



ShadowDragon Federal LLC Software Product Licensing Agreement

This software product licensing agreement (the "Agreement") is by and between Ordering Activity, an entity entitled to order under GSA Schedule contracts as defined in GSA Order ADM 48002.h and as may be revised from time to time, ("Licensee") and ShadowDragon Federal LLC ("Provider") and is entered into as of the date this Agreement is last executed (the "Effective Date"). Any inconsistencies in this Agreement shall be resolved by giving precedence in the FAR 52.212-4(s).

1. DEFINED TERMS

"Boxed Product" means Provider's proprietary software program (both object and source code), as well as any media, documentation and updates related thereto, provided by Provider to Licensee hereunder and for which Licensee is granted a license pursuant to this Agreement. "SaaS Product" means Provider's proprietary software as a service program (both object and source code), as well as any media, documentation and updates related thereto, which is hosted by Provider and made available to Licensee and for which Licensee is granted an access pursuant to this Agreement. "Software Product" means, collectively, the Boxed Product and the SaaS Product. "Support" means, to the extent specified in the applicable appendix, the support and maintenance services Provider furnishes in connection with the Software Product. "Trade Secret" means information, without regard to form, including but not limited to technical, non-technical, or financial data, a formula, pattern, compilation, program, device, method, technique, process, or plan that:

(i) derives economic value, actual, or potential, for its owner, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. Licensee hereby acknowledges that, without limiting the definition hereof, the capabilities of the Software Product represent a Trade Secret of Provider.

2. PURPOSE Provider may furnish Licensee with certain Boxed Product, SaaS Product or both. This Agreement governs Licensee's access and use of the Software Product as identified in Appendix A, and any additional appendices which shall be mutually approved, in writing, in accordance with this Section 2. If Licensee requests access to additional Provider products or modifications to the agreed upon Support set forth in Appendix A, each such request or modification, including any applicable pricing adjustments, will be set forth in appropriate detail in a new appendix. Such new appendix shall be effective only upon execution by both parties to this Agreement and duly attached to this Agreement as an additional appendix. A new appendix can, by its terms, supersede Appendix A, or any other prior appendix, in its entirety. Appendix A shall be defined to include Ordering Activity's purchase or task order.

3. SOFTWARE PRODUCT LICENSE OR ACCESS

3.1 With respect to the Boxed Product, subject to the terms and conditions of this Agreement, Provider grants Licensee a limited, nonexclusive, nontransferable, nonsublicenseable and revocable license during the Term and any Renewal Term (each as defined below) to install and use the Boxed Product solely for Licensee's internal business operations, consistent with the limitations specified or referenced in this Agreement and any applicable documentation made available by Provider.

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- 3.2 With respect to the SaaS Product, subject to the terms and conditions of this Agreement, Provider grants Licensee a non-exclusive, non-transferable, limited right to access and use the SaaS Product during the Term and any Renewal Term solely for Licensee's internal business operations, consistent with the limitations specified or referenced in this Agreement and any applicable documentation made available by Provider.
 - 3.3 Provider may provide Licensee with Support as set forth in Appendix A, and any additional appendices, which shall be mutually approved, in writing, in accordance with Section 2 of this Agreement. Any supplemental software code provided to Licensee in connection with such Support shall be considered part of the Software Product and subject to the terms and conditions of this Agreement.
 - 3.4 Licensee may permit its employees, contractors or other individuals (collectively, the "Users") to use the Software Product provided that (i) the Users shall only use and/or operate the Software Product for the internal business purposes of Licensee; (ii) the actual use of the Software Product shall not violate any restrictions set forth in Article IV below; (iii) Licensee shall ensure that the Users are aware of and comply with the terms and conditions of this Agreement, including any applicable appendix and all applicable laws and regulations; and (iv) Licensee shall be responsible for the acts and omissions of any User. Licensee agrees to take all reasonable steps to prevent unauthorized use, access, copying or disclosure of Software Product and Provider Confidential Information (as defined below).
 - 3.5 Licensee is responsible for identifying and authenticating all Users, for approving access by such Users to the Software Product, for controlling against unauthorized access by Users and for maintaining the confidentiality of usernames, passwords and account information. Licensee agrees to promptly notify Provider in the event it becomes aware of misuse of any User password, unauthorized access or any other event or action that may be reasonably expected to impair the Software Product.
 - 3.6 Provider expressly reserves the right to rate-limit the use of the Software Product, or add and delete transforms from the Software Product as necessary in order to maintain the capabilities and preserve the relevance thereof. To the extent Provider releases updates to the Software Product; Licensee agrees to apply such updates prior to continued use of the Software Product.

4. RESTRICTIONS

- 4.1 Licensee shall not copy or use the Software Product except as expressly permitted by this Agreement.
- 4.2 Licensee shall not sell, relicense, sublicense, lease, rent, loan, lend, transmit, net-work, or otherwise distribute or transfer the Software Product in any manner, to any third party unless expressly permitted under this Agreement.
- 4.3 Licensee shall not create derivative works of Software Product; create a product or service intended to replace Provider's Software Product, remove, obscure, or alter any copyright notices, trademarks, or other proprietary rights notices affixed to or contained within the Software Product.
- 4.4 Licensee shall not, and shall not permit any third party to, interfere with, modify, disrupt, or disable features or functionality of the Software Product, including without limitation

any such mechanism used to restrict or control the functionality thereof, or copy, modify, translate, reverse engineer, decompile, disassemble or reproduce the Software Product for any reason.

- 4.5 Licensee shall not make any Software Product available to, or use the Software Product for the benefit of, anyone other than Licensee and its Users unless such access is expressly permitted in the applicable appendix.
- 4.6 Licensee shall not permit access to or use of any Software Product in a way that circumvents a contractual usage limit.
- 4.7 Licensee shall not remove any proprietary notices of third parties found on or in the Software Product.
- 4.8 Licensee shall not use the Software Product in an illegal or inappropriate manner (as determined by Provider in its sole discretion), including, but not limited to, in performance of intelligence gathering against the interests of the United States government.

5. OWNERSHIP

- 5.1 Provider retains all rights, title and interest in and to the patent, copyright, trademark, trade secret and any other intellectual property rights in the Software Product and copies thereof, including any updates or variations (whether such update or variation is based on Licensee's input, request, requirement, suggestion, or otherwise) and any derivative works, subject only to the limited license set forth in this Agreement. Licensee does not acquire any rights, express or implied, in the Software Product other than those rights expressly granted under this Agreement. All rights not expressly granted to Licensee are reserved by Provider.
- 5.2 Some third party content may be displayed or accessed through use of the Software Product. All title and intellectual property rights in and to such third party content is the sole property of the respective content owner and may be protected by applicable copyright or other intellectual property laws and treaties. This Agreement does not grant Licensee any right, express or implied, to use such content. Provider is not responsible or liable, directly or indirectly, for any damage, loss or other claim caused or alleged to be caused by, or in connection with, access to, use of or reliance on any content available on or through any third party website or resource.

6. CONFIDENTIALITY

- 6.1 Licensee and Provider recognize and acknowledge that either before or after the execution of this Agreement one party may disclose ("Disclosing Party") Confidential Information (as defined in Section 6.4 below) to the other party ("Receiving Party"), which, if used for the benefit of others or disclosed to others, could cause serious harm to the Disclosing Party. Accordingly, Licensee and Provider each covenant that it and its Representatives (as defined below) shall not at any time, directly or indirectly, use, disclose to others, or permit the use by or disclosure to others of, any Confidential Information except as expressly provided herein.
- 6.2 The Receiving Party agrees that it will keep the Confidential Information confidential and will not, without the prior written consent of the Disclosing Party, disclose or make available any Confidential Information either directly or through its directors, officers,

principals, partners, managers, members, controlling persons, employees, agents, subsidiaries, affiliates, or advisors (including financial advisors, counsel and accountants) (collectively, "Representatives"), in any manner whatsoever, in whole or in part to any Person (as defined below) except as expressly provided in this Section 6. Moreover, the Receiving Party agrees to disclose the Confidential Information only to such of its Representatives who need to know the Confidential Information in connection with the Receiving Party's obligations under this Agreement, who are informed of this Agreement, and who agree to be bound by and to comply with the terms hereof. For purposes of this Agreement, the term "Person" shall be construed as broadly as possible and shall include the media and any natural person, corporation, partnership, limited partnership, limited liability company, group, association or other entity.

- 6.3 In addition to the foregoing, the Receiving Party shall be fully liable for any breach of this Agreement by it or its Representatives (as if such Representative were the Receiving Party). The Receiving Party shall, and shall cause its Representatives to, take the same steps and use the same measures to protect the confidentiality of the Confidential Information at least to the same degree as the Receiving Party uses to protect the confidentiality of its own proprietary and confidential information and materials of like kind; provided, however, that in no event shall the Receiving Party or its Representatives use less than a commercially prudent standard of care to protect the confidentiality of the Confidential Information. Confidential Information must not be copied, reproduced, reverse-engineered, licensed, sublicensed, sold, leased, transferred, assigned, distributed, shared or otherwise commercially exploited or made available by the Receiving Party without the Disclosing Party's prior written consent, in the sole discretion of the Disclosing Party
- 6.4 For purposes of this Agreement, the term "Confidential Information" means all confidential and/or proprietary information and Trade Secrets, whether oral, written, computerized, digitized or otherwise, of either party, regarding that party and its business, including, without limiting the generality of the foregoing, information regarding such party's intellectual property and technology (whether owned or licensed), patents and patent applications, research and development, inventions, systems, system configurations, equipment, software, engineering data and specifications, technical knowledge, know-how, techniques, matrices, methods, development tools, data, ideas, plans, creative materials, manuals, products, sales and marketing, costs, earnings, business plans, financial information and forecasts, prospects, business arrangements, operating policies and procedures, methods of operation and business strategies, regardless of whether or not such information is deemed a "trade secret" under applicable law. Confidential Information does not include information that (i) becomes available through lawful means to the public other than as a result of disclosure by any Person in violation of any duty of confidentiality; (ii) was lawfully available to the public on a non-confidential basis from a source other than the Receiving Party; (iii) is independently and lawfully developed, as supported by appropriate documentation, by the Receiving Party without use of or reference to the Disclosing Party's Confidential Information; (iv) is required to be disclosed by any judicial or governmental proceeding, or (v) is required to be disclosed under Federal Law. If disclosure is compelled pursuant to subsections (iv) and (v) of this Section, (a) the Receiving Party shall give the Disclosing Party prompt written notice to enable the Disclosing Party to try to protect the confidentiality of the Confidential Information; and (b) the

Receiving Party shall limit the nature of such disclosure to the greatest extent allowed under applicable law.

7. EFFECT OF TERMINATION

- 7.1 The term of the agreement will be set by each Ordering Activity in the corresponding purchase order. Termination is set out in the Schedule contract, FAR 52.212-4(l), (m), and GSAR 552.238-73.
- 7.2 Upon termination of this Agreement or any appendix to this Agreement for any reason, all rights and licenses granted hereunder or thereunder shall automatically cease. Accordingly, Licensee shall cease all use of the affected Software Product, and shall, at the direction of Provider, either remove and return to Provider or destroy such Software Product, as well as all documentation and related materials in Licensee's possession, and execute and deliver to Provider a certificate stating that all copies of the affected Software Product have either been removed and returned or destroyed.
- 7.3 Provisions which by their nature should apply beyond the term of this Agreement will remain in force after any termination hereof, including, but not limited to, the following provisions: Section 3 (Software Product License), Section 4 (Restrictions), Section 5 (Ownership), Section 6 (Confidentiality), Section 7 (Effect of Termination), Section 10 (Warranty Disclaimer), Section 11 (Limitation of Liability), Section 12 (Indemnification); Section 13 (Controlling Law and Venue); and Section 14 (General).

8. BILLING AND PAYMENT

- 8.1 Fees will be set by the Schedule Price List and billing is set by the Schedule contract.

9. LIMITED WARRANTY

- 9.1 Provider warrants that, for sixty (60) days following the Effective Date, the Software Product shall conform in all material respects to the specifications specified in Provider's documentation therefor. In the event of a breach of the foregoing warranty, Provider shall make all commercially reasonable efforts to promptly correct the non-conforming Software Product without cost to Licensee. In the event of a breach of warranty, the U.S. Government reserves all rights and remedies under the contract, the Federal Acquisition Regulations, and the Contract Disputes Act, 41 U.S.C. 7101-7109.
- 9.2 Provider warrants that, to Provider's knowledge, the Software Product does not infringe on the rights of any third party. Should any Software Product become or, in Provider's opinion, be likely to become the subject of any infringement claim, Provider shall have the right, at its sole discretion and expense, to either procure for Licensee the right to continue using the Software Product, replace or modify the Software Product so it becomes non-infringing, or remove the Software Product in question.

10. WARRANTY DISCLAIMER

EXCEPT AS EXPRESSLY PROVIDED IN SECTION 9 OF THIS AGREEMENT, LICENSEE AGREES THAT THE SOFTWARE PRODUCT AND SUPPORT ARE PROVIDED "AS IS"

WITHOUT WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE. PROVIDER DOES NOT WARRANT THAT THE SOFTWARE PRODUCT WILL OPERATE IN COMBINATION WITH HARDWARE, SOFTWARE, SYSTEMS OR DATA NOT FURNISHED BY PROVIDER, EXCEPT AS EXPRESSLY SPECIFIED IN ANY PROVIDER DOCUMENTATION, OR THAT THE OPERATION OF THE SOFTWARE PRODUCT WILL BE UNINTERRUPTED OR ERROR-FREE. PROVIDER DOES NOT WARRANT OR ASSUME RESPONSIBILITY FOR THE ACCURACY OR COMPLETENESS OF ANY INFORMATION, TEXT, GRAPHICS, LINKS OR OTHER ITEMS CONTAINED WITHIN OR PRODUCED BY THE SOFTWARE PRODUCT. PROVIDER MAKES NO WARRANTIES RESPECTING ANY HARM THAT MAY BE CAUSED BY THE TRANSMISSION OF A COMPUTER VIRUS, WORM, TIME BOMB, LOGIC BOMB, OR OTHER SUCH COMPUTER PROGRAM. PROVIDER FURTHER EXPRESSLY DISCLAIMS ANY WARRANTY OR REPRESENTATION TO AUTHORIZED USERS OR TO ANY THIRD PARTY.

11. LIMITATION OF LIABILITY

In no event will Provider be liable to Licensee for any special, incidental, exemplary, punitive, or consequential damages (including loss of use, data, business or profits) arising out of or in connection with this Agreement, whether such liability arises from any claim based upon contract, warranty, tort (including negligence), strict liability, or otherwise, and whether or not Provider has been advised of the possibility of such loss or damage. The foregoing limitations will survive and apply even if any limited remedy specified in this Agreement is found to have failed of its essential purpose. In any case, Provider's aggregate liability under this Agreement will not exceed the Fees received by Provider from Licensee paid for use of Software Product (if any). **This clause shall not impair the U.S. Government's right to recover for fraud or crimes arising out of or related to this Contract under any federal fraud statute, including the False Claims Act, 31 U.S.C. 3729-3733. Furthermore, this clause shall not impair nor prejudice the U.S. Government's right to express remedies provided in the GSA schedule contract (e.g., clause 552.238-75 - Price Reductions, clause 52.212-4(h) - Patent Indemnification, and GSAR 552.215-72 - Price Adjustment - Failure to Provide Accurate Information).**

12. Intentionally Omitted

13. CONTROLLING LAW AND VENUE

This Agreement shall be governed by and construed and interpreted in accordance with the laws of the United States without giving effect to its conflict of laws rules.

14. GENERAL

14.1 Licensee may not assign this Agreement, or any rights or obligations hereunder, whether by operation of contract, law, or otherwise, except with the express written consent of Provider, and any attempted assignment by Licensee in violation of this Section 14.1 shall be void. In the event of such assignment or attempted assignment by Licensee, Provider shall have the right to terminate this Agreement under the Contract Dispute Act and Licensee shall continue performance during the pendency of

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- the claim. Provider may assign this Agreement only in accordance with the procedures of FAR Part 42.12.
- 14.2 If any provision of this Agreement is found invalid, illegal or unenforceable pursuant to judicial decree or decision, the remainder of this Agreement will remain valid and enforceable according to its terms. Upon a determination that any term or provision is invalid, illegal or unenforceable, the parties hereto agree that, to the extent permitted by applicable law, a court of competent jurisdiction may modify this Agreement to effect the original intent of the parties as closely as possible in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.
- 14.3 This Agreement cannot be modified except by a written agreement signed by all parties hereto. Failure of either party to enforce any provision of this Agreement will not be deemed a waiver of future enforcement of that or any other provision.
- 14.4 Licensee shall not directly or indirectly, separately or as part of a system, export the Software Product outside the U.S. without first obtaining (i) proper authority to do so from the appropriate governmental agencies or entities, as may be required by law; and (ii) the prior written consent of Provider.
- 14.5 Except with respect to Licensee's obligation to make timely payments, neither party shall be responsible for any delay or failure in performance of such party's obligations under this Agreement and any applicable appendix to the extent that such delay or failure is caused by fires, strikes, embargoes, explosion, earthquakes, floods, wars, labor disputes, government requirements, civil or military authorities, acts of God or by the public enemy, acts or omissions of carriers or suppliers, or other causes beyond its reasonable control.
- 14.6 In the event that any provision of this Agreement conflicts with any provision of Appendix A or any mutually approved additional appendices, the order of precedent set by Schedule contract, FAR 52.212-4(s) shall apply.
- 14.7 Provider may, upon reasonable notice to the Licensee, consistent with all applicable security measures, and at Provider's expense, request to gain access to Licensee's premises for the limited purpose of conducting an inspection to determine and verify that Licensee is in compliance with the terms and conditions of this Agreement. The inspection shall be conducted in a manner not intended to unreasonably disrupt Licensee's business and shall be restricted in scope, manner and duration to that reasonably necessary to achieve its purpose.

(Signature Page to Follow)

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the Effective Date.

Licensee Information

By: test

Title: _____

Signature: _____

Date: _____

Contact Number: _____

ShadowDragon Federal LLC:

By: Daniel Clemens

Title: President & Managing

Partner

Signature:

Date: October 9, 2020

Contact Number: +1.202.207.0013