

Red Condor, Inc. Appliance End User Terms & Conditions

These End User terms and conditions are the terms and conditions on which Red Condor, Inc. (“**Red Condor**”) provides the software licenses, hardware, application-hosting and other services, and warranty and support coverage purchased by an end-user or other entity (such customer, “**you**”) directly from Red Condor or through Red Condor’s authorized distributor or reseller (the “**End User Terms**” or the “**Agreement**”). Your rights and Red Condor’s obligations under these End User Terms are conditioned upon Red Condor’s receipt of all applicable license fees, subscription fees, and other payments due in connection with your license and/or purchase.

IMPORTANT – PLEASE READ THESE END USER TERMS CAREFULLY:

BY CLICKING THE “I ACCEPT” BOX OR BY USING ANY RED CONDOR SOFTWARE, HARDWARE, OR SERVICES, YOU ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND THE FOLLOWING TERMS AND AGREE TO BE BOUND BY AND BECOME A PARTY TO THE END USER TERMS, AND IF YOU ARE ACCEPTING ON BEHALF OF AN ENTITY, THAT YOU ARE AUTHORIZED TO BIND SUCH ENTITY TO THESE END USER TERMS. YOU AGREE THAT THESE END USER TERMS ARE AS ENFORCEABLE AS ANY WRITTEN, NEGOTIATED CONTRACT SIGNED BY YOU AND RED CONDOR. IF YOU DO NOT AGREE TO ALL OF THE TERMS AND CONDITIONS CONTAINED IN THESE END USER TERMS, RED CONDOR IS UNWILLING TO GRANT YOU THIS LICENSE OR TO PERMIT YOU TO ACCESS ITS SOFTWARE, HARDWARE, OR ITS SERVICES AND YOU SHOULD CLICK ON THE “I DO NOT ACCEPT” BUTTON AND DO NOT INSTALL OR USE THE SOFTWARE, OR ACCESS THE HARDWARE OR THE SERVICES. IF APPLICABLE, AND IF YOU DO NOT ACCEPT ALL OF THESE TERMS AND CONDITIONS PRIOR TO ACCESSING THE SOFTWARE, HARDWARE, OR SERVICES, YOU MAY PROMPTLY RETURN THE HARDWARE AND LICENSE KEYS TO THE PLACE OF PURCHASE FOR A FULL REFUND.

A. SOFTWARE TERMS.

1. Limited License Grant. Subject to your compliance with these End User Terms and payment of all applicable fees, Red Condor grants to you a limited, non-exclusive, non-transferable, non-sub licensable, revocable, worldwide, limited license to (a) Use the Software as bundled within the Hardware (as defined below); (b) Use the licensed access to the Services; and/or (c) Use the licensed Hardware, only for your internal use, in accordance with Red Condor’s user documentation and these End User Terms. The Software and access to the Services are limited to the number of Users, functionality, number of servers, IP addresses, term periods, subscriptions, seats, applications, modules, and/or special options paid for by you and authorized by Red Condor (collectively, such permitted uses are referred to in these End User Terms as “**Use**”). Any increased use of the Software, the Hardware or access to the Services, if permitted by Red Condor, is subject to the payment of additional license and services fees prior to such additional usage. The Use of any Software, or part thereof, or access to the Services that is not paid for or otherwise is not permitted is in strict violation of these End User Terms. “**Hardware**” means the Red Condor appliance which is the hardware portion of the message assurance gateway (“MAG”) appliance but excludes any software programs, whether pre-loaded with the hardware, installed subsequently or otherwise. Unless otherwise specified by Red Condor in its applicable product documentation, the foregoing Software license shall apply only so long as you have a current subscription, or are otherwise authorized by Red Condor, to access and receive Services from Red Condor in connection with your use of the Software. Notwithstanding the foregoing, to the extent any licensed Software incorporates or is accompanied by any open-source or other third-party code, your rights (if any) to that code will be as set forth in the applicable third-party or open-source license that accompanies the Software.

2. Limitations of License. You agree to keep confidential and to use your best efforts to prevent and protect the contents of the Software, the Hardware and the documentation from unauthorized disclosure or use. You acknowledge and agree that the Software, the Hardware embedded with Software, and the Services as well as the related documentation contains certain trade secrets and confidential information of Red Condor and/or its suppliers, and to protect such trade secrets, you agree: (i) to not permit your employees, representatives, and/or agents, to decompile (except to the extent that is expressly permitted by applicable law and then you agree that Red Condor shall solely own the results of all such endeavors, including, without limitation, all intellectual property rights and all such rights in and to any derivative works), or to reverse engineer, disassemble, unbundle, make verbal or media translations of, or otherwise reduce the Software to a human perceivable form or to permit any other party or machine to do so; and (ii) that except as otherwise expressly provided for in these End User Terms, you may not copy (other than for back up purposes) modify, adapt, translate, encumber, rent, lease, license, sublicense, loan, sell, resell for profit, distribute, time-share, or create any derivative works of the Software and the documentation; and (iii) that you may not allow or sell access to the Software, the Hardware, the documentation or the Services for the benefit of any distributor, reseller, sub-licensor, aggregator, or re-marketer of any kind; and (iv) that you may not offer to third parties any sample or tests of the Software; and (v) that you will not remove any proprietary legends or copyright notices that may be contained in or on the Software and documentation, including as contained on any media or Hardware and you agree to reproduce the legends and notices on any reproductions that you are permitted under these End User Terms to make. Your Use of the Software, the Hardware, and/or the Services is permitted solely and exclusively for connecting to and using Red Condor's Services for your **personal or internal business purposes**. **You may not sub license, distribute, redistribute, or charge others a fee or permit others to use or access Red Condor's Hardware, Software, or Services, unless you have entered into a separate written agreement with Red Condor to engage in such activities. You shall not and you shall not permit others to use Red Condor's or its suppliers' names, logos, or trademarks in any manner including, without limitation, in your advertising or marketing materials, except to the minimum extent necessary to affix the appropriate copyright or other proprietary notices as required herein.**

3. Pre-Loaded Software. You acknowledge that the Hardware will be delivered pre-loaded with Red Condor Software and third-party software, and that such Software is solely for Red Condor's remote use in connection with providing associated Services to you. Unless otherwise granted by Red Condor or the applicable third-party licensor in writing, you have no ownership or license rights with respect to any such pre-loaded Software. If you choose at any time to transfer the Hardware to any third party, or to use the Hardware for any purpose other than to receive Services, you must permanently delete all pre-loaded Software.

4. High Risk Activities Prohibited. The Software, the Hardware, and the Services are not designed, manufactured or intended for use in hazardous environments requiring fail-safe performance including, without limitation, the operation of nuclear facilities, aircraft navigation or communications systems, air traffic control, vehicle and power generation applications, weapons systems, medical systems including direct life support machines or any other applications in which the failure of the Software, the Hardware, or the Services could lead to death, personal injury, or sever physical or property damage or environmental damage (collectively, "**High Risk Activities**"). Red Condor and its suppliers expressly disclaim any express or implied warranty of fitness for high-risk activities.

B. SERVICES TERMS. In addition to the Service terms set forth below, you acknowledge that Red Condor reserves the right to engage third parties to fulfill some or all of the Services or its obligations under this Agreement.

1. Access. When you set up the Hardware, you will generate a user name and password as a part of the initial set up process. You are solely responsible for maintaining the confidentiality of the password(s)

and account and are fully responsible for all activities that occur under your user name. You agree to immediately notify Red Condor of any unauthorized use of your password or account or any other breach of security. You also agree to ensure that you exit from your account at the end of each session. Red Condor cannot and will not be liable for any loss or damage that arises as a result of your failure to comply with this section. Subject to your compliance with these End User Terms and payment of all applicable subscription or other fees, Red Condor will provide you with access to the Services purchased by you, solely for your internal business purposes in accordance with Red Condor's user documentation, and only for the duration of the subscription or access period(s) (or any renewals or extensions thereof) purchased by you from Red Condor or its authorized distributor or reseller.

2. Registration Obligations. You represent and warrant that you are at least 18 years old, or the applicable age of majority in the jurisdiction in which you reside. Additionally, you agree to: (i) provide and maintain true, accurate, current, and complete information about yourself when you register for the Service (such data, "**Registration Data**"); (ii) update the Registration Data to keep it true, accurate, current and complete; and (iii) to only open up an account for yourself and not for any other person. If you provide any information that is untrue, inaccurate, not current or incomplete, or Red Condor has reasonable grounds to suspect that such information is untrue, inaccurate, not current or incomplete, Red Condor has the right to suspend or terminate your account and to refuse any and all current or future use of the Service (or any portion thereof).

3. Data. You shall be solely responsible for any end user data or other information submitted, processed, or transmitted or received by you in connection with or by means of the Services ("**End User Data**"). Red Condor shall follow its standard archival procedures for such End User Data. In the event of any loss or corruption of such End User Data, Red Condor shall use its commercially reasonable efforts to restore the lost or corrupted data from its latest backup. Red Condor shall not be responsible for any loss, destruction, alteration, unauthorized disclosure or corruption of End User Data caused by any third party. Red Condor shall not be responsible for any software, information, or memory data of yours contained in, stored on, or integrated with any Hardware returned to Red Condor for repair or replacement, whether under warranty or not. Red Condor shall follow its standard archival procedures for the filtered messages the Hardware or Services trap and contain ("**Spam**"). Such standard procedures provide for the temporary storage of Spam for up to thirty-five (35) days. Except for the temporary storage of filtered Spam, which is outlined in the preceding sentence, Red Condor does not back up or store your programs or any other data. You, and not Red Condor, are responsible for backing up your programs and data (other than Spam data) to protect against loss or corruption. RED CONDOR'S EFFORTS TO RESTORE LOST OR CORRUPTED END USER DATA PURSUANT TO THIS PARAGRAPH SHALL CONSTITUTE RED CONDOR'S SOLE LIABILITY AND YOUR SOLE AND EXCLUSIVE REMEDY IN THE EVENT OF ANY LOSS OR CORRUPTION OF END USER DATA.

4. Remote Access and Data Collection. You acknowledge and agree that Red Condor may, in the course of providing you with the Services, remotely access the Red Condor-supplied Hardware and/or Software, and collect data via the Software and Services, in order to: (a) identify, analyze, or guard against potential viruses, spam, and other threats; (b) diagnose, optimize, or improve the Red Condor products and Services; (c) verify your compliance with these End User Terms; and (d) perform other actions reasonably related to Red Condor's delivery of the Services to you. Red Condor will use commercially reasonable efforts to minimize unnecessary access to your system and to safeguard any of your personal, confidential or proprietary information that is collected pursuant to this paragraph. Red Condor will disclose such data to third parties only in aggregated, non-identifying form.

5. Acceptable Use. You agree to comply with, and cause any individuals using the Services on your behalf to comply with, such reasonable acceptable-use policies as Red Condor may from time to time establish or update with respect to the Services, including, but not limited to, the following acceptable use

policies: when using the Services, you shall not ((a) violate, or encourage the violation of, the legal rights of others; (b) engage in any unlawful, invasive, infringing, defamatory, or fraudulent purpose; (c) intentionally distribute viruses, worms, Trojan horses, corrupted files, hoaxes, or other items of a destructive or deceptive nature; (d) interfere with the use of the Services, or the equipment used to provide the Services, by customers, authorized resellers, or other authorized users; (e) alter, disable, interfere with or circumvent any aspect of the Services; (f) test or reverse-engineer the Services in order to find limitations, vulnerabilities, or evade filtering capabilities; and/or (g) use the Services or a component of the Services in a manner not authorized by Red Condor.

6. Service Levels. Red Condor shall use reasonable efforts to maximize Services uptime and to provide the Services in accordance with any applicable Red Condor service-level policies then in effect. You acknowledge, however, that uptime may be affected by infrastructure and third-party service providers, power losses and communication errors, and other events or factors outside of Red Condor's reasonable control. In no event will Red Condor be liable for service unavailability or errors that may be caused by any such outside events or factors.

7. Suspension or Termination of Services. In the event that Red Condor does not receive payment for Products and/or Services when due, and/or in the event that your Vx enabled account is experiencing what Red Condor, in its reasonable business judgment considers to be email traffic beyond the normal range, Red Condor may suspend or terminate those Services. Red Condor will notify you so that you may elect to purchase additional Hardware either directly from Red Condor or through one of Red Condor's authorized resellers in order to accommodate the additional email traffic that you require. In the event that you decline to purchase additional Hardware as set forth in the preceding sentence, Red Condor reserves the right to terminate or suspend the Services. Red Condor will use reasonable efforts to notify you of any such suspension at least seven (7) business days in advance of any such termination. Your incoming email messages will not be filtered while Services are suspended, and will be rejected by Red Condor's servers in the event of termination (resulting in lost messages until you reconfigure your domain's mail exchange settings). You agree to hold Red Condor harmless from any liability or other harm that results from our suspension or termination of Services as permitted above. If Services have been suspended only, they will resume upon Red Condor's receipt of the overdue payment; if Services have been terminated, Red Condor may require an additional fee for reinstatement. Red Condor's suspension and termination rights are in addition to, and not in place of, any other rights and remedies Red Condor may have on account of non-payment or late payment.

8. Taxes. You are wholly responsible for any taxes that may arise out of your use of the Service.

C. RESERVATION OF RIGHTS; INTELLECTUAL PROPERTY OWNERSHIP.

1. Reservation of Rights. All rights not expressly granted in these End User Terms are hereby reserved by Red Condor and its suppliers. All title, ownership rights, and intellectual property rights in and to the Products, Software, the Software embedded in or bundled with the Hardware, the documentation, and the Services and any copies, modifications, and derivatives thereof are vested in and shall remain Red Condor's and/or its suppliers'. You agree that you neither own nor hereby acquire any claim or right of ownership in or to the Software, the software embedded in the Hardware, the documentation or the Services or to any related patents, copyrights, trademarks or other intellectual property. You own only the magnetic or other physical media or appliance on which the Software and related documentation are recorded or fixed. The license contained in these End User Terms is not a sale of the original or any subsequent copy of the Software or documentation. The Software, Software embedded on the Hardware, the documentation, and the Services are protected by copyright and other intellectual property laws of the United States and other countries and international treaties. Except as expressly provided for in the license grant set forth in these End User Terms, you may not copy any documentation. You may not copy the Software beyond the

licensed number of copies except to provide the permitted back up copy and to load the Software into the computer or system as a part of executing the Software. ANY AND ALL OTHER COPIES OF THE SOFTWARE AND ANY COPY OF THE DOCUMENTATION MADE BY YOU ARE IN VIOLATION OF THIS LICENSE AND SHALL BE DEEMED TO BE A MATERIAL BREACH OF THIS AGREEMENT.

2. Intellectual Property Ownership. You agree that as between you and Red Condor, title to all intellectual property rights in and to the Software, the Hardware (exclusive of the media itself), the Services and the related documentation, and any part of the foregoing, is and shall remain with Red Condor and that all rights in and to all intangible property, work products, memoranda, invention records, inventions and discoveries which are conceived, developed, or created by, related to, in connection with, or with reference to the Software, the Hardware, the Services, and the related documentation (the "**Work Product**") shall be considered to be a "work made for hire", and therefore, all right, title, and interest therein, (including, without limitation, patents, copyrights, and trade secrets) will vest exclusively in Red Condor. To the extent that all or any part of the Work Product does not qualify as a "work made for hire" under applicable law, you hereby irrevocably assign to Red Condor all right, title, and interest (including, without limitation, patents, copyrights, and trade secrets) therein. Any and all Work Product shall be deemed to be a part of Red Condor's Hardware, Software, Services and related documentation, as the case may be. You agree to cooperate with, and to execute or cause to be executed such papers and documents that Red Condor may request in order for Red Condor to effectuate its rights under this Section C(2).

D. WARRANTY; EXCLUSION OF WARRANTIES; DISCLAIMER OF WARRANTIES

1. Services Warranty. Red Condor warrants that its Products and Services will be provided substantially in accordance with Red Condor's applicable published specifications and end-user documentation. As your sole and exclusive remedy and Red Condor's entire liability for any breach of this warranty, Red Condor will, at its option: (i) correct the nonconformity or provide you with a reasonable workaround to circumvent the nonconformity; or (ii) permit you to terminate the Services and receive a refund of any pre-paid fees for those Services, prorated as of the date you notified Red Condor of the nonconformity. This warranty coverage will be in effect for the duration of your subscription or other right to receive the Services.

2. Limited Hardware Warranty. At the time of your purchase of the Hardware, you received details about the support services that are offered in connection with your Hardware purchased ("**Service Pack**"). The limited Hardware warranty, below, is included in the Service Pack that you purchased with the Hardware and only remains in effect for the period of time for which you purchased the Service Pack (i.e., the term of your Service Pack agreement). Red Condor warrants that such Hardware will, for the period covered by the Service Pack agreement, be free from material defects in design, materials, and workmanship and will conform, under normal use and circumstances in all material respects to Red Condor's published specifications and user documentation associated with the particular Hardware. This limited Hardware warranty applies only to the original purchaser using any version of the Hardware, and then, only during the term of the Service Pack agreement. Nothing in this warranty affects any statutory rights that cannot be waived or limited by contract. By submitting a warranty claim, you accept and agree to be bound by all of the terms and conditions contained herein. Your sole and exclusive remedy and Red Condor's sole and exclusive liability for each defective or non-conforming piece of Hardware during the warranty period shall be for Red Condor, at its election, to either repair or replace any Hardware returned to Red Condor that does not comply with such warranty, as confirmed by Red Condor

3. Warranty Procedures. To request warranty service, you must contact Red Condor's customer support center within the warranty period in order to request a return materials authorization (a "**RMA**"). You must obtain a RMA number from Red Condor prior to returning any Hardware to Red Condor. In no event with Red Condor accept any returned Hardware without a valid RMA number. You will bear the cost of

returning and insuring the shipment of the Hardware to Red Condor or its designated representative, with all costs of shipping and insurance prepaid. Red Condor does not accept liability for loss or damage to the Hardware during shipment and requires that the return be insured for its full retail value. Red Condor may, in its discretion, require that you return the defective Hardware prior to sending you any replacement Hardware. If Red Condor does not receive the defective Hardware within ten (10) business days of your receipt of the replacement unit (if any), Red Condor will invoice you for the full price of the new Hardware, freight charges, and insurance. If, upon Red Condor's inspection, no warranted defect is found, then you will also bear Red Condor's cost of shipping and insuring the shipment of the Hardware back to you.

Replacement Hardware may be new or refurbished (as determined by Red Condor) to be functionally equivalent to new. The replacement Hardware is warranted to be free of defects in material or workmanship and will be warranted for the remainder of the warranty period of the original Hardware. All defective Hardware or parts that are replaced shall become the property of Red Condor. All defective parts that have been repaired shall remain your property.

Any request for the repair of Hardware that is submitted after the expiration of the warranty period may be accepted or rejected by Red Condor in its sole discretion. If accepted, you will be charged for the applicable parts and labor at Red Condor's then-current prices and rates (at a minimum of two (2) hours of labor) or for a replacement Hardware as Red Condor may recommend at the then-current price, less any discount that Red Condor may offer to you.

4. Failover Service. Any Hardware warranty is in addition to Red Condor's Vx failover coverage (if such additional Vx coverage has been purchased by you), which allows you to receive email filtering and network security services on a remotely hosted, failover basis if your Hardware fails. Failover services will continue until the issue is resolved or your failover coverage expires (whichever comes first). The failover service itself is warranted as set forth in Section A.1, above.

5. Software Warranty. Red Condor warrants that each unmodified copy of Software contained in the Hardware as delivered to you will, for a period of ninety (90) days thereafter, substantially conform to the applicable Red Condor documentation supplied to you in connection with that Software.

6. Warranty Exclusions. The warranties above do not apply to, and shall be void due to any Software, Hardware or Services that have had or have been: (i) provided to you free of charge or on an "AS IS" basis; (ii) installed, maintained, or used other than in compliance with Red Condor's published specifications and user documentation; (iii) subjected to negligence, misuse, abuse, accident, thermal or electrical irregularity, theft, vandalism, fire, water or other peril; (iv) opened, modified, altered or repaired by anyone other than Red Condor or its authorized agents; (v) damaged by containment and/or operation outside of the applicable environmental, electrical, or system requirements specified by Red Condor; (vi) connected to or installed with other systems, equipment or devices or used with software other than specifically approved by Red Condor; or (vii) the identification labels on the Hardware or its parts removed or altered. . In addition, these warranties do not cover any error or malfunction caused by any systems, services, infrastructure, equipment, or software outside of Red Condor's reasonable control (such as third-party-provided telecommunications services or Internet access) and do not apply where you have failed to comply with all warranty return terms and conditions as set forth herein.

7. **DISCLAIMER OF WARRANTIES**. The foregoing warranty terms set forth Red Condor's entire obligation, and your sole and exclusive remedy, for defective Software, Services, or Hardware. EXCEPT FOR THE LIMITED WARRANTIES EXPRESSLY SET FORTH HEREINABOVE, THE SOFTWARE, THE HARDWARE, AND THE SERVICES ARE PROVIDED STRICTLY ON AN "AS IS" BASIS AND YOUR USE OF THE FOREGOING IS AT YOUR OWN RISK. THE SOFTWARE, DOCUMENTATION, MAINTENANCE SERVICES AND SUPPORT, AND SECURITY UPDATE SERVICES ARE PROVIDED SOLELY ON AN "AS

IS" AND "AS AVAILABLE" BASIS WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED OR STATUTORY, THE EXPRESS WARRANTIES SET FORTH IN SECTIONS A(1), (2), AND (5), ABOVE ARE IN LIEU OF, AND RED CONDOR SPECIFICALLY DISCLAIMS, ALL OTHER WARRANTIES WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. WITHOUT LIMITING THE FOREGOING, YOU SPECIFICALLY ACKNOWLEDGE THAT RED CONDOR AND ITS SUPPLIERS MAKE NO WARRANTY: THAT THE SOFTWARE, HARDWARE, OR THE SERVICES WILL PERFORM ERROR-FREE OR WITHOUT INTERRUPTION; THAT ALL ERRORS WILL BE CORRECTED; THAT THE SOFTWARE, HARDWARE, OR THE SERVICES WILL BE FREE OF VULNERABILITY TO INTRUSION OR ATTACK; OR THAT YOUR SPECIFIC REQUIREMENTS WILL BE SATISFIED. YOU ASSUME RESPONSIBILITY FOR SELECTING THE SOFTWARE, HARDWARE, AND/OR THE SERVICES TO ACHIEVE YOUR INTENDED RESULTS, AND FOR THE INSTALLATION OF, USE OF, AND RESULTS OBTAINED FROM THE SOFTWARE, HARDWARE, AND/OR THE SERVICES.

If applicable law requires a longer warranty period than that provided by Red Condor, then the Software, Hardware and/or the Services, if used by you in accordance with the license and documentation is warranted to operate in substantial accordance with its documentation for a warranty period starting upon delivery of the license key to the Software or the Hardware, or your initial access to the Services and is deemed extended to the minimum extent so required by applicable law. Some jurisdictions do not allow the exclusion of implied warranties, so the above exclusion may not apply to you in its entirety. This warranty gives you specific legal rights and you may also have other rights that vary, from jurisdiction to jurisdiction. The foregoing provisions shall be enforceable to the maximum extent permitted by law.

E. LIMITATION OF LIABILITY.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, (i) RED CONDOR AND ITS SUPPLIERS' ENTIRE LIABILITY AND YOUR EXCLUSIVE REMEDY IN CONNECTION WITH THE SOFTWARE, THE HARDWARE, ANY SERVICES AND RELATED DOCUMENTATION SHALL BE THAT, IF THE MEDIA UPON WHICH YOU RECEIVE THE SOFTWARE IS DEFECTIVE, YOU ARE ENTITLED TO RETURN SUCH DEFECTIVE MEDIA CONTAINING THE SOFTWARE TOGETHER WITH THE DOCUMENTATION TO RED CONDOR AND IF THE HARDWARE IS DEFECTIVE, YOU ARE ENTITLED TO RETURN THE HARDWARE TO RED CONDOR, SUBJECT TO THE WARRANTY PROVISIONS CONTAINED IN SECTION D IN NO EVENT SHALL RED CONDOR OR ITS SUPPLIERS HAVE ANY LIABILITY UNDER THESE END USER TERMS BEYOND THE REMEDIES EXPRESSLY SET FORTH HEREIN. FURTHERMORE, IN NO EVENT WILL RED CONDOR'S LIABILITY TO YOU EXCEED THE GREATER OF THE AMOUNTS RECEIVED BY RED CONDOR FOR THE SPECIFIC SOFTWARE, HARDWARE, OR SERVICES TO WHICH YOUR CLAIM RELATES OR FIFTY DOLLARS (US\$50.00). RED CONDOR WILL NOT BE LIABLE FOR ANY LOSS OF BUSINESS, PROFITS, OR DATA, FOR ANY "COVER" DAMAGES, OR FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE OR INDIRECT DAMAGES OF ANY KIND, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, EVEN IF RED CONDOR OR ITS SUPPLIERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND WHETHER OR NOT ANY REMEDY PROVIDED SHOULD FAIL OF ITS ESSENTIAL PURPOSES, OR FOR ANY CLAIM BY ANY THIRD PARTY. THESE LIMITATIONS WILL SURVIVE THE EXPIRATION OR EARLIER TERMINATION OF THIS AGREEMENT.

You acknowledge that Red Condor has set its prices in reliance upon the limitations of liability specified above, which allocate the risk between you and Red Condor and form a basis of the bargain between the parties. The foregoing provisions shall be enforceable to the maximum extent permitted by law.

F. TECHNICAL SUPPORT. To the extent you have purchased any Services related to technical support, Red Condor shall provide such Services in accordance with its then-current standard support policies. Red Condor reserves the right to amend its standard support policies and applicable fees upon written notice to you. Red Condor will have no obligation of any kind to provide support of any kind for problems in the operation or performance of the Software or Services to the extent caused by any of the following (each, a “**User-Generated Error**”): (a) non-Red Condor software or hardware products or use of the Software or Services in conjunction therewith (unless such use is expressly specified by Red Condor); (b) modifications to the Software or Services made by anyone other than Red Condor; (c) your use of the Software or Services other than as authorized in these End User Terms and consistent with Red Condor’s applicable documentation; or (d) your use of other than the most current version of the Software or any error corrections or updates thereto provided by Red Condor. If Red Condor determines that it is necessary to perform support services for a problem caused by a User-Generated Error, then Red Condor will notify you thereof as soon as Red Condor is aware of such User-Generated Error and Red Condor will have the right to invoice you at Red Condor’s then-current published time and materials rates for all such maintenance and support services performed by Red Condor.

G. PAYMENT TERMS. NOTE: For appliance trials, see separate appliance evaluation agreement.

1. Payment. Customer will pay Red Condor the applicable prices and fees (plus shipping and handling charges, if any) within thirty (30) days after delivery of the Products or commencement of the chargeable Services (as the case may be). Overdue payments will accrue interest at the rate of one and one-half percent (1.5%) per month or the maximum amount permitted by law, whichever is lower, and may result in suspension or termination of Services. By providing Red Condor with credit card or ACH payment information for the Purchase Order, you authorize Red Condor to charge or debit your corresponding account for all payments as they become due.

2 Renewal. In the event of non-renewal, your subscription will expire at the end of the initial period or then-current renewal period, as the case may be. Subscription renewal fees will be Red Condor’s then-current price list and will be due upon commencement of each renewal period. In the event that you have paid using a credit card, you will need to provide your current and valid credit card information in order to renew your subscription, and if you have not promptly provided valid credit card information to Red Condor, your subscription will not renew and will automatically expire.

H. EXPORT CONTROLS.

The Software and related technology may not be exported or re-exported: (i) into (or to a national or resident of) any other country to which the U.S. has embargoed goods (currently Cuba, Iran, North Korea, Sudan, Syria); or, (ii) to anyone on the U.S. Treasury Department’s list of Specially Designated Nationals or the U.S. Commerce Department’s Table of Denial Orders; or, (iii) to any other person where such export, re-export or other provision violates US export control law or regulation. By installing or using the Software, the Hardware, (which contains bundled or embedded software including the Software) or the Services, you agree to the foregoing and you represent and warrant that you are not located in, under the control of, or a national or resident of any such country or that you are not on any such list. In addition, you agree to comply with any other applicable US export control laws and any local laws in your jurisdiction that may impact your right to import, export, or use the Software, Hardware, or the Services. By installing or using the Software, the Hardware, or the Services, you represent and warrant that you will not use, or permit or authorize others to use the Software, the Hardware, or the Services in connection with the design, development, production, stockpiling or use of any nuclear, chemical or biological weapons.

I. INDEMNITY. You agree to hold Red Condor harmless from and against any claims arising out of, or relating to your violation of any export control law or other applicable law.

J. U.S. GOVERNMENT RESTRICTED RIGHTS LEGEND.

The Software (and the Hardware embedded with the Software) is a “commercial item” (48 C.F.R. 2.101) consisting of “commercial computer software” and “commercial computer software documentation” (48 C.F.R. 12.212). Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, all U.S. Government end users acquire the Software with only those rights set forth therein. If acquired by or on behalf of the Department of Defense, the end-users will be subject to the terms of this commercial computer software license as specified in 48 C.F.R. 227.7202, DFAR Supplement and its successors.

K. Confidentiality.

1. Red Condor agrees that it will not change or copy your messages, and it will not read or distribute your messages, except as required to perform the Application Services. Red Condor hereby agrees that it has implemented industry standard procedures to: (1) ensure the security and confidentiality of your Confidential Information; (2) protect against any anticipated threats or hazards to the security or integrity of such information; and (3) protect against unauthorized access to or use of such information.

L. ADDITIONAL TERMS.

1. Prohibited Uses. You shall use the Services and any licensed Software exclusively for authorized and legal purposes, consistent with all applicable laws, regulations and the rights of others. You shall keep confidential and not disclose to any third parties any account numbers, account profiles, and personally identifiable information used in connection with or gathered or processed by the Software or Services.

2. Additional Restrictions. You have no right to transfer the Software or Services (or access thereto) to any third party and, unless expressly authorized in a written agreement with Red Condor, you have no right to sublicense or otherwise distribute the Software or Services (or access thereto) to any third party. Except as expressly authorized in these End User Terms, or under another written agreement with Red Condor, you will not copy or modify the Software, in whole or in part, nor will you lease, lend or rent the Software or Services; use the Software or Services to provide service bureau, time sharing, rental, application services provider, hosting or other computer services to third parties; or otherwise make the functionality of the Software or Services available to third parties. You acknowledge that the Software and Services constitute and/or contain trade secrets of Red Condor and its licensors, and, in order to protect such trade secrets and other interests that Red Condor and its licensors may have in the Software and Services, you agree not to disassemble, decompile or reverse engineer the Software or Services, nor permit any third party to do so, except to the extent such restrictions are prohibited by law.

3. Entire Agreement. These End User Terms represent the complete and final agreement concerning the license granted, and the Hardware, Software and/or Services offered hereunder and replaces any and all prior or contemporaneous understandings or agreements, written or oral, regarding the subject matter contained herein.

4. Government Rights. The Software (including documentation) consists of “commercial computer software” and “commercial computer software documentation,” as such terms are used in FAR 12.212. Any use, duplication or disclosure of the Software (including documentation) by or on behalf of the U.S. Government is subject to restrictions as set forth in these End User Terms. Manufacturer is Red Condor, Inc.

5. Ownership. You expressly acknowledge that, as between Red Condor and you, Red Condor owns all worldwide right, title and interest in and to the Software and Services, including all worldwide intellectual property rights therein. You will not delete or in any manner alter the copyright, trademark, and other

proprietary rights notices appearing on the documentation, Software and/or Services as delivered to you. You will reproduce such notices on all copies you make of the documentation and Software.

6. Audit. You agree to keep accurate books and records concerning the transactions contemplated by these End User Terms. Red Condor reserves the right to periodically conduct audits upon reasonable advance written notice to you of at least one (1) week in order to verify your compliance with these End User Terms and to use any information obtained in performing technical support or automated system alerts in order to verify your compliance.

7. Governing Law; Forum; Venue. These End User Terms shall be construed, governed, and enforced solely and exclusively by the internal laws of the State of California, USA, without regard to the principles of conflict of laws or international law, including, without limitation, the United Nations Convention on Contracts for the International Sale of Goods, as revised, or to the Uniform Computer Information Transactions Act, as adopted in any jurisdiction. You hereby agree that the courts located in San Francisco County, the State of California, USA, will constitute the sole and exclusive forum for the resolution of any and all disputes arising out of or in connection with this Agreement and you hereby irrevocably consent to the personal jurisdiction and venue of such courts and irrevocably waive any objections thereto. The parties hereby irrevocably waive any objection to the jurisdiction of such courts based on any ground, including, without limitation, improper venue or *forum non conveniens*. The prevailing party shall be entitled to recover from the other party its costs and fees, including reasonable attorneys' fees and fees of other professionals, associated with such litigation.

8. Amendment; Waiver. These End User Terms may only be amended in writing executed by an authorized representative of Red Condor. No provision hereof shall be deemed to be waived unless such waiver shall be in writing and signed by Red Condor.

9. Purchase Orders. In the event of a conflict between these End User Terms and the terms and conditions contained on any purchase order or sales documentation submitted by you, the End User Terms shall control. The terms and conditions contained on any purchase order or sales documentation, even if before or after the acceptance by you of these End User Terms, shall not apply, except with respect to pricing and quantity.

10. Interpretation. If any provision of these End User Terms is held to be unenforceable, such provision shall be reformed only to the extent necessary to make it enforceable and the remainder of these End User Terms shall nonetheless remain in full force and effect.

11. Assignment. Red Condor may freely assign these End User Terms and /or its rights to payment to any third party.

12. Injunctive Relief. Notwithstanding anything to the contrary herein, each party shall be entitled, at any time, to seek injunctive or other equitable relief from any court of competent jurisdiction, wherever such party deems appropriate, in order to preserve or enforce such party's rights hereunder, including without limitation with respect to Red Condor's intellectual property rights.

13. Survival. Any payment obligation that you have to Red Condor hereunder, the sections of these End User Terms entitled "Restrictions", "Ownership", and "Copyright Protection"; "No Other Warranties", "Limitation of Liability", and "Remedies", "General", "Export Controls" and "U.S. Government Restricted Rights Legend", as well as any other term hereunder which contemplates continuing effectiveness shall survive termination of these End User Terms for any reason. Any use of the Software, the Hardware, the documentation, or the Services, beyond the licensed term or the authorized use will result in the

assessment of additional fees and the assessment of such fees shall not be the sole and exclusive remedy of Red Condor.