach in its intent to terminate, and the breach remains uncured for that thirty (30) day period; (ii) either party becomes the subject of a petition in bankruptcy or any proceeding related to its insolvency, receivership, liquidation which is not dismissed within sixty (60) days of its commencement or an assignment for the benefit of creditors and (a) results in Service-now.com's inability to provide access to or support the System, or (b) results in the Customer's failure to meet its financial obligations defined in this Agreement.

10.3 Effect of Termination: At termination of this Agreement, Service-now.com shall retain all Customer Data for a minimum of forty-five (45) days. Customer shall have forty-five (45) days to request a copy of their data and if requested, Service-now.com shall provide a copy of that data in a mutually agreed upon, commercially standard format. After such forty-five (45) day period, Service-now.com shall have no obligation to maintain or provide any Customer Data and shall thereafter, unless legally prohibited, retain the right to delete all Customer Data in its systems or otherwise in its possession or under its control. Termination shall not relieve Customer of the obligation to pay any fees accrued or payable to Service-now.com prior to the effective date of termination. If Customer terminates this Agreement for cause per Section 10.2, Customer shall be entitled to a refund of the pro-rated, pre-paid license fees paid to Service-now.com for which services have not been delivered.

11.0 General Provisions

11.1 Governing Law: This Agreement shall be governed exclusively by, and construed exclusively in accordance with, the laws of the State of California, without regard to its conflicts of laws provisions. The state and federal courts located in San Diego, California shall have exclusive jurisdiction to adjudicate any dispute arising out of or relating to this Agreement. Each party hereby consents to the jurisdiction of such courts and waives any right it may otherwise have to challenge the appropriateness of such forums.

11.2 Entire Agreement: This Agreement, together with the Exhibits and Attachments hereto, constitutes the entire agreement between the parties regarding the subject matter of this Agreement, and supersedes all prior or contemporaneous oral or written agreements, representations and negotiations. Any modification of this Agreement must be in writing and signed by an authorized representative of Service-now.com and Customer.

11.3 Agreement Survivability: In the event that any given section of this Agreement is found by a competent court to be un-enforceable, all unaffected sections of this Agreement shall remain in effect.

**TRIAD TECHNOLOGY PARTNERS
GSA CONTRACT NUMBER: GS-35F-0298W
Attachment III
Exhibit A**

**On Demand Software
Subscription License Agreement – On Premise**

This On Demand Subscription License Agreement (“**Agreement**”) is entered into between Service-now.com (“**Service-now.com**”) a California corporation having its principal place of business at 120 S. Sierra Ave, Solana Beach, California 92075 and [Customer], (“**Customer**”), a [State] corporation having its principal place of business at [Address] and is effective as of [Date] (“**Effective Date**”).

WHEREAS, Customer wishes to license the Internet-based Service-now.com Applications from Service-now.com as listed on the Order Form, Attachment A; and

It is hereby acknowledged that both parties agree as follows:

1. Definitions

“**Anniversary End Date**” shall mean the final date of the term of this Agreement and end of the availability of the System to the Customer and the end of the License Term.

“**Anniversary Start Date**” shall mean the date in which fees begin accruing for use of the System by the Customer and the beginning of the License Term.

“**Applications**” shall mean the Service-now.com application modules, generally referred to as the *Service-now.com Enterprise, Professional, Asset Management* or *Custom* editions in marketing and sales literature.

“**Confidential Information**” means any information whether oral, or written, of a private, secret, proprietary or confidential nature, concerning either party or its business operations, including without limitation: (a) business plans, marketing plans, financial data, employee data, and technical information, (b) the Service-now.com System and technology (c) Customer Data and (d) the terms of this Agreement including Customer specific license pricing.

“**Customer Data**” shall mean all information submitted to and managed by, the System.

“**Customization Request**” shall mean any request submitted to the Service-now.com development staff that the development staff deems to require custom configuration to the System, and, the development staff agrees to perform on behalf of that customer. Generally, a Customization Request is unique to the requesting customer and may be subject to additional fees.

“**Defect**” means an (i) Application source code bug; (ii) Deliverable error; or (ii) failure or malfunction in the Hosting Services provided by Service-now.com that produces an incorrect or unexpected result, or causes the System to operate in unintended ways.

“**Deliverable(s)**” shall mean the work product(s) generated as a result of a Statement of Work.

“**Discovery**” shall mean the Service-now.com discovery technology generally referred to as *Service-now.com Discovery* in marketing and sales literature.

“**Discovered**” shall mean the information collected from the applications and servers probed by the System.

“Effective Date” shall mean the date of commencement of all terms and conditions defined in this Agreement as well as the general availability of the System.

“End User” shall mean any User of the System with no defined role. End Users do not require a paid License and shall be able to:

- Create a task
- Check on the status of a task they have created
- Shop a Service Catalog
- View knowledge articles, reports and other general information published by a Process User

“License” shall mean (i) authorized access to the Applications by a User and (ii) Servers Discovered by the Discovery Technology. All Process Users shall have an assigned Role, and all Process Users shall require a License. The Process User License is a named or fixed License, assigned to a specific individual and may be periodically re-assigned by the Customer, but not shared by multiple individuals at any one time. The Server License is a named or fixed License, assigned to a uniquely Discovered Server.

“License Term” shall mean the period of time for which Customer will have access to the System as noted on the Order Form.

“Order Form” shall mean the ordering documents representing the initial and subsequent licensing of the System as to the number of allowed Process Users, application access, and License Term of the Agreement.

“Planned Maintenance Downtime” shall mean the time for which the System is unavailable to the Customer for Service-now.com to perform maintenance for security and system integrity purposes and provide System upgrades.

“Process User” shall mean any User of the System with an assigned Role. The Process User shall have full access to the System and capable of performing, but not limited to, the following tasks within the System:

- Open, update, assign, categorize or close a task such as an incident, change, release or problem
- Create, assign or approve an approval request
- Actively manage inventory items
- Actively manage contracts and software licenses
- Build or manage service catalog items
- Build or manage knowledge articles and news
- Create or modify a report
- Maintain, monitor, customize and manage the System and access to the System

“Role” shall mean a specific level of access or functionality within the System, technically defined by the Customer.

“Server” shall mean any non-virtual machine whose operating system is one of the following: Linux, Unix or any Windows version intended for Servers.

“Service-now.com Technology” means any methodologies, technology and software (source and object format) that is supplied by Service-now.com or one of its permitted subcontractors in performance of the Services and incorporated into the Deliverables that was developed or created by, or licensed to Service-now.com or such subcontractor and all derivative works, extensions or improvements of Service-now.com Technology conceived or developed under this Agreement (unless otherwise agreed by the parties), to the extent that such derivatives, extensions or improvements do not contain Customer’s Confidential Information.

“Services” shall mean the professional, technical, project management or other services required by each Statement of Work.

“Statement of Work” or “SOW” means the document specifying, without limitation, the scope, objective and time frame of the Deliverables and Services that Service-now.com will perform for Customer.

“System” shall mean the Service-now.com Applications and Discovery technology including the operating system and database.

“User” shall mean any Customer employee, consultant, contractor, service provider or agent who is authorized by the Customer’s system administrator to access and use the System with a unique logon ID and password

2. System

2.1 Use Limits: Customer shall use the System solely for its internal business process as contemplated by this Agreement and shall not: (i) license, sub-license, sell, re-sell, rent lease, transfer, assign, distribute time share or otherwise commercially exploit or make the System available to any third party, other than as contemplated by this Agreement; (ii) intentionally utilize the System to violate the law or rights of any person or entity, including sending spam, unlawful or tortious material; (iii) intentionally send or store software viruses, worms Trojan horses or other harmful computer code, files, scripts, agents or programs; (iv) intentionally interfere with or disrupt the integrity of the System or the data contained therein; or, (v) intentionally attempt to gain unauthorized access to the System or its related systems or networks.

2.2 On Premise Deployment: Service-now.com shall provide on-premise deployment of the System at the data center identified by Customer. All hardware will be provided by Customer at Customer’s expense. Customer must identify a dedicated server for deployment and allow the Service-now.com software to be downloaded from Service-now.com file repository. The software download and installation will be preformed by Service-now.com personnel. Customer to use a MySQL database dedicated to the Service-now.com Application which is to be installed on the same server as the Application server or on a separate server, not to be shared with other applications or databases. Customer is responsible for maintaining the System’s hardware, database, and operating system including all backup and restore, disaster recovery, network and physical security, and patching.

2.3 Remote Access: Customer will provide Service-now.com reliable remote access to the application server in order to provide application maintenance, tuning, and support. This requires secure command-line access to login onto the application server. Service-now.com will always connect to Customer’s application server from specific, fixed Internet Protocol (IP) addresses using Secure Shell (SSH). Customer’s firewall must be configured to accept SSH requests from Service-now.com’s management IP addresses and the firewall must be configured to pass Service-now.com’s SSH requests onto the application server.

For added security, Customer may optionally request the configuration of a VPN tunnel between Service-now.com and Customer’s own network. Additional charges may be incurred by Customer. Any SSH communications will then flow back and forth over the VPN tunnel, offering an additional layer of security.

2.4 Restrictions: Customer shall not (i) modify, copy or create derivative works based on the System or Service-now.com Technology; (ii) create Internet "links" to or reproduce any content forming part of the System, other than for its own internal business purposes; or (iii) disassemble, reverse engineer, or decompile the System or part thereof, or access it in order to copy any ideas, features, content, functions or graphics of the System. Customer acknowledges that except for the limited right to use the System granted herein, no other right title or interest in the intellectual property rights or technology of Service-now.com is granted and all such licenses and rights are hereby expressly reserved.

2.5 Customer Support: Service-now.com shall provide general customer support and technical guidance as part of this Agreement. Prioritized means of customer support shall be:

- a) Online documentation found at <https://wiki.service-now.com/>

- b) Submission of incidents and service requests online at the Service-now.com Customer Support Portal <https://hi.service-now.com/>
- c) Telephone support at 0800 756 9901 or +011 1-858-345-1444
 - in the case of P1 – Critical Outages: twenty-four (24) hours a day, three hundred and sixty-five (365) days a year (24 x 365)
 - in all other cases Monday through Friday inclusive with the exception of US Federal or UK Public holidays.

2.6 Service Level Agreement / Response Times: Service-now.com shall provide support response to Defects as set forth below. Service-now.com shall use all reasonable efforts to resolve Defects according to the Target Resolution Time set forth below, however, Customer acknowledges that such metrics are only targets and cannot be guaranteed.

INCIDENT SEVERITY LEVEL	RESPONSE TIME	TARGET RESOLUTION TIME
P1 – Critical Outage	Thirty (30) minutes	One (1) hour
P2 – High Priority	Two (2) Business Day hours	Eight (8) Business Day hours
P3 – Medium Priority	Eight (8) Business Day hours	Within three (3) Business days
P4 – Low Priority	Within three (3) Business days	Within two (2) weeks

P1 – Critical Outage Incident: A P1 incident is applicable when the issue impacts more than 20% of Users in the production instance, and the situation is an emergency for the Customer, and any one or more of the following is the case: 1. Inability for all Users to connect to the production instance. 2. A critical function within the Application ceases to operate.

P2 – High Priority Incident: A P2 incident is applicable when the issue impacts or affects a function within the production instance and in which the Application affected is mission critical, and any one or more of the following is the case: 1. Severe impact to a critical function that materially impacts Customer’s ability to conduct routine business or to meet customer’s own service levels. 2. A subset of Users is negatively impacted causing an extreme degradation in productivity.

P3 – Medium Priority Incident: A P3 incident is applicable when the issue affects any Customer business process or function that does not qualify as a Critical Outage or High Priority Incident.

P4 – Low Priority Incident: A P4 incident is a minor issue that does not adversely impact any process or function that may be seen more as an inconvenience that requires a minor workaround to restore functionality.

2.7 Supported Versions: Service-now.com will provide full customer support to meet the Service Levels stated in 2.6 for the current and prior generally available releases and interim releases between the two. Service-now.com will provide limited customer support and may not be able to provide code fixes or rework for releases older than the prior generally available release.

3. Data Protection

3.1 Protection of Confidential Information: Each party agrees to hold the other party’s Confidential Information in the strictest confidence in accordance with this clause and any separate non-disclosure agreement signed between the parties. Both parties shall preserve the confidentiality of such Confidential Information with at least the same degree of care that it protects its own most confidential business information. Without limiting the foregoing, neither party shall sell, transfer, publish, disclose, display or otherwise make available to any third party, the other party’s Confidential Information without the prior written consent of the

other party. Customer shall not disclose the terms and conditions of this Agreement, including the commercial structure, related pricing and payment terms to any third party or otherwise disinterested third parties such as consultants and industry or financial analysts.

Each party may only disclose the Confidential Information of the other party to employees or subcontractors with a need to know. Confidential Information will not include information that: (i) was rightfully in the public domain prior to receiving such information, or (ii) becomes publicly available without breach of this Agreement, or (iii) becomes known to the receiving party after rightful disclosure from a third party not under an obligation of confidentiality; or (iv) was disclosed to the minimum extent necessary to comply with a lawful court order or government regulation, provided that in the case of (iv) each party shall provide the other parties with advance written notice thereof, and reasonably cooperate with the other parties to seek confidential or other protective treatment of such information.

Each party's confidentiality obligations shall remain in effect with respect to the Confidential Information of the other party after the cessation or termination of this Agreement for a period of one (1) year.

3.2 Security of Customer Data: As between Service-now.com and Customer, all Customer Data is owned exclusively by Customer. Customer Data shall be considered Confidential Information subject to the terms of this Agreement. Service-now.com may access Customer's Process User accounts, including Customer Data, solely to respond to System or technical problems or at Customer's request, and for the purposes of hosting such Customer Data in connection with the provision of the System to Customer and Customer's authorized Users. Service-now.com shall use industry standard security measures, including standard encryption protocols, to protect and guard the availability and security of all Customer Data and shall be strictly prohibited from using the Customer Data in any fashion other than that defined above.

3.3 Intellectual Property Rights: Service-now.com acknowledges and agrees that Customer may develop its own best practices and intellectual property using the Applications which may include, but shall not be limited to, scripts, forms, applications, modules or other system elements ("Customer Work Products") to support Customer's business operations as contemplated by this Agreement. All rights of patent, copyright, trademark, trade secret and other proprietary rights to such Customer Work Products will be the sole and exclusive property of Customer (excluding Service-now.com's Technology) upon its inception, conception, creation, fixture, development or reduction to practice. To the extent any Service-now.com Technology is used or embodied in the Customer Work Products, Service-now.com shall not be deemed to have assigned its intellectual property rights in such Service-now.com Technology to Customer. Customer Work Product shall not include and the assignment of obligations in this section shall not apply to any Deliverables created on behalf of the Customer by Service-now.com. Further, Service-now.com will at all times have and retain sole and exclusive ownership of and all right, title, and interest in and to the Service-now.com Technology and the Documentation, and all Intellectual Property Rights therein.

3.4 Export Control: Customer acknowledges that the System is subject to the export and re-export control laws and regulations of the United States of America which prohibit export or diversion of certain products and technologies to certain countries. Customer shall in all respects comply with all applicable United States export control laws and regulations and shall not distribute or supply or allow access to the System to any person or entity if there is reason to believe that such person or entity intends to export or re export or otherwise to take the System or to use the System outside of the United States in violation of applicable export control laws and regulations.

4. Subscription Licenses and Fees

4.1 License Grant: Subject to the terms and conditions of this Agreement, Service-now.com grants Customer a worldwide, non-exclusive, non-transferable (except in connection with a permitted assignment of this Agreement), non-sublicenseable right to access and use the System in accordance with the terms of this Agreement, solely in connection with the operation of the business of Customer and not for the purpose of licensing the System to others.

4.2 Application License Requirements: Customer shall limit the number of Process Users accessing the System to the number of Process Users licensed under this, and any subsequent license transactions, for the full License Term listed on the Order Form, Attachment A. Service-now.com may access Customer's System to perform Process User license compliance checks no more than quarterly and Customer may be subject to additional Subscription License Fees should the number of Process Users accessing the System exceed the number of Process Users licensed.

4.3 Discovery License Requirements: Customer shall limit the number of Servers Discovered through the use of the Service-now.com Discovery technology to the number of Servers licensed under this and subsequent license transactions, for the full License Term listed on the Order Form, Attachment A. Customer may be subject to additional Subscription License Fees, should Customer exceed the number of Servers Discovered and managed within the Service-now.com configuration management database, or other inventory repository, in excess of the number of Servers licensed under this Agreement.

4.4 Invoicing and Payment: Subscription License Fees for the System shall be invoiced in advance and in accordance with the terms set forth on the Order Form. All fees are quoted and invoiced in US dollars.

4.5 Suspension of System Access: Service-now.com reserves the right to suspend access to Customer with an account more than thirty (30) days past due, without liability to the Customer, until all accounts are paid in full. A one percent (1%) per month interest fee will be charged on all past due invoices.

5. Consulting Services

5.1 General: The parties may, from time to time, enter into mutually agreed upon Statement(s) of Work. Each Statement of Work shall set forth the specific Services and Deliverables that Service-now.com will provide to the Customer. Each SOW shall only become effective upon execution by both parties' authorized representatives and upon such execution shall be attached to this Agreement as an Exhibit and incorporated herein by this reference. Service-now.com agrees to perform the Services and provide the Deliverables pursuant to any SOW in accordance with the terms of such SOW and this Agreement.

5.2 Service-now.com Performance: Service-now.com and Customer shall ensure that a sufficient number of personnel of suitable experience, training and skills are assigned in accordance with each SOW. Service-now.com shall be solely responsible for all payments to and claims by its personnel. Subject to compliance with Service-now.com's obligations hereunder, Service-now.com shall retain the sole control and discretion to determine the methods by which Service-now.com performs the Services; provided, however, that Service-now.com may subcontract or otherwise delegate its obligations under any SOW to a third party with Customer's prior written consent, not to be unreasonably withheld.

5.3 Subcontractors: Subcontractors approved by the Customer hereunder, if any, shall be subject to any and all terms applicable to Service-now.com regarding or relating to the Services and Deliverables under this Agreement and any applicable SOW; provided, however, that Service-now.com shall at all times remain responsible for its obligations under this Agreement and for any subcontractor's performance of any of the Services.

5.4 Changes in Services: Service-now.com shall adjust the Services for any SOW upon Customer's request; provided, however that if any such requested adjustment represents a material increase or decrease in the scope, nature or type of the Services, the parties shall, in good faith, first mutually agree on a revised SOW description in writing.

5.5 Reporting and Review of Services: During the course of any SOW, Service-now.com shall, within five (5) business days of the Customer's request, provide a report on Service-now.com's performance of the Services for that SOW. In addition, a Service-now.com SOW engagement manager shall meet with the Customer, at no cost to the Customer, at any reasonable time upon the Customer's request during the course of any SOW to discuss and evaluate Service-now.com's performance of the Services.

5.6 Deliverables: For any Deliverable under a SOW, Service-now.com shall create such Deliverable so that it materially conforms to the specifications for such Deliverable as set out in the SOW and is free from material errors or other defects. If the Customer rejects any Deliverable for failing to comply with the specifications or material error, the Customer will provide reasons for its rejection, and Service-now.com will promptly modify such Deliverable to remedy the deficiencies identified by the Customer. Service-now.com will at all times have and retain sole and exclusive ownership of and all right, title and interest in and to any Deliverable (excluding any interest in Customer Work Product and Customer Data).

6. Warranties, Infringement and Indemnification

6.1 Warranties: Each party represents and warrants to the other that it has the legal power to enter into this Agreement. Service-now.com further represents and warrants to Customer that (i) it will provide the System in a manner consistent with general industry standards and (ii) the System will not infringe or otherwise violate any intellectual property or proprietary rights of any third party; and, no third party has asserted, is asserting or, to Service-now.com's knowledge, has threatened or has or will have any reasonable basis to assert a claim of any of the foregoing.

6.2 Infringement: In addition to its obligations set forth above, if the System becomes the subject of a claim of infringement, Service-now.com shall use its best efforts to obtain such licenses, or make such replacements or modifications, as are necessary to permit Customer to continue use of the System without infringement and in compliance with this Agreement. If, despite use of their best efforts, Service-now.com is unable to achieve either of the foregoing within sixty (60) days (or such longer period as Customer may determine in good faith) after the holding of infringement or the entry of the injunction, as applicable, Service-now.com will refund to Customer the unused portion of any license fees for the System or parts of the System for which the use is legally prohibited.

6.3 Infringement Indemnification: Service-now.com shall: (i) defend Customer, its officers, directors and employees against any third party suit, claim, action or demand (a "**Claim**") alleging that the System infringes any valid and issued patent, copyright, or trademark of a third party; and (ii) indemnify and hold Customer harmless from any final award of damages or settlement amount, (including reasonable attorney fees, except as expressly set forth below), arising in connection with any such Claim. No indemnity with respect to any other product is provided by Service-now.com to Customer hereunder.

6.4 Limitations: Service-now.com shall have no obligation under this section for any Claim which results from or arises in connection with: (i) any use of the System in combination with third party software or third party hardware or other technology not provided by Service-now.com to the extent such infringement would not have occurred but for such combination; (ii) any use of the System which exceeds the scope of the license granted to Customer; or (iii) use of the System not in compliance with applicable laws. Service-now.com shall have no liability under this Section for increased damages for intentional or willful infringement by Customer (or any attorneys fees associated with such intentional or willful infringement) if the basis for the increased damages award, as determined by the court, is the result of the conduct, acts or omissions of Customer.

6.5 Disclaimer of Warranty. EXCEPT AS PROVIDED IN THIS SECTION 6, SERVICE-NOW.COM MAKES NO OTHER WARRANTIES, EXPRESS, STATUTORY OR IMPLIED, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH REGARD TO ANY PRODUCT, SERVICE OR RELATED MATERIALS PROVIDED UNDER THIS AGREEMENT.

7. Limitation of Liability

7.1 Limitation of Liability: EXCEPT FOR A PARTY'S LIABILITY UNDER SECTION 3.1, 3.2, 3.3 and 6, IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY EXCEED THE ANNUAL AMOUNT ACTUALLY PAID BY AND DUE FROM CUSTOMER HEREUNDER.

7.2 Exclusion of Consequential and Related Damages: EXCEPT FOR A PARTY'S LIABILITY UNDER SECTION 3.1, 3.2, 3.3 and 6, IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS, LOSS OF USE, COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SYSTEMS, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES HOWEVER CAUSED AND, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

8. Insurance

Service-now.com shall maintain, through the term of this Agreement, at its own expense, the appropriate levels of insurance coverage for all services being provided and comply with all insurance requirements. Such insurance shall be written with reputable and financially responsible insurance carriers. Certificates (and any other appropriate documentation) evidencing such policies shall be furnished to Customer, upon request.

9. Term and Termination

9.1 Term of Agreement: This Agreement commences on the Effective Date and continues until the Anniversary End Date defined on the original or subsequent Order Form(s).

9.2 Termination for Cause: Either party may terminate this Agreement for cause with thirty (30) days written notice to the other party: (i) for material breach of this Agreement, granted the breached party provides notice of the breach in its intent to terminate, and the breach remains uncured for that thirty (30) day period; (ii) either party becomes the subject of a petition in bankruptcy or any proceeding related to its insolvency, receivership, liquidation which is not dismissed within sixty (60) days of its commencement or an assignment for the benefit of creditors and (a) results in Service-now.com's inability to provide access to or support the System, or (b) results in the Customer's failure to meet its financial obligations defined in this Agreement.

9.3 Effect of Termination: Within thirty (30) days of expiration or termination of this Agreement, Service-now.com will securely access Customer's on-premise environment and erase or destroy all copies of the Service-now.com licensed Applications. Should the on-premise environment not be accessible by Service-now.com, Customer shall securely erase or destroy all copies of the Service-now.com licensed Applications. Upon request by Service-now.com, Customer shall certify in writing that the Applications have irretrievably been destroyed or disposed. All Customer Data shall remain the property of Customer. Should Service-now.com have reasonable belief that Customer is still accessing or otherwise using the Applications after such thirty (30) days, Customer will be subject to the pro-rated license fees for such access at three times the annual license fee paid by Customer prior to termination. Termination shall not relieve Customer of the obligation to pay any fees accrued or payable to Service-now.com prior to the effective date of termination. If Customer terminates this Agreement for cause per Section 9.2, Customer shall be entitled to a refund of the pro-rated, pre-paid license fees paid to Service-now.com for which services have not been delivered.

10.0 General Provisions

10.1 Governing Law: This Agreement shall be governed exclusively by, and construed exclusively in accordance with, the laws of the State of California, without regard to its conflicts of laws provisions. The state and federal courts located in California shall have exclusive jurisdiction to adjudicate any dispute arising out of or relating to this Agreement. Each party hereby consents to the jurisdiction of such courts and waives any right it may otherwise have to challenge the appropriateness of such forums.

10.2 Entire Agreement: This Agreement, together with the Exhibits and Attachments hereto, constitutes the entire agreement between the parties regarding the subject matter of this Agreement, and supersedes all prior or contemporaneous oral or written agreements, representations and negotiations. Any modification of this Agreement must be in writing and signed by an authorized representative of Service-now.com and Customer.

10.3 Agreement Survivability: In the event that any given section of this Agreement is found by a competent court to be un-enforceable, all unaffected sections of this Agreement shall remain in effect.

Attachment B **On Premise Implementation Guidelines**

Introduction

These guidelines provide the configuration requirements for the Customer to follow to ensure that Service-now.com can effectively support the Customer's System. Specific installation instructions and system requirements will be provided by Service-now.com at time of implementation.

Dedicated Hardware

1. Customer's production instance of the Application should be installed on a dedicated server that is not shared with other customer systems or Service-now.com instances.
2. Customer's Application database should be installed on the same server as Customer's production instance. The data base must be dedicated to the Service-now.com Application.
3. Should Customer choose to install the database on a separate server, then that server should not be shared with other customer systems or databases or Service-now.com instances or databases.
4. Customer's non-production instances and databases may be on a shared server.

Application Server

1. The operating system on the application server will be installed and managed by the Customer.
2. The Service-now.com application software is provided by Service-now.com.

Database Server

1. The operating system on the database server will be installed and managed by the Customer.
2. The standard offering is to use a mySQL database, which will be installed and managed by Service-now.com.
3. If Customer opts to run another database server such as Oracle, then the Customer should meet with the Service-now.com Operations team to determine the supported version, minimum configuration including sizing of the database and memory allocation for the database. In either scenario, the database should be dedicated to the Service-now.com application.

Service-now.com Remote Management Access

1. Customer must provide Service-now.com reliable remote access to the application server in order to provide Application maintenance, tuning, and support through secure command-line access, (SSH), to login onto the application server (and database server, if applicable)
2. Service-now.com will always connect to Customer's application server from specific, fixed Internet Protocol (IP) addresses using a Secure Shell (SSH) connection. The necessary hostname/IP address(es) on the Service-now.com network will be provided at the time of installation.
3. Customer's firewall must be configured to accept SSH requests from Service-now.com's management IP addresses and the firewall must be configured to pass Service-now.com's SSH requests onto the application server (and database server, if applicable). The necessary hostname/IP address(es) on the Service-now network will be provided at the time of installation.
4. It is recommended to also allow the proper application port ranges to allow Service-now.com personnel direct access to the application interface.

5. This communication (SSH and application) can be configured to go across a VPN connection, if deemed necessary by Customer's security review. The necessary hostname/IP address(es) on the Service-now.com network will be provided at the time of installation.

Service-now.com Application Access

Customer must provide the following outbound network communication flows:

1. All instances which are installed and running on the Customer premises must be permitted to communicate outbound to Service-now.com's internal management system. This communication will always originate from within the customer network, and will utilize HTTPS. The HTTPS connectivity needs to be permitted at all times, as each Service-now.com application will perform this outbound HTTPS communication approximately every 10 minutes. This communication is to allow Service-now.com personnel to have visibility of the hosted application(s) from a licensing and performance perspective. The necessary hostname/IP address(es) on the Service-now network will be provided at the time of installation.
2. All instances which are installed and running on the Customer premises must be permitted to communicate outbound to Service-now.com's software distribution systems. This communication will always originate from within the customer network, and will utilize HTTPS. The HTTPS connectivity needs to be permitted at all times if updates of the Service-now.com application are to be performed on a real-time basis. This traffic will allow the Service-now.com application to download any necessary updates to the application. The necessary hostname/IP address(es) on the Service-now network will be provided at the time of installation.

Security, Backup and Disaster Recovery

1. Customer is responsible for logical, and physical security for the all aspects of the server and network components.
2. Customer is responsible for designing and maintaining data backup, restore, and disaster recovery
3. Customer is responsible for the patching of the database and operating system.

Technical Contacts

1. For effective support, Customer should assign an owner to the application server and, in the scenario where Customer is managing the database, shall provide a DBA for the database and provide their contact information to Service-now.com Customer Support.