

**Calian Corp.**  
**Master Service Agreement**

This Master Services Agreement (this “Agreement”) is between Calian Corp., with offices located at 840 W. Sam Houston Pkwy. N., Suite 420, Houston, Texas 77024 (“us”, “our”, “we” or “Calian”), and you, the entity who electronically signs this document (“you”, “your” or “Client”). This Agreement is effective as of the latest date of the signatures of the parties below (“Effective Date”).

**1) SCOPE OF SERVICES; SOW.** This is a master agreement that governs all services that we perform or facilitate for you, as well as our sale, licensure, and/or provision of products or software (as applicable) to you (collectively, the “Services”). The specific Services are not described in this Agreement; instead, they will be described in one or more order forms, quotes, proposals, or statements of work that we provide to you (each, a “SOW”). Once you and we mutually agree to a SOW (either by signing it or by electronic acceptance), the SOW will become a part of, and governed under, the terms of this Agreement. Unless the SOW expressly states that it is overriding the conflicting provisions of this Agreement and its schedules, if there is a material difference or conflict between the language in a SOW and the language in this Agreement and its schedules, then the language of this Agreement and these schedules will prevail.

**2) GENERAL REQUIREMENTS.**

- a) Environment. For the purposes of this Agreement, “Environment” means, collectively, any computer network (cloud-based or otherwise), computer system, peripheral or device (virtual or physical) installed, maintained, monitored, or operated by us pursuant to a SOW. To avoid a delay or negative impact on our provision of the Services, during the term of each SOW you agree to refrain from modifying or moving the Environment or installing software in the Environment, unless you and we mutually agree to such activity.
- b) Requirements. At all times, all software in the Environment must be genuine and licensed, and you agree to provide us with proof of such licensing upon our request. If we require you to implement certain minimum hardware or software requirements in a SOW (“Minimum Requirements”), you agree to do so as an ongoing requirement of us providing our Services to you.
- c) Maintenance; Updates. If patches and other software-related maintenance updates (“Updates”) are provided under a SOW, we will install the Updates only if we have determined, in our reasonable discretion, that the Updates will be compatible with the configuration of the Environment and materially beneficial to the features or functionality of the affected software or hardware. We will not be responsible for any downtime or losses arising from or related to the installation or use of any Update.
- d) Third-Party Support. If, in Calian’s discretion, a hardware or software issue requires vendor or OEM support, we may contact the vendor or OEM (as applicable) on your behalf and pass through to you, without markup, all fees and costs incurred in that process. If such fees or costs are anticipated in advance or exceed \$100, we will obtain your permission before incurring such expenses on your behalf unless specifically covered in an applicable SOW, or exigent circumstances require otherwise.
- e) Managed Services. For the purposes of this Agreement, “Managed Services” means a subscription plan to the Calian offering identified as Managed Services pursuant to a SOW.
- f) Service Levels. The Service Level Agreement (“SLA”) applicable to Managed Services is set forth hereto in Schedule A of this Agreement. For any other Services, the applicable Service Levels will be contained in a SOW.
- g) Advice; Instructions. From time to time, we may provide you with specific advice and directions related to our provision of the Services or the maintenance or administration of the Environment. (For example, our advice or directions may include adjusting the Environment’s scalability, performance and reliability.) You are hiring us for our knowledge and expertise. For that reason, we strongly advise that you follow and implement any directions we provide to you related to the Services. Depending on the situation, we may suggest that you make additional purchases or investments in the Environment, at your sole cost. We will not be responsible for any problems or issues (such as system downtime or security-related issues) caused by

your failure to promptly follow our advice or directions. If failure to follow or implement our advice makes it economically or technically unreasonable for us, in good faith, to continue to provide the Services to you, then we reserve the right to suspend the Services immediately without notice and/or terminate the applicable SOW for cause by providing notice of termination to you. Unless specifically and expressly stated in a SOW, any services required to remediate issues caused by your failure to follow our advice or directions, or your unauthorized modification of the Environment, as well as any services required to bring the Environment up to or maintain the Minimum Requirements, are not covered under any SOW and will be out-of-scope.

- h) Prioritization. Unless otherwise stated in a SOW, all Services will be performed on a schedule, and in a prioritized manner, as determined by Calian. Exact commencement / start dates may vary or deviate from the dates stated in a SOW depending on the Service being provided and the extent to which prerequisites (if any), such as onboarding activities, must be completed.
- i) Authorized Contact(s). Calian will be entitled to rely on any directions or consent provided by your personnel or representatives who are authorized in a SOW to provide such directions or consent (“Authorized Contacts”). If no Authorized Contact is identified in an applicable SOW, then your Authorized Contact will be the person(s) (i) who signed this Agreement, and/or (ii) who signed the applicable SOW. If you desire to change your Authorized Contact(s), please notify Calian of such changes in writing which, unless exigent circumstances are stated in the notice, will take effect three (3) business days thereafter.
- j) Insurance. If you are supplied with Calian Equipment (defined below), you agree to acquire and maintain, at your sole cost, insurance for the full replacement value of that equipment. Calian must be listed as an additional insured on any policy acquired and maintained by you under this Agreement, and the policy will not be canceled or modified during the term of the applicable SOW without prior notification to Calian. Upon Calian’s request, you agree to provide proof of insurance to Calian.

**3) FEES; PAYMENT.** You agree to pay the fees described in each SOW. If the SOW does not include a fee schedule, then you agree to pay us on an hourly basis pursuant to our then-current standard hourly rate schedule.

- a) Managed Services. If you have a subscription to Managed Services, all prices quoted in a SOW anticipate automatic monthly recurring payments for each service by you (“Monthly Fee”). Payments by any other methods may result in increased fees or costs.
- b) Payment Schedule. Unless otherwise stated in a SOW, all undisputed fees will be due and payable within thirty (30) days of receipt of an undisputed invoice for the provision of the Services. Payment terms are contingent on prior credit approval. If applicable, payments may be made by Automated Clearing House (ACH) or wire transfer.
- c) Nonpayment. Fees that remain unpaid for more than fifteen (15) days after the date on the undisputed invoice may at our discretion be subject to interest on the unpaid amount(s) until and including the date payment is received, at the lower of either 1.5% per month or the maximum allowable rate of interest permitted by applicable law. We reserve the right, but not the obligation, to suspend part or all of the Services without prior notice to you in the event that any portion of undisputed fees are not timely received by us. Notice of disputes related to fees must be received by us within ten (10) days after the applicable Service is rendered or the date listed on an invoice, whichever is later; otherwise, you waive your right to dispute the fee thereafter. A re-connect fee may be charged to you if we suspend the Services due to your nonpayment. Time is of the essence in the performance of all payment obligations by you.
- d) Taxes. You will be responsible for the payment of all applicable taxes (including but not limited to import or export duties, sales, use, value add, and excise taxes) on the Services, except for those related to the net income and property of Calian. If you qualify for a tax exemption, you must provide us with a valid certificate of exemption or other appropriate proof of exemption. You are also responsible for all freight and insurance costs. Invoices will include all applicable taxes in accordance with the laws of the taxing jurisdiction where the Services are performed.

- e) Managed Services Price Adjustment. For Managed Services, Calian may increase the Monthly Fee, after the initial term, for each automatic renewal term, set out in any SOW (and in all subsequent renewal terms, if any) by up to ten percent (10%), provided, however, that such increases shall not occur more than once per calendar year. Notwithstanding the foregoing, Calian may pass through to you any increases charged to Calian by providers of applicable third-party services and/or third-party licensors, it being understood that such pass-through costs are independent of, and not subject to, the foregoing ten percent fee increase limitation.
- 4) **ACCESS.** If required under a SOW, you hereby grant to Calian and Calian's designated third-party vendors the limited right to monitor, diagnose, manipulate, communicate with, retrieve information from, and otherwise access, the Environment on a 24x7x365 basis in order for us or our vendors, as applicable, to provide the Services. Depending on the Service, we may be required to install one or more software agents into the Environment through which such access may be enabled. It is your responsibility to secure, at your own cost and prior to the commencement of any Services, any necessary rights of entry, licenses (including software licenses), permits or other permissions necessary for Calian to provide Services to the Environment and, if applicable, at your designated premises, both physically and virtually. Proper and safe environmental conditions must be provided and assured by you at all times. Calian shall not be required to engage in any activity or provide any Services under conditions that pose or may pose a safety or health concern to any personnel, or that would require extraordinary or non-industry standard efforts to achieve.

#### 5) **LIMITED WARRANTIES; LIMITATIONS OF LIABILITY.**

- a) Hardware / Software Purchased Through Calian. Unless otherwise stated in a SOW, all manufacturer specific hardware, software, peripherals or accessories purchased through Calian ("Third-Party Products") are nonreturnable and nonrefundable without the prior written approval of both Calian and the Third-Party Product manufacturer, including a return authorization number. We will use reasonable efforts to assign, transfer and facilitate all manufacturer warranties (if any) and service level commitments (if any) for the Third-Party Products to you, but will have no liability whatsoever for the quality, functionality or operability of any Third-Party Products, and we will not be held liable as an insurer or guarantor of the performance, uptime or usefulness of any Third-Party Products. Unless otherwise expressly stated in a SOW, all Third-Party Products are provided FOB shipping point "as is" and without any warranty whatsoever as between Calian and you (including but not limited to implied warranties).
- b) Liability Limitations. **This paragraph limits the liabilities arising under this Agreement or any SOW and is a bargained-for and a material part of this Agreement.** You acknowledge and agree that Calian would not enter into this Agreement unless it could rely on the limitations described in this paragraph. In no event shall either party be liable for any indirect, special, exemplary, consequential, or punitive damages, such as lost revenue, loss of profits (except for fees due and owing to Calian), savings, or other indirect or contingent event-based economic loss arising out of or in connection with this Agreement, any SOW, or the Services, or for any loss or interruption of data, technology or services, any loss or damages related to any cyber, data, security or network breach of any kind, or any damages caused by any delay in furnishing Services under this Agreement or any SOW, even if a party has been advised of the possibility of such damages; however, reasonable attorneys' fees awarded to a prevailing party (as described below) shall not be limited by the foregoing limitation. Except for the parties' confidentiality obligations, your payment obligations and your indemnification obligations described in this Agreement, a responsible party's ("Responsible Party's") aggregate liability to the other party ("Aggrieved Party") for damages from any and all claims or causes whatsoever, and regardless of the form of any such action(s), that arise from or relate to this Agreement (collectively, "Claims"), whether in contract, tort, negligence and otherwise, shall be limited solely to the amount of the Aggrieved Party's actual and direct damages, not to exceed the lesser of (a) the total amounts paid and amounts accrued but not yet paid by you (excluding hard costs for licenses, hardware, etc.) to Calian for the specific Service under the applicable SOW upon which the Claim(s) is/are based during the six (6) month period immediately prior to the date on which the event occurred giving rise to the Claim(s)

and (b) \$750,000. Notwithstanding the foregoing, nothing in this Agreement shall limit either Party's liability for property damage or personal injury (including death).

- 6) **INDEMNIFICATION.** Each party (an "Indemnifying Party") agrees to indemnify, defend and hold the other party (an "Indemnified Party") harmless from and against any and all losses, damages, costs, expenses or liabilities, including reasonable attorneys' fees, (collectively, "Damages") incurred by the Indemnified Party resulting from any third-party claim, suit, action or proceeding that arises from, or is related to, the Indemnifying Party's breach of this Agreement, willful or intentional misconduct, and/or gross negligence. The Indemnified Party will have the right, but not the obligation, to control the intake, defense and disposition of any claim or cause of action for which indemnity may be sought under this Section. The Indemnifying Party shall be permitted to have counsel of its choosing participate in the defense of the applicable claim(s); however, (i) such counsel shall be retained at the Indemnifying Party's sole cost, and (ii) the Indemnified Party's counsel shall be the ultimate determiner of the strategy and defense of the claim(s) for which indemnity is provided. No claim for which indemnity is sought by an Indemnified Party will be settled without the Indemnifying Party's prior written consent, which shall not be unreasonably delayed or withheld.
- 7) **TERM; TERMINATION.** This Agreement begins on the Effective Date and continues until terminated as described in this Agreement. Each SOW will have its own term and will be terminated only as provided herein, unless otherwise expressly stated in the applicable SOW. The termination of one SOW shall not, by itself, cause the termination of (or otherwise impact) this Agreement or the status or progress of any other SOW between the parties.
- a) Termination Without Cause or for Convenience. Unless otherwise agreed by the parties in writing or otherwise permitted under this Agreement, no party will terminate this Agreement without cause if, on the date of termination, a SOW is in progress. In addition, no party will terminate a SOW without cause prior to the SOW's natural expiration date. Notwithstanding the foregoing, if Calian decides to cease providing a service to all of its customers generally, then Calian may terminate an applicable SOW without cause by providing no less than ninety (90) days prior written notice to you. If you terminate a SOW without cause and without Calian's consent, then you will be responsible for paying the termination fee described in Section 7(b), below. If no SOW is in progress, then either party may terminate this Agreement without cause by providing the other party with five (5) days prior written notice.
- b) Termination For Cause. In the event that one party (a "Defaulting Party") commits a material breach under a SOW or under this Agreement, the non-Defaulting Party will have the right, but not the obligation, to terminate immediately this Agreement or the relevant SOW (a "For Cause" termination) provided that (i) the non-Defaulting Party has notified the Defaulting Party of the specific details of the breach in writing, and (ii) the Defaulting Party has not cured the default within ninety (90) days (ten (10) days for non-payment by Client) following receipt of written notice of breach from the non-Defaulting Party. If Calian terminates this Agreement or any SOW For Cause, or if you terminate any SOW without cause prior to such SOW's expiration date, then Calian shall be entitled to receive, and you hereby agree to pay to us, (i) all amounts that would have been paid to Calian had this Agreement or SOW (as applicable) remained in effect, and (ii) all expenses incurred by us in our preparation and provision of the Services to you, e.g., licensing fees incurred by Calian, non-mitigatable hard costs, etc. If you terminate this Agreement or a SOW For Cause (defined above), then you will be responsible for paying only for those Services that were properly delivered and accepted by you up to the effective date of termination.
- c) Client Activity as a Basis for Termination. In the event that (i) any Client-supplied equipment, hardware or software, or any action undertaken by you, causes the Environment or any part of the Environment to malfunction consequently requiring remediation by Calian on three (3) occasions or more ("Environment Malfunction"), and if under those circumstances, you fail to remedy, repair or replace the Environment Malfunction as directed by us (or you fail to cease the activity causing the Environment Malfunction, as applicable), or (ii) you or any of your staff, personnel, contractors, or representatives engage in any unacceptable act or behavior that renders it impracticable, imprudent, or unreasonable to provide the Services to you, then Calian will have the right, upon ten (10) days prior written notice to you, to terminate this

Agreement or the applicable SOW For Cause or, at our discretion and if applicable, amend the applicable SOW to eliminate from coverage any Environment Malfunction or any equipment or software causing the Environment Malfunction.

- d) Consent. You and we may mutually consent, in writing, to terminate a SOW or this Agreement at any time.
- e) Equipment / Software Removal. Upon termination of this Agreement or applicable SOW for any reason, you will provide us with access, during normal business hours, to your premises or any other locations at which Calian-owned equipment or software (collectively, "Calian Equipment") is located to enable us to remove all Calian Equipment from the premises. If you fail or refuse to grant Calian access as described herein, or if any of the Calian Equipment is missing, broken or damaged (normal wear and tear excepted) or any of Calian-supplied software is missing, we will have the right to invoice you for, and you hereby agree to pay immediately, the full replacement value of any and all missing or damaged items. Certain services may require the installation of software agents in the Environment ("Software Agents"). You agree not to remove, disable, circumvent, or otherwise disrupt any Software Agents unless we explicitly direct you to do so.
- f) Transition; Deletion of Data. In the event that you request Calian's assistance to transition away from our services ("Off-boarding"), we will provide such assistance if (i) all fees due and owing to us are paid to us in full prior to Calian providing its assistance to you, and (ii) you agree to pay our then-current hourly rate for such assistance for Off-boarding, with up-front amounts to be paid to us as we may require, which will be invoiced accordingly. For the purposes of clarity, it is understood and agreed that the retrieval and provision of passwords, log files, administrative server information, or conversion of data are transition services, and are subject to the preceding requirements. **Unless otherwise expressly stated in a SOW, we will have no obligation to store or maintain any Client data in our possession or control beyond fifteen (15) calendar days following the termination of this Agreement or the applicable SOW.** We will be held harmless for, and indemnified by you against, any and all claims, costs, fees, or expenses incurred by either party that arise from, or are related to, our deletion of your data beyond the time frames described in this Section.

## 8) RESPONSE; REPORTING.

- a) Response. We warrant and represent that we will provide the Services, and respond to any notification received by us of any error, outage, alarm or alert pertaining to the Environment, in the manner and within the time period(s) designated in an applicable SOW ("Response Time"), except for (i) those periods of time covered under the Transition Exception (defined below), or (ii) periods of delay caused by Scheduled Downtime (defined below), Client-Side Downtime (defined below), Vendor-Side Downtime (defined below) or (iii) periods in which we are required to suspend the Services to protect the security or integrity of the Environment or our equipment or network, or (iv) delays caused by a force majeure event.
- b) Scheduled Downtime. For the purposes of this Agreement, Scheduled Downtime will mean those hours, as determined by us but which will not occur between the hours of 8:00 AM and 5:00 PM Central Time, Monday through Friday without your authorization or unless exigent circumstances exist, during which time we will perform scheduled maintenance or adjustments to our network. We will use our best efforts to provide you with at least twenty-four (24) hours of notice prior to scheduling Scheduled Downtime.
- c) Client-Side Downtime. We will not be responsible under any circumstances for any delays or deficiencies in the provision of, or access to, the Services to the extent that such delays or deficiencies are caused by your actions or omissions ("Client-Side Downtime").
- d) Vendor-Side Downtime. We will not be responsible under any circumstances for any delays or deficiencies in the provision of, or access to, the Services to the extent that such delays or deficiencies are caused by third-party service providers, third-party licensors, or "upstream" service or product vendors.
- e) Expenses. Any costs or expenses that we incur as a result of providing the Services during a national, state, or local emergency or during a period in which there are fuel, manpower, or other national or local shortages

("State of Emergency") will be invoiced and payable by you. By way of example, such expenses may include incremental increases in the cost of gasoline or electrical power, or the purchase of health or safety equipment reasonably necessary to provide the Services to you.

- f) Transition Exception. You acknowledge and agree that for the first forty-five (45) days following the commencement date of a SOW, as well as any period of time during which we are performing off-boarding-related services (e.g., assisting you in the transition of the Services to another provider, terminating a service, etc.), the response time commitments described in this Agreement or any applicable SOW will not apply to us, it being understood that there may be unanticipated downtime or delays related to those activities (the "Transition Exception").

## 9) CONFIDENTIALITY.

- a) Confidential Information. From time to time during the term of this Agreement, either party may disclose or make available to the other party information about its business affairs, products, confidential intellectual property, trade secrets, third-party confidential information, customer data, customer lists, internal documents and other sensitive or proprietary information, whether or not marked, designated, or otherwise identified as "confidential" (collectively, "Confidential Information"). Confidential Information does not include information that, at the time of disclosure is: (a) in the public domain; (b) known to the receiving party at the time of disclosure; (c) rightfully obtained by the receiving party on a non-confidential basis from a third party; or (d) independently developed by the receiving party.
- b) Use. The receiving party shall not disclose the disclosing party's Confidential Information to any person or entity, except to the receiving party's directors, officers, employees, contractors, affiliates, professional advisors and auditors, and those of its affiliates, (collectively "Representatives") who have a need to know the Confidential Information for the receiving party to exercise its rights or perform its obligations hereunder and who are under a contractual obligation to maintain the confidentiality of such information. Each Party shall be liable for any breach of the obligations of confidentiality and restriction on use contained herein by it and its Representatives (including without limitation, its Representatives who, subsequent to the first date of disclosure of Confidential Information hereunder, become its former Representatives). Notwithstanding the foregoing, each party may disclose Confidential Information to the limited extent required (i) in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the party making the disclosure pursuant to the order shall first have given written notice to the other party and made a reasonable effort to obtain a protective order; or (ii) to establish a party's rights under this Agreement, including to make required court filings.
- c) Remedies. The parties agree that monetary damages may not be a sufficient remedy for any breach of this Section, and in addition to all other remedies, either party shall be entitled to seek specific performance and injunctive or other equitable relief as a remedy for any such breach without any requirement for the securing or posting of any bond in connection with such remedy and the party in default hereunder shall not oppose any such application on the basis that damages would be a satisfactory or sufficient remedy.
- d) Return of Confidential Information. On the expiration or termination of this Agreement or upon request by the disclosing party, the receiving party shall promptly return to the disclosing party all copies, whether in written, electronic, or other form or media, of the disclosing party's Confidential Information, or destroy all such copies and certify in writing to the disclosing party that such Confidential Information has been destroyed. Notwithstanding the foregoing, the receiving party may retain one (1) copy of Confidential Information of the disclosing party as required to comply with applicable regulatory recordkeeping requirements or any internal recordkeeping policies or procedures, as well as back-up copies of Confidential Information to the extent that routine back-up procedures create copies in its archival computer storage system. Such retained copies shall remain subject to the terms and conditions of this Agreement.
- e) Continued Obligation. Each party's obligations of non-disclosure with regard to Confidential Information will expire three (3) years from the date of expiration or termination of this Agreement; provided, however,

with respect to any Confidential Information that constitutes a trade secret (as determined under applicable law), such obligations of non-disclosure will survive the termination or expiration of this Agreement for as long as such Confidential Information remains subject to trade secret protection under applicable law.

- f) Additional NDA. In our provision of the Services, you and we may be required to enter into one or more additional nondisclosure agreements (each an “NDA”) for the protection of a third party’s Confidential Information (such as, for example, a business associate agreement). In that event, the terms of the NDA will be read in conjunction with the terms of the confidentiality provisions of this Agreement, and the terms that protect confidentiality most stringently shall govern the use and destruction of the relevant Confidential Information.

## 10) THIRD-PARTY SERVICES.

- a) EULAs. Portions of the Services may require you to accept the terms of one or more third-party end user license agreements (“EULAs”). If the acceptance of a EULA is required in order to provide the Services to you, then you hereby grant us permission to accept the EULA on your behalf. EULAs may contain service levels, warranties and/or liability limitations that are different than those contained in this Agreement. You agree to be bound by the terms of such EULAs and will look only to the applicable third-party provider for the enforcement of the terms of such EULAs. If, while providing the Services, we are required to comply with a third-party EULA and the third-party EULA is modified or amended, we reserve the right to modify or amend any applicable SOW with you to ensure our continued compliance with the terms of the third-party EULA.
- b) Third-Party Services. Portions of the Services may be acquired from, resold from, and/or rely upon the services of, third-party vendors, manufacturers, or providers (“Third-Party Provider”). Third-Party Providers may provide services such as data hosting services, help desk services, malware detection services, domain registration services, and data backup/recovery services (each, a “Third-Party Service”). Not all Third-Party Services will be expressly identified as being provided by a Third-Party Provider, and at all times we reserve the right to utilize the services of any Third-Party Provider or to change Third-Party Providers in our sole discretion as long as the change does not materially diminish the Services that we are obligated to provide to you. **Please note:** You understand and agree that Third-Party Providers are not our contractors, subcontractors, or otherwise under our managerial or operational control. While we will endeavor to facilitate a workaround for the failure of a Third-Party Service, we will not be responsible, and will be held harmless by you, for any error or failure of any Third-Party Service as well as the failure of any Third-Party Provider to provide such services to us or to you.
- c) Data Loss. Under no circumstances will we be responsible for any data lost, corrupted or rendered unreadable due to (i) communication and/or transmissions errors or related failures, (ii) equipment failures (including but not limited to silent hardware corruption-related issues), or (iii) our failure to backup or secure data from portions of the Environment that were not expressly designated in the applicable SOW as requiring backup or recovery services. Unless expressly stated in a SOW, we do not warrant or guarantee that any maintained storage device or functionality, data backup device or functionality, load balancing functionality, or any other Services we provide will operate in an error-free manner and, subject to any obligations to repair or remedy the Services under this Agreement or the applicable SOW, we will not be responsible, and will be held harmless by you, for any such error or failure.
- d) BYOD. You hereby represent and warrant that we are authorized to access all devices, peripherals and/or computer processing units, including mobile devices (such as notebook computers, smart phones and tablet computers) that are connected to the Environment, regardless of whether such device(s) are owned, leased or otherwise controlled by you. Calian will not be obligated to provide the Services to any mobile device or temporarily connected device unless that obligation is specifically stated in an applicable SOW. Further, unless otherwise stated in a SOW, devices will not receive or benefit from the Services while the devices are detached from, or unconnected to, the Environment. You are strongly advised to refrain from connecting Devices to the Environment where such devices are not previously known to us and are not expressly covered

under a Managed Services subscription plan from us (“Unknown Devices”). We will not be responsible for the diagnosis or remediation of any issues in the Environment caused by the connection or use of Unknown Devices in the Environment, and we will not be obligated to provide the Services to any Unknown Devices.

- e) Records. We will keep and maintain all records of the Services for a period of three (3) years after the termination of this Agreement to substantiate all invoices paid, and Services provided, under each SOW.

**11) OWNERSHIP.** Each party is, and will remain, the owner and/or licensor of all works of authorship, patents, trademarks, copyrights and other intellectual property owned or licensed by such party (“Intellectual Property”), and nothing in this Agreement or any SOW shall be deemed to convey or grant any ownership rights or goodwill in one party’s Intellectual Property to the other party. For the purposes of clarity, you understand and agree that we own any software, codes, algorithms, or other works of authorship that we create while providing the Services to you. If we provide licenses to you for third-party software, then you understand and agree that such software is licensed, and not sold, to you. You are allowed to use such third-party software subject to the terms and conditions (i) of this Agreement, (ii) of the applicable SOW, (iii) written directions that we supply to you, and (iv) any applicable EULA; no other uses of such third-party software are permitted. To the maximum extent permitted by applicable law, we make no warranty or representation, either expressed or implied with respect to third-party software or its quality, performance, merchantability, or fitness for a particular purpose.

**12) DISCLAIMER OF WARRANTIES.** Unless otherwise expressly stated in this Agreement, all Services are provided “as-is” and Calian hereby disclaims all conditions and warranties, whether express, implied, statutory or otherwise, including, without limitation, all implied conditions and warranties of quality, performance, merchantability and fitness for a particular purpose. Calian makes no warranty of any kind that the Services or the results of the use thereof, will meet Client’s or any other person’s requirements, operate without interruption, achieve any intended result, be compatible or work with any software, system, or other services, or be secure, accurate, complete, free of harmful code, or error-free.

**13) ARBITRATION.** Subject to Section 9, any dispute, claim or controversy arising from or related to this Agreement shall be determined by arbitration before one arbitrator to be mutually agreed upon by the parties, except that in the event of a payment dispute, we also reserve the right at our discretion to pursue a legal claim with a court of competent jurisdiction and/or any other remedies available at law. The arbitration shall be administered and conducted by the American Arbitration Association (“AAA”) pursuant to its commercial arbitration rules (the “Rules”). In the event of any inconsistency between the Rules and the procedures set forth below, the procedures set forth below will control. The arbitrator will be experienced in contract, intellectual property and information technology transactions. If the parties cannot agree on an arbitrator within fifteen (15) days after a demand for arbitration is filed, AAA shall select the arbitrator. The arbitration shall take place in Harris County, Texas. The arbitrator shall determine the scope of discovery in the matter; however, it is the intent of the parties that any discovery proceedings be limited to the specific issues in the applicable matter, and that discovery be tailored to fulfill that intent. The cost of the arbitration shall be split evenly between the parties; however, the party prevailing in the arbitration shall be entitled to an award of its reasonable attorneys’ fees and costs.

**14) MISCELLANEOUS.**

- a) Disclosure. You warrant and represent that you know of no law or regulation governing your business that would impede or restrict our provision of the Services, or that would require us to register with, or report our provision of the Services (or the results thereof), to any government or regulatory authority. You agree to promptly notify us if you become subject to any of the foregoing which, in our discretion, may require a modification to the scope or pricing of the Services.
- b) Business Associate. If applicable, we will enter into a separate business associate agreement with you as required under the Health Insurance Portability and Accountability Act of 1996 or its relevant regulations (“HIPAA”). To fullest extent permitted under law, the liability limitations of this Agreement will apply to



any services or acts undertaken by Calian as a business associate as defined in the HIPAA Privacy Standards (45 CFR Parts 160 and 164).

- c) Compliance. Unless otherwise expressly stated in a SOW, the Services are not intended, and will not be used, to bring you into full regulatory compliance with any rule, regulation, or requirement that may be applicable to your business or operations. Depending on the Services provided, the Services may aid your efforts to fulfill regulatory compliance; however, the Services are not (and should not be used as) a compliance solution.
- d) Assignment. Neither this Agreement nor any SOW may be assigned or transferred by a party without the prior written consent of the other party. This Agreement will be binding upon and inure to the benefit of the parties hereto, their legal representatives, and permitted successors and assigns. Notwithstanding the foregoing, we may assign our rights and obligations hereunder to a successor in ownership in connection with any merger, consolidation, or sale of substantially all of the assets of our business, or any other transaction in which ownership of more than fifty percent (50%) of our voting securities are transferred; provided, however, that such assignee expressly assumes our obligations hereunder.
- e) Amendment. Unless otherwise expressly permitted under this Agreement, no amendment or modification of this Agreement or any SOW will be valid or binding upon the parties unless such amendment or modification is originated in writing by Calian, specifically refers to this Agreement, and is accepted in writing by one of your Authorized Contacts.
- f) Severability. If any provision hereof or any SOW is declared invalid by a court of competent jurisdiction, such provision will be ineffective only to the extent of such invalidity, illegibility or unenforceability so that the remainder of that provision and all remaining provisions of this Agreement or any SOW will be valid and enforceable to the fullest extent permitted by applicable law.
- g) Other Terms. We will not be bound by any terms or conditions printed on any purchase order, invoice, memorandum, or other written communication supplied by you unless such terms or conditions are incorporated into a duly executed SOW, or unless we have expressly acknowledged the other terms and, thereafter, expressly and specifically accepted such other terms in writing.
- h) No Waiver. The failure of either party to enforce or insist upon compliance with any of the terms and conditions of this Agreement, the temporary or recurring waiver of any term or condition of this Agreement, or the granting of an extension of the time for performance, will not constitute an Agreement to waive such terms with respect to any other occurrences.
- i) Merger. This Agreement, together with any and all SOWs, sets forth the entire understanding of the parties and supersedes any and all prior agreements, arrangements or understandings related to the Services, and no representation, promise, inducement or statement of intention has been made by either party which is not embodied herein. Any document that is not expressly and specifically incorporated into this Agreement or SOW will act only to provide illustrations or descriptions of Services to be provided and will not modify this Agreement or provide binding contractual language between the parties. We will not be bound by any of our agents' or employees' representations, promises or inducements if they are not explicitly set forth in this Agreement.
- j) Force Majeure. In no event shall either party be liable to the other party, or be deemed to have breached this Agreement, for any failure or delay in performing its obligations under this Agreement, if and to the extent such failure or delay is caused by or results from acts or circumstances beyond the impacted party's ("Impacted Party") control including, without limitation, the following force majeure events ("Force Majeure Event(s)": (a) acts of God; (b) flood, tsunami, fire, earthquake, explosion; (c) epidemics, pandemics; (d) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riots, or other civil unrest; (e) government order, law or actions; (f) embargoes or blockades in effect on or after the date of this Agreement; (g) strikes, lockouts, labour stoppages or slowdowns, labour disputes, or other industrial

disturbances; and (h) cyberwarfare, cyberterrorism, or hacking, malware or virus-related incidents that circumvent then-current anti-virus or anti-malware software. The Impacted Party shall give notice within ten (10) days of the Force Majeure Event to the other Party, stating the period of time the occurrence is expected to continue. The Impacted Party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The Impacted Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause.

- k) Non-Solicitation. During the term of this Agreement and for a period of one (1) year following the termination of this Agreement, neither party will, individually or in conjunction with others, directly or indirectly hire, solicit, induce or influence any of the other party’s employees or subcontractors to discontinue or reduce the scope of their business relationship with the other party, or recruit, solicit or otherwise influence any employee or agent of the other party to discontinue such employment or agency relationship with the other party. In the event that a party violates the terms of the restrictive covenants in this Section, then each party acknowledges and agrees that the damages to the other party would be difficult or impracticable to determine, and in such an event, as the other party’s sole and exclusive remedy therefore, the hiring party will pay the other party as liquidated damages and not as a penalty an amount equal to fifty percent (50%) percent of that employee or subcontractor’s first year of base salary with the hiring party (including any signing bonus). In addition to and without limitation of the foregoing, any solicitation or attempted solicitation for employment directed to any of a party’s employees by the other party will be deemed to be a material breach of this Agreement, in which event the aggrieved party shall have the right, but not the obligation, to terminate this Agreement or any then-current SOW immediately For Cause. The restrictions set forth in this Section shall not apply to a general advertisement or notice of a job listing or opening or other similar general publication of a job search or availability to fill employment positions shall not be construed as a solicitation or inducement and the hiring of any such employees who freely responds, thereto is not a breach of this Section.
- l) Survival. The provisions contained in this Agreement that by their context are intended to survive termination or expiration of this Agreement will survive. If any provision in this Agreement is deemed unenforceable by operation of law, then that provision shall be excised from this Agreement and the balance of this Agreement shall be enforced in full.
- m) Insurance. Calian will maintain, at its expense, the following insurance:

<b>TYPE OF INSURANCE</b>	<b>Limits</b>
<b>GENERAL LIABILITY</b>	<b>\$1,000,000 Each Occurrence \$2,000,000 General Aggregate</b>
<b>NON-OWNED AUTOMOBILE LIABILITY</b>	<b>\$1,000,000 Combined Single Limit</b>
<b>UMBRELLA LIABILITY EXCESS LIABILITY</b>	<b>\$5,000,000 Each Occurrence and in the Aggregate</b>
<b>EMPLOYERS' LIABILITY</b>	<b>\$1,000,000 Each Accident</b>
<b>ERRORS &amp; OMISSIONS</b>	<b>\$5,000,000 (CAD)</b>

- n) Governing Law; Venue. This Agreement and any SOW will be governed by, and construed according to, the laws of the state of Texas. You hereby irrevocably consent to the exclusive jurisdiction and venue of Harris County, Texas, for any and all claims and causes of action arising from or related to this Agreement.
- o) Currency. Unless otherwise stated, all references in this Agreement or any Statements of Work to dollar amounts, “dollars” or “\$” are references to American dollars (USD).
- p) No Third-Party Beneficiaries. The Parties have entered into this Agreement solely for their own benefit. They intend no third party to be able to rely upon or enforce this Agreement or any part of this Agreement.

- q) Usage in Trade. It is understood and agreed that no usage of trade or other regular practice or method of dealing between the Parties to this Agreement will be used to modify, interpret, supplement, or alter in any manner the terms of this Agreement.
- r) Business Day. If any time period set forth in this Agreement expires on a day other than a business day in Harris County, Texas, such period will be extended to and through the next succeeding business day in Harris County, Texas.
- s) Notices: Writing Requirement. All notices hereunder shall be in writing and addressed to other party at the addresses set forth below (or to such other address that may be designated by the party giving notice from time to time in accordance with this Section):

Calian

Calian Corp.

840 W. Sam Houston Pkwy. N., Suite 420

Houston, Texas 77024

Attention: Contracts Department

Email: [contracts.caliancorp@calian.com](mailto:contracts.caliancorp@calian.com)

Notices sent in accordance with this Section will be given upon (i) personal delivery, in which case notice shall be deemed given on the day of such hand delivery, or (ii) by overnight courier, in which case notice shall be deemed given one (1) business day after deposit with a recognized courier for U.S. deliveries (or three (3) business days for international deliveries), or (iii) by electronic mail, in which case notice shall be deemed given when sent if sent during the addressee's normal business hours, and on the next business day if sent after the addressee's normal business hours. All electronic documents and communications between the parties will satisfy any "writing" requirement under this Agreement.

- t) Independent Contractor. Calian is an independent contractor, and is not your employer, employee, partner, or affiliate.
- u) Subcontractors. Calian shall guarantee all work performed by any Calian-designated subcontractor as if Calian performed the subcontracted work itself. For the purposes of clarity, you understand and agree that Third-Party Services are resold and not contracted services, and providers of Third-Party Services are not our contractors or subcontractors.
- v) Data Access/Storage. Depending on the Service provided, a portion of your data may occasionally be accessed or stored on secure servers located outside of the United States. You agree to notify us if your company requires us to modify our standard access or storage procedures.
- w) Counterparts. The parties intend to sign and deliver this Agreement and any SOW in any number of counterparts, and each of which will be deemed an original and all of which, when taken together, will be deemed to be one agreement. Each party may sign and deliver this Agreement (or any SOW) electronically (e.g., by digital signature and/or electronic reproduction of a handwritten signature), and the receiving party will be entitled to rely upon the apparent integrity and authenticity of the other party's signature for all purpose.

**The MSA is accepted by Client electronically.**

## SCHEDULE A

### SERVICE LEVEL AGREEMENT AND ADDITIONAL TERMS FOR ALL MANAGED SERVICES

The SLA and additional terms govern all Managed Services subscription plan provided under a SOW and are incorporated into and are made part of the Agreement.

#### 1) DEFINITIONS

- a) “**Business Day**” means any day that is not a Saturday, Sunday or federal or state holiday.
- b) “**Effective Date**” means the date defined as such in an applicable SOW.
- c) “**Go-Live Date**” means the date of the first use of the Managed Services defined in an SOW by any user or as otherwise may be defined in an applicable SOW and where the monthly recurring fee will begin to accrue for each of the subscribed services.
- d) “**Minimum Monthly Recurring Fee**” means the Monthly Fee listed on the "Investment" section of an applicable SOW will begin on the Go-Live Date of each subscribed Service, or at Calian's discretion, may begin as a result of Onboarding delays of more than 90 days which are caused by action or failure to act or engage by Customer.
- e) “**Onboarding Charges or Fees**” means the charges or fees described as Onboarding Charges or Fees in an applicable SOW.
- f) “**Onboarding Period**” means the period of time beginning on the Effective Date of an SOW and continuing until the Go-Live Date.
- g) “**Term**” means the period of time beginning at the Go-Live Date of the first service onboarded, and for the period set out in an applicable SOW.

#### 2) GENERAL TERMS AND CONDITIONS

- a) Licensure. All software in any environment monitored or managed by Calian must be genuine and licensed.
- b) Term. The Term for each SOW for Managed Services is set out in an applicable SOW. The Term shall automatically renew for one successive term of twelve (12) consecutive months (each, a "Renewal Term") unless you or Calian provides written notice to the other of its intention to terminate an SOW at least ninety (90) days prior to the expiration of the applicable Term.
- c) Fee Adjustments. Your Monthly Fee may be adjusted based upon on the following conditions (collectively, “Allowable Adjustment Conditions”):
  - i. The specific plan options selected by you
  - ii. The number of employees accessing your data network; and
  - iii. Your ongoing compliance with all of the following obligations:
    1. You will allow Calian to create an Internet Protocol security (“IPsec”) virtual private network (“VPN”) for management and monitoring purposes between Calian Network Operations Center (“NOC”) and your Network;

2. You allow Calian to install certain software and/or equipment required for remote access and/or monitoring, patch management and fault tolerance on your equipment; and you acknowledge that additional or one-time charges may be associated with the installation of such equipment;
  3. You will allow Calian to refresh technology (including, without limitation, upgrade, replace, augment, enhance, etc.) the Calian systems and applications used by Calian to provide the Services to the extent provided to you by Calian for the Managed Services, at a level and with a frequency that will enable Calian at all times to perform and provide the Services in accordance with the Managed Services. The monthly service fees may if mutually agreed upon be adjusted for specific enhanced services and listed in a separate Amendment.
- iv. *Minimum Monthly Recurring Fees.* Provided that your adjusted Monthly Fee does not decrease below the Monthly Fee initially agreed upon by you, you may also add or remove Services from the service plan, and/or add (but not remove) products to the service plan, by providing written notice to Calian (which notice may be provided by e-mail). If Services and/or Products are added to the service plan, (a) the applicable fee(s) will be increased to accommodate the additional services or products for the balance of the then-current term. If Services are removed from the service plan, the service plan fee will be decreased to accommodate the decreased amount of services. Under no circumstances will any monthly equipment lease fee be reduced without our consent.
  - v. *Increases.* We reserve the right to increase our fees by providing no less than thirty (30) days prior written notice to you; however, we generally endeavor to refrain from increasing our fees by more than five percent (5%) unless market conditions require us to do so. Should this occur, we will explain the circumstances to you and work in good faith to keep the increases narrowly tailored to cover our increased costs and expenses.
  - vi. *Early Termination Fee.* Early termination of the Managed Services will result in an Early Termination Fee of the Minimum Recurring Fee multiplied by the number of months remaining in the current Term or Renewal Term at the time of the termination (the “Early Termination Fee”). The entire amount of any Early Termination Fee will be immediately due upon receipt of notice from you.
- d) *Supported Locations.* On-site services (if any) will be limited to your primary location listed in the applicable SOW. Additional service locations may be available at additional cost; please speak with your technician for more information.
  - e) *Service Levels.* Unless otherwise expressly stated in an SOW, Calian shall use reasonable efforts to achieve 99.9% uptime for the Services, as measured over a calendar month. In the event that Calian fails to meet this goal you shall be eligible for a credit of 5% of the applicable monthly service fees for each one-hour (1) hour of service downtime experienced up to 100% of the applicable monthly service fee. Third-party pass-thru charges including but not limited to, software licensing and internet carrier charges, as well as charges for equipment leases, rentals and onboarding fees are not eligible for this service credit.
  - f) *Service Levels Credits.* All requests for service credits must be received by Calian within seven (7) days after the date on which the outage or missed service level occurred. No Service Credits will be given for service interruptions outside of the control of Calian, or interruptions (i) caused by the action or failure to act by you, (ii) due to failure of any equipment or software provided by you, (iii) which are the result of scheduled maintenance, (iv) due to a force majeure event, (v) caused by the internet service provider, or (vi) resulting from your breach of the terms of this Agreement.
  - g) *Response Times.* Unless otherwise expressly stated in an SOW, Calian will respond to alerts, issues, or outages with regard to Managed Services on a “best efforts” basis and in accordance with the service levels described below. (Please note: *Calian response times for Managed Services are different than those for*

*Cybersecurity-related Services. If you are receiving Cybersecurity-related services from Calian, please see the section below – “Cybersecurity Services”).*

**3) MANAGED SERVICES SLA**

- a) Priority Table. The priority of the issue will be determined by Calian. Your description of the scope and impact of the issue will be considered by Calian in our determination of the appropriate priority level. Any time period listed in the table depends on whether you have a Business Day or 24x7 support Subscription Plan.

	<b>Response</b>	<b>Resolution Plan</b>	<b>Resolved</b>
Priority 1	15 min.	4 hrs.	8 hrs. or until resolution
Priority 2	1 hr.	8 hrs.	16 hrs.
Priority 3	8 hrs.	24 hrs.	72 hrs.
Priority 4 – Scheduled Work	24 hrs.	48 hrs.	6 months
Priority – Machine Setup	8 hrs.	48 hrs.	72 hrs.
Priority – New User Setups	8 hrs.	24 hrs.	24 hrs.
Priority – Password Reset	20 min.	45 min.	1 hr.

**4) MANAGED CYBERSECURITY SERVICES SLA**

To the extent that the Managed Services include cybersecurity services, the following terms shall apply:

- a) Anti-Virus; Anti-Malware. Our anti-virus / anti-malware solution will generally protect the managed environment from becoming infected with new viruses and malware (“Viruses”); however, Viruses that exist in the managed environment at the time that the security solution is implemented may not be capable of being removed without additional services, for which a charge may be incurred. We do not warrant or guarantee that all Viruses and malware will be capable of being detected, avoided, or removed, or that any data erased, corrupted, or encrypted by malware will be recoverable. In order to improve security awareness, you agree that Calian or its designated third-party affiliate may transfer information about the results of processed files, information used for URL reputation determination, security risk tracking, and statistics for protection against spam and malware. Any information obtained in this manner does not and will not contain any personal or confidential information.
- b) Breach/Cyber Security Incident Recovery. Unless otherwise expressly stated in an SOW, the scope of the SOW will not include the remediation and/or recovery from a Security Incident (defined below). Such services, if requested by you, will be provided on a time and materials basis under our then-current hourly labor rates. Given the varied number of possible Security Incidents, we cannot and do not warrant or guarantee (i) the amount of time required to remediate the effects of a Security Incident (or that recovery will be possible under all circumstances), or (ii) that all data impacted by the incident will be recoverable. For the purposes of this paragraph, a Security Incident means any unauthorized or impermissible access to or use of the Environment, or any unauthorized or impermissible disclosure of your confidential information (such as user names, passwords, etc.), that (i) compromises the security or privacy of the information or applications in, or the structure or integrity of, the Environment, or (ii) prevents normal access to the Environment, or impedes or disrupts the normal functions of the Environment.

- c) Penetration Testing. You understand and agree that security devices, alarms or other security measures, both physical and virtual, may be tripped or activated during the penetration testing process, despite our efforts to avoid such occurrences. You will be solely responsible for notifying any monitoring company and all law enforcement authorities of the potential for “false alarms” due to the provision of the penetration testing services, and you agree to take all steps necessary to ensure that false alarms are not reported or treated as “real alarms” or credible threats against any person, place or property. Some alarms and advanced security measures, when activated, may cause the partial or complete shutdown of the Environment, causing substantial downtime and/or delay to your business activities. We will not be responsible for and will be held harmless and indemnified by you against, any claims, costs, fees or expenses arising or resulting from (i) any response to the penetration testing services by any monitoring company or law enforcement authorities, or (ii) the partial or complete shutdown of the Environment by any alarm or security monitoring device.
- d) Security Awareness Training. All training videos and other training materials supplied or made accessible to you are owned by the authors of those materials and are protected by copyright. You shall not copy, edit, modify, resell, sublicense, or otherwise use those materials in any manner that violates the applicable author’s copyrights or other intellectual property rights. Any training materials or training sessions made available to you are for your general informational and educational purposes only. Such information is provided on an “as is” basis, and we do not warrant or represent that the training information will cover all potential security issues, risks, or threats.
- e) SIEM. Any SIEM solution requires an initial assessment and analysis of the managed environment against which subsequent unusual or aberrant behavior may be measured. The initial assessment does not include (i) portable or mobile devices that are not connected to the tested environment at the time that our initial assessment is performed, (ii) systems or applications that are not physically connected to the tested environment at the time our initial assessment is performed, such as systems or applications connected by VPN or cloud-based applications, or, (iii) devices, wiring, and infrastructure-related materials that are not readily physically viewable or accessible to our technicians at the time that our initial assessment is performed.
- f) Cybersecurity-Related Response Times. Unless otherwise expressly stated in an SOW, Calian will respond to alerts, issues, or outages in Cybersecurity-related Services on a “**best efforts**” basis and in accordance with the service levels described below.
- g) Priority Table. The priority of the issue will be determined by Calian; your description of the scope and impact of the issue will be considered by Calian in our determination of the appropriate priority level. Any time period listed in the table depends on whether you have a Business Day or 24x7 support Subscription Plan.

	<b>Response</b>	<b>Resolved</b>
<b>Priority 1</b>	1 hr.	24 hrs. or until resolution.
<b>Priority 2</b>	12 hrs.	48 hrs.
<b>Priority 3</b>	24 hrs.	72 hrs.
<b>Priority 4</b>	24 hrs.	Best effort

**5) IDENTIFIED THIRD-PARTY SERVICES.**

To the extent that identified Third-Party Services are provided to you under an SOW, the following terms shall apply:



- a) Contractual Agreement. Calian will enter into a contractual agreement on your behalf for the estimated fees of the services to be provided by the Third-Party Provider.
- b) Third-Party Payment Obligations. Once the Third-Party Services are fully delivered and installed by the Third-Party Provider and accepted by you, your payment obligations under the applicable SOW for the Third-Party Services shall become fully fixed and non-cancelable for the entire SOW term. You agree that any issues you may have concerning delivery, installation, implementation, and the quality or fitness of any Third-Party Services will be resolved exclusively between you and the applicable Third-Party Provider.

## 6) EQUIPMENT/HARDWARE SUPPLIED TO YOU.

To the extent that hardware or other equipment is supplied to you under an SOW, the following terms shall apply:

- a) Leased Equipment. Any equipment or hardware that is leased, rented, or licensed to you under an SOW is owned by Calian or its designated third-party vendor(s) or finance company (collectively, “Leased Equipment”). Issues or defects with Leased Equipment will be handled through the applicable manufacturer’s then-current warranty program.
  - i. Events of Default. Any of the following events or conditions shall constitute a default by you (each, an “Event of Default”): (i) Your failure to pay any amounts due beyond the fifth (5<sup>th</sup>) day after such amounts are due; (ii) seizure of any or all the Leased Equipment under legal process; (iv) the filing by or against you of a petition for reorganization or liquidation under the Bankruptcy Code or any amendment thereto or under any other insolvency law providing for the relief of debtors; (v) the voluntary or involuntary making of an assignment of a substantial portion of its assets by you, or any guarantor (“Guarantor”) under any guaranty executed in connection with the Leased Equipment (“Guaranty”) for the benefit of creditors, the appointment of a receiver or trustee for you or any Guarantor, provided that in the case of all such involuntary proceedings, same are not dismissed within sixty (60) days after commencement; for any of your or Guarantor’s assets, the institution by or against you or any Guarantor of any formal or informal proceeding for dissolution, liquidation, settlement of claims against or winding up of your affairs or of any Guarantor; or, (vi) the making by you or any Guarantor of a transfer of all or a material portion of your or Guarantor’s assets or inventory not in the ordinary course of business.
  - ii. Remedies. If an Event of Default occurs, we shall have the right to exercise, at its sole discretion, any one or more of the following remedies: (i) terminate the lease; (ii) without affecting our title or right to possession of the Leased Equipment, declare due and recover all monthly lease payments and other amounts then accrued or thereafter accruing for the entire lease term or any extension thereof, which the parties agree is a fair and reasonable amount; (iii) require you to promptly redeliver the Leased Equipment, insured and with delivery pre-paid at your expense; (iv) repossess the Leased Equipment without notice, legal process, prior judicial hearing or liability for trespass or other damages (WHICH RIGHTS LESSEE HEREBY VOLUNTARILY, INTELLIGENTLY AND KNOWINGLY WAIVES); or, (v) take possession of the Leased Equipment and sell all or any portion at public or private sale without demand or notice of intention to sell. Such repossession of the Leased Equipment shall not terminate your obligations under the lease unless we so notify you in writing. If we are unable to repossess the Leased Equipment, then it is deemed a total loss and you must pay the replacement cost as determined by us. All such remedies are cumulative and may be enforced separately or concurrently.
  - iii. Purchase Option. If no Event of Default has occurred and if the applicable SOW expressly states that you may purchase the Leased Equipment at the conclusion of the lease term, then upon the natural expiration of the applicable SOW, you shall be entitled, at your option and upon written notice to us delivered to us no less than sixty (60) days prior to the end of the applicable SOW term, to purchase the Leased Equipment for \$1.00. If the Leased Equipment is purchased by you as

described herein, then you understand and agree that the Leased Equipment is sold to you in an “as is” and “where is” condition without any warranty or representation by us whatsoever.

- iv. *Return of Equipment.* Subject to a Purchase Option (if applicable), all Leased Equipment must be returned to Calian within ten (10) days after the termination of an applicable SOW. Unless otherwise expressly agreed in writing by Calian, you will remove, package and ship back to Calian, at your expense and in a commercially reasonable manner, all Leased Equipment. If Leased Equipment is not timely returned to us, or if the equipment is returned to us damaged (normal wear and tear excepted), then we will have the right to charge you, and you hereby agree to pay, the replacement value of all such unreturned or damaged equipment.
  
- b) *Hardware / Software Purchased Through Calian.* All hardware, software, peripherals, or accessories purchased through Calian (“Third-Party Products”) are generally nonrefundable once the product is obtained from our Third-Party Provider or reseller. If you require a refund, then the Third-Party Provider’s or reseller’s return policies shall apply. We do not guarantee that purchased Third-Party Products will be returnable, exchangeable, or that re-stocking fees can be avoided. You will be responsible for the payment of all re-stocking or return-related fees charged by the Third-Party Provider or reseller. We will use reasonable efforts to assign, transfer and facilitate all warranties (if any) and service level commitments (if any) for the Third-Party Products to you, but will have no liability whatsoever for the quality, functionality, or operability of any Third-Party Products, and we will not be held liable as an insurer or guarantor of the performance, uptime or usefulness of any Third-Party Products. All Third-Party Products are provided “as is” and without any warranty whatsoever as between Calian and you (including but not limited to implied warranties).