ATTACHMENT A
CONTRACTOR SUPPLEMENTAL PRICELIST INFORMATION AND TERMS

APPIAN CORPORATION

A. APPIAN CORPORATION LICENSE, WARRANTY AND SUPPORT TERMS

1. DEFINITIONS: The terms in this Section 1 and any other capitalized terms defined in the other sections of this Agreement have the meanings stated.

a. "Agreement" means these Attachment A terms and conditions and the attached schedules.

b. "Appian" means Appian Corporation.

c. "Appian Software" means an object code version of the software application, the Documentation and all updates, new versions, enhancements and corrections to the Appian Software received by Ordering Activity under this Agreement.

d. "Contractor" means EC America, Inc.

e. "Correction" means, without limitation, workarounds, support releases, component replacements, patches and/or Documentation changes, as Appian deems reasonably appropriate.

f. "Ordering Activity" means Ordering Activity, Subscriber or End User identified in the applicable Order who receives a licenses and/or services under this Agreement.

g. "Documentation" means the specifications, use case scenarios and instructions for the proper use of the Appian Software provided under the documentation section of the Appian Forum website, https://forum.appian.com or other URL as notified to Ordering Activity in writing from time to time and provided for informational purposes only. .

h. "Maintenance Services" is as defined in Section A(3) below.

i. " User" means an employee, subcontractor or consultant of Ordering Activity, who (i) is compliant with the terms herein, and (ii) has an active user account in the Appian Software allowing him/her to authenticate into the Appian Software.

j. "Order" means a purchase order from Ordering Activity.

k. "Party" means, individually, Ordering Activity or Contractor, and "Parties" means Ordering Activity and Contractor, collectively.

l. "Release" means a new version of the Appian Software identified by a decimal point move in the version number in the tenths place (e.g. 5.1 to 5.2). In the event of a full integer move in the version number (e.g. 5.7 to 6.0), the new integer number (6.0) will be considered the current Release.

m. "Training" is as defined in Section A(5) of this Agreement.

2. SOFTWARE LICENSE GRANT:

a. General. Subject to Ordering Activity's compliance with the terms herein and payment of a corresponding sublicense fee, the Contractor through Appian grants Ordering Activity a personal, non-transferable, non-exclusive license, without right of sublicense, to allow certain access and use of the Appian Software, as more particularly described in this Agreement and in the applicable Order.

If the applicable Order does not restrict the purposes for which Ordering Activity can use the Appian Software, Ordering Activity is authorized to use the Appian Software for its general business purposes, subject to this Agreement. Appian software is licensed based on the following subscription types:

Application Specific User Subscription. An Application Specific User Subscription allows a specific User to access and use the Appian Software an unlimited number of times during the Subscription Period solely to use the application identified in the line item above.

Enterprise User Subscription. An Enterprise User Subscription allows a specific User to access and use the Appian Software an unlimited number of times during the Subscription Period. Enterprise User Subscriptions may be reassigned from time to time to new Users who are replacing former Users who have terminated employment or who have otherwise changed job status or function and no longer use the Cloud Offering.

b. License Administrator. The Ordering Activity employee listed in the applicable Order (the "License Administrator") is responsible for configuring the Appian Software to authorize Users to access and use the Appian Software. Ordering Activity may change its License Administrator to another Ordering Activity employee, provided one of Ordering Activity's Maintenance Services contacts, as defined in Section A(3)(b) of this Agreement first submits the name of Ordering Activity's new License Administrator to Appian's online technical support case management system.

c. Copies of the Appian Software. Ordering Activity may make a reasonable number of copies of the Appian Software as necessary for Ordering Activity to use the licenses purchased under this Agreement, subject to the restrictions of FAR 52.227-14. All proprietary and restricted rights notices shall be reproduced on such copies, and all copies are subject to this Agreement.

Third Party Hosting. Ordering Activity may operate the Appian Software at a third party co-location facility, provided Ordering Activity: (i) notifies Appian of the address and name of the entity operating the co-location facility ("Hosting Entity"), (ii) authorizes Appian to share the name and address of the Hosting Entity with Appian's licensors, and (iii) Ordering Activity and the Hosting Entity enter into a written agreement in which the Hosting Entity agrees: (I) to store and/or load the Appian Software only on computers and media that are reasonably secure from unauthorized access, (II) only to operate the Appian Software to make it available to Ordering Activity over the Internet or other transmission medium and not for any other purpose, and (III) not to attempt to reverse engineer, disassemble, decompile or otherwise attempt to derive the source code from the Appian Software.

d. License Keys. Ordering Activity must provide Contractor with the following information for every Ordering Activity Computer and, if applicable, for every computer used by a Hosting Entity, to operate the Appian Software: (i) a fully qualified domain name (FQDN) owned by Ordering Activity, (ii) the operating system, and (iii) the number of CPUs. A CPU is a single central processing unit, and each core of a multi-core processing unit shall equal one CPU. Appian will use this information to develop a license key and/or enabling code ("License Key") that will allow the Appian Software to operate only on computers matching the information supplied by the Ordering Activity, domain name, operating system and CPU cores. The License Key will allow Ordering Activity to use the Appian Software up to the number and type of licenses purchased.

e. Deleted.

f. Restrictions.

(i) General. Ordering Activity may not reverse engineer, decompile (or otherwise attempt to access or determine the source code of the Software). In addition, except as expressly set forth in this Agreement, Ordering activity may not, modify, adapt or prepare any derivative works from the Appian Software, or any part thereof, nor allow, permit or assist any third party to do any of the foregoing (except to the extent any of the foregoing are permitted by the licensing terms governing use of any open sourced components included with the Appian Software). Ordering Activity agrees not to modify or tamper with the License Key or to attempt to manipulate the number of licenses counted by the License Key. Ordering Activity may only install the Software on servers owned (or leased by Ordering Activity) or the servers of Ordering Activity's third party infrastructure as a service providers (collectively referred to as "Authorized Servers").

In addition, Ordering Activity may not:

- (I) re-distribute or sublicense the Appian Software, or any part thereof, to any third party,
- (II) create Internet "links" to the Appian Software or "frame" or "mirror" any content available on the Appian Software on any other server or wireless Internet-based device,
- (III) operate the Appian Software on a service bureau basis, or
- (IV) allow, assist or permit any third party to do any of the foregoing.

(ii) Permitted Usage. Ordering Activity is authorized to use the Appian Software for its general business purposes, subject to the terms and conditions of this Agreement. Ordering Activity acknowledges that the Appian Software is not designed to be used in circumstances in which errors or inaccuracies in the content, functionality, services, data or information provided by the Appian Software or the failure of the Appian Software, could lead to death, personal injury, or severe physical or environmental damage. Ordering Activity agrees not to use the Appian Software for any such purpose.

(iii) User Accounts. Only the identified individual associated with a particular User account can access the Appian Software, or the data therein, using that account. Without limiting the generality of the foregoing, this means that User accounts may not be: (I) shared amongst individuals or (II) used to provide access to the Appian Software, or the data therein, to individuals who are not the individual associated with the corresponding Named User account. In addition, Ordering Activity may not activate and de-activate User accounts on a daily or other regular basis in order to circumvent the restrictions set forth herein. User licenses may be reassigned from time to time to new users who are replacing former users who have terminated employment or who have otherwise changed job status or function and no longer use the Appian Software

(iv) Use by Users. Ordering Activity shall limit access to the Appian Software to its Users (a) who have a need to know the Appian Software in the normal course of their duties with Ordering Activity, and (b) who are subject to binding confidentiality obligations with the Ordering Activity. Ordering Activity is responsible for ensuring that any User complies with this Agreement.

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(vi) Use by Term Users. A User license allows a specific named user to access the Appian Software an unlimited number of times during the subscription term specified in the Order. The term shall commence as of the date of the corresponding Order. During this period, Ordering Activity shall receive (I) a license to allow the number of Users listed in the corresponding Order to use the Appian Software in accordance with this Agreement, and (II) associated standard Maintenance Services.

Licensors. The Appian Software contains software licensed to Contractor from certain third party licensors ("Third Party Licensors"). Any warranty provided in connection with the Appian Software, if any, is from Contractor, not the Third Party Licensors, and the Third Party Licensors make no warranty to Ordering Activity in connection with the Appian Software, including the implied warranties of merchantability or fitness for a particular purpose. To the extent permitted under applicable law, the Third Party Licensors are not liable for any damages of any kind resulting from Ordering Activity's use of the Appian Software, including without limitation, direct, indirect, consequential, incidental, and special damages.

(vii) Rights and Obligations upon Termination. Upon the termination of Ordering Activity's license, Ordering Activity must cease using the Appian Software and the Appian Community Website. Within five (5) business days after such termination, Ordering Activity must return to Contractor all originals and all copies of the Appian Software in Ordering Activity's care, custody or control. Ordering Activity will certify to Contractor that it has complied with the foregoing requirements. The foregoing obligations apply to copies of the Appian Software in all forms, partial and complete, in all types of media and computer memory, and whether or not modified or combined with other materials.

(viii) Usage. If Ordering Activity exceeds the number of licensed Users set forth in the effective Order, Contractor will invoice Ordering Activity for the excessive use and Ordering Activity will pay the invoice within thirty (30) days of the invoice receipt date. Ordering Activity shall either discontinue the excessive use, or Ordering Activity may purchase such additional User subscriptions necessary to bring Ordering Activity into compliance for the remainder of the term of Ordering Activity's current subscription. Such additional User subscriptions shall be at Contractor's current GSA Schedule list fees for Appian, irrespective of any discounts offered to Ordering Activity in any Order Form.

g. Intellectual Property Rights. The Appian Software is Commercial computer software provided pursuant to FAR12.212. This includes all software minor modifications of a type typically delivered to commercial customers (enhancements). Any non software deliverables provided under this Agreement containing Appian's copyrighted material is provided as Limited rights data specified in FAR 52.227-14. The Appian Software and other Appian copyright material provided under this Agreement is licensed to the Ordering Activity, not sold. All rights in the Appian Software or other Appian copyrighted material not provided to Ordering Activity under this Agreement are expressly retained by Appian and its licensors.

3. MAINTENANCE AND SUPPORT SERVICES:

Subject to the terms and conditions of this Agreement, including without limitation Ordering Activity paying the Contractor the required Maintenance Services fee, Contractor shall make available to Ordering Activity the services described in this Section 3 (the "Maintenance Services") during the period set forth in the applicable Order.

a. **Technical Support.** Appian shall provide Technical Support to allow Ordering Activity's Maintenance Services contacts to report problems and to seek assistance regarding the Ordering Activity's use of the Appian Software. Ordering Activity shall designate Ordering Activity employees to coordinate Ordering Activity's requests for Maintenance Services ("Maintenance Services contacts"). Ordering Activity shall email support@appian.com with Ordering Activity's Maintenance Services contacts promptly on or after the Effective Date. Ordering Activity may change its Maintenance Services contacts using Appian's case management system. Ordering Activity's Maintenance Services contacts may report problems using Appian's online technical support case management system (https://community.appian.com/support/ or other URL as notified to Ordering Activity in writing from time to time), by telephone using Appian's authorized technical support phone line, (703) 442-1066 (or such other number that Appian may provide to Ordering Activity from time-to-time), or using any other means that Appian may authorize from time-to-time. Appian shall return support requests within a commercially reasonable time after receipt. Ordering Activity's Maintenance Services contacts may track Technical Support requests using Appian's case management system. Ordering Activity's Maintenance Services contacts must be reasonably familiar with the Appian Software to facilitate discussions with Appian's Maintenance Services staff. Technical Support is provided on the two (2) most recent Releases; provided, however, that Appian shall continue supporting the third most recent Release for a reasonable period sufficient to allow Ordering Activity to implement the newest Releases.

Type	Standard Support	Premier Support
Online case management	☑	☑
Phone support	☑	☑
Live screen sharing	☑	☑
Discussion forums	☑	☑
Knowledge base	☑	☑
Maintenance Services contacts	2	10
Case severity/Response times	Priority 1: <1 business hour Priority 2: <2 business hours Priority 3: <8 business hours Priority 4: <12 business hours	Priority 1: <15 minutes Priority 2: <1 hour Priority 3: <4 business hours Priority 4: <8 business hours
Primary Contact		☑
Proactive guidance		☑
Extended Technical Support and Security Defect Corrections		6 months
New release planning		☑
24/7 Support for Priority 1&2 Issues		☑

b. Response Times. Appian will be deemed to have responded to an Issue once it responds that it has received the Issue during business hours (an automated email response shall not count as a response). Business hours are 8:00 a.m. to 8:00 p.m. (ET), Monday through Friday, excluding Appian holidays.

Priority Definitions.

- A Priority 1 Issue occurs when the Appian Software is down in a production setting and no workaround exists, or the workaround is not feasible to implement due to the impact on Ordering Activity's business.
- Priority 2 Issue occurs when Users are unable to operate the Core Functionality on a production instance of the Appian Software using the User's then current username and password. Core Functionality means the ability using the Appian Software to: (i) load a designer interface; (ii) publish a generic process; (iii) launch a generic process (including accepting a generic task and entering a generic form); (iv) access a generic dashboard; or (v) run a generic report.
- Priority 3 Issue occurs when a production instance is negatively affected, but it is not a Priority 1 or 2.
- All other issues are Priority 4.

c. **Defect Correction**. When Ordering Activity reports a suspected Defect in the Appian Software to Appian, Appian shall attempt to recreate the suspected Defect based upon information provided by Ordering Activity. If the Defect is confirmed, Appian shall use commercially reasonable efforts to provide Ordering Activity with a Correction. For the purpose herein, a "Defect" is a failure of the Appian Software used by Ordering Activity to operate substantially in accordance with the then current Documentation. Appian is responsible for correcting Defects in only the most recent Release of the Appian Software; provided however, that Appian shall continue supporting the immediately preceding

Release for a reasonable period sufficient to allow Ordering Activity to implement the newest Release. Ordering Activity must implement all Corrections within a reasonable time of receipt.

d. Updates. Contractor through Appian will promptly make available to Ordering Activity all updates, enhancements and corrections to the Appian Software generally released by Appian to its other licensees who have purchased maintenance services for the Appian Software, including all relevant documentation ("Maintenance Releases"). Neither Contractor nor Appian is obligated to provide installation, implementation or testing services in connection with the Maintenance Releases. Maintenance Releases are part of the Appian Software and subject to this Agreement. Contractor through Appian is not obligated to release a Maintenance Release during any particular Maintenance Services term.

Appian Community Website. Appian shall provide Ordering Activity with reasonable access to appropriate areas of Appian's community website, currently named Appian Forum and located at https://community.appian.com. This website provides Ordering Activity with access to the Appian Software, Maintenance Releases, online discussion forums and Documentation.

e. Ordering Activity Obligations. Ordering Activity shall cooperate with Appian's reasonable requests in connection with providing the Maintenance Services, including, without limitation, by providing Appian with timely access to data, information and personnel of Ordering Activity. Ordering Activity is responsible for the accuracy and completeness of all data and information provided to Appian in connection with the Maintenance Services.

f. Excluded Items. Maintenance Services do not include on-site or in-person assistance or consultation, or extensive training that would normally be provided in formal training classes. In addition, Maintenance Services shall not include Technical Support (beyond an initial response) or Defect Correction to the extent required as a result of the following:

i. For on-premise licenses to the Appian Software, malfunction of the computer system and communications network on which Ordering Activity has installed and is using the Appian Software;
ii. Use of the Appian Software contrary to the terms of the then current Documentation;
iii. Modifications, enhancements or customizations of the Appian Software;
iv. Any use of the Appian Software in disregard of any known adverse consequences, including without limitation; or
v. Ordering Activity's failure to make appropriate backups or to follow warning messages and other written instructions.

g. MAINTENANCE SERVICES FEE:

Annual Subscription The Premier Maintenance Services fee for the initial term of Maintenance Services is the percentage of the underlying license fee set forth in the applicable Order (Maintenance Services Percentage). Standard Support is included in the price Subscription fee.. Maintenance Services must be purchased on all User licenses for the initial Maintenance Services term (the one (1) year period immediately following the effective date of the Order under which the licenses are purchased. Ordering Activity must purchase the same type of Maintenance Services (standard or premium) on all named User licenses. The Maintenance Services term for User licenses shall renew if agreed upon by the Parties. If Ordering Activity discontinues the Maintenance Services for User licenses at any time, the reinstatement shall be subject to a fee equal to 100% of the then current Maintenance Services fee under the GSA Schedule Contract multiplied by the number of years or any part thereof during which the Maintenance Services were discontinued. Maintenance Services renewals must be exercised on an all or nothing basis (Ordering Activity may not renew Maintenance Services on only a portion of its User licenses . The annual Maintenance Services fee for any renewal shall equal the then current GSA list price.

h. SERVICES:

a. TRAINING

Ordering Activity may purchase Appian's standard training courses, as described on Appian's website, www.appian.com/training ("Training"). Training is offered at Appian's headquarters, in Reston, Virginia or at Ordering Activity's location.

i. Training at Appian Headquarters. Training offered at Appian's headquarters is available at the times listed in Appian's course calendar, also available on Appian's website, and is subject to space availability. Ordering Activity must order the number of corresponding Training Credits published for the selected course. Ordering Activities must order one (1) Training Credit for each student per day of Training. If the Ordering Activity purchases unique training, additional charges may apply for course development, course materials, etc. Additional terms associated with the Ordering Activity's purchase of Training are contained in Schedule 1 of this Agreement, which is hereby incorporated by reference.

Training at Ordering Activity Facility. Training offered at Ordering Activity's location will be provided at a time mutually agreed upon between the Parties. Ordering Activity must order one (1) Training Day for each day of Training, provided the maximum number of students for each Training class at the Ordering Activity's site will not exceed eight (8) students,

unless additional student attendance is purchased up to a maximum of twelve (12) students per class. Travel and per diem fees for Appian training personnel are not included in the Training fee and will be quoted as part of Appian's associated proposal. The allow-ability of such travel and per diem fees shall be in accordance with the Federal Travel Regulations. Additional terms associated with the Ordering Activity's purchase of Training is contained in Schedule 1 of this Agreement, which is hereby incorporated by reference.

b. ELITE SERVICES --- Reserved

i. LIMITED WARRANTY AND DISCLAIMER:

i. Appian Software. Subject to the limitations set forth below, for a period of forty-five (45) calendar days following the date on which the Ordering Activity receives a License Key for the initial installation of the Appian Software (the "Warranty Period"), Contractor warrants that the Appian Software will operate in substantial conformance with its then current Documentation. If Ordering Activity notifies Contractor of a breach of this warranty during the Warranty Period, Contractor through Appian will attempt to recreate the reported issue based upon information provided by the Ordering Activity. If Contractor or Appian is able to recreate the issue, Contractor's obligation and Ordering Activity's remedy is for Contractor to use commercially reasonable efforts to provide Ordering Activity with a Correction at no additional cost. If Contractor is unable to provide a Correction within a commercially reasonable time after Contractor reproduces the warranty issue, Contractor shall refund to Ordering Activity the amounts Ordering Activity paid for the non-conforming Appian Software, including any prepaid and unearned Maintenance Services fees. Notwithstanding the foregoing, Contractor is not liable for any alleged breach of this warranty caused by (i) failures due to Ordering Activity supplied computers or the operating environment on which the Appian Software resides, (ii) problems due to Ordering Activity's failure to implement currently available updates or upgrades, (iii) failures due to modifications or alterations of the Appian Software, (iv) Ordering Activity using the Appian Software contrary to the then current Documentation, or (v) Ordering Activity combining the Appian Software with materials, hardware or data not contemplated by the parties or approved by Appian, in writing.

ii. Maintenance Services, Training and Elite Services. Subject to the limitations set forth below, Contractor warrants that it shall perform through Appian the Training, Elite Services and Maintenance Services, as applicable, in a professional and workmanlike manner consistent with prevailing industry practices. In the event of a breach of this warranty, Contractor's obligation and Ordering Activity's remedy is for Contractor through Appian to use commercially reasonable efforts to re-perform the defective Training, Elite Services or Maintenance Services, as appropriate, at no additional cost. If Contractor is unable to re-perform the applicable Training, Elite Services or Maintenance Services, within a commercially reasonable time after Ordering Activity notifies Contractor of the corresponding breach of this warranty, Contractor shall refund to Ordering Activity the amount Ordering Activity paid for the defective Training, Elite Services or Maintenance Services, as the case may be. Ordering Activity must notify Contractor of any breach of this warranty, in writing, within five (5) business days after the defective Training, Elite Services or Maintenance Services, as applicable, are provided to Ordering Activity.

iii. Warranty Disclaimer. THE FOREGOING WARRANTIES ARE THE ONLY EXPRESS WARRANTIES PROVIDED BY CONTRACTOR IN CONNECTION WITH THE APPIAN SOFTWARE, TRAINING, ELITE SERVICES AND MAINTENANCE SERVICES. CONTRACTOR EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESSED, STATUTORY OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIEDWARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND ANY AND ALL WARRANTIES IMPLIED FROM CUSTOM, USAGE IN TRADE OR COURSE OF DEALING. THE APPIAN SOFTWARE, TRAINING, ELITE SERVICES AND MAINTENANCE SERVICES ARE PROVIDED "AS IS" WITH ALL FAULTS AND THE ENTIRE RISK AS TO SATISFACTION, QUALITY, PERFORMANCE, ACCURACY, AND EFFORT IS WITH ORDERING ACTIVITY. ORDERING ACTIVITY ACKNOWLEDGES THAT THERE IS NO WARRANTY AGAINST INTERFERENCE WITH ENJOYMENT OR INFRINGEMENT IN CONNECTION WITH THE APPIAN SOFTWARE, TRAINING, ELITE SERVICES OR MAINTENANCE SERVICES. CONTRACTOR DOES NOT WARRANT THAT THE APPIAN SOFTWARE IS FREE FROM ERROR OR WILL FUNCTION WITHOUT INTERRUPTION.

j. LIMITATION OF LIABILITY

i) Exclusion of Consequential Damages. EXCEPT FOR A) A CLAIM OF IP INFRINGMENT HEREUNDER, OR B) AS PROVIDED IN7.(iii) BELOW, IN NO EVENT SHALL CONTRACTOR BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF PROFITS, DATA OR USE, INCURRED BY EITHER PARTY OR ANY THIRD PARTY, WHETHER IN AN ACTION IN CONTRACT OR TORT, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES PROVIDED HOWEVER, THAT IN THE EVENT ORDERING ACTIVITY MAKES UNAUTHORIZED COPIES OF THE SOFTWARE, CONTRACTOR SHALL BE ENTITLED TO RECOVER THE FULL AMOUNT OF ANY LICENSE FEES THAT WOULD RELATE TO SUCH COPIES.

ii) LIMITATION OF DIRECT DAMAGES. EXCEPT FOR A) A CLAIM OF IP INFRINGEMENT HEREUNDER, OR B) AS PROVIDED IN 7.(III) BELOW, THE AGGREGATE AND CUMULATIVE LIABILITY OF CONTRACTOR AND LICENSORS FOR DAMAGES HEREUNDER SHALL IN NO EVENT EXCEED THE AMOUNT OF FEES PAID BY ORDERING ACTIVITY UNDER THE ORDER GIVING RISE TO SUCH LIABILITY, AND IF SUCH DAMAGES RELATE TO PARTICULAR SOFTWARE, TRAINING, ELITE SERVICES OR MAINTENANCE SERVICES, SUCH LIABILITY SHALL BE LIMITED TO FEES PAID FOR THE RELEVANT SOFTWARE. TRAINING, ELITE SERVICES OR MAINTENANCE SERVICES GIVING RISE TO THE LIABILITY.

iii) Non-Applicability to Statutory or Regulatory Rights. Nothing herein shall operate to impair or prejudice the U.S. Government's right (a) to recover for fraud or crimes arising out of or relating to this Agreement under any Federal fraud statute, including without limitation the False Claims Act (31 USC §§3729 through 3733), or (b) to express remedies provided under any FAR, GSAR or Schedule 70 solicitation clauses incorporated into this contract, including without limitation the GSAR 552.215-72 Price Adjustment
– Failure to Provide Accurate Information (August 1997) or GSAR 552.238-75 Price Reductions (May 2004) Alternate I (May 2003).

k. INTELLECTUAL PROPERTY INFRINGEMENT

i. If a third party makes a claim against Ordering Activity that the Appian Software directly infringes any patent, copyright, or trademark or misappropriate any trade secret ("IP Claim"); Contractor will to the extent permitted by 28 U.S.C. 516 (i) assist in defending Ordering Activity against the IP Claim at Contractor's cost and expense, and (ii) pay all costs, damages and expenses (including reasonable legal fees) finally awarded against Ordering Activity by a court of competent jurisdiction or agreed to in a written settlement agreement signed by Contractor arising out of such IP Claim; provided that: (I) Ordering Activity promptly notifies Contractor in writing no later than sixty (60) days after Ordering Activity's receipt of notification of a potential claim and (II) Ordering Activity provides Contractor, at Contractor's request and expense, with the assistance, information and authority necessary to perform Contractor's obligations under this Section. Notwithstanding the foregoing, Contractor shall have no liability for any claim of infringement based on (I) the use of a superseded or altered release of the Appian Software if the infringement would have been avoided by the use of a current unaltered release of the Appian Software, (II) the modification of the Appian Software, (III) the use of the Appian Software other than in accordance with the then current Documentation or this Agreement, or (IV) any materials or information provided to Contractor by Ordering Activity, for which Ordering Activity shall be solely responsible.

ii. If the Appian Software is held to infringe or are believed by Contractor to infringe, Contractor shall have the option, at its expense, to (i) replace or modify the Appian Software to be non-infringing, or (ii) obtain for Ordering Activity a license to continue using the Appian Software. If it is not commercially reasonable to perform either of the foregoing options, then Contractor may terminate the license for the infringing Appian Software and refund the license fees paid for the Appian Software upon return of the Appian Software by Ordering Activity. This section states Contractor's entire liability and Ordering Activity's exclusive remedy for any claim of infringement; provided, however, if the license is for a cloud subscription described in Section B of this Agreement, then Appian shall only refund to Ordering Activity those license fees that were pre-paid and unearned at the time Appian terminates the license.