

TERASCALA INC.
MASTER PURCHASE, LICENSE AND SERVICES AGREEMENT ("AGREEMENT")

BEFORE YOU CLICK ON THE "I AGREE" BUTTON OR USE THE PRODUCT (AS DEFINED HEREIN) MADE AVAILABLE TO YOU BY TERASCALA INC. ("TERASCALA"), CAREFULLY READ ALL THE FOLLOWING TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU ARE USING THE PRODUCT FOR THE FIRST TIME, AND YOU DO NOT AGREE TO ALL OF THE TERMS OF THIS AGREEMENT, DO NOT USE THE PRODUCT. IF YOU ARE USING THE PRODUCT AS PART OF AN ORGANIZATION AND ARE THE FIRST MEMBER OF YOUR ORGANIZATION TO ACCEPT THE TERMS OF THIS AGREEMENT, YOU WARRANT AND REPRESENT TO TERASCALA THAT YOU ARE DULY AUTHORIZED TO AGREE TO THE TERMS OF THIS AGREEMENT ON BEHALF OF YOUR ORGANIZATION AND TO BIND YOUR ORGANIZATION TO ITS TERMS. YOU AGREE THAT THIS AGREEMENT IS ENFORCEABLE LIKE ANY WRITTEN NEGOTIATED AGREEMENT SIGNED BY YOU.

BY CLICKING ON THE "I AGREE" BUTTON OR USING THE PRODUCT, YOU ARE ACKNOWLEDGING THAT YOU ARE BOUND BY THE TERMS OF THIS AGREEMENT AND ARE ALSO AGREEING THAT THE LICENSE, AND USE OF THE PRODUCT SHALL BE SUBJECT TO THE TERMS OF THIS AGREEMENT. AS USED IN THIS AGREEMENT THE TERM "LICENSEE" REFERS TO (I) YOU OR (II) IF YOU ARE USING THE PRODUCT AS PART OF YOUR ORGANIZATION, YOUR ORGANIZATION AND YOU PERSONALLY AS A MEMBER OF SUCH ORGANIZATION.

THIS AGREEMENT SHALL BE EFFECTIVE AS OF THE DATE IT IS FIRST ACCEPTED OR THE PRODUCT IS USED BY THE LICENSEE. USE OF ANY PRODUCT OR SERVICES BY THE LICENSEE WHILE THIS AGREEMENT IS IN EFFECT SHALL CONSTITUTE ACCEPTANCE OF THE TERMS OF THIS AGREEMENT BY LICENSEE TO THE PURCHASE, LICENSE, AND USE OF ALL OR ANY PART OF SUCH PRODUCT.

GENERAL TERMS AND CONDITIONS

1. **DEFINITIONS.** Capitalized terms referred to in this Agreement and not defined herein shall have the meanings set forth on Appendix 1 attached hereto.
2. **PURCHASE ORDERS; DELIVERY.**
 - 2.1. **Purchase Order.** Licensee, through a Reseller, will initiate orders for Products with a Purchase Order. Each Purchase Order shall state the type and quantity of Products ordered. Each Purchase Order shall attach to and form a part of this Agreement.
 - 2.2. **Delivery.** Unless otherwise agreed by the parties, all Software and Documentation will either be installed on the Hardware or loaded by electronic download.
3. **LICENSE TERMS.**
 - 3.1. **License.** Subject to the terms and conditions of this Agreement, upon the execution of a Purchase Order by Terascala and Licensee, Terascala grants to Licensee a non-exclusive, non-transferable, perpetual license to install, execute and use the Licensed Software, in object code form only, as well as the accompanying Documentation, solely on the Hardware and solely for Licensee's internal use. The foregoing license is subject to the other terms set forth in this Agreement, any additional terms set forth in the applicable Purchase Order, and payment of all applicable fees.
 - 3.2. **Copies.** Licensee may make up to two (2) copies of the Documentation solely for Licensee's internal back-up and archival purposes only, provided that all such copies shall bear the original and unmodified copyright, patent and other intellectual property markings as originally delivered by Terascala.
 - 3.3. **Restrictions.** Licensee shall not and shall not allow any third party to decompile, disassemble, reverse engineer or attempt to reconstruct, identify or discover any source code, underlying ideas, underlying user interface techniques or algorithms of the Licensed Software or any portion thereof, or otherwise derive its source code; (ii) modify, translate, or create derivative works of the Licensed Software or Documentation; (iii) sell, lease, license, sublicense, copy (except as permitted in Section 3.2 above), market or distribute the Licensed Software or Documentation; (iv) use the Licensed Software for any timesharing, service bureau, subscription, rental or similar uses without the express prior written consent of Terascala; or (v) publicly disseminate performance information or analysis (including, without limitation, benchmarks and performance tests) from any source relating to the Licensed Software. Licensee shall take all reasonable precautions to prevent unauthorized or improper use or disclosure of the Licensed Software.
4. **OWNERSHIP; PROTECTION OF SOFTWARE.**
 - 4.1. **Licensed Software.** Ownership of the Product, copies, modifications and derivatives of the Product (in whole or in part), and all related copyright, patent, trade secret and other proprietary rights, are and will remain the exclusive property of Terascala and/or its licensors. Terascala and its licensors reserve all rights not expressly granted by it to Licensee under this Agreement. There are no implied rights. Title to any third-party products included in the Licensed Software or otherwise provided to Licensee by Terascala ("Third Party Products") and all intellectual property rights in and to them, are and will remain the exclusive property of the owner of such Third Party Products. Nothing contained in this Agreement grants or confers, or will be construed to grant or confer, any rights in or to any Third Party Products, expressly or by implication, except for the limited license expressly set forth herein. Licensee will not use any Third Party Products that are included in the Licensed Software or otherwise provided to Licensee by Terascala, separately or apart from the Software or the Hardware.
 - 4.2. **Authorized Users.** The Licensed Software may only be accessed and used by Licensee and its Affiliates; provided, however, that Licensee shall take appropriate action, by instruction or agreement, to ensure that the Licensed Software are being used by such Affiliates in accordance with the terms and conditions of this Agreement. Licensee shall be liable for any breach of this Agreement by any of its Affiliates.
 - 4.3. **Certification and Audit.** At Terascala's written request and no more than once every twelve (12) months, Licensee shall provide Terascala with a signed certification (i) verifying that the Licensed Software is being used pursuant to the provisions of this Agreement, and (ii) listing all copies and the respective locations of the Licensed Software. In addition to the foregoing, Terascala may, upon written notification to Licensee, perform an audit, not more than once per twelve (12) month period, of Licensee's use of the Licensed Software and Documentation and Licensee's compliance with the provisions of this Agreement. Any such audit shall be made at Terascala's expense and shall occur during the Licensee's normal business hours. Terascala shall notify Licensee, in writing, ten (10) business days prior to such audit. Such audit shall not unreasonably interfere with Licensee's business operations and Licensee agrees to cooperate with Terascala in any such audit. Licensee also acknowledges that the Licensed Software may include password protection, anticopying subroutines or other security measures designed to monitor the usage of the Licensed Software for license management purposes. Under no circumstances would Terascala employ any such measure to interfere with Licensee's normal and permitted operation of the Licensed Software.

4.4. **Confidentiality.** Except as reasonably required to exercise its rights under this Agreement, each party shall maintain the Confidential Information of the other party in confidence. Each party agrees to use commercially reasonable efforts to prevent and restrain any unauthorized disclosure, communication, copying, use, distribution, installation or transfer of possession of Confidential Information by any of its employees, consultants, and agents to others or use it for any purpose, except pursuant to and in order to carry out, the terms and objectives of this Agreement. At a minimum, each party shall maintain at least the same procedures regarding the other party's Confidential Information that it maintains with respect to its own. A party's Confidential Information shall not include any information which: (i) becomes part of the public domain through no act or omission of the other party; (ii) is lawfully acquired by the other party from a third party without any breach of confidentiality to the party to whom the information relates; (iii) is disclosed by a party to a third party without any obligation of confidentiality to the party to whom the information relates; (iv) is independently developed without reference to Confidential Information; or (v) is disclosed in accordance with judicial or other governmental order. Notwithstanding the foregoing, either party shall be permitted to disclose the terms and conditions of this Agreement in conjunction with legal due diligence proceedings, but not otherwise. Without limiting the generality of the foregoing, Licensee shall take all reasonable steps to prevent any personnel from removing any proprietary or other legend or restrictive notice contained or included in any material provided by Terascala. Either party may publicly disclose the existence of this Agreement, but neither party shall disclose details of the Agreement without written consent from the other party.

4.5. **Injunctive Relief.** Both parties acknowledge that any use of the disclosing party's Confidential Information in a manner inconsistent with the provisions of this Agreement may cause the disclosing party irreparable and immediate damage for which remedies other than injunctive relief may be inadequate. Therefore, both parties agree that, in addition to any other remedy to which the disclosing party may be entitled hereunder, at law or equity, the disclosing party shall be entitled to an injunction or injunctions (without the posting of any bond and without proof of actual damages) to restrain such use in addition to other appropriate remedies available under applicable law.

4.6. **Export; Government Restricted Rights.** Licensee acknowledges that the export of any Licensed Software is subject to export or import control and Licensee agrees that any Licensed Software or the direct or indirect product thereof will not be exported (or re-exported from a country of installation) directly or indirectly, unless Licensee obtains all necessary licenses from the U.S. Department of Commerce or other agency as required by law. The Licensed Software and the Documentation have been developed at private expense and are sold commercially. They are provided under any U.S. government contracts or subcontracts with the most restricted and the most limited rights permitted by law and regulation. Whenever so permitted, the government and any intermediate buyers will obtain only those rights specified in Terascala's standard commercial license. Thus, the Licensed Software referenced herein, and the Documentation provided by Terascala hereunder, which are provided to any agency of the U.S. Government or U.S. Government contractor or subcontractor at any tier shall be subject to the maximum restrictions on use as permitted by FAR 52.227-19 (June 1987) or DFARS 227.7202-3(a) (Jan. 1, 2000) or successor regulations.

5. **MAINTENANCE.**

5.1 **Software Maintenance.** Licensee may purchase Maintenance and Support Services for the Product for so long as Terascala continues to maintain such Maintenance and Support Services, in accordance with Terascala's then current maintenance and support policies, the current version of which is described on **Appendix 2** to this Agreement. Terascala's Maintenance and Support Services are provided only for the standard version of the Licensed Software made generally available by Terascala.

6. **LIMITED WARRANTY; LIMITATION OF WARRANTIES.**

6.1. **Limited Software Warranty.** Terascala hereby grants to Licensee a sixty (60) day Software Warranty, as defined below, commencing on the date that the Licensed Software is delivered to Licensee by Terascala and continuing for sixty (60) consecutive days thereafter (the "**Software Warranty Period**"). Terascala warrants that during the Software Warranty Period the Licensed Software will perform in accordance with the then-current Documentation in all material respects (the "**Software Warranty**"). This Software Warranty does not cover any copy of the Licensed Software, which has been altered or changed in any way by a party other than Terascala. Licensee's sole and exclusive remedy for any breach of the Software Warranty shall be to have Terascala or its representatives, at their option, modify such Licensed Software to correct the defect giving rise to such breach or replace the defective Licensed Software with Licensed Software that complies with this Software Warranty within a reasonable period, not to exceed ninety (90) days from Terascala's receipt of written notification of such defect from Licensee.

6.2. **Contingencies.** Licensee's remedy and Terascala's liability under Section 6.1 are expressly contingent upon: (i) Licensee notifying Terascala in writing of the claim within the Software Warranty Period and furnishing Terascala with adequate supporting documentation and details to substantiate the claim and to assist Terascala with the identification and detection of the cause of the problem, and (ii) the problem being capable of reproduction on properly functioning equipment by Terascala; (iii) the Licensed Software has not been altered or changed in any way by a party other than Terascala; (iv) the Licensed Software has been properly installed and operated in accordance with the Documentation; and (v) the Licensed Software has not experienced interference from products, applications, or configurations provided by Licensee or third parties.

6.3. **Errors.** Terascala does not warrant that the functions contained in the Product will meet the requirements of Licensee or that the operation of the Licensed Software will be interruption or error-free. Terascala is not responsible for problems which result from the use of the Licensed Software in conjunction with software of third parties or with hardware which is incompatible with the operating system for which the Licensed Software is being procured.

6.4. **DISCLAIMER.** EXCEPT FOR THE EXPRESS WARRANTIES MADE IN THIS SECTION, TERASCALA MAKES AND LICENSEE RECEIVES NO OTHER EXPRESS OR IMPLIED WARRANTIES OF ANY KIND WITH RESPECT TO ANY LICENSED SOFTWARE, DOCUMENTATION, MAINTENANCE SERVICES, PROFESSIONAL SERVICES, THIRD PARTY SOFTWARE, OR OTHER SERVICES. TERASCALA SPECIFICALLY DISCLAIMS AND EXCLUDES ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, AND ANY AND ALL WARRANTIES ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR TRADE USAGE. THE STATED PRODUCT WARRANTY IS IN LIEU OF ALL OBLIGATIONS AND LIABILITIES ON THE PART OF TERASCALA FOR DAMAGES.

7. **INDEMNIFICATION.**

7.1. **Indemnity.** Terascala will defend and indemnify, at its own expense, any third party claim against Licensee that arises due to a claim that the Licensed Software infringes a valid United States patent or copyright or involves the misappropriation of a trade secret. Terascala will pay such damages or costs as are finally awarded against Licensee or agreed to in settlement for such claim provided that Licensee gives Terascala: (a) prompt written notice of any such claim or threatened claim; (b) sole control of the defense, negotiations and settlement of such claim; and (c) full cooperation in any defense or settlement of the claim (at Terascala's cost).

7.2. **Further Obligations.** Should any Licensed Software become, or in Terascala's opinion be likely to become, the subject of a claim of infringement or trade secret misappropriation as set forth above, Terascala shall, at its option and expense either: (i) procure for Licensee the right to continue to use the infringing Licensed Software, or (ii) replace or modify the infringing Licensed Software to make its use non-infringing without loss of substantial functionality. Notwithstanding the foregoing, if Terascala, in its sole discretion, determines that neither of the said options is reasonably available to it, Terascala, at its option, may terminate Licensee's license for the infringing Licensed Software.

7.3. **Exclusions.** Regardless of the foregoing, Terascala shall have no liability or obligation to Licensee with respect to any claim if such a claim is based on (i) Licensee's use of any non-current or altered version of the Licensed Software, to the extent that Licensee's liability for such claim would have been avoided by the use of a more recent and unaltered version of the Licensed Software which had been provided by Terascala to Licensee, or (ii) the combination, operation, or use of the Licensed Software with software or equipment which was not provided by Terascala, to the extent that Licensee's liability for such claim would have been avoided in the absence of such combination, operation, or use.

7.4. **Sole Obligation.** This Section states Terascala's sole obligation and Licensee's sole remedy in the event that the Licensed Software infringes or misappropriates any intellectual or proprietary rights of any third party.

8. LIMITATION OF LIABILITY.

8.1. **Limitation of Liability.** Except for (i) a party's breach of its obligations under Section 4.4 above, (ii) in connection with a breach by either party of the intellectual property rights of the other party or (iii) a breach by Licensee of Section 3.3 above, in no event will either party, or their respective Affiliates, employees or agents, or Terascala's suppliers, be liable for loss of profits, business, use or data, or for interruption of business, or any other indirect, incidental, consequential or punitive damages even if advised of the possibility of such damages, regardless of the form of action, notwithstanding the failure of essential purpose of any limited remedy. Except for Terascala's indemnification obligations under Section 7.1 above, in no event will Terascala's aggregate, cumulative monetary liability for any damages arising from or related to this Agreement, whether in contract or in tort or under any other legal theory (including strict liability and negligence), exceed the Fees actually paid by Licensee to Terascala for the applicable Licensed Software that is related to the claim provided that nothing in this Agreement shall operate so as to restrict or exclude any liability for death or personal injury caused by negligence of either party. The provisions of this Agreement allocate the risks between the parties.

9. TERMINATION.

9.1. **Termination by the Parties.** Either party may terminate this Agreement for cause immediately by written notice upon the occurrence of any of the following events:

- (i) if the other party ceases to do business, or otherwise terminates its business operations;
- (ii) if the other party is adjudicated as bankrupt, or if a petition in bankruptcy is filed against the other party and such petition is not discharged within sixty (60) days of such filing; or
- (iii) if the other party breaches any material provision of this Agreement and fails to fully cure such breach within thirty (30) days of written notice describing such breach provided, however, that a breach by Terascala of its obligations under Section 7.1 shall not be deemed to be a material breach but instead shall be subject to the exclusive remedies set forth in Section 7.1.

9.2. **Effect of Termination.** Upon termination of this Agreement, regardless of the cause, all licenses granted under this Agreement shall be immediately revoked.

9.3. **Destruction of Software.** Licensee agrees that, in the event of any termination of the Agreement, Licensee shall, within fifteen (15) days from the date of such termination, purge all copies of such Licensed Software and Documentation from all computers and storage media on which Licensee has maintained them, destroy all copies of such Licensed Software and Documentation provided to or made by Licensee under this Agreement, and promptly certify in writing to Terascala that the same have been purged and destroyed.

9.4. **Survival.** Termination of this Agreement shall not relieve either party of any payment or other obligation under this Agreement which was to have been performed by such party prior to the termination. All provisions of this Agreement which by their nature are intended to survive the termination of this Agreement (including, without limitation, the provisions of Sections 3, 4, 6.4, 7, 8, 9 and 10) shall survive such termination.

10. GENERAL PROVISIONS.

10.1. **Entire Agreement and Controlling Documents.** This Agreement contains the entire agreement between the parties with respect to the subject matter hereof, and supersedes all proposals, understandings, representations, warranties, covenants, and any other communications (whether written or oral) between the parties relating thereto and is binding upon the parties and their permitted successors and assigns. Only a written instrument that refers to this Agreement and is duly signed by both authorized representatives of both parties may amend this Agreement. The terms and conditions contained in any purchase order issued by Licensee shall be of no force or effect, even if the order is accepted by Terascala. In the event of a conflict in terms among the Agreement and the Purchase Order, the Agreement shall control.

10.2. **US Government Contracts.** If the Software is acquired by or on behalf of a unit or agency of the United States Government, the Government agrees that such Software or documentation is "commercial computer software" or "commercial computer software documentation" and that, absent a written agreement to the contrary, the Government's rights with respect to such Software are limited by the terms of this Agreement, pursuant to FAR 12.212(a) and/or DFARS 227.7202-1(a), as applicable.

10.3. **Assignment.** This Agreement shall be binding upon and for the benefit of Terascala and Licensee and their respective legal representatives, successors, and assigns; provided, that Licensee shall not assign, sublicense, delegate, or otherwise transfer any of its rights or obligations under this Agreement without Terascala's prior written consent, except that a party may assign this Agreement without consent to the acquiring or surviving entity in a merger or acquisition in which the assigning party is the acquired entity (whether by merger, reorganization, acquisition or sale of stock) or to the purchaser of all or substantially all of the assigning party's assets.

10.4. **Governing Law; Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, without regard to (i) its conflict of law provisions, and (ii) the applicability, if any, of the United Nations Convention on Contracts for the International Sale of Goods. Each party consents to, and agrees that each party is subject to, the exclusive jurisdiction of the state and federal courts of the Commonwealth of Massachusetts with respect to any actions for enforcement of or breach of this Agreement.

10.5. **Headings; Counterparts.** The headings to the sections of this Agreement are for ease of reference only and shall not affect the interpretation or construction of this Agreement. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original and all of which shall be deemed to be an original instrument.

- 10.6. **Relationship of the Parties.** Terascala and Licensee are independent contractors, and nothing in this Agreement shall be construed as making them partners or as creating the relationships of employer and employee, master and servant, or principal and agent between them, for any purpose whatsoever. Neither party shall make any contracts, warranties or representations or assume or create any other obligations, express or implied, in the other party's name or on its behalf.
- 10.7. **Attorneys' Fees.** In the event of any litigation between the parties concerning performance or non-performance of either party's obligations under this Agreement, the prevailing party shall be entitled to be reimbursed by the other party for the costs and expenses, including, but not limited to, reasonable attorneys' fees, incurred or paid by the prevailing party in such litigation.
- 10.8. **Force Majeure.** Except for the obligation to make payments, nonperformance of either party shall be excused to the extent that performance is rendered impossible by strike, fire, flood, governmental acts or orders or restrictions, failure of suppliers, or any other reason where failure to perform is beyond the reasonable control of the non-performing party.
- 10.9. **Notices.** Any demand, notice, consent, or other communication required by this Agreement to be given in writing shall be given either (i) by being hand-delivered to the receiving party, or (ii) by

being deposited in the mail (registered or certified) or delivered to a recognized private express common carrier, postage or freight prepaid, addressed to the receiving party. Either party may change its address by giving written notice to the other party of the changed address.

- 10.10. **Waiver and Severability.** The waiver or failure of either party to exercise in any respect any right provided for in this Agreement shall not be deemed a waiver of the subject right or any further right under this Agreement. If any provision of this Agreement or the application thereof to any party or circumstances shall be declared void, illegal or unenforceable, the remainder of this Agreement shall be valid and enforceable to the extent permitted by applicable law. In such event the parties shall use their best efforts to replace the invalid or unenforceable provision by a provision that, to the extent permitted by applicable law, achieves the purposes intended under the invalid or unenforceable provision.
- 10.11. **Use of Name.** Licensee agrees that Terascala may upon approval by Licensee (i) use Licensee's name in Terascala's customer list, (ii) issue a press release generally describing the party's relationship under this Agreement, (iii) obtain Licensee's participation in a case study, and (iv) in a reasonable number of instances, identify Licensee as a reference customer.

Appendix 1

Definitions

Affiliates: Any corporation, partnership or other entity now existing or hereafter organized that is directly or indirectly controlled by a party. For purposes of this definition "control" means the direct possession of at least fifty-one percent (51%) of the outstanding voting securities of an entity.

Confidential Information: All information which is written, graphic, machine readable or other tangible form and is marked "confidential", "proprietary", "source code", or in some other manner to indicate its confidential nature, or which under the circumstances of disclosure reasonably ought to be considered as confidential. Confidential Information shall expressly include the Licensed Software, including all source and object code, Documentation related to such Licensed Software, and the terms and pricing under this Agreement.

Documentation: The documentation for Licensed Software generally supplied by Terascala to assist its customers in the use of such Licensed Software, including: (i) user and system administrator guides and manuals and other written materials, including the software functional specifications, and (ii) on-line help for use by customers in connection with the Licensed Software.

Hardware: The hardware products on which the Licensed Software is installed at the date of purchase.

Licensed Software: The series of Terascala computer software programs loaded on the Hardware or listed on a Purchase Order. Licensed Software shall include the Upgrades thereto and shall also include any security device (if any) and third party software and documentation (if any) delivered to Licensee by Terascala.

Licensed Software Maintenance Period: If Maintenance and Support Services is purchased by Licensee, the period set forth on the Purchase Order commencing on the date of delivery of the Hardware.

Maintenance and Support Services: Terascala's maintenance and support services program with respect to the Licensed Software as further described on [Appendix 2](#).

Open Source Materials: means third-party software for which source code is made available free of additional charge and which can be used, redistributed, and modified under the terms of a separate license agreement.

Purchase Order: The purchase order signed by both parties from time to time that, when completed, set forth the Products, Maintenance and Support Services and any other services ordered by Licensee from Terascala, certain restrictions and any other terms that Terascala and Licensee agree upon.

Products: the Licensed Software and Maintenance and Support Services, and other services identified in the Purchase Order.

Reseller: a VAR, OEM, reseller or other distributor of the Products.

Upgrades: Periodically released versions of the Licensed Software and Documentation, which include updates, modifications, corrections, and feature enhancements to the Licensed Software and Documentation and which Terascala generally provides to its customers who are enrolled in and fully paid-up under the Maintenance Program. Upgrades do not include new Terascala products, which either add new functionality to the Licensed Software or which are marketed and priced separately by Terascala.

Appendix 2

MAINTENANCE AND SUPPORT SERVICES

I. MAINTENANCE SERVICES.

- A. Upon payment of the applicable annual Maintenance and Support Services fees, Terascala shall provide the Maintenance and Support Services for the Licensed Software as described herein. Terascala will use commercially reasonable efforts to meet the following objectives with respect to remedial support for the Licensed Software. All Maintenance Services provided under this Agreement shall be conducted in the English language.
- B. Support Services: During the Licensed Software Maintenance Period, Terascala shall provide technical support for the Licensed Software. Terascala shall make available to Licensee technical staff to assist with questions concerning the Licensed Software and to assist Licensee in resolving any problems with the Licensed Software based on the level of support to which Licensee has subscribed.
- C. Email and Telephone Support: During the Licensed Software Maintenance Period, Licensee Terascala shall provide Licensee with email and telephone support. Email support is provided at the email address terascalasupport@terascala.com. Telephone support is provided during the Terascala office hours defined for the Licensee's support region, defined as 7:00 AM to 7:00 PM, Eastern Standard Time, Monday through Friday, excluding holidays recognized by Terascala ("Daily Coverage Period"), at the telephone number: 508-588-1501 x2. Terascala agrees to provide a response in accordance with Section V below upon notification by Licensee to Terascala (via telephone, email, or Internet) of problems with the Licensed Software. Requests received after the Daily Coverage Period shall be deemed to be received during the next business day of Terascala.
- D. Upgrades to the Licensed Software and Documentation: So long as Licensee is enrolled in and fully-paid up under Terascala's Maintenance and Support Services for the Licensed Software, Terascala shall provide Licensee with all Upgrades to the Licensed Software and Documentation. Licensee shall destroy or return to Terascala any portion of the Licensed Software replaced by an Upgrade (except archival copies).

II. SUPPORT OF PREVIOUS VERSIONS OF THE LICENSED SOFTWARE.

- A. During the Licensed Software Maintenance Period, Terascala shall provide Maintenance Services for the current release of the Licensed Software as listed on the Purchase Order and all other releases whose version number begins with either the same number, or the previous number. For example, if the current release is Version 4.5, Terascala will support only those versions between 3.0 and the current release.

III. LICENSEE RESPONSIBILITIES.

- A. Remote Diagnostics: Licensee shall provide Terascala with the necessary remote access to the Licensee's designated Hardware so that Terascala may provide remote dial-in support services.
- B. Licensee's Designated Contact: Licensee shall appoint one individual within Licensee's organization to serve as the primary contact between Licensee and Terascala and to receive support through the telephone support center.
- C. Licensee's Dedicated Resource to the Licensed Software: Licensee shall appoint at least two (2) individuals within its organization who are familiar with all modifications, customizations, or extensions to the Licensed Software, and

has access to any and all source code related to the same. Such individuals shall act as the primary contacts for any support calls to Terascala involving such modifications, customizations, or extensions to the Licensed Software.

- D. Information: Licensee shall provide to Terascala a problem report containing all pertinent information regarding the current problem with the Licensed Software, which shall, at a minimum, verify the existence of the problem and provide the conditions in which the problem may be duplicated.

IV. LIMITATIONS.

All associated computer hardware and operating systems must be maintained at the latest version deemed necessary by Terascala. Terascala shall not be obligated to provide the services hereunder if service is required as a result of hardware not provided by Terascala or on which the Licensed Software was licensed or software or modifications to the Licensed Software. If Licensee is unable to remedy the said problems, Terascala will, upon Licensee's request, treat such problems as a professional services engagement and shall bill for its services at Terascala's then-current professional services rates.

V. RESPONSE TIMES.

A. Severity Levels /Response Times. Terascala shall use commercially reasonable efforts to address the Severity Levels set out below in the time periods described below, provided that classification of any problem among Severity Levels shall be reasonably in accordance with the definitions specified below which shall be determined in Terascala's reasonable discretion:

(a) Error Severity Levels.

Severity 1 (Critical): The production environment for the Licensed Software is unavailable, causing critical impact to system operation if service is not restored quickly. No workaround is available.

Severity 2 (Severe): The production environment is severely degraded, impacting significant aspects of system operations. No workaround is available.

Severity 3 (Standard): The production environment is degraded. Functionality is noticeably impaired, but most system operations continue.

Severity 4 (Low): Licensee requires information or assistance on the capabilities, installation, or configuration of the Licensed Software.

(b) Response Times.

Severity 1 (Critical): Terascala will use commercially reasonable efforts to acknowledge the issue within thirty (30) minutes during the Daily Coverage Period. Licensees who have elected to purchase Premium Support shall be entitled to pager-support coverage beyond the Daily Coverage Period. Terascala will use commercially reasonable efforts to resolve the issue within three (3) business days or as reasonably practicable after initial notification. Resolution will usually be in the form of patch or workaround for system critical errors.

Severity 2 (Severe): Terascala will use commercially reasonable efforts to acknowledge the issue within two business hours during the Daily Coverage Period. Terascala will use commercially reasonable efforts to resolve the issue within five (5) business days or as reasonably practicable after initial notification. Final resolution usually will be

delivered in the next scheduled patch release, or as a patch in extreme cases.

Severity 3 (Standard): Terascala will use commercially reasonable efforts to acknowledge the issue within four business hours during the Daily Coverage Period. A schedule for resolution will not be committed; however, Terascala will provide regular updates of progress and timescales for when a resolution will be available.

Severity 4 (Low): Terascala will use commercially reasonable efforts to acknowledge the issue within one business day of the notification of the error.