ATTACHMENT A – YUBICO

ENTERPRISE MAINTENANCE AND SUPPORT SERVICES AGREEMENT

THIS ENTERPRISE MAINTENANCE AND SUPPORT SERVICES AGREEMENT is by and between the Ordering Activity under the GSA Schedule ("**Ordering Activity**" or "**Customer**"), and Yubico, Inc., a Delaware corporation having a place of business at 530 Lytton Avenue, Suite 301, Palo Alto, CA 94301 ("**Yubico**"). In this Agreement, "**Party**" means, individually, Customer or Yubico as the context requires and "**Parties"** means, collectively, Customer and Yubico.

BACKGROUND OF THE AGREEMENT

A. Customer has entered into or is currently entering into an agreement(s) with Yubico: (i) for the purchase of YubiKey and/or YubiHSM products; and/or (ii) to license Yubico's Software (as defined below);

B. Customer desires Yubico to provide it with enterprise-wide maintenance and support services for the YubiKey, YubiHSM and/or Software products that it has or will acquire from Yubico;

C. Customer may obtain maintenance and support services for additional YubiKey, YubiHSM and/or Software products by entering into one or more additional Order Schedules; such additional Order Schedules shall be subject to and become part of this Agreement; and

D. Yubico is willing to provide Customer with maintenance and support services pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. **DEFINITIONS**

1.1. "**Agreement**" means this Enterprise Maintenance and Support Services Agreement, including all attached exhibits and Order Schedules that reference this Agreement.

1.2. "**Customer Support Contact(s)**" means individuals designated by Customer who are trained on the use of the Product and/or Software and authorized by Yubico to report Problems to Yubico Support Contacts. Customer Support Contacts, and their contact information, are listed on one or more Order Schedules.

1.3. "**Documentation**" means Yubico's written materials which it makes accessible to customers and potential customers describing the technical features and functions of the Software and/or Product.

1.4. "**End User**" means Customer's employees and consultants authorized by Customer to use the Product and/or Software.

1.5. "**Error**" means any material error or defect in the Software that causes the Software not to substantially conform in all material respects with its Documentation.

1.6. "**Error Corrections**" means patches and bug fixes developed by Yubico to correct Errors.

1.7. "**Order Schedule**" means a purchase order issued by Customer and accepted by Yubico, for the Product Maintenance Services and Software Support Services described in this Agreement.

1.8. "**Problem**" means a problem or error encountered in the reasonable and authorized use of the Software or Product that (i) degrades the performance of the Software or Product as compared to Yubico's Documentation applicable to such Software or Product, or (ii) renders one or more features of the Software or Product wholly or partly inoperable.

1.9. "**Problem Report**" means a reasonable description of a Problem encountered by Customer or its End Users, including: the End User who encountered the Problem, the date and time the Problem was encountered, the operating environment the problem occurred in, the functions the End User was attempting, the steps taken by the Customer Support Contact to resolve the problem prior to submitting a Problem Report and a reproducible test case.

1.10. "**Product**" means the YubiKey or YubiHSM, as applicable.

1.11. "**Severity 1 Problem**" means multiple users cannot access software of critical importance to the Customer's business with no possible Workaround or a failure with multiple users affected per site, multiple sites affected and no possible Workaround. The resulting situation is critical to the operation of the Customer's business.

1.12. "**Severity 2 Problem**" means multiple users cannot access software of high importance to the Customer's business with no practical or easily implementable Workaround or a failure which affects several users in a single site. The resulting situation has moderate impact on the operation of the Customer's business.

1.13. "**Severity 3 Problem**" means multiple users cannot access software of low importance to the Customer's business and a practical Workaround exists or a failure which affects a single user. The resulting situation as some minimal impact on the operation of the Customer's business.

1.14. "**Severity 4 Problem**" includes requests for new or enhanced features, general questions relating to the Software or Product and all other Problems that are not Severity 1-3 Problems. The resulting situation does not affect the daily business of the Customer.

1.15. "**Service**" means Product Maintenance Services and Software Support Services.

1.16. "**Software**" means one or more of Yubico's: (i) YubiKey Smart Card Minidriver; (ii) Yubico PIV Tool; (iii) YubiKey PIV Manager; and (iv) YubiHSM Key Storage Provider (KSP)

1.17. "**Updated Product**" means a replacement Product designed to correct an identified critical security issue in an existing Product.

1.18. "**Updates**" means Error Corrections, minor enhancements and patches and other minor changes to the Software that are generally made available by Yubico to its Customers at no additional cost pursuant to Enterprise Maintenance and Support Services Agreements. Updates do not include enhancements to or new versions of Software that provide substantial new, enhanced or different features, functions or performance.

1.19. "**Workaround**" means a change in the procedures recommended by Yubico or data supplied by Customer to avoid a Problem without substantially impairing Customer's use of the Software or Product.

1.20. "**Yubico Support Contacts**" are those individuals designated by Yubico to assist Customer with Problems. Customer Support Contacts shall communicate with Yubico Support Contacts in order to report and resolve a Problem. Contact information for the Yubico Support Contacts is listed in one or more Order Schedules.

2. PRODUCT MAINTENANCE SERVICES

2.1. Scope of Services. Product Maintenance Services comprise the provision of Updated Products when Yubico has become aware of a critical security vulnerability with a previous version of a Product that could materially adversely affect the security of Customer's data. The determination of whether a critical security vulnerability exists that could materially adversely affect a Customer's data shall be made by Yubico in its sole discretion.

2.2. Updated Products. Yubico will notify Customer when Updated Products are available that address a critical security vulnerability, and Yubico will provide such Updated Products to Customer without additional charge.

2.3. Prompt Replacement of Existing Products. Customer agrees to use commercially reasonable efforts to promptly replace the compromised existing Products with the Upgraded Products and provide evidence of the destruction of the compromised Products to Yubico if requested.

3. SOFTWARE SUPPORT SERVICES.

3.1. Scope of Services. Software Support Services comprise the following services:

a. The provision of Updates as such Updates become available; and

b. Depending upon the Service Level selected and purchased by Customer, Yubico will work to correct Problems with the Software by e-mail, telephone or electronically from Yubico's remote support center, or provide onsite support for an additional fee in accordance with the GSA pricelist.

3.2. Updates. As permanent solutions are developed for known Errors in the Software, they will be incorporated from time to time in planned Updates. Yubico will provide Customer, free of additional charge, with such Updates as they are released. Yubico will provide documentation that Yubico considers reasonably necessary to assist in a smooth transition for mitigating the errors. In the event Yubico decides in its sole discretion to update the associated Documentation, Yubico will provide a copy of the same to Customer at no additional charge.

3.3. Installation of Updates. All Updates will be made available to Customer electronically via secure download from Yubico's designated site. Customer agrees to use commercially reasonable efforts to promptly download and install all Updates supplied hereunder in order to maintain the Software at the most current revision level. Yubico is obligated hereunder to provide Software Support Services only (i) for the current revision level of the Software, and (ii) for the pre-updated version of the Software for six (6) months following the release of an Update. Customer is solely responsible for all costs of installation of Updates.

4. PROBLEM REPORTING

4.1. Customer Obligations. Prior to submitting a Problem Report, Customer shall make all reasonable efforts to resolve the Problem without assistance from Yubico. Customer Support Contacts shall attempt to reproduce any problems reported to them by Customer's End Users and only report reproducible Problems to Yubico. For Problems that Customer is unable to resolve itself, Customer Support Contacts shall report the Problem to Yubico by submitting a Problem Report to Customer's designated Yubico Support Contact. Customer Support Contacts and Yubico Support Contacts will be set forth in the applicable Order Schedule. All communications concerning Problem identification and resolution shall occur between

Customer Support Contacts and Yubico Support Contacts. Valid Problem Reports must be submitted to Yubico in English or languages on Yubico's Supported Languages List, which will be made available upon request.

4.2. Problem Resolution. Yubico shall address reported Problems in accordance with the severity level assigned to such Problem by Yubico, the Service Level selected and paid for by Customer, and as otherwise set forth in Exhibit B ("**Technical Response Schedule**") attached hereto. Yubico shall exert good faith, commercially reasonable efforts to achieve the response times set forth in Exhibit B. However, Customer acknowledges and agrees that Yubico may not be able to achieve the response times set forth in Exhibit B at all times and under all circumstances.

5. EXCLUSION FROM PRODUCT MAINTENANCE AND SOFTWARE SUPPORT SERVICES

5.1. Customer Errors. Yubico will have no obligation of any kind to provide Product Maintenance Services or Software Support Services of any kind for problems in the operation or performance of Products or Software to the extent caused by any of the following (each, a **"Customer-Generated Error"**): (a) non-Yubico software or hardware products or use of the Software or Product in conjunction therewith; (b) modifications to the Software or Product made by any party other than Yubico without Yubico's express prior written authorization; (c) Customer's use of the Software or Product other than in a reasonable manner and as authorized by Yubico; and (d) Customer's use of other than the most current Product and the most current version of the Software or any Error Corrections or Updates provided by Yubico (or pre-updated version of the Software for six (6) months following the release of an Update).

6. FEES

6.1. Maintenance and Support Services Fees. Customer will pay Yubico the total fees for all Services ("**Service Fees**") as specified in all accepted Order Schedules, in accordance with the GSA pricelist. For clarity, if Customer chooses to purchase Services then Customer must select a single level of Service (i.e., Gold or Silver) for all of the Products and Software it has acquired. Yubico cannot provide Services for only a subset of Customer's Products and Software, nor can Yubico provide Customer with different service levels for different Products and Software.

7. WARRANTY AND DISCLAIMER OF WARRANTIES

7.1. Updated Product Warranty. Updated Products are warranted under the original Product warranty and, accordingly, the warranty for any Updated Product shall persist for the longer of the remaining period of the original one (1) year Product warranty or ninety (90) days from the date Yubico ships the Updated Product to Customer.

7.2. Software Support Services Warranty. Yubico warrants that the Software Support Services will be performed in a workmanlike manner by qualified personnel familiar with the Software and its operations. This warranty will be in effect for a period of thirty (30) days from completion of Yubico's performance of the affected Software Support Service.

7.3. Sole Remedy. As Customer's sole and exclusive remedy and Yubico's entire liability for any breach of the warranty set forth in Section 7.2 regarding Yubico's provision of Software Support Services, Yubico will, at its option: (a) promptly re-perform the service in an attempt to correct any Errors; or (b) provide Customer with a reasonable procedure to circumvent the nonconformity; or (c) refund to Customer an equitable portion of the fees paid if the Problem cannot be resolved.

7.4. Disclaimer. Yubico does not warrant that the Updated Products, Updates, Error Corrections, Workarounds and Services provided pursuant to this Agreement will meet Customer's requirements, or that the Updated Products, Updates, Error Corrections and Workarounds will work in the combinations that Customer may select, or that the operation of the Updated Products, Updates, Error Corrections, Workarounds and Services will be error-free or that all errors in the Products and/or Software will be corrected. Yubico will have no obligation or liability for any Customer-Generated Errors.

EXCEPT AS EXPRESSLY SET FORTH HEREIN, (I) ALL UPDATED PRODUCTS ARE SUBJECT TO THE SAME TERMS AND CONDITIONS THE PARTIES AGREED TO WITH RESPECT TO THE ORIGINAL PRODUCTS THAT ARE REPLACED BY THE UPDATED PRODUCTS, AND (II) ALL UPDATES ARE SUBJECT TO THE SAME TERMS AND CONDITIONS THE PARTIES AGREED TO WITH RESPECT TO THE SOFTWARE MODIFIED OR REPLACED BY THE UPDATES.

BY USING THE UPDATED PRODUCTS, UPDATES, ERROR CORRECTIONS, WORKAROUNDS AND THE SERVICE, CUSTOMER ASSUMES ALL RESPONSIBILITY AND RISK OF LOSS RESULTING FROM SUCH USE, INCLUDING WITHOUT LIMITATION LOSS OR CORRUPTION

OF DATA OR SOFTWARE PROGRAMS, OR UNAUTHORIZED ACCESS TO DATA, SOFTWARE PROGRAMS AND/OR COMPUTER SYSTEMS.

NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED FROM YUBICO OR ELSEWHERE WILL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THIS AGREEMENT. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, YUBICO DISCLAIMS ALL OTHER WARRANTIES, EXPRESS, STATUTORY OR IMPLIED, INCLUDING WITHOUT LIMITATION THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT, AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING, USAGE OR TRADE.

8. **RESERVED**

9. **TERM AND TERMINATION**

9.1. Term. The initial term ("**Initial Term**") of this Agreement is from the date of shipment and for 12 months as set forth in the applicable Order Schedule.

9.2. Reinstating Expired or Terminated Agreement. Once expired or terminated, Customer may only reinstate this Agreement upon payment of the then-applicable GSA Service Fees, plus an additional amount equivalent to the Service Fees that would have been due for the period of time from the termination or expiration date of the Agreement until the date the Agreement is reinstated.

9.3. Survival. Sections 1, 6.1, 7, 9.2, 10 and this Section 9.3 will survive any termination or expiration of this Agreement.

10. **GENERAL**

10.1. Assignment. This Agreement is not assignable or transferable by either Party, in whole or in part, by operation of law or otherwise, without the other Party's express prior written consent, which consent may be withheld for any reason. Subject to the foregoing, this Agreement will bind and inure to the benefit of each Party's permitted successors, assignees and transferees.

10.2. Governing Law and Jurisdiction. This Agreement will be governed by and construed in accordance with the Federal laws of the United States. The Parties expressly agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply.

10.3. Nonexclusive Remedy. Except as expressly set forth in this Agreement, the exercise by either Party of any of its remedies under this Agreement will be without prejudice to its other remedies under this Agreement or otherwise.

10.4. Severability. If for any reason a court of competent jurisdiction finds any provision of this Agreement invalid or unenforceable, that provision of the Agreement will be enforced to the maximum extent permissible and the other provisions of this Agreement will remain in full force and effect.

10.5. Waiver. The failure by either Party to enforce any provision of this Agreement will not constitute a waiver of future enforcement of that or any other provision.

10.6. Export Control. Customer agrees to comply fully with all relevant export laws and regulations of the United States and other countries ("**Export Laws**") to ensure that the Software, Updated Product, Updates, Workarounds and Error Corrections, or any direct or derivative products thereof, are not: (a) exported or re-exported directly or indirectly in violation of Export Laws; or (b) used for any purposes prohibited by the Export Laws, including but not limited to nuclear, chemical, or biological weapons proliferation.

10.7. Entire Agreement. This Agreement, including the attached Exhibits, the underlying GSA Schedule Contract, Schedule Pricelist, and all accepted Order Schedules constitute the complete and exclusive understanding and agreement between the Parties regarding its subject matter and supersedes all prior or contemporaneous agreements or understandings, written or oral, relating to its subject matter. Any waiver, modification or amendment of any provision of this Agreement will be effective only if in writing and signed by duly authorized representatives of both Parties.

Yubico Support Contacts:

E-mail: enterprise-support@yubico.com
Web: yubi.co/support
Phone: 1-(844) 876-5300

EXHIBIT B

TECHNICAL RESPONSE SCHEDULE

SILVER AND GOLD SUPPORT SERVICES.

Service Components	***Silver Support Services***	***Gold Support Services***
Hours of Coverage	Monday – Friday (excluding holidays): 5am to 5pm (US Pacific Time)	24 hours per day, 7 days per week, 365 days per year for Severity 1 problems. Business hours: Monday – Friday (excluding holidays): 5am to 5pm (US Pacific Time) Severity 2 – 4.
Problem Reporting	E-mail Problem Reporting only. If e-mail report of a Problem is sent outside of the hours of coverage, then it will be deemed to be received by Yubico Support Contacts upon the next start of the Hours of Coverage.	Unlimited Problem Reporting, seven (7) days a week, twenty-four (24) hours a day web and toll free telephone access to at least one Yubico Support Contact.
Response Targets		

Severity 1 Problem	Response time: One (1) business day.	Response time: One (1) hour. A Severity 1 Problem requires you to have dedicated resources available to work on the issue with Yubico on an ongoing basis during your contractual hours, as required. Severity 1 Problems will have priority over Severity 2 - 4 Problems and Severity 1 Problems of Gold Support Services customers will have priority over Severity 1 Problems of Silver Support Services.
Severity 2 Problem	Response time: One (1) business day. Severity 1 Problems will have priority over Severity 2 Problems.	Response time: Eight (8) business hours. Severity 1 Problems will have priority over Severity 2 Problems and Severity 1 Problems of Gold Support Services customers will have priority over Severity 1 Problems of Silver Support Services customers.

Severity 3 Problem	Response time: Three (3) business days. Severity 1 Problems and Severity 2 Problems will have priority over Severity 3 Problems.	Response time: One (1) business day. Severity 1 Problems and Severity 2 Problems will have priority over Severity 3 Problems.
Severity 4 Problem	Response time: Five (5) business day. All other Problems will have priority over Severity 4 Problems.	Response time: Three (3) business days. All other Problems will have priority over Severity 4 Problems.