



ANCHORE RESELLER AGREEMENT

This Anchore Reseller Agreement (“Agreement”) is made by and between Anchore, Inc., with its principal place of business at 800 Presidio Ave., Suite B, Santa Barbara, CA 93101 (“Anchore”), and _____, with its principal place of business at _____ (“Reseller”) and shall take effect upon the date by which the respective duly authorized representatives of both Reseller and Anchore have executed this Agreement (“Effective Date”). When a Distributor is not available in the Territory, then Anchore shall directly be the Distributor to the Reseller. The foregoing parties hereto may be referred to herein, individually, as a “Party” and, collectively, as the “Parties.”

THE AGREEMENT GOVERNS RESELLER’S MARKETING, DISTRIBUTION, OFFER FOR RESALE, AND RESALE OF ANCHORE’S SOFTWARE AND SERVICES, UNLESS ANCHORE HAS EXECUTED A SEPARATE WRITTEN AGREEMENT WITH RESELLER FOR THAT PURPOSE. AS OF THE EFFECTIVE DATE HEREOF AND BY AND THROUGH EACH PARTY’S EXECUTION OF THIS AGREEMENT IN THE MANNER DESCRIBED ABOVE, EACH PARTY AFFIRMATIVELY ASSENTS TO AND ACCEPTS ALL THE TERMS AND CONDITIONS OF THE AGREEMENT, AND THE AGREEMENT IMMEDIATELY SHALL TAKE EFFECT AND AUTOMATICALLY SHALL BE DEEMED INCORPORATED BY REFERENCE INTO EACH PURCHASE ORDER FOR ANCHORE PRODUCTS AND/OR SERVICES PROVIDED BY RESELLER TO ANCHORE. RESELLER HEREBY REPRESENTS AND WARRANTS TO ANCHORE THAT THE INDIVIDUAL AFFIRMATIVELY ASSENTING TO AND ACCEPTING THE TERMS AND CONDITIONS HEREOF AND OF EACH SUCH PURCHASE ORDER ON BEHALF OF RESELLER IS DULY AUTHORIZED BY RESELLER AND OTHERWISE POSSESSES ALL CORPORATE AND OTHER LEGAL AUTHORITY TO BIND RESELLER TO ALL SUCH TERMS AND CONDITIONS.

WHEREAS, Anchore develops, markets, sells, and delivers the Products and Services specified in Exhibit A;

WHEREAS, Reseller is a reseller of software and related services;

WHEREAS, Reseller or End Users, as the case may be, shall receive any Anchore Software and Services provided hereunder from Anchore’s duly authorized Distributors in the Territory, if such authorized Distributors exist. Otherwise, Reseller or End Users, as the case may be, shall receive such Anchore Software and Services directly from Anchore as the Distributor;

WHEREAS, certain capitalized terms used in this Agreement are defined in Section 18 (Definitions) of the Agreement; and



WHEREAS, Reseller desires a license from Anchore to market, distribute, offer for resale, and resell (all the foregoing, or any subset thereof, “Resell” or “Resale”) Software and Services in the Territory for the Term solely as set forth herein, and Anchore is willing to grant to Reseller such license solely subject to and in accordance with the terms and conditions hereof.

NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement, the Parties agree as follows:

1. Reseller License.

1.1 Anchore grants to Reseller a nonexclusive, nontransferable, nonassignable, nonsublicensable, and limited license to Resell Products and Services to End-Users in the Territory during the Term, solely as set forth in and subject to the terms and conditions of this Agreement. Without limiting the foregoing, (i) Reseller will in no event Resell Products to any party for ultimate use outside the Territory; (ii) Reseller acknowledges and agrees that the foregoing license is limited solely to those specific Products and Services identified on Exhibit A hereto (and any subsequent versions or releases of those specific products listed on Exhibit A), which hereby is incorporated by reference herein (“Exhibit A”) and shall not apply to any other products or services of, or subsequently released by, Anchore (unless mutually agreed by the Parties in writing) and (iii) the foregoing license is limited solely to Reseller and does not include the right, license, or authority to grant any sublicenses hereunder or thereunder or appoint any sub-resellers or sub-distributors without the prior written consent of Anchore, which may be withheld in Anchore’s sole discretion.

1.2 Anchore grants Reseller a nonexclusive, nontransferable, nonassignable, nonsublicensable and limited license to use the Marks in the Territory during the Term solely to Resell the Products and the Services, subject to and in accordance with the terms and conditions of this Agreement, including without limitation Section 15 (Use of Marks) hereof, and the provisions of Section 1.1 (i)-(iii) above shall apply in all respects to the foregoing license granted in this Section 1.2.

1.3 Except as specifically set forth in the Agreement, no express or implied license or right of any kind is granted to Reseller regarding the Products, the Services or the Marks, including, but not limited to, any right to know, use, produce, receive, reproduce, copy, market, sell, distribute, transfer, translate, modify, adapt, disassemble, decompile, or reverse-engineer the Products or Services or create derivative works or compilations based on the Products or Services or any portions thereof, or obtain possession of any source code, object code, documentation, databases, or other technical material relating to the Products or Services.

2. License Restrictions. Reseller acknowledges and agrees that (i) any and all data provided or otherwise made available by Anchore in connection with the Products and/or Services,



including without limitation for access and/or use by Reseller or any End Users (collectively, “Data”), is proprietary and highly valuable to Anchore and its third-party suppliers and (ii) disclosure by Reseller of any such Data to third parties or any use thereof by Reseller other than permitted under this Agreement shall constitute a breach hereof by Reseller and shall result in a significant and irreparable harm to Anchore and such third-party suppliers for which (a) an award of money damages is an inadequate remedy and (b) Anchore shall be entitled to injunctive and other equitable relief to prevent such breach or its continuation without need to post any bond or other security. Accordingly Reseller will have no right to, and will not, nor will it allow others to: (i) extract any Data from the Software or Services or use such Data in any way, except as permitted under this Agreement; (ii) sublicense, resell, rent, lease, distribute, market, commercialize or otherwise transfer any rights or usage in or to the Software or Data for any purpose other than as expressly provided in Section 1 (Reseller License) above; (iii) transfer, use or export the Software in violation of any export laws or regulations of any government or governmental agency.

3. Delivery. Anchore will make the Software available to the applicable End-Users electronically, together with its Documentation, promptly following the date by which the applicable purchase order for such Software provided by Reseller to Anchore in accordance with this Agreement (“Purchase Order”) has been received and processed by Anchore. If applicable, Anchore will perform, and will be compensated by the applicable End User for, Professional Services pursuant to and in accordance with a fully executed Statement of Work between the applicable End-User and Anchore. Reseller agrees to engage Anchore a reasonable time prior to selling any such Professional Services to an End-User so that the terms and conditions of the applicable Statement of Work can be created and finalized by Anchore and such End User.

4. Reseller Obligations.

4.1 Reseller is licensed hereunder to Resell the Software and Services only to End-Users in the Territory during the Term and only in accordance with and subject to the terms and conditions of this Agreement and the applicable End-User Agreement. Reseller will, and will cause sufficient Reseller Personnel to, become proficient, and all times during the Term remain proficient, in the market fit, value proposition, and the competitive differentiation of the Products and Services such that Reseller can comply with its obligations hereunder.

4.2 Reseller will have the authority to Resell the Software and Services only to End-Users and only under the terms and conditions of the applicable End-User Agreement. Reseller shall ensure that (a) the applicable End-User Agreement is passed through to the End-User by Reseller; (b) the applicable End-User shall expressly agree in a writing executed by such End-User and Reseller that (1) such End-User will comply with all terms and conditions of the applicable End-User Agreement; (2) Anchore, Inc. is, and, at all times during the term of such End-User Agreement, will be, an intended third party beneficiary under such End-User



Agreement and shall have the right to directly enforce the terms and conditions thereof against such End-User; and (3) such End-User understands that its access to, use of, and other activities in connection with the Software and Services are governed in all respects by the applicable End-User Agreement. Reseller will not, and will not allow any other entity or individual utilized by Reseller in connection with this Agreement (collectively, “Reseller Personnel”), to make or offer to make any alterations to the End-User Agreement, whether prior to, at the time of, or at any time after the applicable End User’s agreement to the provisions set forth in clauses 4.2(b)(1)-(3) above. Reseller (i) will be liable to Anchore for all acts and omissions of any Reseller Personnel (i) that constitute negligence or misconduct or (ii) which, if performed or not performed, as the case may be, by Reseller, would constitute a breach of or default under this Agreement by Reseller and (ii) will cause all Reseller Personnel to comply with all of Reseller’s obligations, agreements, covenants, representations, and warranties hereunder.

4.3 In no event will Reseller (i) make any statements, promises, warranties or representations concerning the Products and Services that differ from, exceed, or are inconsistent or conflict with the Products- and Services-related marketing materials or technical specifications provided to Reseller by Anchore for use in connection with Reseller’s Resale activities hereunder or (ii) bind Anchore to any obligation, undertaking, or performance with respect to the Products and Services.

4.4 In no event will Reseller reproduce, copy or alter any Products or Services or any portion thereof, without the prior express written consent of Anchore.

4.5 Reseller represents and warrants to Anchore that: (a) Reseller will not make any representation or warranty on behalf of Anchore; (b) Reseller will not create any obligation on behalf of Anchore except as specifically agreed to in this Agreement by Anchore; and (c) Reseller shall indemnify, defend, and hold harmless Anchore and the employees, officers, directors, agents, and other representatives (collectively, “Representatives”) of Anchore from and against any third-party claims, actions, demands, and proceedings, and any loss, liability, damage, cost, and expense (including without limitation reasonable attorney fees) related thereto, arising from or relating to a breach or default by Reseller, whether directly or indirectly by or through any act or omission of any Reseller Personnel, of any provision of this Agreement; provided; however, that Anchore gives Reseller prompt notice of, reasonable cooperation in connection with, and sole control over the defense and any settlement thereof; provided further, however, that (i) any failure by Anchore to provide such notice shall in no event diminish, limit, or otherwise abrogate any of Reseller’s obligations under this subsection 4.5(c), except to the extent that such failure materially adversely affects Reseller’s performance thereof and (ii) in no event shall Reseller settle any such claim, action, demand, or proceeding that requires Anchore or any of Anchore’s Representatives to admit fault or liability or requires payment of any amounts or other consideration not otherwise indemnified by Reseller hereunder.



5. Orders and Fulfillment.

5.1 Reseller will place Orders pursuant to the designated order placement and processing procedures as agreed between the Reseller and Distributor and otherwise in accordance with this Agreement.

5.2 If an End-User requests Services, Reseller may request Anchore to provide such services to the End-User. Any such Services that Anchore agrees to provide shall be provided upon Reseller's request at Anchore's then-current rates provided to the Reseller by Anchore, subject to the availability of Anchore resources. Anchore will provide and be compensated for providing the Services to End-User as described in, and subject to, a mutually agreed Statement of Work by and between Anchore and the applicable End-User.

6. Fees.

6.1 Reseller will engage and pay Distributor pursuant to the payment and other terms and conditions as agreed between the Reseller and such Distributor; provided, however, that in no event shall any such terms and conditions conflict or be inconsistent with the terms and conditions of this Agreement. If Reseller is purchasing directly from Anchore as the Distributor, then the following additional terms shall apply:

6.1.1 Reseller will pay Anchore the Fees specified in the applicable Purchase Order. Reseller will pay Anchore such Fees within thirty (30) days after receipt of the applicable invoice. Interest may be charged by Anchore on delinquent accounts at the rate of one percent (1%) per month or the maximum amount allowed by law, whichever is less, commencing with the date payment was due in accordance herewith. Reseller will pay to Anchore any amounts actually incurred by Anchore in collection of any such delinquent accounts, including without limitation attorneys' fees. Anchore may also suspend provision of Services until such delinquency is corrected.

6.1.2 All payments from Reseller to Anchore hereunder will be in U.S. Dollars and shall be made in the manner specified by Anchore. Subject to credit approval (at Anchore's sole discretion), Reseller will pay Anchore by means of a check or wire transfer to Anchore's bank.

6.1.3 The amounts due to Anchore as set forth herein are net amounts to be received by Anchore, exclusive of all taxes, and are not subject to offset or reduction because of any costs, expenses, or liabilities incurred by Reseller or imposed on Anchore in the performance of this Agreement or otherwise due as a result of this Agreement or any other agreement by and between the Parties. All fees are nonrefundable and made without right of setoff or chargeback.



6.1.4 Reseller will be responsible for and will pay directly, any and all taxes, duties and charges incurred in the performance of this Agreement, including, but not limited to, sales and use taxes, withholding taxes, duties and charges imposed by federal, state or local governmental authorities in the United States or elsewhere, but excluding U.S. corporate income taxes of Anchore. Reseller also will be responsible for payment of any license fee, assessment, duty, tax, levy, or similar charge imposed by any foreign government as a result of this Agreement for any transactions contemplated by the Parties hereunder. If any applicable law requires Reseller to withhold amounts from any payments to Anchore under this Agreement, (a) Reseller will withhold and remit such amounts to the appropriate taxing authorities and promptly furnish Anchore with tax receipts evidencing the payments of such amounts, and (b) the sum payable by Reseller upon which the deduction or withholding is based will be increased to the extent necessary to ensure that, after such deduction or withholding, Anchore receives and retains, free from liability for such deduction or withholding, a net amount equal to the amount Anchore would have received and retained absent the required deduction or withholding. Reseller will provide its sales tax exemption number and related documentation (including resale exemption certificate) to Anchore as required by applicable law.

6.2 Reseller will set, in its sole discretion, the fees that it charges End-Users for Products and Services that Reseller Resells pursuant to this Agreement.

7. Marketing and Press Releases.

7.1 Marketing. Reseller will submit to Anchore, prior to use, distribution, or disclosure, any advertising, promotional and marketing materials, and publicity relating to the Products and Services proposed to be used by Reseller (the "Marketing Materials"). Reseller shall not use, distribute, or disclose the Marketing Materials unless approved in writing by Anchore in advance, which approval will not be unreasonably withheld. The parties will also collaborate from time to time to discuss in good faith jointly marketing the Products. Anchore will have the right to use Reseller's name and logo in its marketing and publicity materials in a manner approved in writing by Reseller in each instance.

7.2 Press Releases. The Parties agree that neither Party shall issue a press release associated with this Agreement or the relationship hereby formed without the Parties' prior mutual agreement in writing.

8. Reports and Records. Reseller shall maintain complete and accurate accounting of all records, data, and other information generated or otherwise used by Reseller in connection with this Agreement (collectively, "Records"), all in accordance with generally accepted accounting practices. Without limiting the foregoing, during the Term and for two years thereafter, Reseller will keep complete and accurate Records and books of account containing all information required for the computation and verification of Fees payable to Anchore and sufficient to



identify the End-Users to whom Reseller Resells the Products and/or Services. Anchore will have the right, on seven days' prior written notice, itself or through an independent certified public accountant or knowledgeable neutral third-party auditor, selected and paid for by Anchore, to inspect and audit Reseller's Records to verify compliance with the terms of this Agreement. Any underpayment of Fees discovered during such audit shall be corrected and Reseller shall immediately pay the amount of such underpayment plus interest thereon from the date such payment was originally due at a rate of one percent (1.0%) per month or the maximum amount allowed by law, whichever is less, during the time which any such underpaid sums were overdue and unpaid. For any such underpayment in excess of five percent (5%) of such Fees due to Anchore hereunder for the period covered by the applicable audit, Reseller shall, in addition to making immediate payment of the underpaid Fees plus interest in accordance with the previous sentence, pay to Anchore the reasonable out-of-pocket costs and expenses incurred by Anchore for such inspection and audit.

9. Confidentiality. At all times during the Term and the 5-year period immediately thereafter, the Receiving Party shall (a) hold the Confidential Information of the Disclosing Party in trust and confidence, and not disclose or release, such Confidential Information, or provide any access thereto, to any other person or entity, including without limitation by using the same degree of care as Receiving Party uses to avoid unauthorized use, disclosure, or dissemination of its own Confidential Information of a similar nature, but not less than reasonable care, without Disclosing Party's prior written consent and (b) not use the Confidential Information of the Disclosing Party for any purpose whatsoever except as expressly permitted under this Agreement; provided that, to the extent the Confidential Information constitutes a trade secret under applicable law ("Trade Secret"), the Receiving Party agrees to treat and protect such trade secret information in accordance with this Section 9 (Confidentiality) for so long as it qualifies as a Trade Secret. Without limiting the foregoing, the Receiving Party may disclose the Confidential Information of the Disclosing Party only to those of Receiving Party's Representatives (1) who have a need to know such Confidential Information solely for purposes of performing the obligations and exercising the rights of Receiving Party hereunder and (2) who are bound to Receiving Party by written obligations of confidentiality and restricted use with respect to the Disclosing Party's Confidential Information that are at least as stringent and protective of such Confidential Information as those imposed of Receiving Party hereunder, and Receiving Party shall be liable to Disclosing Party for all violations of this Section 9 (Confidentiality) by Receiving Party's Representatives. The obligations under this Section 9 (Confidentiality) shall not apply to information that the Receiving Party can demonstrate to the Disclosing Party by contemporaneous written evidence (i) was in Receiving Party's possession at the time of disclosure and without restriction as to confidentiality or use, (ii) at the time of disclosure hereunder is generally available to the public without restriction on disclosure or use or after disclosure becomes generally available to the public without restriction on disclosure or use through no breach of this Agreement or other wrongful act by the Receiving Party or any of its Representatives, (iii) has been received from a third party without restriction on disclosure



and/or use and without breach of this Agreement or other wrongful act by the Receiving Party or any of its Representatives, or (iv) is independently developed by the Receiving Party without use or benefit of, reliance on, or access to any of Disclosing Party's Confidential Information. In addition, the Receiving Party may disclose Confidential Information as required to comply with binding orders of governmental entities that have jurisdiction over it; provided, however, that the Receiving Party (A) gives the Disclosing Party reasonable written notice thereof, if legally permitted to do so, (B) reasonably assists Disclosing Party, at Disclosing Party's request and sole expense, to seek and secure a protective order or other means for limiting any such disclosure, and (C) discloses such Confidential Information only to the extent necessary to comply with such requirement.

10. Ownership.

10.1 Reseller acknowledges that nothing herein gives it or any individual or entity other than Anchore any right, title or interest in the Products and Documentation, the Data, the Services, the Marks, or any other Anchore Property, except for Reseller's limited express rights pursuant to Section 1 (Reseller License) of this Agreement.

10.2 Reseller acknowledges and agrees that Anchore or its licensors, as the case may be, maintain and shall maintain exclusive ownership of all right, title, and interest, including without limitation all Intellectual Property rights, in and to the Products and Documentation in all forms (both object code and source code) and all copies and all portions thereof, the Data, the Services, Offering Materials and the Marks (all the foregoing, "Anchore Property"). "Intellectual Property" as used herein shall mean (i) all inventions, works of authorship, including without limitation computer software and related computer code and documentation, databases, trademarks, service marks, trade dress, trade secrets and other intellectual property; (ii) all improvements, derivative works, compilations, and other modifications to the foregoing in subsection (i); and (iii) all patent, copyright, trademark, trade secret and other intellectual property rights in the foregoing in subsections (i) and (ii).

10.3 Reseller agrees and acknowledges that Reseller is not obtaining ownership of or other rights in any Intellectual Property embodied in or associated with any Documentation, training materials, or other works of authorship provided by Anchore to Reseller for purposes of marketing the Products and Services (collectively, "Offering Materials"), other than the rights specifically granted thereto in this Agreement. Reseller will be entitled to keep and use all Offering Materials provided by Anchore to Reseller during the Term, but without any other license to exercise any of the Intellectual Property rights therein, all of which are hereby strictly reserved to Anchore. Unless Anchore grants in writing such rights to do so, Offering Materials may not be re-distributed, disclosed to third parties, lent, hired out, made available to the public, sold, offered for sale, shared, or transferred in any other manner. All Anchore copyrights, trademarks, service marks, trade dress, trade names, logos, and other proprietary rights



designations and notices present on the Offering Materials and all copies thereof will be preserved in their respective original forms upon provision by Anchore and in no event will be modified or obscured.

11. Term and Termination.

11.1 This Agreement will commence on the Effective Date and, unless terminated early in accordance with the provisions hereof, will continue for a period of twelve months (“Initial Term”), and shall automatically renew for additional successive twelve month periods thereafter (each a “Renewal Term” and any and all such Renewal Terms together with such Initial Term, collectively, the “Term”), unless either Party provides the other Party with written notice of its decision to terminate this Agreement within thirty (30) days prior to the end of such Initial Term or the then-current Renewal Term, as the case may be.

11.2 Either Party may terminate this Agreement with or without cause upon thirty (30) days prior written notice to the other Party.

11.3 Either Party may terminate this Agreement by written notice to the other Party, if there has been a material breach hereof by such other Party, which material breach has not been cured to the reasonable satisfaction of such Party within thirty (30) days after the date of such other Party’s receipt of written notice thereof from such Party.

11.4 Anchore may terminate this Agreement immediately if Reseller becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits an appointment of a receiver for its business or assets, becomes subject to any proceedings under any bankruptcy or insolvency law, whether domestic or foreign, or is liquidated, dissolved, or otherwise ceases doing business in the ordinary course, whether voluntarily or otherwise.

11.5 Upon expiration or termination of this Agreement for any reason, Reseller will immediately return to Anchore all Anchore Property provided to Reseller during the Term, and all copies thereof, including, but not limited to, the Products, Data, Offering Materials and Proprietary Information of Anchore. All licenses and other rights granted by Anchore hereunder to Reseller for such Anchore property will immediately cease upon any such termination or expiration.

11.6 Termination or expiration of this Agreement for any reason will automatically accelerate the due date of all Anchore related invoices and any other monies due to Anchore or Distributor by Reseller, which will become due and payable within thirty (30) days after the effective date of such termination or expiration.

11.7 Upon termination or expiration of this Agreement, the provisions of this Agreement providing for payment of any unpaid fees due to Anchore or Distributor hereunder, protection of



Anchore's Intellectual Property or other proprietary rights, warranties disclaimers, limitations of liability, indemnities, arbitration and other provisions of this Agreement concerning the ongoing interests of Anchore, including, but not limited to, Sections 6 (Fees), 8 (Reports and Records), 9 (Confidentiality), 10 (Ownership), 11 (Term and Termination), 12 (Representation and Warranty Disclaimer), 13 (Limitation of Liability), 14 (Indemnification) and 16 (Dispute Resolution), 17.6 (Governing Law and Jurisdiction), and 18 (Definitions) (to the extent of any defined terms therein used in any of the foregoing surviving provisions), will continue and survive in full force and effect.

12. REPRESENTATION AND WARRANTY DISCLAIMER. THE PRODUCTS, SOFTWARE, SERVICES, DATA, DOCUMENTATION, AND ALL OTHER ANCHORE PROPERTY ARE PROVIDED "AS-IS" AND "AS-AVAILABLE." ANCHORE AND ITS SUPPLIERS MAKE NO WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SYSTEM INTEGRATION, DATA ACCURACY, QUIET ENJOYMENT, NON-INFRINGEMENT, TITLE, PERFORMANCE, AND ANY IMPLIED WARRANTIES ARISING FROM STATUTE, COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE. WITHOUT LIMITING THE FOREGOING, ANCHORE AND ITS LICENSORS DO NOT WARRANT THAT: (A) THE PRODUCTS OR SOFTWARE WILL FUNCTION UNINTERRUPTED, OR BE SECURE OR AVAILABLE AT ANY PARTICULAR TIME OR LOCATION; (B) ANY ERRORS OR DEFECTS IN THE PRODUCTS, SOFTWARE, OR OTHER ANCHORE PROPERTY WILL BE CORRECTED; (C) THE PRODUCTS OR SOFTWARE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS; OR (D) THE RESULTS OF USING THE PRODUCTS, SOFTWARE, OR OTHER ANCHORE PROPERTY WILL MEET RESELLER'S OR ANY END USER'S REQUIREMENTS. WITHOUT LIMITING THE FOREGOING DISCLAIMER, THE PRODUCTS, SOFTWARE, DATA, SERVICES, DOCUMENTATION, AND OTHER ANCHORE PROERTY ARE NOT DESIGNED, MANUFACTURED OR INTENDED FOR USE: (I) IN THE PLANNING, CONSTRUCTION, MAINTENANCE, CONTROL, OR DIRECT OPERATION OF HAZARDOUS ENVIRONMENTS THAT REQUIRE FAIL-SAFE PERFORMANCE, SUCH AS NUCLEAR OR CHEMICAL FACILITIES, AIRCRAFT OR OTHER MODES OF HUMAN MASS TRANSPORTATION, LIFE SUPPORT SYSTEMS, IMPLANTABLE MEDICAL EQUIPMENT, MOTOR VEHICLES, WEAPONS SYSTEMS, OR OTHER USES IN WHICH FAILURE OF THE SOFTWARE, SUPPORT DOCUMENTATION, OR OTHER ANCHORE PROPERTY COULD LEAD DIRECTLY TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE, OR (II) WITH ANY INFORMATION, DATA OR TECHNOLOGY GOVERNED BY THE INTERNATIONAL TRAFFIC IN ARMS REGULATIONS.

13. LIMITATION OF LIABILITY. IN NO EVENT SHALL ANCHORE BE LIABLE TO RESELLER ANY END USER, OR ANY OTHER PARTY IN CONNECTION WITH THIS AGREEMENT FOR ANY INTERRUPTION OF BUSINESS, ECONOMIC LOSS, OR ANY OTHER INDIRECT,



SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING LOST PROFITS), REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE.

ANCHORE'S TOTAL LIABILITY FOR ANY TYPE OF CLAIM WHATSOEVER ARISING HEREUNDER, SHALL BE LIMITED TO PROVEN DIRECT DAMAGES IN AN AMOUNT NOT TO EXCEED THE AMOUNT PAID BY RESELLER TO DISTRIBUTOR FOR RESALE OF ANCHORE PRODUCTS AND SERVICES UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE OF THE CLAIM GIVING RISE TO SUCH LIABILITY. IN NO EVENT WILL ANCHORE'S SUPPLIERS HAVE ANY LIABILITY UNDER THIS AGREEMENT. THE FOREGOING LIMITATIONS, EXCLUSIONS AND DISCLAIMERS ARE AN ALLOCATION OF THE RISK BETWEEN THE PARTIES AND WILL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

14. Indemnification.

14.1 Anchore will defend, at its expense, any action (or portion thereof) brought against Reseller based solely on a claim by a third party that the Products or Services, in the same unmodified form delivered by Anchore to End Users, infringe upon a United States copyright or misappropriate the trade secret rights of any third party. Anchore will indemnify and hold harmless Reseller against damages and costs including reasonable attorneys' fees, penalties and interest finally awarded against Reseller in such actions directly caused by any such claim. Anchore will not be obligated to indemnify any claim of infringement or misappropriation, if such infringement or misappropriation arises out of the use or combination of the Products with other software or any use or other act or omission with respect to the Products, Services, or other Anchore Property that is not authorized hereunder and/or in the Documentation.

14.2 Reseller will indemnify, defend and hold harmless Anchore and Anchore's Representatives from and against any third-party claims, demands, actions, suits, and other proceedings (collectively, "Claims"), and all liabilities, losses, damages, judgments, injuries, costs and expenses, including without limitation reasonable attorneys' fees (collectively, "Losses"), brought against or incurred by Anchore or any of its Representatives arising out of or resulting from (i) any breach by Reseller of any provision of this Agreement or any SOW or (ii) any act or omission of any Representative of Reseller, which (i) violates any applicable law, rule, or regulation; (ii) constitutes negligence or misconduct; or (iii) if performed or not performed, as the case may be, by Reseller, would constitute a breach of or default under this Agreement or any SOW by Reseller.

14.3 The indemnified Party (i) shall provide the indemnifying Party prompt notice of any such claims, damages, costs, Claims or Losses indemnifiable hereunder; provided, however, that any



failure by the indemnified Party to provide such notice shall not limit, diminish, or otherwise abrogate the indemnifying Party's obligations under this Section 14 (Indemnification), except to the extent that such failure materially adversely affects the indemnifying Party's performance thereof; (ii) shall reasonably assist the indemnifying Party in connection with the defense or settlement of any such indemnifiable Claim; and (iii) shall cede control of such defense or settlement to the indemnifying Party; provided, however, that in no event shall the indemnifying Party enter into any such settlement that requires the indemnified Party to admit fault or liability, or pay any amounts not otherwise indemnified hereunder, without the indemnifying Party's prior written consent.

15. Use of Marks.

15.1 In connection with the use of the Marks as permitted in Section 1 (Reseller License) hereof, Reseller agrees to comply in all respects with any guidelines or directions provided by Anchore with respect to proper usage of the Marks, including without limitation regarding any registration and other proprietary notices and designations associated therewith. Prior to any such use, Reseller will submit to Anchore any and all materials bearing or including any of the Marks, for review and approval by Anchore. Immediately upon the request of Anchore, Reseller will discontinue all use of (i) any Marks being used by Reseller in a manner determined by Anchore in its sole discretion to be inconsistent with the guidelines set forth above or otherwise unacceptable to Anchore, or (ii) any trademark, service mark, or tradename deemed by Anchore to create a likelihood of confusion with any Mark.

15.2 Reseller agrees and acknowledges that Anchore owns all right, title and interest in and to the Marks, including without limitation all goodwill associated therewith. Reseller covenants and agrees not to file or prepare any application for registration of any of the Marks. Reseller agrees not to adopt, use, file for registration, or register any trademark, service mark, or tradename which may be an infringement of any one or more of the Marks or result in a likelihood or confusion with a Mark. Anchore shall have the right, upon reasonable prior notice to Reseller, to examine any and all uses of the Marks by or on behalf of Reseller.

15.3 Reseller agrees not to commit, or fail to commit, any acts, directly or indirectly, which may contest, dispute, or otherwise impair or erode the rights, title or interest of Anchore (or any related goodwill) in or to the Marks. Reseller agrees not to claim or assert any rights, title or interest in or to the Marks in any way. The Parties agree that all uses of the Marks by Reseller will be in such a manner as to inure at all times to the benefit of Anchore, including without limitation as to any goodwill arising from or associated with such use, all of which shall inure exclusively in and to Anchore. Reseller will not use any language or display any Marks in such a manner as to create the impression that the Marks belong to and are owned by Reseller or that Reseller has any rights therein except to the extent granted in Section 1 (Reseller License)



hereof. Reseller may not use the Marks in combination with any other trademarks, tradenames, service marks, or other designations, without the prior written approval of Anchore.

15.4 Reseller will promptly notify Anchore of any and all known infringements or known attempted infringements of any Marks. Anchore reserves all rights regarding a decision to initiate any legal action against an alleged infringer, provided that at the request of Anchore, Reseller will provide reasonable assistance to Anchore in connection therewith.

15.5 Any and all activities of Reseller and its Representatives in connection with Resale of the Products and Services shall be of the highest quality so as to reflect favorably on the Marks and on Anchore as owner thereof. Upon any breach by Reseller of any provision of this Section 15 (Use of Marks), Anchore may terminate any and all rights and licenses of Reseller hereunder, including without limitation with respect to the Marks and use thereof, immediately upon provision of written notice thereof to Reseller.

16. Dispute Resolution.

16.1 Each Party, to the extent permitted by applicable law, (i) hereby irrevocably submits itself to and consents to the exclusive jurisdiction of the United States District Court for the Central District of California or the Superior Court of Santa Barbara County, California, as the case may be, for the purposes of any suit, action or other proceeding in connection with any controversy, claim or dispute relating to this Agreement or to enforce a resolution, settlement, order or award made pursuant hereto, and (ii) hereby waives, and agrees not to assert, by way of motion, as a defense or otherwise, in any such suit, action or proceeding, any claim that (a) such party is not personally subject to the jurisdiction of such court, (b) such court does not have subject matter jurisdiction over such suit, action, or proceeding, or (c) the suit, action or proceeding is brought in an inconvenient forum or that the venue of the suit, action or proceeding is improper or otherwise objectionable for any reason. Each Party hereby agrees to the entry of an order and to the confession of judgment to enforce a resolution, settlement, order or award made pursuant to this Section 16.1 by the United States District Court for the Central District of California or the Superior Court of Santa Barbara County, California and in connection therewith hereby waives, and agrees not to assert by way of motion, as a defense or otherwise, any claim that such resolution, settlement, order or award is inconsistent with or violative of any laws or public policy.

16.2 Each Party further irrevocably consents to service of process in any such action, suit or proceeding by personal service or by the mailing of copies thereof by registered or certified mail, postage prepaid, return receipt requested, to such Party at its address set forth on the signature page of this Agreement, provided that a reasonable period for appearance is allowed. The foregoing, however, will not limit the right of a Party to serve process in any other manner permitted by applicable law. Any judgment against a party or the assets of a Party in any suit for



which such Party has no further right of appeal will be conclusive, and may be enforced in other jurisdictions by suit on the judgment in accordance with Section 16.1 hereof, a certified or true copy of which judgment will be conclusive evidence of the fact and of the amount of any indebtedness or liability of such Party therein described; provided always that a Party seeking to enforce a judgment may at its option bring suit, or institute other judicial proceedings, against the other Party or any of its assets in the court of any country or place where such other Party engages in business or such assets may be found.

17. GENERAL.

17.1 Entire Agreement. This Agreement constitutes the entire agreement between the Parties concerning the subject matter hereof which in no event shall include, among other things, the Reseller's use or distribution of, or other activities in connection with, the Products, Documentation, Services, or other Anchore Property in a manner not permitted under this Agreement and/or applicable law. Purchase Orders shall be for the sole purpose of defining quantities, prices and describing the Products, Documentation, Data, and Services to be provided under this Agreement, and, to the extent that the terms and conditions of any such Purchase Order conflict or are inconsistent with the terms and conditions of this Agreement, the terms and conditions of this Agreement shall govern. This Agreement supersedes all prior or contemporaneous discussions, proposals and agreements between the Parties relating to the subject matter hereof. No waiver of any provision of this Agreement, or any right or obligation of a Party in connection therewith, shall be effective unless in writing and signed by both Parties.

17.2 Severability. If any provision of this Agreement is held to be invalid or unenforceable by competent, controlling legal authority, the remaining provisions hereof shall remain in full force and effect, and, to the extent reasonably practicable under the circumstances, such invalid or enforceable provision shall be enforced to the maximum extent possible so as to effect the intent of the Parties and, if possible, shall be reformed to the extent necessary to make such provision valid and enforceable.

17.3 Waiver. No waiver of rights or obligations by either Party may be implied solely from any actions, delays, or failures to enforce such rights or obligations under this Agreement.

17.4 Force Majeure. Neither Party shall be liable to the other Party for any delay or failure to perform hereunder due to causes or events beyond such Party's reasonable control (excluding payment of monies due); provided, however, that the Party claiming force majeure shall (i) keep the other Party reasonably apprised in writing of the status of such cause or event; (ii) take reasonable steps to mitigate any adverse effects on the other Party of such Party's non-performance; and (iii) resume performance in accordance with the provisions hereof promptly after cessation of such cause or event.



17.5 No Third-Party Beneficiaries. Unless otherwise specifically stated, the terms of this Agreement are intended to be and are solely for the benefit of Anchore and Reseller and do not create any right in favor of any third party. The Parties are independent contractors hereunder, and neither Party shall have the right to bind the other Party to any duty, obligation, agreement, covenant, representation or warranty.

17.6 Governing Law and Jurisdiction. This Agreement shall be governed by the laws of the State of California, without reference to the principles of conflicts of law. The provisions of the Uniform Computerized Information Transaction Act and United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. Subject to Section 16 (Dispute Resolution) above, any litigation related to this Agreement shall be brought in the state or federal courts located within the Central District of California (federal) or County of Santa Barbara, California (state), as the case may be, and only in those courts, and each Party irrevocably waives any objections to such venue and to the personal jurisdiction of such courts over such Party.

17.7 Notices. All notices required of a Party hereunder must be in writing and shall be effective three (3) days after the date sent by such Party to the other Party's principal place of business specified in the first paragraph hereof, Attention: Legal Department.

17.8 Government Regulation. Reseller acknowledges that the Software and Documentation are subject to export restrictions by the U.S. government and import restrictions by certain foreign governments. To the extent necessary for any countries within the Territory that are not within the United States, Anchore shall promptly provide Reseller with all license, classification, and other information available relating to compliance for exporting the Software or Documentation into such countries and shall cooperate with Reseller regarding the same. Reseller shall not Resell any Software, Services, or Documentation or any direct product thereof that requires Anchore to export or re-export the Software, Services, or Documentation in violation of the U.S. Export Administration Act and the related rules and regulations and similar non-U.S. government restrictions, if applicable. In addition, Reseller shall not Resell any Software, Services, or Documentation or any direct product thereof to End Users in non-U.S. countries that requires Anchore to export or re-export any Software, Services, or Documentation or any direct product thereof: (i) into (or to a national or resident of) any embargoed or terrorist-supporting country; (ii) to anyone on the U.S. Commerce Department's Table of Denial Orders or U.S. Treasury Department's list of Specially Designated Nationals; (iii) to any country to which such export or re-export is restricted or prohibited, or as to which the U.S. government or any agency thereof requires an export license or other governmental approval at the time of export or re-export without first obtaining such license or approval; or (iv) otherwise in violation of any export or import restrictions, laws or regulations of any United States or foreign agency or authority. Reseller agrees to the foregoing and represents and warrants that it is not currently, and at all times during the Term will not be, located in, under the control of, or a national or



resident of any such prohibited country or on any such prohibited party list. The Software and Documentation are further restricted from being used for: (a) terrorist activity, or (b) the design or development of nuclear, chemical, or biological weapons or missile technology without the prior permission of the U.S. government. Reseller shall at all times comply with all applicable laws, rules, and regulations in connection with this Agreement, including without limitation any applicable anti-corruption and personal data protection laws.

17.9 Assignment. Neither Party shall transfer or assign any of its rights or delegate any of its obligations, in whole or in part, whether voluntarily or by operation of law, without the prior written consent of the other Party, which shall not be unreasonably withheld, conditioned, or delayed. Any purported transfer, assignment, or delegation by either Party without such prior written consent shall be null and void ab initio and of no force or effect. Notwithstanding the foregoing, without securing such prior consent, either Party may upon written notice to the other party assign and transfer this Agreement and assign and delegate, as the case may be, its rights and obligations hereunder to any successor of such Party by way of merger, consolidation, stock purchase, combination, or the acquisition of all or substantially all of such Party's business and assets relating to this Agreement.

17.10 Equitable Remedies and Specific Performance. Reseller acknowledges that each provision in this Agreement providing for the protection of Anchore's Intellectual Property rights, Proprietary Information and other proprietary rights is material to this Agreement. The Parties acknowledge that any threatened or actual breach of Anchore's copyrights or other proprietary rights by Reseller will constitute immediate, irreparable harm to Anchore that cannot be remedied by an award of money damages; therefore, Anchore will be entitled to injunctive relief and other equitable remedies awarded by a court of competent jurisdiction to address any such breach.

17.11 Modifications to Agreement Terms. This Agreement may be amended only in a writing that expressly references the Agreement and is executed by the Parties' respective duly authorized representatives.

18. Definitions. Capitalized terms used but not otherwise defined in this Agreement shall have the following meanings:

"Confidential Information" means, in every form and media, any and all information, data, documents, proprietary materials, or trade secrets which should reasonably be considered confidential and which has been or is hereafter disclosed or made available by one Party to the other Party under this Agreement in connection with the transactions contemplated under this Agreement.



“Disclosing Party” means the Party disclosing Confidential Information to the other Party hereunder.

“Documentation” means the user guides, manuals, and other written documentation regarding the operation and functionality of the Software made available to Reseller electronically as part of the Software, all of which may be modified from time to time by Anchore in its sole discretion.

“End-User” or “End User” means a customer buying a subscription to the Software and/or related Services in accordance with and subject to the End-User Agreement terms and conditions for the purpose of using the Software and Services for internal, in-house use only and not for remarketing, reselling, leasing, sublicensing, transferring, or other distribution of any kind.

“End-User Agreement” means a written agreement by and between Anchore and End-User, which shall consist of Schedule F and any and all applicable product Schedules A through E, as made available in Exhibit A, which may be revised from time to time in the sole discretion of Anchore.

“Marks” means any trademarks, service marks, trade dress, other source indicators, or trade names of Anchore associated with the Products, Software, Documentation, Data, and/or Services as designated by Anchore.

“Order” or “Orders” means orders placed by Reseller to Distributor for Products and Services Resold to End-User pursuant to and in accordance with the provisions of this Agreement and the applicable End-User Agreement.

“Order Form” means the written order agreement between the Reseller and the Distributor which outlines the details of the Products and Services provided by Anchore to Reseller for Resale by Reseller hereunder and any transactional terms associated with the Order.

“Product” or “Products” means the products listed in Exhibit A.

“Professional Services” means consulting, training, implementation, or other such similar professional services provided under this Agreement as described in the applicable Schedule C and/or Statement of Work.

“Proprietary Information” means Trade Secrets and Confidential Information.

“Receiving Party” means the Party receiving Confidential Information from the other Party hereunder.



“Services” means, collectively, the Support Services, TAM Services, Quickstart Services, and any Professional Services performed by Anchore in connection with the applicable End-User Agreement.

“Software” means the object code version of the Anchore software Product(s) listed in Exhibit A.

“Statement of Work” or “SOW” means a statement of work entered into by the Parties describing Professional Services or other Services, as the case may be, to be provided under this Agreement and incorporating the terms of this Agreement.

“Support Services” means the support services offered by Anchore, in connection with the Products, as more fully described in the applicable Schedule(s) to the applicable End-User Agreement.

“Territory” means the countries specified in Exhibit B, except to the extent limited by U.S. export laws and other applicable import and export laws of the foreign countries listed.

“Trade Secrets” means information which: (a) derives economic value, actual or potential, from not being generally known to, and not being ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

All references in this Agreement to the “purchase” or “sale” of software, including without limitation the Products, Software, Services, and other Anchore Property, or any part thereof, (i) shall mean the acquiring or granting, respectively, of a license to use such software, and to exercise any other rights pertaining to such software, which are expressly set forth herein or in the applicable End-User Agreement accompanying the software and (ii) shall in no event mean the transfer to or acquisition by Reseller or any End User of any right, title, or interest in or to such Products, Software, Services, or other Anchore Property, except to the extent of such license.



EXHIBIT A
PRODUCTS AND END-USER AGREEMENTS

Product Description	Link to End-User Agreement and Schedules*
Schedule A - Anchore Enterprise Service Description	https://anchore.com/legal/schedule-a
Schedule B - Anchore Federal Service Description	https://anchore.com/legal/schedule-b
Schedule C - Professional Services Service Description	https://anchore.com/legal/schedule-c
Schedule D - Technical Account Manager Service Description	https://anchore.com/legal/schedule-d
Schedule E - Quickstart Services	https://anchore.com/legal/schedule-e
Schedule F - Anchore Master Software License and Services Agreement	https://anchore.com/legal/mssa

*Reseller acknowledges that the End-User Agreement and related Schedules may be updated from time to time by Anchore, at its sole and exclusive discretion. Reseller must convey this fact to the End-Users.



EXHIBIT B
TERRITORY

"Territory" as used in this Agreement shall mean _____.