Material Security

SOFTWARE LICENSE AGREEMENT

Licensee: _____

Effective Date: Date of execution of this Agreement

This Software License Agreement (this "***Agreement***") is made and entered into as of the above date (the "***Effective Date***") by and between Material Security Inc., a Delaware corporation ("***Material***"), and the above party (the "***Licensee***"). Capitalized terms shall have the meaning defined herein and, in the Exhibits, hereto.

In consideration of the premises and the covenants set forth in this Agreement, the parties hereby agree as follows:

1.   Definitions.

        1.1   "**Authorized Period**" means the time period specified in the Order Form.

        1.2   "**Authorized Unit**" means the specific number of Units authorized for use with respect to the Licensed Software as specified in the Order Form.

        1.3   "**Confidential Information**" means any and all non-public, confidential and proprietary information, furnished by one party to this Agreement (the "**Disclosing Party**") or any of its Representatives to the other party to this Agreement (the "**Receiving Party**") or any of its Representatives, whether orally, in writing, or in other tangible form. Without limiting the generality of the foregoing, Confidential Information may include, without limitation, that which relates to patents, patent applications, trade secrets, research, product plans, products, developments, know-how, ideas, inventions, processes, design details, drawings, sketches, models, engineering, software (including source and object code), algorithms, business plans, sales and marketing plans, and financial information. Any Confidential Information disclosed in a written or other tangible form shall be clearly marked as "confidential," "proprietary," or words of similar import. Any Confidential Information disclosed orally shall, to the extent practicable, be identified as confidential at the time of disclosure. Notwithstanding the foregoing, Confidential Information shall expressly include the terms of this Agreement, the Licensed Software and all know-how, techniques, ideas, principles and concepts which underlie any element of the Licensed Software and which may be apparent by use, testing or examination.

        1.4   "**Derivative Work**" means a work of authorship or other development that is based on, derived from or extends, replaces, emulates, substitutes for, or exposes to third parties the functionalities of the Licensed Software, such as a revision, enhancement, modification, improvement, translation, abridgement, compression, extension or expansion or any other form in which such work may be recast, applied, transformed or adopted, and includes, without limitation, any "derivative work" as defined in the United States Copyright Act, 17 U.S.C. Section 101.

        1.5   "**Intellectual Property Right**" means any of the following: (i) all letters patent and applications for letters patent throughout the world, including all patent applications in preparation for

filing anywhere in the world, all reissues, divisions, continuations, continuations-in-part, extensions, renewals, and reexaminations of any of the foregoing; (ii) common law and statutory trade secrets and all other confidential or proprietary or useful information that has independent value, and all know-how, in each case whether or not reduced to a writing or other tangible form; (iii) all copyrights, whether arising under statutory or common law, registered or unregistered, now or hereafter in force throughout the world, and all applications for registration thereof, whether pending or in preparation, all extensions and renewals of any thereof and all proceeds of the foregoing; (iv) all trademarks, trade names, corporate names, company names, business names, fictitious business names, trade styles, service marks, certification marks, collective marks, logos, other source of business identifiers, prints, and labels on which any of the foregoing have appeared or appear, designs and general intangibles of a like nature, now existing anywhere in the world or hereafter adopted or acquired, whether currently in use or not, all registrations and records thereof and all applications in connection therewith, whether pending or in preparation for filing, including registrations, recordings, and applications in any office or agency of the United States of America or any State thereof or any foreign country, all reissues, renewals, and extensions thereof, all of the goodwill of the business connected with the use of, and symbolized by such items, and all proceeds of, and rights associated with, the foregoing; (v) moral rights in those jurisdictions within where such rights are recognized, (vi) database protections in those jurisdictions that provide distinct legal protections for databases, (vii) all other intellectual property protections recognized within any of the jurisdictions, including but not limited to any applicable *sui generis* protections for intellectual property, and (viii) all proceeds of, and rights associated with, the foregoing (as appropriate to such rights), including the right to sue third parties for any actual or threatened past, present, or future infringements, dilutions or misappropriations of any of the foregoing, or for any injury to the goodwill associated with the use of any property or rights set forth in clause (iv), and all rights corresponding thereto throughout the world.

1.6 "**Licensed Software**" means the Material proprietary software product(s) indicated in the Order Form as Licensed Software under this Agreement.

1.7 "**M&S**" means the maintenance and support services provided by Material for the Licensed Software licensed under this Agreement.

1.8 "**Managed Service**" means the services provided by Material associated with the management of the Licensed Software on Licensee's behalf as further described in the Order Form.

1.9 "**Representatives**" means, as to any person, such person's affiliates and its or their directors, officers, employees, agents, and advisors (including, without limitation, financial advisors, counsel and accountants) bound by a written agreement or other legal obligation to maintain the confidentiality of the Confidential Information disclosed to them as required by the terms of Section 11.

1.10 "**Unit**" means the specific unit of measure identified in the Order Form applicable to Licensee's use of the Licensed Software.

2. License Grant.

2.1 **License to Licensed Software**. Subject to the terms and conditions of this Agreement, including but not limited to receipt of all applicable fees by Material, Material hereby grants to Licensee, and Licensee hereby accepts from Material, a limited, non-exclusive, non-transferable, non-assignable and non-sublicenseable license to use the Licensed Software, in a manner consistent with the limitations set forth in this Agreement, in connection with the Authorized Units during the Authorized Period.

2.2   Restrictions on Licenses. In addition to the restrictions set forth above, Licensee agrees that, except as otherwise expressly provided by this Agreement, it shall not: (a) exceed the scope of the licenses granted in this Section 2; (b) make copies of the Licensed Software; (c) sublicense, assign, delegate, rent, lease, sell, time-share or otherwise transfer the benefits of, use under, or rights to, the license granted in Section 2.1, and any attempt to make any such sublicense, assignment, delegation or other transfer by Licensee shall be void and of no effect; (d) reverse engineer, decompile, disassemble or otherwise attempt to learn the source code, structure or algorithms underlying the Licensed Software, except to the extent required to be permitted under applicable law; (e) modify, translate or create Derivative Works of the Licensed Software without the prior written consent of Material; (f) remove any copyright, trademark, patent or other proprietary notice that appears on the Licensed Software; or (g) combine or distribute any of the Licensed Software with any software that is licensed under terms that seek to require that any of the Licensed Software (or any associated Intellectual Property Rights) be provided in source code form (e.g., as "open source"), licensed to others to allow the creation or distribution of Derivative Works, or distributed without charge. The licenses provided by this Agreement are limited licenses, and Licensee acknowledges that this Agreement does not grant Licensee, and Material expressly disclaims the grant of, any license, immunity, or other right to or under any patent or other Intellectual Property Right of Material, whether directly or by implication, legal or equitable estoppel, exhaustion or otherwise, except for the limited licenses expressly set forth in Section 2.1. The restrictions in this Section 2.2 are not intended to prohibit Licensee from using third party managed services providers to manage the Licensed Software either at a Licensee's site or such third party's site solely on behalf and for the benefit of Licensee.

3.   Orders. Licensee may place orders for additional Licensed Software, Authorized Units or to extend the Authorized Period with respect to the Licensed Software by specifying such order details in the order form agreed to in writing by the parties.

4.   Ownership. The Licensed Software are licensed and not sold to Licensee. Material and its licensors own and retain all right, title and interest in the Licensed Software, any design changes, improvements, enhancements, Derivative Works, or modifications thereof or thereto, and any related and/or associated Intellectual Property Rights, whether developed by Material or by Licensee or its employees or independent contractors. Licensee shall cooperate with Material in good faith to the extent necessary for Material to arrange or obtain registration on behalf of Material of all Intellectual Property Rights in any design changes, improvements, enhancements, Derivative Works, or modifications to the Licensed Software. Notwithstanding anything to the contrary in this Agreement, Licensee acknowledges that it is not licensed under, and Material disclaims the grant of, any rights under Intellectual Property Rights of Material, whether by implication, exhaustion, estoppel, or under any other theory, other than those expressly specified in Section 2 above.

5.   Services.

5.1   Licensed Software Maintenance and Support. Subject to the timely payment of the Fees for the applicable M&S fees as described in the Order Form, Material shall provide M&S for such Licensed Software as set forth in Exhibit A.

5.2   Managed Services. Subject to the timely payment of the Fees for the applicable Managed Services fee as described in the Order Form, Material shall provide Managed Services as set forth in the Order Form.

6.   Payments.

     6.1   Fees. Licensee shall pay to Material the applicable fees set forth in the Order Form in respect of the Licensed Software, M&S, Managed Services, and the other fees described in this Section 6 (collectively, the "**Fees**"). Licensee acknowledges that it shall have no right to return the Licensed Software, M&S, or Managed Services and that all Fees shall be non-refundable.

     6.2   Payment Terms. All amounts payable to Material under this Agreement shall be paid in United States dollars and shall be due thirty (30) days from the date of invoice. Unless otherwise agreed by Material, all payments shall be made by wire transfer of immediately available funds to an account designated by Material, all wire transfer fees prepaid. Notwithstanding any other rights of Material, in the event of late payment by Licensee (other than a payment that is not made when due as a result of a bona fide dispute between the parties), Material shall be entitled to interest on the amount owing at a rate of 1% per month or the highest rate allowed by applicable law, whichever is less, compounded on a daily basis from the due date of payment until the date of actual payment.

     6.3   Taxes; Set-offs. Any and all payments made by Licensee in accordance with this Agreement are exclusive of any taxes that might be assessed against Licensee by any jurisdiction. Licensee shall pay or reimburse Material for all value-added, sales, use, property and similar taxes; all customs duties, import fees, stamp duties, license fees and similar charges; and all other mandatory payments to government agencies of whatever kind, except taxes imposed on the net or gross income of Material. All amounts payable to Material under this Agreement shall be without set-off and without deduction of any taxes, levies, imposts, charges, withholdings and/or duties of any nature which may be levied or imposed, including without limitation, value added tax, customs duty and withholding tax.

7.   Term. The term of this Agreement shall commence on the Effective Date and remain in effect until the end of the Authorized Period (the "**Term**"), unless this Agreement is terminated earlier in accordance with Section 8. The Authorized Period will renew automatically at the end of the applicable term, and the corresponding fees will become due, unless either party provides to the other advance written notice with respect to non-renewal at least thirty (30) days prior to the end of the then current term.

8.   Termination.

     8.1   Termination. This Agreement and the licenses granted hereunder may be terminated:

          (a) by either party if the other has materially breached this Agreement, within thirty (30) calendar days after written notice of such breach to the other party if the breach is remediable or immediately upon notice if the breach is not remediable; or

          (b) by Material upon written notice to Licensee if Licensee (i) has made or attempted to make any assignment for the benefit of its creditors or any compositions with creditors, (ii) has any action or proceedings under any bankruptcy or insolvency laws taken by or against it which have not been dismissed within sixty (60) days, (iii) has effected a compulsory or voluntary liquidation or dissolution, or (iv) has undergone the occurrence of any event analogous to any of the foregoing under the law of any jurisdiction.

     8.2   Effect of Termination. Upon any expiration or termination of this Agreement, the license granted in Section 2 shall terminate immediately, and Licensee shall (i) immediately cease use of all Licensed Software, and (ii) return to Material all Licensed Software and other materials and information provided by Material and any copies thereof made by Licensee. Licensee shall certify to Material in

writing that it has retained no copies of such Licensed Software, materials or information. Any termination or expiration shall not relieve Licensee of its obligation to pay all Fees accruing prior to termination. If the Agreement is terminated due to Licensee's breach, Licensee shall pay to Material all Fees set forth in the Order Form.

9. Warranty.

9.1 Material Warranty. The Licensed Software, when used by Licensee in accordance with the provisions of this Agreement, will perform, in all material respects, the functions described in the Order Form without any Errors (as such term is defined in Exhibit A) for a period of ninety (90) days from the date the Licensed Software was first delivered to Licensee (such period, the "**Warranty Period**").

9.2 Exclusive Remedies. Licensee shall report to Material, pursuant to the notice provision of this Agreement, any breach of the warranties set forth in this Section 9 during the relevant Warranty Period. In the event of a breach of warranty by Material under this Agreement, Licensee's sole and exclusive remedy, and Material's entire liability, shall be prompt correction of Errors or, if such correction is not possible, replacement of the Licensed Software in order to minimize any material adverse effect on Licensee's business.

9.3 Limitations of Warranties. No warranty or indemnification shall apply where the defect or error in the Licensed Software is caused by: (a) any use of the Licensed Software which is not in conformity with the provisions of this Agreement; (b) any repair, modification or installation of the Licensed Software not made or expressly authorized by Material; or (c) the use or attempted use of software other than the most current version supported by Material and made available to Licensee under the terms of this Agreement. Replacement or repair of a Licensed Software product shall not extend its warranty period beyond the original warranty expiration date.

9.4 Disclaimer of Warranty. Material does not represent or warrant that the operation of the Licensed Software (or any portion thereof) will be uninterrupted or error free, or that the Licensed Software (or any portion thereof) will operate in combination with other hardware, software, systems or data not provided by Material, except as expressly specified in the Order Form. Material does not provide assistance on the general use of the Licensed Software or problem diagnosis if Licensee is not current in its payment obligations. LICENSEE ACKNOWLEDGES THAT, EXCEPT AS EXPRESSLY SET FORTH IN SECTION 9.1, MATERIAL MAKES NO EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES OF ANY KIND WITH RESPECT TO THE LICENSED SOFTWARE OR SERVICES, OR THEIR CONDITION. MATERIAL IS FURNISHING THE WARRANTIES SET FORTH IN SECTION 9.1 IN LIEU OF, AND MATERIAL HEREBY EXPRESSLY EXCLUDES, ANY AND ALL OTHER EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES, WHETHER UNDER COMMON LAW, STATUTE OR OTHERWISE, INCLUDING WITHOUT LIMITATION ANY AND ALL WARRANTIES AS TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY OR NON-INFRINGEMENT OF THIRD-PARTY RIGHTS.

10. Limitation of Liability.

10.1 Exclusion of Consequential Damages. EXCEPT FOR A BREACH OF SECTION 11 BY EITHER PARTY, OR LICENSEE'S BREACH OF SECTION 2, IN NO EVENT SHALL MATERIAL OR LICENSEE BE LIABLE IN AN ACTION UNDER TORT, CONTRACT, WARRANTY OR OTHERWISE FOR ANY: (a) SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE/EXEMPLARY DAMAGES OR LOSSES ARISING FROM OR RELATED TO A BREACH OF THIS AGREEMENT, THE OPERATION OR USE OF THE LICENSED SOFTWARE, OR THE SERVICES PERFORMED

HEREUNDER, INCLUDING, WITHOUT LIMITATION, SUCH DAMAGES OR LOSSES ARISING FROM (i) LOSS OF BUSINESS, PROFIT OR REVENUES, (ii) LOSS OF DATA, PROGRAMMING OR CONTENT, (iii) FAILURE TO REALIZE SAVINGS OR OTHER BENEFITS, (iv) SUBSTITUTE PROCUREMENT, OR (v) DAMAGE TO EQUIPMENT, INCURRED BY EITHER PARTY OR ANY THIRD PARTY, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES OR IF SUCH DAMAGES OR LOSSES ARE FORESEEABLE; OR (b) DAMAGES OR LOSSES (REGARDLESS OF THEIR NATURE) FOR ANY DELAY OR FAILURE BY A PARTY TO PERFORM ITS OBLIGATIONS UNDER THIS AGREEMENT DUE TO ANY CAUSE BEYOND SUCH PARTY'S REASONABLE CONTROL.

10.2   Maximum Liability. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, IN NO EVENT SHALL MATERIAL'S TOTAL LIABILITY TO LICENSEE FOR DAMAGES, LOSSES OR LIABILITY OF ANY KIND EXCEED, EITHER CUMULATIVELY OR IN THE AGGREGATE, THE FEES PAID BY LICENSEE TO MATERIAL UNDER THIS AGREEMENT.

10.3   Allocation of Risk. The parties acknowledge and agree that the limitations of liability in this Section 10 and in other provisions of this Agreement and the allocation of risk herein are an essential element of the bargain between the parties, without which neither party would have entered into this Agreement. Material's pricing and compensation under this Agreement reflects this allocation of risk and the limitation of liability specified herein. The parties further acknowledge and agree that the limitations of liability in this Section 10 shall apply even when a remedy available under breach of warranty or other similar provisions set forth under this Agreement has failed of its essential purpose.

11.   Confidentiality. Unless otherwise agreed to in writing by the Disclosing Party, each Receiving Party agrees (a) to keep all Confidential Information in strict confidence and not to disclose or reveal any Confidential Information to any person (other than such Receiving Party's Representatives who (i) are actively and directly involved in providing or receiving products or services under this Agreement, and (ii) have a need to know the Confidential Information), and (b) not to use Confidential Information for any purpose other than in connection with fulfilling obligations or exercising rights under this Agreement. The Receiving Party shall treat all Confidential Information of the Disclosing Party by using the same degree of care, but no less than a reasonable degree of care, as it accords its own Confidential Information. The parties agree to cause their Representatives who receive Confidential Information to observe the requirements applicable to the Receiving Party pursuant to this Agreement with respect to such information, including, but not limited to, the restrictions on use and disclosure of such information contained in this Section 11. Notwithstanding the above, the obligations of the parties set forth herein shall not apply to any information that: was in the public domain at the time it was disclosed or has entered the public domain through no fault of the Receiving Party or any of its Representatives; was known to the Receiving Party free of any obligation of confidentiality before or after the time it was communicated to the Receiving Party by the Disclosing Party; is independently developed by the Receiving Party without use of or reference to the Disclosing Party's Confidential Information; is disclosed with the prior written approval of the Disclosing Party; is or becomes available to the Receiving Party on a non-confidential basis from a person other than the Disclosing Party or any of its Representatives who is not known by the Receiving Party to be otherwise bound by a confidentiality agreement with the Disclosing Party or any of its Representatives or to be under an obligation to the Disclosing Party or any of its Representatives not to transmit the information to the Receiving Party; or is disclosed pursuant to an order or requirement of a court, administrative agency or other governmental body; provided however, that the Receiving Party shall provide prompt written notice of such court order or requirement to the Disclosing Party to enable the Disclosing Party to seek a protective order or otherwise prevent or restrict such disclosure, and shall use reasonable efforts to cooperate with the Disclosing Party (at the Disclosing Party's expense) to obtain such protective order

or other appropriate remedy. In the event that such protective order or other remedy is not obtained, or the Disclosing Party waives compliance in whole or in part, with the terms of this Agreement, the Receiving Party and its Representatives shall use reasonable efforts to disclose only that portion of the Confidential Information that is legally required to be disclosed or is the subject of such waiver, and to ensure that all Confidential Information that is so disclosed shall be accorded confidential treatment. Any materials or documents which have been furnished to the Receiving Party from the Disclosing Party shall be promptly returned or destroyed, at the option of the Disclosing Party, by the Receiving Party, within ten (10) days after (a) this Agreement has expired or has been terminated; or (b) a written notice is made by the Disclosing Party requesting such return or destruction. Upon such request, all copies, reproductions, compilations, summaries, analyses, or other documents containing or reflecting the Receiving Party's or its Representatives' use of the Confidential Information will be destroyed by the Receiving Party, and such destruction confirmed to the Disclosing Party in writing. The terms and obligations pertaining to confidentiality in this Agreement shall survive and remain in full force and effect for a period of five (5) years from the termination or expiration of this Agreement, unless the Disclosing Party expressly agrees in writing to release all or part of its Confidential Information from the restrictions imposed by this Agreement before such period has elapsed.

12. Indemnification.

12.1 By Material. Material will indemnify, defend and hold harmless Licensee and its employees (collectively, the "**Indemnified Parties**") from and against any and all losses arising from claims by a third party that the Licensed Software when used by Licensee as authorized in this Agreement (i) directly infringes a third party copyright or patent; or (ii) misappropriates, or unlawfully uses a third-party's trade secrets (collectively, "**Infringement Claims**"). Should any Licensed Software become, or in Material's opinion be likely to become, the subject of any Infringement Claim, then Licensee will permit Material, at Material's option and expense: to procure for Licensee the right to continue using the Licensed Software; to replace or modify the Licensed Software or portion thereof to be non-infringing; or to take any other action reasonably deemed advisable by Material related to such alleged infringement. In the event none of these remedies is available and/or practical, Material may, in its sole discretion, terminate the license and return to Licensee the license fees paid for the infringing licensed copies with respect to the then-current Authorized Period, reduced on a prorated basis for each month the Licensed Software is used during the Authorized Period.

12.2 Notice of Claim and Indemnity Procedure. In the event of a claim for which an Indemnified Party will seek indemnity or reimbursement under this Section 12, and as a condition of the indemnity benefits in Section 12, such party shall notify Material in writing as soon as practicable, but in no event later than thirty (30) days after receipt of such claim, together with such further information as is necessary for Material to evaluate such claim to the extent that the Indemnified Party is in possession or has knowledge of such information; provided that any delay in giving such notice shall not preclude the Indemnified Party(ies) from seeking indemnification or reimbursement thereunder if: (a) such delay has not materially prejudiced Material's ability to defend the claim; and (b) such delay does not materially affect the amount of any damages awarded for or paid in settlement of such claim. As a condition of the indemnity benefits in Section 12, Material shall have the right to assume full control of the defense of the claim, including retaining counsel of its own choosing. Upon the assumption by Material of the defense of a claim with counsel of its choosing, Material will not be liable for the fees and expenses of additional counsel retained by any Indemnified Party. The Indemnified Party(ies) shall cooperate with Material in the defense of any such claim.

12.3 Exclusions. Notwithstanding any other provision in this Agreement, Material shall have no obligation to indemnify or reimburse any Indemnified Party with respect to any Infringement Claim

to the extent arising from (i) use of any Licensed Software in combination with any products or services other than those provided or approved by Material to Licensee under this Agreement; (ii) modification of the Licensed Software after delivery by Material to Licensee, except for such modifications performed by or expressly approved in writing by Material; (iii) use of any version of the Licensed Software other than the most current version made available by Material to Licensee hereunder; (iv) the failure of any Indemnified Party to use any Updates, corrections or enhancements to the Licensed Software that are made available by Material to Licensee hereunder; or (v) detailed, non-discretionary designs or specifications provided to Material by any Indemnified Party that necessarily caused such Infringement Claim. Licensee agrees to reimburse Material for any and all damages, losses, costs and expenses incurred as a result of any of the foregoing actions.

12.4   General Limitations. Notwithstanding the foregoing provisions, Material shall have no obligation to indemnify or reimburse for any losses, damages, costs, disbursements, expenses, settlement liability of a claim or other sums paid by any Indemnified Party voluntarily, and without Material's prior written consent, to settle a claim. Subject to the maximum liability set forth in Section 10.2, the provisions of this Section 12 constitute the entire understanding of the parties regarding Material's liability for Infringement Claims (including related claims for breach of warranty if any) and sole obligation to indemnify and reimburse any Indemnified Party.

13.   Miscellaneous.

13.1   On-Site Precautions. Each party shall take all reasonable precautions to ensure the health and safety of the other party's personnel while they are working at the other party's premises. Each party shall indemnify the other in the event that any employee of the other party suffers personal injury or death as a result of the negligent act or omission of the first party.

13.2   Publicity. Licensee hereby grants Material the right to identify Licensee as a Material customer, and use Licensee's name, mark, and/or logo on Material's website and/or in Material's marketing materials with respect to the same. In addition, Licensee agrees to participate in certain publicity activity, such as a case study or customer quote as may be described in the corresponding Order Form.

13.3   Notices. All notices, summons and communications related to this Agreement and sent by either party hereto to the other shall be written in English and sent by electronic mail with respect to Material to legal@material.security and with respect to Licensee to Licensee's "Email for Notices" supplied below.

13.4   Assignment. Licensee shall not transfer or assign this Agreement or any of its rights or obligations hereunder, the Licensed Software or any component thereof, or any other materials provided hereunder, to any other person or entity, whether by written agreement, operation of law or otherwise, without the prior written consent of Material, which consent may be withheld for any reason whatsoever, as determined by Material in its sole discretion. Any purported assignment or transfer by Licensee without Material's prior written consent shall be void and of no effect. Material may freely assign this Agreement, or delegate obligations under this Agreement, without the prior written consent of Licensee. Subject to the foregoing, any permitted assignment or transfer of or under this Agreement shall be binding upon, and inure to the benefit of, the successors, executors, heirs, representatives, administrators and assigns of the assigning or transferring party hereto.

13.5   Survival. Sections 1, 2.2, 4, 6, 8.2, 9.4, 10, 11, 13 shall survive the expiration or termination of this Agreement, or any default under or rejection in bankruptcy of this Agreement by Licensee.

13.6   Governing Law; Jurisdiction. This Agreement and all matters relating to this Agreement shall be construed in accordance with and controlled by the laws of the State of California, without reference to its conflict of law principles. The parties agree to submit to the non-exclusive jurisdiction and venue of the courts located in San Francisco, California and hereby waive any objections to the jurisdiction and venue of such courts.

13.7   No Agency; Independent Contractors. In connection with this Agreement each party is an independent contractor and as such will not have any authority to bind or commit the other. Furthermore, neither this Agreement, nor any terms and conditions contained herein, shall be construed as creating a partnership, joint venture or agency relationship or as granting a franchise.

13.8   Export Control; Compliance with Laws.

(a)   **Export Control**. The Licensed Software and all other technical information delivered hereunder (collectively, "**Technical Data**") include technology and software and are subject to the export control laws and regulations of the United States ("**U.S.**"). Licensee agrees not to export, re-export or otherwise release any Licensed Software outside of the U.S. and to abide by such laws and regulations as to which Material may notify Licensee from time to time. Licensee further acknowledges and agrees that the Technical Data may also be subject to the export laws and regulations of the country in which the products are received, and that Licensee will abide by such laws and regulations.

(b)   **Compliance with Laws**. Licensee shall comply with all applicable laws and regulations in its use of any Licensed Software, including without limitation the unlawful gathering or collecting, or assisting in the gathering or collecting of information in violation of any privacy laws or regulations. Licensee shall, at its own expense, defend, indemnify and hold harmless Material from and against any and all claims, losses, liabilities, damages, judgments, government or federal sanctions, costs and expenses (including attorneys' fees) incurred by Material arising from any claim or assertion by any third party of violation of privacy laws or regulations by Licensee or any of its agents, officers, directors or employees.

13.9   Force Majeure. Neither party shall be liable for failure to perform any of its obligations under this Agreement (except payment obligations) during any period in which such party cannot perform due to fire, earthquake, flood, any other natural disaster, epidemic, accident, explosion, casualty, strike, lockout, labor controversy, war, embargo, riot, civil disturbance, act of public enemy, act of nature, the intervention of any government authority, any failure or delay of any transportation, power, or for any other similar cause beyond either party's control. In the case of failure to perform, the failing party shall promptly notify the other party in writing of the reason for and the likely duration of the failure. The performance of the failing party's obligations shall be suspended during the period that the cause persists, and each party shall use commercially reasonable efforts to avoid the effect of that cause.

13.10 Severability and Waiver. To the extent that any term, condition or provision of this Agreement is held to be invalid, illegal or otherwise unenforceable under applicable law, then such term, condition or provision shall be deemed amended only to the extent necessary to render such term, condition or provision enforceable under applicable law, preserving to the fullest extent possible the intent and agreements of the parties set forth herein; in the event that such term, condition or provision cannot be so amended as to be enforceable under applicable law, then such term, condition or provision shall be deemed excluded from this Agreement and the other terms, conditions and provisions hereof shall remain in full force and effect as if such unenforceable term, condition or provision had not been included herein. The failure of a party to prosecute its rights with respect to a

default or breach hereunder shall not constitute a waiver of the right to enforce its rights with respect to the same or any other breach.

13.11 Entire Agreement; Amendment. This Agreement, the Order Form, and any Exhibits referred to herein embody the entire understanding of the parties with respect to the subject matter hereof and shall supersede all previous communications, representations or understandings, either oral or written, between the parties relating to the subject matter hereof. It shall not be modified except by a written agreement signed on behalf of Licensee and Material by their respective duly authorized representatives. Licensee acknowledges that it is entering into this Agreement solely on the basis of the agreements and representations contained herein, and for its own purposes and not for the benefit of any third party. It is expressly agreed that the terms of this Agreement, the Order Form, and its Exhibits shall supersede the terms in any purchase order or other ordering document.

13.12 Exhibits. Each Exhibit to this Agreement shall be governed by the terms of this Agreement and the terms set forth therein. In the event of any inconsistency between the terms of this Agreement and the terms of the Exhibit, the terms of the Exhibit shall govern that Exhibit except as otherwise stated therein.

13.13 Headings. Captions and headings contained in this Agreement have been included for ease of reference and convenience and shall not be considered in interpreting or construing this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the Effective Date by their duly authorized representatives.

MATERIAL SECURITY INC.

By: _____

Name:

Title:

Date:

LICENSEE

By: _____

Name:

Title:

Date:

Email for Notices:

Exhibit A

Maintenance and Support for the Licensed Software

1.   **Access to Material**.   Material will provide Licensee with telephone and email support, Monday through Friday, from 8:00 a.m. to 6:00 p.m. Pacific Time (excluding US Federal holidays).

2.   **Updates**.   For so long as Licensee is timely in the performance of its obligations under this Agreement and these M&S terms, and has paid to Material the corresponding Fees, Material shall provide Licensee with access to Updates of the Licensed Software.

3.   **Request for Problem Resolution.**   All requests by Licensee for Error resolution will be logged after which Material will perform an initial diagnosis and determine as far as reasonably practical the source of any problem which may have led to the support request. All response and resolution times shall commence at the beginning of the next business day for requests for problem resolution that are logged during non-business hours.

4.   **Bug Fixing.**   Material will investigate incident reports concerning suspected problems with Licensed Software provided that (a) Licensee sends Material a written report, which includes evidence of the suspected Error, and (b) the incident can be reproduced or reasonably confirmed by Material. Material will use commercially reasonable efforts to promptly correct the Error or provide a workaround to permit Licensee to use the Licensed Software. Should an Error not be resolved quickly or for bugs that require further investigation, the procedures set forth in Section 5 of this exhibit shall apply.

5.   **Escalation Procedures.**   With regard to Errors submitted to Escalation Procedures, an action plan will be developed by the Material support team and communicated to Licensee. An Error will not be considered resolved until one of the following activities has been completed:

(a) a resolution to the Error is obtained to Licensee's reasonable satisfaction;

(b) a computer software code change in the form of a patch, workaround or a new revision that corrects the Error has been delivered to Licensee; or

(c) an engineering commitment is made to correct the Error in a future release of the Licensed Software.

6.   **Excluded Services.**   Material shall not be obligated to fix any Error or problem:

(a) where the Licensed Software is not used for its intended purpose; or

(b) where the Licensed Software has been altered, damaged, modified or incorporated into other software in a manner not approved by Material; or

(c) which is caused by Licensee's or a third party's software or equipment or by Licensee's negligence, abuse, misapplication, or use of the Licensed Software other than as specified in the Order Form.

7.   **Installation of Updates and Delivery of Usage Logs**.   Licensee acknowledges that periodic Updates and transfer of usage logs to Material are necessary to maintain optimal performance of the License Software. Licensee consents and hereby authorizes Material to install the Licensed Software, including any necessary third-party software, on Licensee's behalf as Licensee's agent. To facilitate the automatic installation of periodic Updates and the transfer of usage logs, the Licensed Software is

configured to allow for the automatic transfer of usage logs and installation of Updates. Licensee consents to Material's use of Licensee's usage logs for purposes of improving the features, functions and performance of the Licensed Software (including New Versions) and M&S.

8.　　**Term; Termination.**　Subject to the terms and conditions set forth in this exhibit and the Agreement, and payment by Licensee of the corresponding Fees, M&S shall be provided to Licensee during the Authorized Period.

9.　　**Fees.**　In consideration of Material's provision of M&S as set forth above, Licensee agrees to pay to Material the applicable fees set forth on the Order Form.

10.　　**End of Life Policy.**　Licensee acknowledges that new features may be added to the Licensed Software based on market demand and technological innovation. Accordingly, as Material develops enhanced versions of the Licensed Software, Material may cease to maintain and support older versions. Material will use commercially reasonable efforts to notify Licensee of a Licensed Software undergoing the transition from supported to unsupported status at least six (6) months in advance of a Licensed Software's end of life ("**EOL**"). A time schedule for the termination of support will be provided on a product-by-product basis. After the six (6) month EOL notification period, Material will continue to offer Licensee the option of obtaining technical support at the then-current maintenance price for the discontinued product or version for a maximum period of one (1) year. Maintenance for discontinued products during a transitional support period shall include patches only for critical bug fixes and shall not include the addition of any new features, functionality, enhancements or improvements.

11.　　Definitions

11.1 "**Error**" means an incident that investigation reveals is caused by the Licensed Software's failure to perform materially in accordance with the specifications. An incident will not be classified as an Error if (a) the relevant Licensed Software is not used for its intended purpose; (b) the incident is caused by Licensee's or a third party's software or equipment (except to the extent Material has incorporated or packaged such third party's software or equipment in or with the Licensed Software); or (c) the version of the Licensed Software on which the Error has purportedly occurred is not the most current version of such Licensed Software made available to Licensee under this Agreement.

11.2 "**New Version**" means a release of a Licensed Software product or component thereof that implements a fundamental change in the software system philosophy and/or the software architecture, as determined by Material in its sole discretion, typically identified by a change in the digit to the left of the decimal point of the product numbering convention (x.x) (e.g., Product 3.0 to Product 4.0).

11.3 "**Update**" means a change to the current version of a Licensed Software product or a component thereof that does not constitute a New Version, as determined by Material in its sole discretion. An Update may include, without limitation, bug fixes, enhancements to the capability of an already partially supported feature or changes in the number, type, and/or specification of the supported platform(s), and is typically identified by a change in the digit to the right of the decimal point of the product numbering convention (x.x) (e.g., Product 3.1 to Product 3.2).

11.4 "**Upgrade**" means a migration by an existing licensee to a New Version.