

**TERMS AND CONDITIONS APPLICABLE TO SOFTWARE LICENSES (SPECIAL ITEM NUMBER 511210), OF GENERAL PURPOSE COMMERCIAL INFORMATION TECHNOLOGY SOFTWARE**

**1. INSPECTION/ACCEPTANCE**

The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The ordering activity reserves the right to inspect or test any software that has been tendered for acceptance. The ordering activity may require repair or replacement of nonconforming software at no increase in contract price. The ordering activity must exercise its post acceptance rights (1) within a reasonable time after the defect was discovered or should have been discovered; and (2) before any substantial change occurs in the condition of the software, unless the change is due to the defect in the software.

**Terms of Service Agreement**

KAHUA, INC. ("VENDOR") IS WILLING TO PROVIDE THE SERVICE IDENTIFIED BELOW TO YOU IF YOU ACCEPT THE TERMS IN THIS AGREEMENT. PLEASE READ THE AGREEMENT CAREFULLY. BY EXECUTING THIS AGREEMENT OR THE ACCOMPANYING PURCHASE ORDER IN WRITING, YOU ACCEPT THE TERMS OF THE AGREEMENT. IF YOU ARE NOT WILLING TO BE BOUND BY ALL THESE TERMS, THEN DO NOT EXECUTE THIS AGREEMENT OR THE ACCOMPANYING PURCHASE ORDER AND DO NOT USE THIS SERVICE. IF YOU ARE ACCEPTING THESE TERMS ON BEHALF OF ANOTHER PERSON OR A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT AND WARRANT THAT YOU HAVE FULL AUTHORITY TO ACT FOR AND TO BIND THAT PERSON, COMPANY, OR LEGAL ENTITY TO THESE TERMS AS A BINDING CONTRACT OF THAT PARTY.

1. This Agreement, including the attached Schedules, is effective on the date on which you execute this Agreement in writing ("Effective Date").
2. Definitions. The following definitions (and additional definitions provided in other Sections and Schedules) will apply:
  - 2.1. "Customer" means the legal entity or individual that enters into this Agreement.
  - 2.2. "Customer Content" means Customer-supplied text, audio, video, graphics and other information and data available by means of the Service.
  - 2.3. "Customer Data" means data, information or material provided or submitted by Customer or any User to Vendor in the course of utilizing the Service.
  - 2.4. "Customer Representative" means the Users designated by Customer as authorized to create User accounts, administer Customer's use of the Service and otherwise represent Customer for the purpose of this Agreement.
  - 2.5. "Order" means the Order form submitted by Customer.
  - 2.6. "Pricing Schedule" means the Order.
  - 2.7. "Service" means Vendor's online service that Customer has subscribed to as described in the Order and applicable portions of Schedules A and B and the applicable documentation on Vendor's website.
  - 2.8. "Term" means the Initial Term.

2.9. “User” means (i) any employee of Customer, or (ii) any other person authorized by Customer to access the Service for purposes of performing services or providing product to Customer who agrees to the applicable End User Terms of Use and have been supplied User identifications and passwords by Customer (or by Kahua at Customer’s request).

### 3. Customer Use of the Service

3.1. Kahua grants Customer a limited, non-exclusive, non-transferable license to access and use the Service during the Term via the Internet under and subject to the terms of this Agreement. Use of the Service will be limited to the number of Users purchased by Customer from Kahua. Kahua will host the Service during the Term.

3.2. Customer is licensed during the Term to store, print, and display the Service and to permit its Users to access the Service to collaborate and manage processes and projects. Customer shall use the Service only for the internal business uses of Customer as described in this Agreement. No other use of the Service is permitted.

3.3. Customer is entitled during the Term to use the online knowledge repository, documentation, email support and priority phone support that is applicable to the Service tier chosen and paid for by Customer as shown on the Customer’s Order in accordance with the services described on the attached Schedule B.

3.4. From time to time, the Service may require Customer to obtain a license for third party materials to access or use certain functionality. The kStore under each Application’s Spec tab (after clicking on “more details on App”) will contain a specification of the requirements and identify the required third party materials.

### 4. Volume Parameters

Customer and its Users are authorized to use the Service only to the extent Customer has paid the applicable license fees for such use based on the volume parameters, i.e. number of Users, additional disk storage above the Permitted Usage, and the other parameters set forth in the Order or the applicable current Pricing Schedule (“Billable Parameters”). Customer, by its Customer Representative, may obtain authority to use an additional number of each applicable parameter by contacting Vendor customer support by e-mail or phone or by utilizing applicable management features of the Service and paying the applicable fees and charges to Vendor.

### 5. Fees Generally

Customer agrees to pay fees as set forth in the then current Pricing Schedule for the use of the Service and the Billable Parameters of Customer and as Vendor and Customer agree in the Order or otherwise in writing.

### 6. Volume-Based Fees; Payment

6.1. Subject to the fee structure and calculations stated in the then current Pricing Schedule, fees and charges shall be paid by Customer to Vendor for the Service based on the Billable Parameters applicable to the immediately preceding month. A Billable Parameter instance is considered billable if it has been used or is available for use at any time during a month. Customer agrees that charges will apply for all Billable Parameters including those that have been inactive during a particular month. A User account, specifically, shall not be shared or used by more than one individual User. Customer may add, replace, or delete Users as often as they want by changing the names of the Users listed in the account manifest provided in the Service, up to the applicable maximum number of Users for which Customer has paid and selected in the applicable Order (“Account Manifest”). Customer and Users shall not share any of their account credentials beyond the individuals named in the Account Manifest.

6.2. Vendor will invoice annually or as otherwise specified in the Order for use of the Service at

the beginning of the respective period for all fees and charges except for the Excess Charges. Excess Charges will be invoiced after the end of the applicable month until those charges are changed pursuant to Section 6 by upgrading to a higher level of Permitted Usage and thereafter those charges will be due and payable in advance. All invoices for any fees or charges under this Agreement are due and payable within 30 days of invoice date or as otherwise provided in the GSA Schedule Contract or Government Purchase Order. For customers paying via credit card, customer's credit card is charged simultaneously with the creation of the customer's invoice. Amounts due are exclusive of all applicable taxes, levies, or duties, and Customer will be responsible for payment of all such amounts. Kahua shall state separately on its invoices taxes excluded from the fees, and the Customer agrees either to pay the amount of the taxes (based on the current value of the equipment) to the contractor or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3. All amounts are payable in U.S. dollars. If Customer believes that any specific charge under this Agreement is incorrect, in order to obtain a credit, Customer must contact Vendor in writing within thirty (30) days of invoice date setting forth the nature and amount of the requested correction. Otherwise invoices are final.

7. Excess Charges

The maximum disk storage space and internet bandwidth usage for data transfer provided to Customer is specified on the Pricing Schedule ("Permitted Usage"). If the amount of disk storage for Customer's use exceeds this Permitted Usage then Vendor shall invoice Customer for any additional fees to increase Service level for Permitted Usage equal to the amount of disk storage required for Customer's use during those prior months and will be charged at the applicable rate stated in the GSA Schedule Pricelist or Government Purchase Order,.

8. Non-Payment

When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Vendor shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer.

9. Account Information Submitted to Vendor

Customer agrees to provide Vendor in writing with billing and contact information as Vendor may reasonably require, including Customer's legal company name, street address, e-mail address, and name and telephone number of an authorized billing contact, as well as the name, User name of the Customer Representative. Customer agrees to update this information promptly by means of e-mail to sales@kahua.com, and in any case within 15 days, if there is any change.

10. Appropriate Use of the Service

10.1. While Users may be any employees or contractors that Customer authorizes to use the Service for its internal business, Customer shall not sublicense, resell or supply the Service for use in or for the benefit of any other person, organization, entity, business, or enterprise without Vendor's prior written consent in a paper writing signed by an employee of Vendor.

10.2. Customer agrees not to submit to the Service any material that is illegal, misleading, defamatory, indecent or obscene, in poor taste, threatening, infringing of any third party proprietary rights, invasive of personal privacy, or otherwise objectionable (collectively "Objectionable Matter"). Customer will be responsible to ensure that its Users do not submit any Objectionable Matter. Customer and Customer's Users shall comply with all applicable laws regarding Customer Data and Customer Content and use of the Service, including laws involving private data and any applicable

export controls.

10.3. Customer and its Users shall use the Service as required by this Agreement.

10.4. Vendor reserves the right to suspend or terminate immediately any Customer or User account or activity that is disrupting or causing harm to Vendor or to Vendor's computers, systems or infrastructure or to other parties, or is in violation of any applicable state or federal laws. Any such violation by Customer will be a material breach of this Agreement. When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Vendor shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer.

11. Passwords and Access

Customer is responsible for all activities that occur under Customer's User accounts. Customer is responsible for maintaining the security and confidentiality of all User usernames and passwords. Customer agrees to notify Vendor immediately of any unauthorized use of any Service username or password or account or any other known or suspected breach of security.

12. Customer Data and Customer Content

12.1. All Customer Data and Customer Content submitted by Customer to Vendor or to the Service, whether submitted by Customer or by its Users, will remain the sole property of Customer or such other owner to the full extent provided by law.

12.2. Customer will have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness of and copyright permissions for all Customer Data and Customer Content. Vendor may use the Customer Data and Customer Content to provide the Service to Customer and for incorporation into the Aggregated Anonymous Data Products. Vendor may aggregate anonymous data, study results and analysis, and activity of Users for sale to others in aggregated anonymous data products ("Aggregated Anonymous Data Products"). Such Aggregated Anonymous Data Products will be the sole property of Vendor.

12.3. Vendor will make daily backup of Customer Data. Such backups will be stored at a location selected at Vendor's sole discretion for a minimum period of thirty (30) days.

12.4. Vendor will use commercially reasonable security measures to protect Customer Data against unauthorized disclosure or use. Vendor's security policies in effect from time to time can be accessed on Vendor's Customer Center website.

13. Limited License to Customer Data

Subject to the terms and conditions of this Agreement, Customer grants to Vendor a non-exclusive license to use, copy, store, transmit and display Customer Data and Customer Content to the extent reasonably necessary to provide and maintain the Service, including without limitation publication of contact information to enable collaboration between customers of the Service.

14. Vendor's Ownership

Vendor and its suppliers retain all rights in the Service. This Agreement grants no ownership rights to Customer or any other party. No license is granted to Customer except for use of the Service as expressly stated herein. The Vendor name, the Vendor logo, and the product names associated with the Service are trademarks of Vendor or third parties, and they may not be used without Vendor's prior written consent.

15. Restrictions on Use of the Service

Customer may not alter, resell or sublicense the Service or provide it as a service bureau. Customer agrees not to reverse engineer the Service or its software or other technology. Customer will not use

or access the Service to: (i) build a competitive product or service, or (ii) make derivative works based upon the Service. Customer will not “frame” or “mirror” the Service. Use, resale or exploitation of the Service except as expressly permitted in this Agreement is prohibited.

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#### 17. Warranty Regarding the Service

Vendor warrants that the Service will perform in all material respects to the functionality as described in applicable online user documentation available via Vendor’s website. Company will repair or provide a workaround for any Company Service for which it receives written notice from Customer within thirty (30) days after performance describing a breach of the foregoing warranty, as Customer’s exclusive remedy and Company’s sole and complete obligation with respect thereto.

#### 18. Additional Warranties

Each party represents and warrants that it has the legal power and authority to enter into this Agreement. Customer represents and warrants that it has not falsely identified itself or provided any false information to gain access to the Service and that Customer’s billing information is correct.

#### 19. Indemnification

19.1. Vendor will defend, indemnify, and hold Customer (and its officers, directors, employees and agents) harmless from and against all costs, liabilities, losses, and expenses (including reasonable attorneys’ fees) (collectively, “Losses”) caused by any third party claim, suit, action, or proceeding caused by the actual or alleged infringement of any United States copyright, patent, trademark, or misappropriation of a trade secret by the Service (other than that due to Customer Data or Customer Content). In case of such a claim, Vendor may, in its discretion, procure a license that will protect Customer against such claim without cost to Customer, replace the Service with a non-infringing Service, or if it deems such remedies not practicable, Vendor may terminate the Service and this Agreement without fault, provided that in case of such a termination, Customer will receive a pro-rata refund of the license fees prepaid for use of the Service not yet furnished as of the termination date. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516. THIS SECTION STATES CUSTOMER’S SOLE AND EXCLUSIVE REMEDIES FOR INFRINGEMENT OR CLAIMS ALLEGING INFRINGEMENT.

19.2. [Reserved]

19.3. [Reserved]

19.4. In case of any claim that is subject to indemnification under this Agreement, the Customer will provide Kahua with reasonably prompt notice of the relevant claim. Kahua will defend and/or settle, at its own expense, any demand, action, or suit on any claim subject to indemnification under this Agreement. Each party will cooperate in good faith with the other to facilitate the defense of any such claim and will tender the defense and settlement of any action or proceeding covered by this Section to Kahua upon request. Claims may be settled without the consent of the Customer, unless the settlement includes an admission of wrongdoing, fault or liability. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice’s right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516.

#### 20. Disclaimers and Limitations

20.1. Kahua warrants that the SOFTWARE will, for a period of sixty (60) days from the date of your receipt, perform substantially in accordance with SOFTWARE written materials accompanying it. Except as just stated, THE WARRANTIES EXPRESSLY STATED IN THIS AGREEMENT ARE THE SOLE AND EXCLUSIVE WARRANTIES OFFERED BY VENDOR. THERE ARE NO OTHER WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, INCLUDING

WITHOUT LIMITATION, THOSE OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. EXCEPT AS STATED IN SECTIONS 16, 17 AND 18 ABOVE, THE SERVICE ARE PROVIDED TO CUSTOMER ON AN “AS IS” AND “AS AVAILABLE” BASIS. CUSTOMER ASSUMES ALL RESPONSIBILITY FOR DETERMINING WHETHER THE SERVICE OR THE INFORMATION GENERATED THEREBY IS ACCURATE OR SUFFICIENT FOR CUSTOMER’S PURPOSES. VENDOR DOES NOT WARRANT THAT USE OF THE SYSTEM WILL BE ERROR-FREE OR UNINTERRUPTED. VENDOR IS NOT RESPONSIBLE FOR SOFTWARE, CUSTOMER DATA OR CUSTOMER CONTENT INSTALLED OR USED BY CUSTOMER OR USERS OR FOR THE OPERATION OR PERFORMANCE OF THE INTERNET.

20.2. THIS AGREEMENT 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). Except with regard to Customer’s payment obligations and with regard to either party’s indemnification obligations, in no event will either party’s aggregate liability exceed the contract price. In no event will either party be liable for any indirect, special, incidental, consequential damages of any type or kind (including, without limitation, loss of data, revenue, profits, use or other economic advantage).

## 21. Confidentiality

21.1. “Confidential Information” means non-public information, technical data or know-how of a party and/or its affiliates, which is furnished to the other party in written or tangible form in connection with this Agreement. Oral disclosure will also be deemed Confidential Information if it would reasonably be considered to be of a confidential nature or if it is confirmed at the time of disclosure to be confidential. Vendor recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which requires that certain information be released, despite being characterized as “confidential” by the vendor.

21.2. Notwithstanding the foregoing, Confidential Information does not include information which is: (i) already in the possession of the receiving party and not subject to a confidentiality obligation to the providing party; (ii) independently developed by the receiving party; (iii) publicly disclosed through no fault of the receiving party; (iv) rightfully received by the receiving party from a third party that is not under any obligation to keep such information confidential; (v) approved for release by written agreement with the disclosing party; or (vi) disclosed pursuant to the requirements of law, regulation, or court order, provided that the receiving party will promptly inform the providing party of any such requirement and cooperate with any attempt to procure a protective order or similar treatment.

21.3. Neither party will use the other party’s Confidential Information except as reasonably required for the performance of this Agreement. Each party will hold in confidence the other party’s Confidential Information by means that are no less restrictive than those used for its own confidential materials, but in no event less than reasonable care. Each party agrees not to disclose the other party’s Confidential Information to anyone other than its employees or subcontractors who are bound by confidentiality obligations and who need to know the same to perform such party’s obligations hereunder. The confidentiality obligations set forth in this Section will survive for two (2) years after the termination or expiration of this Agreement, provided the obligations for information that is a

trade secret shall continue so long as the information continues to be deemed a trade secret under applicable law or otherwise subject to reasonable secrecy efforts.

21.4. Upon termination or expiration of this Agreement, except as otherwise agreed in writing or otherwise stated in this Agreement, each party will, upon the request of the disclosing party, either: (i) return all of such Confidential Information of the disclosing party and all copies thereof in the receiving party's possession or control to the disclosing party; or (ii) destroy all Confidential Information and all copies thereof in the receiving party's possession or control. The receiving party will then, at the request of the disclosing party, certify in writing that no copies have been retained by the receiving party, its employees or agents.

21.5. In case a party receives legal process that demands or requires disclosure of the disclosing party's Confidential Information, such party will give prompt notice to the disclosing party, if legally permissible, to enable the disclosing party to challenge such demand.

## 22. Term and Termination

22.1. The Term of this Agreement will begin on the Effective Date and will end at the end of the Initial Term specified by Customer in the Order, counted from the Effective Date ("Initial Term").

22.2. When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Vendor shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer.

22.3. In the event that this Agreement is terminated (for any reason), Vendor will, within 5 days of a Customer's request, and at Customer's cost, make available one backup of the Customer Data in Vendor's standard format. Customer agrees and acknowledges that Vendor has no obligation to retain and may delete Customer Data that remains in Vendor's possession or control more than sixty (60) days after termination.

22.4. [Reserved]

22.5. The following provisions will survive termination: all definitions, Customer's accrued financial obligations, the license to Customer Data to the extent reasonable for Vendor's discharge of its post-termination obligations, and the following Sections and paragraphs: 1 (Definitions), 7.2 (Overdue Payments), 11.1 (Customer Data), 13 (Vendor's Ownership), 14 (Restrictions on Use of the Service), 18 (Indemnification), 19 (Disclaimers and Limitations), 20 (Confidentiality), 21.3 (Return of Customer Data), 21.5 (Survival of Provisions), 22 (Notice), 24 (Arbitration), and 26 (Miscellaneous).

## 23. Notice

Vendor may give notice by means of electronic mail to Customer's e-mail address on record in Customer's account or by written communication sent by first class mail or by courier service to Customer's address on record in Customer's account. Such notice will be deemed to have been given upon the expiration of 36 hours after mailing (if sent by first class mail) or sending by courier or 12 hours after sending (if sent by e-mail), or, if earlier, when received. Customer may give notice to Vendor by sending an e-mail to sales@kahua.com. A party may, by giving notice, change its applicable address, e-mail, or other contact information.

## 24. Assignment

This Agreement may not be assigned by Vendor or Customer. Any purported assignment in violation of this Section will be void. This Agreement may be enforced by and is binding on permitted successors and assigns.

25. [Reserved]

26. Professional Services

26.1. Customer may retain Vendor to perform professional services for study design, data analysis/reporting, recruiting/study logistics and other services from time to time offered by Vendor (“Professional Services”) as the parties may agree upon in writing in the form of a work order or other writing (“Work Order”). Vendor will use reasonable efforts to carry out the Professional Services stated in the Work Order. Except as the parties otherwise agree in a Work Order, Professional Services and the results thereof are made available “AS IS.”

26.2. Unless otherwise agreed in writing in the Work Order, Professional Services are provided by Vendor on a time and materials basis at Vendor’s then applicable rates and subject to such deposit or advance payment as Vendor may require. Maintenance and support of code or functionality created by means of Professional Services will likewise be on a Work Order basis under this Section unless otherwise agreed in writing. The work product made or provided under this Section and all interests therein, including inventions, patents, copyrights, and all other intellectual property will be Vendor’s property. Access to the results of Professional Services will be available during the Term unless otherwise agreed in writing. The initial Work Order (if any) will be agreed upon online.

27. Miscellaneous

27.1. Choice of Law; Jurisdiction. This Agreement will be interpreted fairly in accordance with its terms, without any strict construction in favor of or against either party and in accordance with the Federal laws of the United States.

27.2. Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then such provision(s) will be construed, as nearly as possible, to reflect the intentions of the invalid or unenforceable provision(s), with all other provisions remaining in full force and effect.

27.3. No Agency. No joint venture, partnership, employment, or agency relationship exists between Customer and Vendor as a result of this Agreement or use of the Service.

27.4. No Waiver. The failure of Vendor to enforce any right or provision in this Agreement will not constitute a waiver of such right or provision unless acknowledged and agreed to by Vendor in writing.

27.5. Force Majeure. Excusable delays shall be governed by FAR 52.212-4(f).

27.6. Entire Agreement. This Agreement, all Orders, and each End User Terms of Use agreed to by the Users (whether electronically or otherwise), together with the GSA Schedule Contract and Schedule Pricelist, constitute the entire agreement between the parties with respect to the subject matter herein. No modifications, waivers, additions, or amendments to this Agreement shall be effective unless made in writing as an addendum to this Agreement and signed by handwritten signature by duly authorized representatives of the parties. No amendment to or modification of this Agreement will be binding unless in writing and signed by an authorized representative of each party. . The terms of this Agreement shall supersede and take priority over any conflicting terms in any click-through agreements or licenses governing the applicable Service.

27.7. Application Provisions.

The following terms and conditions are applicable if Customer purchases applications for use together with the Service:

27.7.1. Applications. Kahua offers certain software products which provide discrete functionality when used in conjunction with the Service (“Applications”). These Applications may be proprietary work of Kahua or may be the proprietary work of third parties who have granted Kahua the right to



sublicense the Applications solely for use in conjunction with the Service. These Applications may be products (i) intended for installation on a desktop computer, laptop, or mobile device such as a smart phone or tablet (a “Device Application”), or (ii) intended for integration directly into the Service and only accessed via the Internet without the local installation of any significant amount of computer code (a “Web Application”). This Application Agreement is effective as of the day Customer downloads a Device Application or first access a Web Application (“Effective Date”). Applications may be owned and licensed by Kahua or other third parties that have agreed to offer their Applications for license (“Licensor”) with use together with the Service. Use of Applications will require unique password and identification information for each User that accesses the Application.

27.7.2. License to Device Applications. The license grant set forth in this paragraph shall apply if the Application is intended to be downloaded by the Customer directly from Kahua and installed and utilized on a desktop computer, laptop, or mobile device (i) through the use of an executable file, (ii) through the functionality of a product such as Microsoft Silverlight, or (iii) through the functionality of an application market integrated into a particular mobile device.

27.7.2.1 Licensor grants to Customer a limited, non-exclusive, non-transferable license to install and use the Application solely for Customer's internal use by the number of devices paid for by Customer at one time and solely in conjunction with Customer’s use of the Service.

27.7.2.2 Customer may not (i) install Device Applications on computer products designed to allow simultaneous access by multiple end users, such as those in a server or mainframe environment, or (ii) install Device Applications in a way to allow their utilization by anyone other than a human – computerized utilization of Device Applications is not allowed. Customer is responsible for ensuring that Customer has appropriate hardware, software, and connectivity to enable a Device Application to function in accordance with the documentation for the Application. Customer is responsible for keeping the Application up to date, including downloading and installing any upgrades or new versions that may become available after installation.

27.7.3. License to Web Applications. The license grant set forth in this paragraph shall apply if the Application is intended to be accessed by Customer solely through the Customer Service without the local installation of any significant amount of computer code.

27.7.3.1 Licensor grants to Customer a limited, non-exclusive, non-transferable, non-assignable license to access and use the Web Application solely for Customer's internal use during the Term via the Internet under and subject to the terms of this Agreement. If the Application is made available by a third-party owner, the applicable owner reserves the right to make changes and updates to the functionality and/or documentation of the Application from time to time, including the removal of functionality in the discretion of the owner. . If the Application is made available by Kahua (and no third-party), Kahua reserves the right to make changes and updates to the functionality and/or documentation of the Application from time to time, provided that Kahua shall not materially and adversely reduce the functionality of the Application. Kahua will maintain the Application on servers or equipment owned or operated on Kahua’s behalf. Customer shall not be entitled to receive a copy of any software related to the Application, but rather will access and use the Application via an internet connection upon logging into the Service.

26.7.4. Volume Parameters. Customer will be authorized to use the Applications only to the extent Customer has paid the applicable license fees for such use based on the volume parameters as described in Sections 4-7 above that are applicable to the Application.

26.7.5. Warranty and Support. Kahua warrants that the APPLICATIONS will, for a period of sixty (60) days from the date of your receipt, perform substantially in accordance with APPLICATION

written materials accompanying it. Except as just stated, ALL APPLICATIONS ARE PROVIDED “AS IS, WHERE IS”. KAHUA PROVIDES NO WARRANTIES, GUARANTEES, CONDITIONS OR REPRESENTATIONS, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, WITH RESPECT TO ANY APPLICATIONS, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, ERROR-FREE USE, ORIGINALITY, OR FITNESS FOR A PARTICULAR PURPOSE. CUSTOMER IS SOLELY RESPONSIBLE FOR ENSURING THAT ALL APPLICATIONS OPERATE IN ACCORDANCE WITH THEIR DOCUMENTATION AND CUSTOMER’S EXPECTATIONS AND CUSTOMER’S SOLE REMEDY FOR ANY DEVIATION THERETO IS TO SEEK A REFUND FOR APPLICATION FEES DURING THE INITIAL 5 BUSINESS DAYS AFTER DOWNLOADING THE APPLICATION. The owner of the Application may offer updates, patches, or new versions of the Applications from time to time as published on the kStore or separate support services that you can purchase directly from the owner. Customer is responsible to check the kStore or contact the owner directly for any support by accessing the feedback function of the Service or by accessing the support contact information provided in the Service. Kahua does not support all applications made available through the kStore.

DOCUSIGN, INC.

## TERMS AND CONDITIONS FOR RESELLER CUSTOMERS

V130123

These Terms and Conditions for Reseller Customers (the “Terms”) govern the use of the DocuSign Subscription Service by Customer, and will be effective when accepted by Customer in connection with an agreement between Customer and an authorized Reseller of DocuSign Products (“Reseller”), from whom Customer purchases DocuSign Products. These Terms establish a binding legal agreement between DocuSign and Customer.

### 1. DEFINITIONS

“Account” means a unique account established by the Customer in order to gain access for its Authorized Users to the Subscription Services and, where applicable, other DocuSign Products.

“Authorized User” means an individual employee or third party agent of Customer, as identified by a unique email address and user name, who is registered as a member of Customer's Account. No two persons may register, access or use the Subscription Services as the same Authorized User.

“Customer” means the entity using the DocuSign Subscription Service, via an agreement with a Reseller.

“DocuSign Products” means the products and services identified on a Purchase Agreement, including, but not limited to, the Subscription Services.

“eContract” refers to a contract, notice, disclosure, or other record or document deposited into the System by an Authorized User for Processing under the Subscription Services.

“Envelope” means an electronic record containing one or more eContracts consisting of a single page or a group of pages of data uploaded to the System.

“Personal Data” means: (a) non-public personally identifiable information, including driver’s license numbers, national identification numbers such as social security account numbers, credit card numbers, digital identity certificates; (b) personally identifiable financial information regarding a consumer (i) provided by a consumer to a financial institution, (ii) resulting from any transaction with the consumer or any service performed for the consumer by a financial institution, (iii) otherwise obtained by the financial institution, including any list, description, or other grouping of consumers (and publicly available information pertaining to them) that is derived using any nonpublic personal information; and (c) personally identifiable medical or health related information.

“Process” and means to perform any operation or set of operations upon Customer’s eContracts, whether or not by automatic means, such as collection, recording, organization, storage, adaptation or alteration, retrieval, accessing, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction.

“Purchase Agreement” means the agreement between Customer and Reseller that describes DocuSign Products to be purchased by Customer, however such agreement is titled.

“Specifications” means the Subscription Services Specifications available at <http://docusign.com/support/specifications.php>.

“Subscription Services” means DocuSign’s on-demand electronic signature service, as updated from time to time, which provides on-line display, certified delivery, acknowledgement, electronic signature, and storage services for eContracts via the Internet as set forth in the Specifications.

“System” refers to the software systems and programs, communication and network facilities, and hardware and equipment used by DocuSign or its agents to provide the Subscription Services.

“Term” means the term of the Purchase Agreement.

“Transaction Data” means data associated with an eContract, including transaction history, eContract image hash value, information concerning method and time of eContract purge, and sender and recipient names, email addresses and signature IDs.

## 2. SUBSCRIPTION SERVICES

2.1 DocuSign will provide the Subscription Services in accordance with the Specifications during the term of the applicable Purchase Agreement. If the Purchase Agreement expires or is terminated, these Terms will automatically terminate, except with respect to terms that by their nature are intended to survive termination. Customer will comply with the terms of the Purchase Agreement, including any terms related to payment of fees to Reseller for the Subscription Services. Customer acknowledges that payment to Reseller is a material condition under these Terms, and if Reseller notifies DocuSign that Customer is delinquent in such payment, DocuSign may consider the

Customer to be in breach of these Terms.

2.2 From the Start Date defined in the Purchase Agreement, Customer may obtain an Account and register Authorized Users, and subject to these Terms, such Authorized Users may log onto and use the Subscription Services in accordance with the Specifications. Customer's right to use the Subscription Services is limited to its Authorized Users, and Customer agrees not to resell or otherwise provide or assist with the provision of the Subscription Services to any other third party. The use of the Subscription Services by Customer and its Authorized Users is subject to Customer's acknowledgement and agreement that:

a) Nothing in these Terms will be construed to make DocuSign a party to any eContract, and DocuSign makes no representation or warranty regarding the transactions sought to be effected by any eContract;

b) DocuSign maintains no control or access to the contents of any eContract, and so the content, quality, and format of any eContract is at all times in the exclusive control and responsibility of Customer;

c) If Subscriber elects to use optional features designed to verify the identity of the intended recipient of an eContract ("Authentication Measures"), DocuSign will apply only those Authentication Measures (if any) selected by the Subscriber, but makes no representations or warranties about the appropriateness of any Authentication Measure and further, assumes no liability for the inability or failure by the intended recipient or other party to satisfy the Authentication Measure or to circumvent it;

d) Certain types of agreements and documents are excepted from electronic signature laws, such that they cannot be legally formed by electronic signatures, and additionally, various agencies may have promulgated specific regulations that apply to electronic signatures and electronic records. DocuSign assumes no responsibility to determine whether any particular eContract is an exception to applicable electronic signature laws or whether it is subject to any particular agency promulgations and whether it can be legally formed by electronic signatures;

e) Customer is solely responsible for making available to third parties (including parties to its eContracts) all contracts, documents, and other records required by applicable law, including, without limitation, electronic signature laws and other laws that may require records relating to a transaction to be retained or made accessible for a certain period of time; and

f) Certain laws or regulations may impose special requirements with respect to electronic transactions involving one or more "consumers," such as (among other things) requirements that the consumer consent to the method of contracting and/or that the consumer be provided with a copy, or access to a copy, of a paper or other non-electronic, written record of the transaction. DocuSign assumes no responsibility to: (i) determine whether any particular transaction involves a consumer; (ii) furnish or obtain any such consents or to determine if any such consents have been withdrawn; (iii) provide any information or disclosures in connection with any attempt to obtain any such consents; (iv) provide legal review of, or update or correct any information or disclosures previously given; (v) provide any such copies or access except as expressly provided in the Specifications for all

transactions, consumer or otherwise; or (vi) otherwise comply with any such special requirements. Customer expressly undertakes to determine whether any consumer is involved in any eContract presented by Customer or its Authorized Users for Processing, and, if so, to comply with all requirements imposed by law on such eContracts or their formation.

### 3. CONFIDENTIALITY

3.1 “Confidential Information” means any trade secrets or other information of DocuSign or Customer, whether of a technical, business, or other nature (including, without limitation, in the case of DocuSign, DocuSign software and related information, and in the case of Customer, Personal Data and eContracts), that is disclosed to the other party (the “Recipient”). Confidential Information does not include any information that: (a) was known to Recipient prior to receiving it from the disclosing party; (b) is independently developed by Recipient without use of or reference to any Confidential Information of the other party; (c) is acquired by Recipient from another source that did not receive it in confidence from the other party to this Agreement; or (d) is or becomes part of the public domain through no fault or action of Recipient.

3.2 Restricted Use and Nondisclosure. During and after the Term, Recipient will: (a) use the Confidential Information of the other party solely for the purpose for which it is provided; (b) not disclose such Confidential Information to a third party; and (c) protect such Confidential Information from unauthorized use and disclosure to the same extent (but using no less than a reasonable degree of care) that it protects its own Confidential Information of a similar nature.

3.3 Required Disclosure. If Recipient is required by law to disclose Confidential Information of the other party, Recipient will give prompt written notice of such requirement, and use reasonable efforts to provide notice before such disclosure occurs, and to assist the disclosing party to obtain an order protecting the Confidential Information from public disclosure.

3.4 Remedies. Recipient acknowledges that any actual or threatened violation of this confidentiality provision may cause irreparable, non-monetary injury to the disclosing party, the extent of which may be difficult to ascertain, and therefore agrees that the disclosing party shall be entitled to seek injunctive relief in addition to all remedies available to the disclosing party at law and/or in equity. Absent written consent of the disclosing party, the burden of proving that the disclosing party’s Confidential Information is not, or is no longer, confidential or a trade secret shall be on the Recipient.

### 4. ADDITIONAL CUSTOMER RESPONSIBILITIES

4.1 Customer agrees that it will not use or permit the use of the Subscription Services to send unsolicited mass mailings outside its organization, it being understood that the term “unsolicited mass mailings” includes all statutory and other common definitions, including all Commercial Electronic Marketing Messages as defined in the U.S. CAN SPAM Act.

4.2 Customer agrees that it is solely responsible for, and will indemnify DocuSign with respect to, the nature and content of all materials, works, data, statements, and other visual, graphical, video, written or audible communications of any nature submitted by any Authorized User or otherwise

Processed through Customer's Account.

4.3 Customer further agrees not to use or permit the use of the Subscription Services: (a) to communicate any message or material that is defamatory, harassing, libelous, threatening, or obscene; (b) in a way that violates or infringes upon the intellectual property rights or the privacy or publicity rights of any person or entity or that may otherwise be unlawful or give rise to civil or criminal liability (other than contractual liability of the parties under eContracts Processed through the Subscription Services); (c) in any manner that is likely to damage, disable, overburden, or impair the System or the Subscription Services or interfere in any way with the use or enjoyment of the Subscription Services by others; or (d) in any way that constitutes or encourages conduct that could constitute a criminal offense. Although DocuSign does not actively monitor the content Processed through the Subscription Services, DocuSign may at any time and without prior notice suspend any use of the Subscription Services and/or remove or disable any content as to which DocuSign is made aware of a reason for concern as to such use or content. DocuSign agrees to exert reasonable commercial efforts to provide Customer with notice of any such suspension or disablement before its implementation, or promptly thereafter.

## 5. INTELLECTUAL PROPERTY

a) DocuSign is the owner of various intellectual property and technology rights associated with the Subscription Services, its document management, digital signature, and notary system, including patent, copyright, trade secret, and trademark and service mark rights. Except for the rights expressly granted in these Terms, DocuSign does not license or transfer to Customer or any Authorized User or other third party any of DocuSign's technology or other intellectual property or technology rights. All right, title, and interest in and to DocuSign's technology and intellectual property will remain solely with DocuSign. Customer agrees that it will not, directly or indirectly, reverse engineer, decompile, disassemble, or otherwise attempt to derive source code or other trade secrets from or about any of the DocuSign Products or DocuSign's technology. DocuSign agrees that data and information provided by Customer under these Terms shall remain, as between Customer and DocuSign, owned by Customer.

b) DocuSign hereby grants to users and licensees of its products and services a limited, nonexclusive and nontransferable right to use DocuSign's regular trade names, trademarks, titles and logos ("Licensed Marks") solely for purposes of identifying DocuSign's products and services. Details of this trademark license are available at: <http://www.docusign.com/trademark-license>.

## 6. STORAGE

6.1 General eContract Storage and Deletion Policy. Unless Customer elects otherwise in its Account settings, DocuSign will store in accordance with the Specifications all completed eContracts sent by Customer until the Term expires. Copies of stored eContracts may be retrieved by Customer through its Account at any time during the Term. Customer may, at its option and wholly at Customer's risk, direct that any eContract be deleted or purged at a time stated by Customer and prior to the end of the Term.

6.2 Uncompleted eContracts. DocuSign may at its sole discretion delete an uncompleted eContract

from the System immediately and without notice upon earlier of: a) expiration of the Envelope (where Customer has established an expiration for such Envelope, not to exceed 365 days); or b) expiration of the Term.

6.3 Transaction Data. Transaction Data collected by DocuSign may be retained by DocuSign permanently, provided that any Transaction Data that constitutes Confidential Information of Customer will at all times maintain that status and DocuSign will comply with its obligations in Section 3.

## 7. WARRANTIES, DISCLAIMERS, AND INDEMNIFICATION

7.1 DocuSign Warranties. DocuSign represents and warrants that: (a) the Subscription Service as delivered to Customer and used in accordance with the Specifications will not infringe on any United States patent, copyright or trade secret; (b) the Subscription Service shall be performed in accordance with the Specifications in their then-current form at the time of the provision of such Subscription Service; (c) any DocuSign Products that are software shall be free of harmful or illicit code, trapdoors, viruses, or other harmful features; (d) the proper use of the Subscription Service by Customer in accordance with the Specifications and applicable law in the formation of an eContract not involving any consumer will be sufficient under the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. §§ 7001 et seq. (the “ESIGN Act”) to support the validity of such formation, to the extent provided in the ESIGN Act; (e) the proper use of the Subscription Service by Customer in accordance with the Specifications and applicable law in the formation of an eContract involving a consumer will be sufficient under the ESIGN Act to support the validity of such formation, to the extent provided in the ESIGN Act, so long as and provided that Customer complies with all special requirements for consumer eContracts, including and subject to those referenced in Section 2.2.e) and f) above; and (f) DocuSign has implemented information security policies and safeguards to preserve the security, integrity, and confidentiality of Personal Data and to protect against unauthorized access and anticipated threats or hazards thereto, that meet the objectives of the Interagency Guidelines Establishing Standards for Safeguarding Customer Information as set forth in Section 501 (b) of the Gramm-Leach-Bliley Act.

7.2 Disclaimer. EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES STATED IN SECTION 7.1 ABOVE, DOCUSIGN MAKES NO ADDITIONAL REPRESENTATION OR WARRANTY OF ANY KIND -- WHETHER EXPRESS, IMPLIED IN FACT OR BY OPERATION OF LAW, OR STATUTORY -- AS TO ANY MATTER WHATSOEVER. DOCUSIGN EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. DOCUSIGN DOES NOT WARRANT THAT THE DOCUSIGN PRODUCTS, ARE OR WILL BE ERROR-FREE, WILL MEET CUSTOMER’S REQUIREMENTS, OR BE TIMELY OR SECURE. CUSTOMER WILL NOT HAVE THE RIGHT TO MAKE OR PASS ON ANY REPRESENTATION OR WARRANTY ON BEHALF OF DOCUSIGN TO ANY THIRD PARTY.

7.3 Customer Warranties. Customer hereby represents and warrants to DocuSign that: (a) it has all requisite rights and authority to use the Subscription Service under these Terms and to grant all applicable rights herein; (b) the performance of its obligations under these Terms will not violate, conflict with, or result in a default under any other agreement, including confidentiality agreements

between Customer and third parties; (c) Customer will use the Subscription Service for lawful purposes only and subject to these Terms; (d) Customer is responsible for all use of the Subscription Service in its Account; (e) Customer is solely responsible for maintaining the confidentiality of its Account names and password(s); (f) Customer agrees that DocuSign will not be liable for any losses incurred as a result of a third party's use of its Account, regardless of whether such use is with or without Customer's knowledge and consent; (g) Customer will not attempt to gain unauthorized access to the System or the Subscription Service, other accounts, computer systems, or networks under the control or responsibility of DocuSign through hacking, cracking, password mining, or any other unauthorized means.

7.4 Customer Indemnification. Customer will defend, indemnify, and hold DocuSign and its affiliates, officers, directors, employees, suppliers, consultants, and agents harmless from any and all third party claims, liability, damages, and costs (including, but not limited to, attorneys' fees) arising from or related to: (a) Customer's use of the Subscription Service; (b) Customer's violation of these Terms; (c) Customer's infringement, or infringement by any other user of its Account, of any intellectual property or other right of any person or entity; or (d) the nature and content of all materials, works, data, statements, and other visual, graphical, written, or audible communications of any nature submitted or otherwise Processed through Customer's Account.

## 8. LIMITATIONS OF LIABILITY

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THESE TERMS, DOCUSIGN WILL NOT, UNDER ANY CIRCUMSTANCES, BE LIABLE TO CUSTOMER FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL, OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATED TO THE TRANSACTION CONTEMPLATED UNDER THESE TERMS AND CONDITIONS, INCLUDING BUT NOT LIMITED TO LOST PROFITS OR LOSS OF BUSINESS, EVEN IF APPRISED OF THE LIKELIHOOD OF SUCH DAMAGES OCCURRING. UNDER NO CIRCUMSTANCES WILL DOCUSIGN'S TOTAL LIABILITY OF ALL KINDS ARISING OUT OF OR RELATED TO THESE TERMS AND CONDITIONS (INCLUDING BUT NOT LIMITED TO WARRANTY CLAIMS), REGARDLESS OF THE FORUM AND REGARDLESS OF WHETHER ANY ACTION OR CLAIM IS BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER FOR THE SUBSCRIPTION SERVICES UNDER THESE TERMS DURING THE 3 MONTHS PRECEDING THE DATE OF THE ACTION OR CLAIM. EACH PROVISION OF THESE TERMS THAT PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES, OR EXCLUSION OF DAMAGES IS TO ALLOCATE THE RISKS OF THESE TERMS BETWEEN THE PARTIES. THIS ALLOCATION IS REFLECTED IN THE PRICING OFFERED TO CUSTOMER FOR THE SUBSCRIPTION SERVICE AND IS AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES. EACH OF THESE PROVISIONS IS SEVERABLE AND INDEPENDENT OF ALL OTHER PROVISIONS OF THESE TERMS, AND EACH OF THESE PROVISIONS WILL APPLY EVEN IF THE WARRANTIES AND REMEDIES IN THESE TERMS HAVE FAILED OF THEIR ESSENTIAL PURPOSE. Because some states and jurisdictions do not allow limitation of liability in certain instances, portions of the above limitation may not apply to Customer.

## 3. GUARANTEE/WARRANTY



- a. Unless specified otherwise in this contract, the Contractor's standard commercial guarantee/warranty as stated in the contract's commercial pricelist will apply to this contract.
- b. The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract. If no implied warranties are given, an express warranty of at least 60 days must be given in accordance with FAR 12.404(b)(2)
- c. Limitation of Liability. Except as otherwise provided by an express or implied warranty, the Contractor will not be liable to the ordering activity for consequential damages resulting from any defect or deficiencies in accepted items.

#### 4. TECHNICAL SERVICES

The Contractor, without additional charge to the ordering activity, shall provide a hot line technical support number for the purpose of providing user assistance and guidance in the implementation of the software. The technical support number is available from 9AM to 5PM EST.

Telephone: 770-641-9994

#### 5. SOFTWARE MAINTENANCE

- a. Software maintenance as it is defined:

1. Software Maintenance as a Product (SIN 511210)

Software maintenance as a product includes the publishing of bug/defect fixes via patches and updates/upgrades in function and technology to maintain the operability and usability of the software product. It may also include other no charge support that are included in the purchase price of the product in the commercial marketplace. No charge support includes items such as user blogs, discussion forums, on-line help libraries and FAQs (Frequently Asked Questions), hosted chat rooms, and limited telephone, email and/or web-based general technical support for user's self diagnostics. Software maintenance as a product does NOT include the creation, design, implementation, integration, etc. of a software package. These examples are considered software maintenance as a service.

Software Maintenance as a product is billed at the time of purchase.

#### 6. PERIODS OF TERM LICENSES (SIN 511210) - See Terms of Use document above.

#### 7. CONVERSION FROM TERM LICENSE TO PERPETUAL LICENSE: Not Offered

- a. The ordering activity may convert term licenses to perpetual licenses for any or all software at any time following acceptance of software. At the request of the ordering activity the Contractor shall furnish, within ten (10) calendar days, for each software product that is contemplated for conversion, the total amount of conversion credits which have accrued while the software was on a term license and the date of the last update or enhancement.
- b. Conversion credits which are provided shall, within the limits specified, continue to accrue from one contract period to the next, provided the software remains on a term license within the ordering activity.
- c. The term license for each software product shall be discontinued on the day immediately preceding the effective date of conversion from a term license to a perpetual license.
- d. The price the ordering activity shall pay will be the perpetual license price that prevailed at the

time such software was initially ordered under a term license, or the perpetual license price prevailing at the time of conversion from a term license to a perpetual license, whichever is the less, minus an amount equal to% of all term license payments during the period that the software was under a term license within the ordering activity.

8. TERM LICENSE CESSATION: See Terms of Use document above.

9. UTILIZATION LIMITATIONS - (SIN 511210): See Terms of Use document above

10. SOFTWARE CONVERSIONS - (SIN 511210): See Terms of Use document above

11. DESCRIPTIONS AND EQUIPMENT COMPATIBILITY

The Contractor shall include, in the schedule pricelist, a complete description of each software product and a list of equipment on which the software can be used. Also, included shall be a brief, introductory explanation of the modules and documentation which are offered.

12. RIGHT-TO-COPY PRICING: See Terms of Use document above

**TERMS AND CONDITIONS APPLICABLE TO INFORMATION TECHNOLOGY (IT)  
PROFESSIONAL SERVICES (SPECIAL ITEM NUMBER 54151S)**

**1. SCOPE**

- a. The prices, terms and conditions stated under Special Item Number 54151S Information Technology Professional Services apply exclusively to IT Services within the scope of this Information Technology Schedule.
- b. The Contractor shall provide services at the Contractor's facility and/or at the ordering activity location, as agreed to by the Contractor and the ordering activity.

**2. PERFORMANCE INCENTIVES**

- a. Performance incentives may be agreed upon between the Contractor and the ordering activity on individual fixed price orders or Blanket Purchase Agreements under this contract in accordance with this clause.
- b. The ordering activity must establish a maximum performance incentive price for these services and/or total solutions on individual orders or Blanket Purchase Agreements.
- c. Incentives should be designed to relate results achieved by the contractor to specified targets. To the maximum extent practicable, ordering activities shall consider establishing incentives where performance is critical to the ordering activity's mission and incentives are likely to motivate the contractor. Incentives shall be based on objectively measurable tasks.

**3. ORDER**

- a. Agencies may use written orders, EDI orders, blanket purchase agreements, individual purchase orders, or task orders for ordering services under this contract. Blanket Purchase Agreements shall not extend beyond the end of the contract period; all services and delivery shall be made and the contract terms and conditions shall continue in effect until the completion of the order. Orders for tasks which extend beyond the fiscal year for which funds are available shall include FAR 52.232-19 (Deviation – May 2003) Availability of Funds for the Next Fiscal Year. The purchase order shall specify the availability of funds and the period for which funds are available.
- b. All task orders are subject to the terms and conditions of the contract. In the event of conflict between a task order and the contract, the contract will take precedence.

**4. PERFORMANCE OF SERVICES**

- a. The Contractor shall commence performance of services on the date agreed to by the Contractor and the ordering activity.
- b. The Contractor agrees to render services only during normal working hours, unless otherwise agreed to by the Contractor and the ordering activity.
- c. The ordering activity should include the criteria for satisfactory completion for each task in the Statement of Work or Delivery Order. Services shall be completed in a good and workmanlike manner.

d. Any Contractor travel required in the performance of IT Services must comply with the Federal Travel Regulation or Joint Travel Regulations, as applicable, in effect on the date(s) the travel is performed. Established Federal Government per diem rates will apply to all Contractor travel. Contractors cannot use GSA city pair contracts.

## **5. STOP-WORK ORDER (FAR 52.242-15) (AUG 1989)**

(a) The Contracting Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this contract for a period of 90 days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop-work is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Contracting Officer shall either-

- (1) Cancel the stop-work order; or
- (2) Terminate the work covered by the order as provided in the Default, or the Termination for Convenience of the Government, clause of this contract.

(b) If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, accordingly, if-

- (1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and
- (2) The Contractor asserts its right to the adjustment within 30 days after the end of the period of work stoppage; provided, that, if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon the claim submitted at any time before final payment under this contract.

(c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

(d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

## **6. INSPECTION OF SERVICES**

In accordance with FAR 52.212-4 CONTRACT TERMS AND CONDITIONS-- COMMERCIAL ITEMS (MAR 2009) (DEVIATION I - FEB 2007) for Firm-Fixed Price orders and FAR 52.212-4 CONTRACT TERMS AND CONDITIONS –COMMERCIAL ITEMS (MAR 2009) (ALTERNATE I – OCT 2008)(DEVIATION I – FEB 2007) applies to Time-and-

Materials and Labor-Hour Contracts orders placed under this contract.

## **7. RESPONSIBILITIES OF THE CONTRACTOR**

The Contractor shall comply with all laws, ordinances, and regulations (Federal, State, City, or otherwise) covering work of this character. If the end product of a task order is software, then FAR 52.227-14 (Dec 2007) Rights in Data – General, may apply.

## **8. RESPONSIBILITIES OF THE ORDERING ACTIVITY**

Subject to security regulations, the ordering activity shall permit Contractor access to all facilities necessary to perform the requisite IT Services.

## **9. INDEPENDENT CONTRACTOR**

All IT Services performed by the Contractor under the terms of this contract shall be as an independent Contractor, and not as an agent or employee of the ordering activity.

## **10. ORGANIZATIONAL CONFLICTS OF INTEREST**

### **a. Definitions.**

—Contractor<sup>l</sup> means the person, firm, unincorporated association, joint venture, partnership, or corporation that is a party to this contract.

—Contractor and its affiliates<sup>l</sup> and —Contractor or its affiliates<sup>l</sup> refers to the Contractor, its chief executives, directors, officers, subsidiaries, affiliates, subcontractors at any tier, and consultants and any joint venture involving the Contractor, any entity into or with which the Contractor subsequently merges or affiliates, or any other successor or assignee of the Contractor.

An —Organizational conflict of interest<sup>l</sup> exists when the nature of the work to be performed under a proposed ordering activity contract, without some restriction on ordering activities by the Contractor and its affiliates, may either (i) result in an unfair competitive advantage to the Contractor or its affiliates or

(ii) Impair the Contractor's or its affiliates' objectivity in performing contract work.

b. To avoid an organizational or financial conflict of interest and to avoid prejudicing the best interests of the ordering activity, ordering activities may place restrictions on the Contractors, its affiliates, chief executives, directors, subsidiaries and subcontractors at any tier when placing orders against schedule contracts. Such restrictions shall be consistent with FAR 9.505 and shall be designed to avoid, neutralize, or mitigate organizational conflicts of interest that might otherwise exist in situations related to individual orders placed against the schedule contract. Examples of situations, which may require restrictions, are provided at FAR 9.508.

## **11. INVOICES**

The Contractor, upon completion of the work ordered, shall submit invoices for IT/IAM Professional services. Progress payments may be authorized by the ordering activity on individual orders if appropriate. Progress payments shall be based upon completion of defined milestones or interim products. Invoices shall be submitted monthly for recurring services performed during the preceding month.

## **12. PAYMENTS**

For firm-fixed price orders the ordering activity shall pay the Contractor, upon submission of proper invoices or vouchers, the prices stipulated in this contract for service rendered and accepted. Progress payments shall be made only when authorized by the order. For time-and-materials orders, the Payments under Time-and-Materials and Labor-Hour Contracts at FAR 52.212-4 (MAR 2009) (ALTERNATE I – OCT 2008) (DEVIATION I – FEB 2007) applies to time-and-materials orders placed under this contract. For labor-hour orders, the Payment under Time-and-Materials and Labor-Hour Contracts at FAR 52.212-4 (MAR 2009) (ALTERNATE I – OCT 2008) (DEVIATION I – FEB 2007) applies to labor-hour orders placed under this contract. 52.216-31(Feb 2007) Time-and-Materials/Labor-Hour Proposal Requirements—Commercial Item Acquisition. As prescribed in 16.601(e)(3), insert the following provision:

(a) The Government contemplates award of a Time-and-Materials or Labor-Hour type of contract resulting from this solicitation.

(b) The offeror must specify fixed hourly rates in its offer that include wages, overhead, general and administrative expenses, and profit. The offeror must specify whether the fixed hourly rate for each labor category applies to labor performed by—

(1) The offeror;

(2) Subcontractors; and/or

(3) Divisions, subsidiaries, or affiliates of the offeror under a common control.

### **13. RESUMES**

Resumes shall be provided to the GSA Contracting Officer or the user ordering activity upon request.

### **14. INCIDENTAL SUPPORT COSTS**

Incidental support costs are available outside the scope of this contract. The costs will be negotiated separately with the ordering activity in accordance with the guidelines set forth in the FAR.

### **15. APPROVAL OF SUBCONTRACTS**

The ordering activity may require that the Contractor receive, from the ordering activity's Contracting Officer, written consent before placing any subcontract for furnishing any of the work called for in a task order.

### **16. DESCRIPTION OF IT SERVICES AND PRICING**

**Commercial Job Title:** Kahua Certified Solution Provider

**Minimum/General Experience:** Competed Kahua certification requirements and have thorough understanding of the Kahua system and its capabilities. Five (3) years of technical experience working in the real estate, design or construction industry. Requires competence in all phases of design and construction projects. Basic understanding of facility lifecycle concepts and flow of information into facility operations. Aptitude for business process consulting around AECO workflow. Experience managing software implementation and training for project control systems. Functional Responsibility: Guides customers in formulating requirements, advises alternative approaches, develops and assists in technology deployment and training efforts

**Minimum Education:** Bachelor's Degree



**Commercial Job Title:** Kahua Certified Training Consultant

**Minimum/General Experience:** Competed Kahua software certification requirements and have thorough understanding of the Kahua system and its capabilities. Three (3) years of technical experience working in consulting in the development of training programs. Requires competence in all phases of design and construction projects. Basic understanding of facility lifecycle concepts and flow of information into facility operations. Aptitude for business process consulting around AECO workflow. Experience consulting in the development of training programs.  
Functional Responsibility: Develops training for Kahua users.

**Minimum Education:** Bachelor's Degree

**Commercial Job Title:** Kahua Software Engineer

**Minimum/General Experience:** Competed Kahua certification requirements and have thorough understanding of the Kahua system and its capabilities. Certified to use Kahua kBuilder. Three (3) years of extensive technical software experience with the software as it relates to the construction industry. Requires competence in all phases of design and construction projects. Basic understanding of facility lifecycle concepts and flow of information into facility operations. Aptitude for business process consulting around AECO workflow. Experience developing software for the AECO industries. Knowledge and understanding of software development practices.  
Functional Responsibility: Provides software development services using Kahua's kBuilder.

**Minimum Education:** Bachelor's Degree

**Commercial Job Title:** Kahua Project Manager

**Minimum/General Experience:** Competed Kahua certification requirements and have thorough understanding of the Kahua system and its capabilities. Working knowledge and understanding of the Kahua kBuilder. Three (3) years of technical experience working with extensive technical software experience with the software as it relates to the construction industry. Requires competence in all phases of design and construction projects. Basic understanding of facility lifecycle concepts and flow of information into facility operations. Aptitude for business process consulting around AECO workflow. Experience managing software implementation and training for project control systems.  
Functional Responsibility: Guides customers in formulating requirements, advises alternative approaches, develops and assists in technology deployment, training and optimization efforts.

**Minimum Education:** Bachelor's Degree

**Commercial Job Title:** Kahua Certified Program Manager

**Minimum/General Experience:** Competed Kahua certification requirements and have thorough understanding of the Kahua system and its capabilities. Working knowledge and understanding of the Kahua kBuilder. Five (5) years of technical experience with extensive technical software experience with the software as it relates to the construction industry. Requires competence in all



phases of design and construction projects. Basic understanding of facility lifecycle concepts and flow of information into facility operations. Aptitude for business process consulting around AECO workflow. Experience managing software implementation and training for project control systems. Functional Responsibility: Guides customers in formulating requirements, advises alternative approaches, develops and assists in technology deployment, training and optimization efforts.

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**Minimum Education:** Bachelor's Degree