

## CIMCON SOFTWARE, LLC SUBSCRIPTION SERVICES AGREEMENT

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This Subscription Services Agreement entered into between the parties hereunder (this "Agreement") is a legal agreement between you and CIMCON Software, LLC, a Delaware limited liability company with its principal place of business at 234 Littleton Road, Westford, MA 01886 ("CIMCON"), that governs your acquisition and use of CIMCON's proprietary Software and Documentation. It is effective between you (the "Customer") and CIMCON as of the date you first access the Software Service (the "Effective Date").

**\*\*\* IMPORTANT –  
PLEASE READ CAREFULLY BEFORE YOU ACCESS OR USE THE  
SOFTWARE SERVICE \*\*\***

**By clicking on the “Accept” button at the end of this document or by accessing or using the Software Service, you acknowledge that you have read this Agreement, understand it and agree to be bound by its terms and conditions including but not limited to the payment of the subscription fees. If you are not willing to be bound by the terms of this Agreement, do *not* access or otherwise use the Software Service.**

**If you are using the Software Service in your capacity as an employee or agent of a company, an LLC or other organization, then any references to “Customer” in this Agreement shall refer to such entity and not to you in your personal capacity. You warrant that you are authorized to legally bind the company or organization on whose behalf you are accessing the Software Service. If you are not so authorized, then neither you nor your company or organization may access or use the Software Service in any manner whatsoever.**

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

**1. Definitions.** Defined terms shall have the meanings accorded to such terms herein. The following terms shall have the following meanings.

**Access Credentials:** The login information, passwords, and security controls through which Users may access and use the Software Service.

**Affiliates:** Any corporation, partnership or other entity now existing or hereafter organized that is directly or indirectly controlled by a party. For purposes of this definition “control” means the direct possession of at least fifty-one percent (51%) of the outstanding voting securities of an entity.

**Aggregate Information:** Any information, data and/or metadata derived from access or use of the Software Service that is not specific to a person, does not include personally identifiable information, and cannot be used, alone or in conjunction with other information, to identify any specific person.

**AWS Marketplace:** The marketplace for software as a service products and solutions made available by Amazon Web Services at <https://aws.amazon.com/marketplace/> as such URL may be updated from time to time.

**Confidential Information:** All information which is written, graphic, machine readable or other tangible form and is marked “confidential”, “proprietary”, or in some other manner to indicate its confidential nature, or which under the circumstances of disclosure reasonably ought to be considered as confidential. Confidential Information of CIMCON shall expressly include the Software Service and the Documentation.

**Customer Content:** The information, content, data and other materials transmitted, uploaded, or stored by Customer or its Users in the Software Service, including without limitation any and all messages, files, pages, data, works of authorship, trade or service marks, images, photographs, illustrations, graphics, audio clips, video clips, email or other messages, metatags, and domain names.

**Documentation:** The user manuals, specifications, and guides with respect to the Software Service which are made generally commercially available by CIMCON.

**Software Service:** The version of the CIMCON proprietary software as a service offering subscribed to by Customer in its order for the Software Service as the same may be updated from time to time by CIMCON.

**Subscription Fees:** The fees payable by Customer for the Software Service as set forth in the order for the Software Service.

**Subscription Term:** The period of time that Customer has subscribed to the Software Service as set forth in the order for the Software Service.

**Support Services:** CIMCON’s provision of support services with respect to the Software Service pursuant to CIMCON’s support services program. CIMCON shall only be obligated to provide Support Services if Customer has purchased a subscription from CIMCON, and is within the term of the subscription license.

**Updates:** All upgrades, enhancements, improvements, maintenance releases, additions, and modifications, of the Software Service made generally commercially available as part of the Software Service during a Subscription Term.

**User:** An employee or contractor of Customer or its Affiliates that is assigned Access Credentials and uses the Software Service on behalf of and for the exclusive benefit of Customer.

## **2. Software Service; Restrictions.**

2.1 Software Service. Customer may order Software Services from CIMCON’s website or, with respect to certain Software Services, through AWS Marketplace. When Customer places an order for a Software Service, Customer agrees to this Agreement and the additional terms set forth in the order, including without limitation the Subscription Term, the Subscription Fees and any other terms and conditions set forth therein. Subject to Customer’s compliance with the terms of this Agreement and the order, including, without limitation, the timely payment of Subscription Fees, CIMCON will use commercially reasonable efforts to make the Software Service available to Customer and its Users during the Subscription Term. Customer and its Users may access and use the Software Service solely for Customer’s own business purposes and only in accordance with the Documentation, the terms of this Agreement and the order. Customer is responsible for obtaining and maintaining all equipment and software required to access the Software Service by Customer and its Users, and CIMCON has no responsibility therefor.

2.2 Access Credentials; Customer Content.

Customer agrees to (a) provide true, accurate, current and complete registration data, as applicable, and (b) maintain and promptly update the registration data to keep it true, accurate, current and complete. Customer will safeguard, and ensure that all Users safeguard, its Access Credentials. Customer agrees to: (1) keep its Access Credentials secure and confidential and not to allow any of Customer’s Users to provide their Access Credentials to anyone else; and (2) not permit others to use Customer’s Access Credentials.

Customer will immediately notify CIMCON if it learns of any unauthorized access to or use of the Software Service, Customer's account or any Access Credentials assigned to Customer or its Users, or if it learns of any other known or suspected breach of security with respect to the Software Service, Customer's account or any Access Credentials assigned to Customer. CIMCON reserves the right, in its sole discretion and without liability to Customer or its Users, to take any action CIMCON deems necessary or reasonable to ensure the security of the Software Service and Customer's Access Credentials and account, including terminating Customer's access or the access of any of Customer's Users, changing passwords, or requesting additional information to authorize activities related to Customer's account.

Customer grants to CIMCON a non-exclusive, royalty-free, fully paid, worldwide license, under any and all of Customer's Intellectual Property Rights, to use, copy, execute, host, store, and display the Customer Content for the sole purposes of enabling CIMCON to provide the Software Service to Customer and its Users. In addition, Customer agrees that CIMCON may use its third party contractors and services providers to exercise the licenses granted to CIMCON in this Section to perform services for or on behalf of CIMCON in connection with the provision of the Software Service to Customer and its Users. Customer is responsible for all Customer Content. Customer is responsible to ensure that it, or the applicable User, has obtained all third party licenses, consents and / or permissions that may be necessary or appropriate with respect to such Customer Content to enable each party to exercise its rights and perform its obligations under this Agreement. Customer represents, warrants and covenants that Customer has all rights and licenses necessary to upload the Customer Content.

Customer shall indemnify and hold CIMCON, its affiliates, employees, officers, and directors harmless from and against any losses, damages, expenses, costs, settlements, fines, penalties, and any and all other liabilities (including reasonable attorneys' fees) incurred in connection with third party claims, actions, demands, allegations, suits and/or proceedings (i) arising out of or related to the Customer Content, including without limitation any claim that the Customer Content infringes the intellectual property rights or rights of privacy or publicity of a third party or has otherwise harmed a third party; (ii) based upon Customer's or any User's use of the Software Service not in accordance with the terms hereof or not in accordance with the Documentation or in violation of Section 2 of the Agreement; or (iii) based on any failure or alleged failure of the Customer or its Users to comply with any applicable law, rule, regulation or guideline in connection with its use of the Software Service for Customer's business, including without limitation any data privacy and security laws.

2.3 Restrictions. Customer shall not and shall not allow any third party to (i) decompile, disassemble, reverse engineer or attempt to reconstruct, identify or discover any source code, APIs, underlying ideas, underlying user interface techniques or algorithms of the Software Service or any portion thereof, or otherwise derive its source code; (ii) modify, translate, or create derivative works of the Software Service or Documentation; (iii) sell, lease, license, sublicense, copy, market or distribute the Software Service or Documentation; (iv) use the Software Service for any timesharing, service bureau, application service provider, subscription, rental, lease or similar uses; (v) combine all or any part of the Software Service with other software or use all or part the Software Service to create a new product, application, service (whether software as a service or otherwise); (vi) distribute any software or device incorporating all or part of the Software Service; (vii) use the Software Service in contravention to any applicable laws or government regulations; or (viii) use the Software Service to develop any product which is competitive with CIMCON's offerings. Customer shall take all reasonable precautions to prevent unauthorized or improper use or disclosure of the Software Service.

2.4 Electronic Delivery. CIMCON shall make available to Customer a link to access the Software. Delivery shall be deemed to have occurred upon accessing and utilizing that link or upon receipt of electronic confirmation by CIMCON that the electronic mail to Customer containing the instructions for accessing the Software and Documentation has been sent. If Customer is subscribing to the Software Service through the AWS Marketplace, the link will be sent to Customer by Amazon and not by CIMCON.

2.5 Export. Customer acknowledges that the Software Service, Documentation and related technical data is subject to U.S. export regulations, and agrees to comply with all applicable international and national laws that apply thereto, including without limitation the U.S. Export Administration Regulations,

as well as end-user, end-use and destination restrictions issued by U.S. and other governments. Customer agrees that it will not provide access or use of the Software Service outside of the United States, directly or indirectly, without first obtaining any necessary licenses from the U.S. Department of Commerce or other agency as required by law. Without limiting the generality of the foregoing, Customer agrees that it may not use the Software Service or permit Users to use the Software Service in Cuba, North Korea, Iran, Libya, Syria and Sudan and may not provide access or use of the Software Service to any person or entity on the U.S. Department of Commerce Denied Persons List or on the U.S. Department of Treasury's lists of Specially Designated Nationals, Specially Designated Narcotics Traffickers or Specially Designated Terrorists, as such is changed from time to time.

2.6 Use Guidelines. Customer shall comply and shall require its Users to comply with [CIMCON's Acceptable Use Policy](#) as the same may be updated from time to time. Further, Customer shall not, directly or indirectly, and shall require that its Users do not, access or use the Software Service, in whole or in part: (i) except as expressly provided in this Agreement or in an order; (ii) to send spam or otherwise duplicative or unsolicited messages or other unsolicited communications; (iii) to harvest or collect e-mail addresses or other contact information of third parties by any means for the purposes of sending spam or otherwise duplicative or unsolicited e-mails or other unsolicited communications; (iv) to send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material, including material harmful to children or that violates of third party privacy rights; (v) to send or store material containing viruses, security vulnerabilities, worms, Trojan horses or other harmful or malicious computer code, files, scripts, agents or programs; (vi) to attempt to probe, scan, or test (including without limitation stress testing or penetration testing) the vulnerability of any system or network associated with the Software Service or breach any security or authentication measures; (viii) to monitor availability, performance or functionality, for any benchmarking purposes, or for any competitive purposes; or (ix) in any unlawful manner or in any other manner that could damage, disable, overburden or impair the Software Service. Further, Customer shall not, directly or indirectly, and shall not permit any third party to (i) use automated scripts to collect information (such as java script files) from or otherwise interact with the Software Service; (ii) interfere with or disrupt the integrity or performance of the Software Service or the data contained therein; or (iii) attempt to gain unauthorized access to the Software Service or its related systems or networks. Customer acknowledges and agrees that, in the event of a User violation of any of the foregoing restrictions threatens to harm the Software Service, CIMCON or its customers and such violation is not cured within 48 hours of receipt of written notice from CIMCON (which notice may be provided via email), CIMCON shall have the right to suspend, restrict or terminate any User account associated with the restricted activity, in addition to any other remedies under applicable law or at equity. CIMCON will restore the User account once the User cures the violation and agrees to cease such activity.

2.7 Modifications; Discontinuance. CIMCON reserves the right to modify the Software Service from time to time, including without limitation implementing Updates and/or discontinuing the Software Service. If any such modification or Update materially and adversely reduces the functionality of the Software Service, Customer may terminate its subscription for the Software Service by providing written notice to CIMCON within thirty days from the date the modification or Update was released and CIMCON will refund any prepaid Subscription Fees for the unused remainder of the Subscription Term following such termination. CIMCON may condition the implementation of new features, functionality or other modifications to the Software Service on Customer's payment of additional fees provided that CIMCON generally charges other customers for such new features, functionality or other modifications.

2.8 Data Backup. CIMCON will follow its standard archival procedures for storage of Customer Content. In the event of any loss or corruption of Customer Content, CIMCON will use commercially reasonable efforts to restore the lost or corrupted Customer Content from the latest backup of such Customer Content maintained by CIMCON or its third party service provider in accordance with its archival procedures. Notwithstanding the foregoing and for the avoidance of doubt, CIMCON will not be responsible for any loss, corruption, destruction, alteration, or unauthorized disclosure of or access to Customer Content and CIMCON'S EFFORTS TO RESTORE LOST OR CORRUPTED CUSTOMER CONTENT PURSUANT TO THIS SECTION 2.8 WILL CONSTITUTE CIMCON'S SOLE LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY IN THE EVENT OF ANY LOSS,

CORRUPTION, DESTRUCTION, ALTERATION, OR UNAUTHORIZED DISCLOSURE OF OR ACCESS TO CUSTOMER CONTENT.

### **3. Subscription Fees; Payment Terms.**

3.1 Subscription Fees. Customer agrees to pay the Subscription Fees specified in the ordering process. Prices exclude all applicable taxes, duties and currency exchange settlements, unless stated otherwise. Customer is solely responsible for paying such taxes or other charges. Taxes are calculated based on Customer's location at the time its account was registered with CIMCON or AWS Marketplace, as applicable. CIMCON may suspend the Software Service and cease providing Support Services if it does not receive an on time, full payment from Customer of the applicable Subscription Fees.

3.2 Payment Method. To pay the Subscription Fees, Customer will be asked to provide a payment method at the time Customer orders the Software Service. By providing a payment method, Customer (i) represents that it is authorized to use the payment method provided and that any payment information provided is true and accurate; and (ii) authorize CIMCON or AWS Marketplace, as applicable, to charge Customer using Customer's payment method.

3.3 Refund Policy. Unless otherwise provided by law or by a particular Software Service offer, all purchases are final and non-refundable. If Customer believes that CIMCON has charged Customer in error, Customer must contact CIMCON within 90 days of such charge. No refunds will be given for any charges more than 90 days old. CIMCON reserves the right to issue refunds or credits at CIMCON's sole discretion. If CIMCON issues a refund or credit, CIMCON is under no obligation to issue the same or similar refund in the future.

### **4. Warranty; Disclaimer.**

4.1 Software Warranty. During the Subscription Term, CIMCON warrants that the Software Service will perform in all material respects in accordance with its Documentation). As Customer's sole and exclusive remedy for any breach of this warranty, CIMCON shall correct the nonconformity within a reasonable period, not to exceed ninety (90) days from CIMCON's receipt of written notification of such defect from Customer (the "Cure Period"). If, within the Cure Period, CIMCON is unable to correct the nonconformity, then CIMCON shall be entitled to terminate Customer's subscription to the Software Service and this Agreement by giving written notice thereof to Customer within ten (10) days following the end of the Cure Period and CIMCON will refund any prepaid Subscription Fees for the unused remainder of the Subscription Term following the termination date.

4.2 Exclusions and Contingencies. Customer's remedy and CIMCON's liability under this Section 4 are expressly contingent upon: (i) Customer furnishing CIMCON with adequate supporting documentation and details to substantiate the claim and to assist CIMCON with the identification and detection of the cause of the problem; (ii) the problem being capable of reproduction by CIMCON; and (iii) the Software not having experienced interference or integration issues from products, applications, services, or configurations provided by Customer or third parties.

4.3 Errors. CIMCON does not warrant that the Software Service will meet the requirements of Customer or that the operation of the Software Service will be interruption or error-free. CIMCON is not responsible for problems caused by changes in, or modifications to, the operating characteristics of any computer hardware, operating system, or networking for which the Software Service is procured, nor is CIMCON responsible for problems which result from the use of the Software Service in conjunction with software or services of third parties or with hardware which is incompatible with the computer hardware, operating system or networking for which the Software Service is being procured.

4.4 **DISCLAIMER. EXCEPT FOR THE EXPRESS WARRANTIES MADE IN THIS SECTION 4, CIMCON MAKES AND CUSTOMER RECEIVES NO OTHER EXPRESS OR IMPLIED WARRANTIES OF ANY KIND WITH RESPECT TO ANY SOFTWARE SERVICE,**

DOCUMENTATION, SUPPORT SERVICES, OR OTHERWISE WITH RESPECT TO THIS AGREEMENT. CIMCON SPECIFICALLY DISCLAIMS AND EXCLUDES ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, AND ANY AND ALL WARRANTIES ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR TRADE USAGE. LICENSOR DOES NOT WARRANT THAT THE SOFTWARE SERVICE IS ERROR-FREE, ACCURATE, RELIABLE, OR WILL OPERATE WITHOUT INTERRUPTION. No oral or written information or advice given by CIMCON, its resellers, dealers, distributors, agents, representatives or employees shall create any warranty or in any way increase any warranty provided herein. If applicable law requires any warranties other than the foregoing, all such warranties are limited in duration to thirty (30) days from the date of delivery. Some jurisdictions do not allow the exclusion of implied warranties, so the above exclusion may not apply. The warranty provided herein gives Customer specific legal rights and Customer may also have other legal rights that vary from jurisdiction to jurisdiction. The limitations or exclusions of warranties, remedies or liability contained in this Agreement shall apply to Customer only to the extent such limitations or exclusions are permitted under the laws of the jurisdiction where Customer is located.

## **5. Term; Termination.**

5.1 Term. This Agreement shall commence on the Effective Date and shall continue for the Subscription Term purchased unless earlier terminated as provided herein. The Subscription Term will automatically renew for successive periods equivalent in duration to the Subscription Term originally purchased unless either party notifies the other party of its desire not to renew the Subscription Term by giving written notice at least thirty (30) days prior to the end of the then-current Subscription Term.

5.2 Termination. Either party may, at its election, terminate this Agreement immediately upon written notice to the other party, if: a) the other party discontinues business, becomes insolvent or bankrupt, a receiver is appointed over any of its property or assets, or is otherwise unable to meet its regular commercial obligations and commitment; or b) the other party materially breaches any term or section of this Agreement or default in the performance of any of its obligations hereunder, provided that the other party is given ten (10) business days prior written notice of default and the opportunity to cure default during such period.

5.3 Suspension. At any time during a Subscription Term, CIMCON may, immediately upon notice to Customer, suspend its performance under this Agreement and any order or may suspend any and all Users' access to the Software Service, in CIMCON's sole reasonable discretion, including, without limitation, for any of the following reasons: (a) breach or threatened breach of the Acceptable Use Policy or the use guidelines or restrictions set forth in Section 2, (b) a reasonable threat to the technical security or technical integrity of the Software Service exists as determined by CIMCON in its sole and absolute discretion; provided that CIMCON promptly recommences performance upon the cessation of the threat, or (c) if any amount due under this Agreement is not received by CIMCON within fifteen (15) days after it was due and CIMCON provided written notice of same. If such suspension continues for longer than thirty (30) days, the Customer Content may be irretrievable or may be deleted by CIMCON.

5.4 Effect of Termination. Termination shall not relieve Customer of the obligation to pay any fees accrued or payable to CIMCON prior to the effective date of termination; provided, however, that if Customer terminates this Agreement for CIMCON's material breach pursuant to Section 5.2 above, CIMCON shall refund any prepaid fees for the unused portion of the Subscription Term following the termination date. In the event of termination of this Agreement, regardless of the cause, Customer's and its Users' access to and use of the Software Service will immediately cease. Further, Customer shall return or destroy all copies of the Documentation and all CIMCON Confidential Information in its custody or control and Customer shall certify in writing to CIMCON within thirty (30) days of termination of this Agreement that Customer has complied with the foregoing. CIMCON may destroy any Customer Content in its custody or control; provided, that unless this Agreement is terminated by CIMCON for Customer's uncured breach pursuant to Section 5.2 above, Customer shall have at least thirty (30) days following the effective date of the expiration or termination of this Agreement to download its Customer Content from the

Software Service. The provisions of Sections 1, 3, 5.4, 6, 7, 8, 9, and 10 shall survive any termination or expiration of this Agreement.

## **6. Confidential Information.**

6.1 Except as reasonably required to exercise its rights under this Agreement, each party shall maintain the Confidential Information of the other party in confidence. Each party agrees to use commercially reasonable efforts to prevent and restrain any unauthorized disclosure, communication, copying, use, distribution, installation or transfer of possession of Confidential Information by any of its employees, consultants, and agents to others or use it for any purpose, except pursuant to and in order to carry out, the terms and objectives of this Agreement. At a minimum, each party shall maintain at least the same procedures regarding the other party's Confidential Information that it maintains with respect to its own. A party's Confidential Information shall not include any information which: (i) becomes part of the public domain through no act or omission of the other party; (ii) is lawfully acquired by the other party from a third party without any breach of confidentiality to the party to whom the information relates; (iii) is disclosed by a party to a third party without any obligation of confidentiality to the party to whom the information relates; (iv) is independently developed by the receiving party without use of or reference to the Confidential Information of the disclosing party, or (v) is disclosed in accordance with judicial or other governmental order; provided, that in the case of (v) the receiving party promptly notifies the disclosing party to enable the disclosing party to seek a protective order or contest the disclosure and the receiving party will, at the disclosing party's expense, assist the disclosing party in obtaining a protective order and/or contesting the disclosure as may be requested by the disclosing party and shall only disclose that portion of the Confidential Information as it is advised by its legal counsel it is required to disclose. Notwithstanding the foregoing, either party shall be permitted to disclose the terms and conditions of this Agreement to its accountants, auditors, legal counsel and advisors as well as in conjunction with legal due diligence proceedings conducted by its investors and/or acquirors, but not otherwise. Without limiting the generality of the foregoing, Customer shall take all reasonable steps to prevent any personnel or user from removing any proprietary or other legend or restrictive notice contained or included in any material provided by CIMCON.

6.2 Injunctive Relief. Both parties acknowledge that any use of the disclosing party's Confidential Information in a manner inconsistent with the provisions of this Agreement may cause the disclosing party irreparable and immediate damage for which remedies other than injunctive relief may be inadequate. Therefore, both parties agree that, in addition to any other remedy to which the disclosing party may be entitled hereunder, at law or equity, the disclosing party shall be entitled to an injunction or injunctions (without the posting of any bond and without proof of actual damages) to restrain such use in addition to other appropriate remedies available under applicable law.

## **7. Ownership**

7.1 Software Service. Except for the limited right to access and use the Software Service and Documentation granted herein, all right, title and interest in and to the Software Service and Documentation, including without limitation all intellectual property rights therein and thereto, including but not limited to copyright, trademark, patent, and trade secret rights and interest in the Software Service and Documentation, are and shall remain the sole property of CIMCON, its licensors and/or its suppliers. CIMCON reserves all rights not expressly granted herein and there are no implied rights. Further, Customer acknowledges and agrees that CIMCON owns all right, title and interest in and to the Aggregate Information it develops and may use Aggregate Information to provide and improve CIMCON's products and services and for sales, marketing and other business purposes.

7.2 Feedback. Customer may, from time to time, make known to CIMCON suggestions, enhancement requests, techniques, know-how, comments, questions, data, ideas, feedback or other input to CIMCON with respect to the Software Service (collectively, "Suggestions"). Unless otherwise agreed to in writing by the parties with respect to any Suggestion, CIMCON shall have a royalty-free, worldwide, irrevocable, perpetual license to use, disclose, reproduce, license, distribute and exploit any Suggestion without

restriction or obligation of any kind, on account of confidential information, intellectual property rights or otherwise, and may incorporate into its offerings any service, product, technology, enhancement, documentation or other development (“Improvement”) incorporating or derived from any Suggestion with no obligation to license or to make available the Improvement to Customer or any other person or entity.

## **8. Limitation of Liability**

TO THE MAXIMUM EXTENT PERMITTED BY LAW, NEITHER PARTY NOR THEIR SUPPLIERS SHALL BE LIABLE TO THE OTHER OR ANY THIRD PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE, COVER OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR THE INABILITY TO USE EQUIPMENT OR ACCESS DATA, LOSS OF BUSINESS, LOSS OF PROFITS, LOSS OF USE, LOSS OR CORRUPTION OF DATA, LOSS OF USE, PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, BUSINESS INTERRUPTION OR THE LIKE), ARISING OUT OF THE ACCESS AND/OR USE OF, OR INABILITY TO ACCESS AND/OR USE, THE SOFTWARE SERVICE AND BASED ON ANY THEORY OF LIABILITY INCLUDING BREACH OF CONTRACT, BREACH OF WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE, EVEN IF THE PARTY OR ITS REPRESENTATIVES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES BY THE OTHER PARTY OR IF SUCH DAMAGES WERE FORESEEABLE AND EVEN IF A REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH PARTY’S TOTAL AGGREGATE LIABILITY TO THE OTHER PARTY FOR ACTUAL DAMAGES FOR ANY CAUSE WHATSOEVER WILL BE LIMITED TO THE AMOUNT PAID BY CUSTOMER TO CIMCON (WHETHER DIRECTLY OR INDIRECTLY THROUGH AWS MARKETPLACE) IN THE TWELVE MONTHS IMMEDIATELY PRIOR TO THE DATE THE CAUSE OF ACTION AROSE.

The foregoing limitations shall not apply to a Customer’s breach of Section 2, Customer’s nonpayment of undisputed amounts, either party’s violation or misappropriation of the other party’s intellectual property rights or a party’s gross negligence, willful misconduct or fraud.

To the maximum extent permitted by applicable law and except for actions for non-payment or breach of either party’s intellectual property rights, no action (regardless of form) arising out of this Agreement may be commenced by either party more than one (1) year after the cause of action has accrued. The Disclaimer of Warranties and Limitation of Liability set forth above are fundamental elements of the basis of the agreement between the parties and CIMCON and its suppliers would not be able to provide the Software Service on an economic basis without such limitations.

## **9. Government Restricted Rights.**

This Section 9 applies to all acquisitions of the Software Service by or for the federal government, or by any prime contractor or subcontractor (at any tier) under any contract, grant, cooperative agreement or other activity with the federal government. The Software Service was developed at private expense and is Commercial Computer Software, as defined in Section 12.212 of the Federal Acquisition Regulation (48 CFR 12.212 (October 1995)) and Sections 227.7202-1 and 227.7202-3 of the Defense Federal Acquisition Regulation Supplement (48 CFR 227.7202-1, 227.7202-3 (June 1995)). Accordingly, any use, duplication or disclosure by the government or any of its authorized users is subject to restrictions as set forth in this Agreement for the Software Service. If for any reason, Sections 12.212, 227.7202-1 or 227.7202-3 are deemed not applicable, then the Government’s rights to use, duplicate or disclose the Software Service are limited to “Restricted Rights” as defined in 48 CFR Section 52.227-19(c)(1) and (2) (June 1987), or DFARS 252.227-7014(a)(14) (June 1995), as applicable. If this Agreement fails to meet the government’s needs or is inconsistent in any respect with Federal law, the government agrees to cease all access and use of the Software Service.



## 10. General.

10.1 Entire Agreement and Controlling Documents. This Agreement entered into by the parties hereunder contains the entire agreement between the parties with respect to the subject matter hereof, and supersedes all proposals, understandings, representations, warranties, covenants, and any other communications (whether written or oral) between the parties relating thereto and is binding upon the parties and their permitted successors and assigns. The terms and conditions contained in any purchase order or other ordering document issued by Customer shall be of no force or effect, even if the order is accepted by CIMCON. Both parties acknowledge and agree that the agreement hereunder is not contingent upon the delivery of any future functionality or features not specified herein or dependent upon any oral or written, public or private comments made by CIMCON with respect to future functionality or features for the Software Service.

10.2 Assignment. Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld). Notwithstanding the foregoing, either party may assign this Agreement in its entirety, without consent of the other party, to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets, stock or business to which this Agreement relates. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

10.3 Waiver; Cumulative Remedies. The failure of CIMCON to enforce at any time any of the provisions of this Agreement shall in no way be construed as a waiver of such provision, nor in any way affect the validity of this Agreement or any part thereof, or the right of CIMCON to enforce each and every provision. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.

10.4 Severability. If any provision of this Agreement shall be held by a court of competent jurisdiction to be contrary to law that provision will be enforced to the maximum extent permissible and the remaining provisions of this Agreement will remain in full force and effect. If possible, the parties will replace the severed provision with a provision that reflects the intention of the parties with respect to the severed provision but that will be valid and enforceable.

10.5 Trademarks. CIMCON Software and other trademarks contained in the Software are trademarks or registered trademarks of CIMCON Software, LLC. in the United States and/or other countries. Customer may not remove or alter any trademark, trade names, product names, logo, copyright or other proprietary notices, legends, symbols or labels in the Software.

10.6 No Third Party Beneficiaries. No person or company shall be third party beneficiaries to this Agreement. Neither party shall be deemed to be an employee, agent or other legal representative of the other party for any purpose whatsoever, or have the right or authority to assume or otherwise create any obligation or responsibility, express or implied on behalf of the other party or to bind the other party in any manner whatsoever.

10.7 Governing Law. This Agreement shall be governed by the internal laws of the Commonwealth of Massachusetts, U.S.A., without giving effect to principles of conflict of laws. Each party hereby consents to the exclusive jurisdiction and venue of the state courts sitting in the Commonwealth of Massachusetts or the federal courts in the Commonwealth of Massachusetts to resolve any disputes arising under this Agreement. In each case this Agreement shall be construed and enforced without regard to the United Nations Convention on the International Sale of Goods or to the Uniform Commercial Information Transactions Act. **The parties irrevocably waive any right to a jury trial.**

10.8 Attorneys' Fees. In the event of any litigation between the parties concerning performance or non-performance of either party's obligations under this Agreement, the prevailing party shall be entitled to be

reimbursed by the other party for the costs and expenses, including, but not limited to, reasonable attorneys' fees, incurred or paid by the prevailing party in such litigation.

10.9 Force Majeure. Except for the obligation to make payments, nonperformance of either party shall be excused to the extent that performance is rendered impossible by strike, fire, flood, governmental acts or orders or restrictions, failure of suppliers, failure of service providers, telecommunications providers, utilities or other third party service providers, or any other reason where failure to perform is beyond the reasonable control of the non-performing party.

10.10 Notices. Any demand, notice, consent, or other communication required by this Agreement to be given in writing shall be given either (i) by being hand-delivered to the receiving party, or (ii) by being deposited in the mail (registered or certified) or delivered to a recognized private express common carrier, postage or freight prepaid, addressed to the receiving party at its address set forth in the introductory paragraph to this Agreement. In addition, CIMCON may provide notice to Customer by email to the email account provided by Customer in its registration data and such notice will be deemed given on the next business day following the day it was sent. Either party may change its address by giving written notice to the other party of the changed address.

10.11 Amendment. This Agreement may be amended, modified, supplemented or changed only by a written document signed by authorized representatives of CIMCON and Customer.

10.12 Counterparts; Electronic Signatures. This Agreement may be executed in counterparts (including counterparts delivered by facsimile or other electronic means), which taken together shall form one legal instrument. A manually or electronically signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of the Agreement.

10.13 Drafting. The titles of the sections of this Agreement are for convenience of reference only and are not to be considered in construing this Agreement. Unless the context of this Agreement clearly requires otherwise: (i) references to the plural include the singular, the singular the plural, and the part the whole, (ii) "or" has the inclusive meaning frequently identified with the phrase "and/or," (iii) "including" has the inclusive meaning frequently identified with the phrase "including but not limited to" or "including without limitation," and (iv) references to "hereunder," "herein" or "hereof" relate to this Agreement as a whole. Any reference in this Agreement to any statute, rule, regulation or agreement, including this Agreement, shall be deemed to include such statute, rule, regulation or agreement as it may be modified, varied, amended or supplemented from time to time. The parties agree that this Agreement shall be fairly interpreted in accordance with its terms without any strict construction in favor of or against either party and that ambiguities shall not be interpreted against the drafting party.