

# Anchore Master Software License and Services Agreement

Version: 2021129

This Anchore Master Software License and Services Agreement, along with all Order Forms (defined below), Schedules (defined below) hereto, and SOWs (defined below) in connection herewith, and all amendments to any and all of the foregoing (all the foregoing, collectively, the “Master Agreement”), is made by and between Anchore, Inc. (“Anchore”, “Us”, “We”, or “Our”) and the entity or individual identified as “Customer” in the applicable Order Form. All capitalized terms used but not defined in this Master Software License & Services Agreement shall have the respective meanings ascribed to such terms in the Schedules or applicable Order Form, as the case may be.

**NOTE TO CUSTOMER:** PLEASE READ THE MASTER AGREEMENT CAREFULLY AS IT GOVERNS CUSTOMER’S USE OF THE PRODUCTS (AS DEFINED BELOW), UNLESS WE HAVE EXECUTED A SEPARATE WRITTEN AGREEMENT WITH CUSTOMER FOR THAT PURPOSE.

AS OF THE DATE ON WHICH CUSTOMER EITHER (I) CLICKS ON THE “I AGREE” OR SIMILAR BUTTON OR LINK ON THE APPLICABLE ORDER FORM OR (II) ACCEPTS DELIVERY OF, ACCESSES, OR COMMENCES USE OF THE PRODUCTS, WHICHEVER OF THE FOREGOING OCCURS FIRST (THE “MASTER AGREEMENT EFFECTIVE DATE”), CUSTOMER, BY AND THROUGH SUCH ACTION, AFFIRMATIVELY ASSENTS TO AND ACCEPTS ALL THE TERMS AND CONDITIONS OF THE MASTER AGREEMENT, AND THE MASTER AGREEMENT IMMEDIATELY SHALL TAKE EFFECT. CUSTOMER HEREBY REPRESENTS AND WARRANTS TO ANCHORE THAT THE INDIVIDUAL AFFIRMATIVELY ASSENTING TO AND ACCEPTING SUCH TERMS AND CONDITIONS ON BEHALF OF CUSTOMER IS DULY AUTHORIZED BY CUSTOMER AND OTHERWISE POSSESSES ALL CORPORATE AND OTHER LEGAL AUTHORITY TO BIND CUSTOMER TO ALL SUCH TERMS AND CONDITIONS. ANCHORE MAY AMEND THE MASTER AGREEMENT FROM TIME TO TIME IN ITS SOLE DISCRETION AND WITHOUT NOTICE TO CUSTOMER, AND CUSTOMER’S CONTINUED USE OF THE PRODUCTS AFTER ANY SUCH AMENDMENTS SHALL CONSTITUTE CUSTOMER’S ACCEPTANCE THEREOF.

The Master Agreement applies to the following Anchore product and service offerings, as further set forth below (collectively, the “Products”):

- The Software, pursuant to a Subscription under either (i) Anchore Enterprise or (ii) Anchore Federal, as the case may be;
- Any related Support Services; and
- Any related Professional Services.

If an Anchore Partner, rather than Anchore, provides any Products to Customer, the terms and conditions of the Master Agreement shall apply in all respects thereto, except that the following provisions of the Master Agreement will be superseded and replaced by the corresponding provisions in the applicable agreement entered into by and between Customer and the applicable Anchore Partner: Article 3 (Payment); Article 4 (Audit; Verification); and Article 10 (Termination).

## 1. Definitions

Capitalized words not listed here will be defined within the Master Agreement.

1.1. "Anchore Enterprise" means the Anchore Software and any Support Services provided as part of the Subscription, all as described in more detail in Schedule A (defined below), which (i) Customer may access online at <http://anchore.com/legal/schedule-a> and (ii) hereby is incorporated by reference herein to the extent that the applicable Order Form for the applicable Subscription indicates that Customer ordered the Anchore Enterprise service.

1.2. "Anchore Federal" means the Anchore Software, proprietary Anchore policy bundles, and any Support Services provided as part of the Subscription, all as described in more detail in Schedule B (defined below), which (i) Customer may access online at <http://anchore.com/legal/schedule-b> and (ii) hereby is incorporated by reference herein to the extent that the applicable Order Form for the applicable Subscription indicates that Customer ordered the Anchore Federal service.

1.3. "Affiliate" means any entity that directly or indirectly controls, is controlled by, or is under common control with a Party where "control" means having more than fifty percent (50%) ownership or the right to direct the management of the entity.

1.4. "Anchore Partner" means an entity expressly authorized by Anchore in writing to resell Anchore Products under the terms and conditions of Anchore's Reseller Agreement.

1.5. "Beta Previews" means software, services, or features identified as alpha, beta, preview, early access, or evaluation, or words or phrases with similar meanings.

1.6. "Customer Modifications" means modifications to the open source software components of the Software that Customer is expressly permitted to make under the applicable license for such open source software solely for the purpose of developing bug fixes, customizations, or additional features to any libraries licensed under such open source software licenses that may be included with or linked to by the Software.

1.7. "Documentation" means any manuals, documentation and other supporting materials related to the Software that Anchore provides or otherwise makes available to Customer. Documentation shall be considered part of the "Software" as defined herein.

1.8. "Enterprise Feed Service" means any content or data supplied by Anchore that (i) provides functionality for the Product and (ii) may be based on or derived from proprietary, licensed or publicly available sources.

1.9. "Feedback" means any ideas, know-how, algorithms, code contributions, suggestions, enhancement requests, recommendations or any other feedback on Anchore Products.

1.10. "Fees" means the fees and other amounts set forth in the applicable Order Form or applicable SOW, as the case may be, that Customer is obligated to pay Anchore for any of the following: Anchore Enterprise Service, Anchore Federal Service, Professional Services, Technical Account Manager Services, and any

other Products or services that Customer requests and Anchore agrees to provide in the applicable Order Form and/or applicable SOW.

1.11. "License Key" is the data file used by the Software's access control mechanism that allows Customer to install, operate, and use the Software.

1.12. "License Effective Date" is the effective date of the applicable Order Form as stated therein.

1.13. "Order Form" means written or electronic documentation (including any and all applicable quotations) that the Parties use to order and provide the Products.

1.14. "Parties" means references to Anchore and Customer collectively. Each may be referred to individually as a "Party."

1.15. "Professional Services" means services provided by Anchore to Customer in connection with the Products, the terms and conditions of which shall be set forth in Schedule C (defined below), which (i) Customer may access online at <http://anchore.com/legal/schedule-c> and (ii) hereby is incorporated by reference herein to the extent that the applicable Order Form for the applicable Subscription indicates that Customer ordered such Professional Services. Professional Services shall be described in more detail in individual SOWs appended to the applicable Schedule C.

1.16. "Release" means a Software release that Anchore makes generally available to its customers, along with any corresponding changes to Documentation, that contains enhancements, new features, or new functionality, generally indicated by a change in the digit to the right of the first decimal point (e.g., x.x.x to x.y.x) or to the left of the first decimal point (e.g., x.x.x to y.x.x).

1.17. "Schedule(s)" means any or some, as applicable, of (i) Schedule A - Anchore Enterprise Service Description ("Schedule A"); (ii) Schedule B - Anchore Federal Service Description ("Schedule B"); (iii) Schedule C - Professional Services ("Schedule C"); (iv) Schedule D - Technical Account Manager ("Schedule D"); and (v) Schedule E - QuickStart Services ("Schedule E").

1.18. "Anchore Software" or "Software" shall have the meaning ascribed thereto in Schedule A (Anchore Enterprise) or Schedule B (Anchore Federal), as the case may be.

1.19. "SOW" means a mutually agreed upon statement of work executed by the Parties' respective duly authorized representatives and detailing any Professional Services or Out-of-Scope Services that Customer requests from Anchore and Anchore is willing to provide or perform, any related Fees, each Party's related obligations, and any other terms and conditions mutually agreeable to the Parties.

1.20. "Subscription License" means the license granted to Customer in Article 2 (License Grant; Ownership) hereof to install, access and internally use the Software, and permit Users to access and use the Software on Customer's behalf, solely for Customer's lawful business purposes, and in no event shall such access and use exceed the total number of Stock Keeping Units ("SKUs") of Analyzers, Images, or Repositories, as

the case may be, specified under the "SKU Description" column in the applicable Order Form.

1.21. "Subscription Term" shall have the meaning set forth in Section 10.2 (Subscription Term) hereof.

1.22. "Support Services" means the maintenance and support services for the Products as set forth in Section 4 (Support Services) of either Schedule A or Schedule B, as the case may be.

1.23. "Technical Account Manager" means services provided to Customer by Anchore pursuant to and governed by the terms and conditions of this Master Agreement and those of Schedule D (defined above), which (i) Customer may access online at <http://anchore.com/legal/schedule-d> and (ii) hereby is incorporated by reference herein to the extent that the applicable Order Form for the applicable Subscription indicates that Customer ordered Technical Account Manager (TAM) Services.

1.24. "Update" means a Software release that Anchore makes generally available to all of its customers, along with any corresponding changes to Documentation, that contains error corrections or bug fixes, generally indicated by a change in the digit to the right of the second decimal point (e.g., x.x.x to x.x.y). All Updates will constitute "Anchore Software" or "Software" for purposes of the Master Agreement.

1.25. "User" means a Customer Employee or Pre-Approved Third Party, whether a single person or machine account, that initiates the execution of the Software or interacts with or directs the Software in the performance of its functions.

## **2. License Grant; Ownership**

2.1. *Software License Grant.* Subject to the terms and conditions of the Master Agreement, Anchore grants to Customer, during the applicable Subscription Term designated on the applicable Order Form, a limited, non-exclusive, non-transferable, and non-sublicensable license to install (only on computer services owned or otherwise operated and controlled by Customer) and use the compiled object code version of Products solely for Customer's lawful internal business purposes. Customer's use of the Products shall be further limited as per the SKU description on the applicable Order Form. During the applicable Subscription Term, Customer also has the right to internally use the Documentation for such Products in accordance with the Master Agreement and solely for Customer's lawful internal business purposes.

2.2. *License Restrictions.* Except as otherwise expressly permitted in the Master Agreement, Customer shall not itself, or through any parent, subsidiary, affiliate, agent or other individual, entity, or third party: (a) sell, lease, license, distribute, disclose, provide access to, disseminate, sublicense or otherwise transfer, in whole or in part, any Products, Enterprise Feed Service or the Documentation to any third party; (b) incorporate any of the foregoing into any other product or service; (c) install, access, or use any of the foregoing other than as permitted hereunder; (d) decompile, disassemble, translate, reverse engineer or otherwise attempt to derive source code or proprietary data or intellectual property from the Products or Enterprise Feed Service; (e) allow any third party other than Customer's employees or Pre-Approved Third Parties to access or use the Products or Enterprise Feed Service or Documentation; provided, however,

that Customer shall be liable to Anchore for all acts and omissions of all such employees and Pre-Approved Third Parties, including without limitation any and all such acts and omissions, which, if performed or not performed, as the case may be, by Customer, would constitute a breach of or default under the Master Agreement by Customer; (f) circumvent or disable, or attempt to circumvent or disable, the license keys embedded within the Products; (g) modify or alter, or create derivative works or compilations based upon, the Products, Enterprise Feed Service, or Documentation; (h) disclose the results of any benchmark test of the Products to any other individual or entity; or (i) change, remove, obscure, or otherwise alter any proprietary rights notices which appear on or associated or in connection with the Products, Enterprise Feed Service, or Documentation; or (j) disable or bypass any measures that Anchore uses or may use to prevent or restrict access to or use of the Products or Enterprise Feed Service in excess of, or otherwise not in accordance with, any restrictions or limits on such access and/or use set forth herein or in the applicable Order Form.

*2.3. Open Source Software.* Customer acknowledges and agrees that the Products may include individual open source software components, each of which, along with access thereto and use thereof, is and shall be subject to (i) the copyright and other rights of the respective owners thereof and (ii) the terms and conditions of the applicable open source license thereto. The foregoing open source software components are licensed to Customer solely under and subject to the terms and conditions of the applicable open source license and all applicable notices of copyright, all of which can be found in the applicable licenses file for such component, the Documentation or other materials accompanying the Products, and Anchore shall have no obligations or liability to Customer or any other individual or entity in connection with any such components.

*2.4 Ownership.* Notwithstanding anything to the contrary herein, except for the limited license and right expressly granted to Customer in Section 2.1 (Software License Grant) of the Master Agreement and as between Anchore and Customer, Anchore owns and will own all right, title and interest in and to the Products, Updates, Enterprise Feed Service, Documentation, and Anchore Confidential Information (collectively, "Anchore Property") and all copies of the foregoing (including, without limitation, all inventions, computer software and related object and source code and all other works of authorship, and other intellectual property included or embodied therein and all patent, copyright, trademark, trade secret and other intellectual property rights therein and thereto) and all improvements, modifications, derivative works and compilations thereof and thereto. Customer acknowledges and agrees that (i) it is obtaining hereunder only the limited license and right expressly granted to Customer in Section 2.1 (Software License Grant) hereof and (ii) notwithstanding any use of the words "purchase," "sale," or like terms hereunder, no ownership or exclusive rights of any kind are being conveyed to Customer under the Master Agreement or otherwise. Notwithstanding anything to the contrary herein or in any Order Form or SOW, Customer acknowledges and agrees that Anchore and its Representatives shall own and be free to use and exploit their general skills, know-how, and expertise, and to use, disclose, and exploit any generalized ideas, concepts, know-how, methods, techniques or skills gained or learned during the course of their activities under and in connection with this Master Agreement.

### **3. Payment**

Customer agrees to pay Anchore the Fees stated in the applicable Order Form or SOW, as the case may be, in accordance with the terms and conditions of such Order Form or SOW, as the case may be, and the Master Agreement. Customer will pay directly any taxes arising out of the Master Agreement or Anchore's performance in connection with the Master Agreement, but excluding taxes on Anchore's net income. If any applicable law requires Customer to withhold amounts from any payments to Anchore in connection with the Master Agreement, (a) Customer shall effect such withholding, remit such amounts to the appropriate taxing authorities and promptly furnish Anchore with tax receipts evidencing the payments of such amounts and (b) the sum payable by Customer upon which the deduction or withholding is based shall be increased to the extent necessary to ensure that, after such deduction or withholding, Anchore receives and retains, free from liability or obligation for such deduction or withholding, a net amount equal to the amount Anchore would have received and retained absent the required deduction or withholding. Unless expressly set forth otherwise in the applicable Order Form or SOW, as the case may be, Fees shall be: (i) invoiced by Anchore to Customer in full upon the Order Form Effective Date or effective date of the applicable SOW, as the case may be, and (ii) due and payable by Customer to Anchore in U.S. dollars immediately upon Customer's receipt of the applicable invoice therefor. All payments made by Customer hereunder are nonrefundable, except to the extent provided otherwise in the Master Agreement, and shall be made without right of set-off or chargeback. If Customer does not pay any amounts on the applicable invoice when due hereunder, Anchore may charge Customer, and Customer promptly shall pay, interest on the unpaid balance at the lesser of (i) one percent (1%) per month or (ii) the maximum rate permitted by applicable law. If Customer fails to pay any and all Fees to Anchore within ten (10) days after such Fees are due and payable by Customer under this Section 3 (Payment) of the Master Agreement, Anchore may suspend fulfilling its obligations under the Master Agreement unless and until all such unpaid Fees are paid by Customer and collected by Anchore.

#### **4. Support Services**

Anchore shall provide Support Services for the Products during the applicable Subscription Term designated in the applicable Order Form.

#### **5. Audit; Verification**

During the Term and for one (1) year following any termination or expiration of the Master Agreement (but no more than once in a calendar year), Anchore and its auditors may inspect and audit Customer's records relating to its reproduction and use of the Products for the purposes of verifying Customer's compliance with the Master Agreement. Customer shall cooperate fully with Anchore and its auditors in conducting such inspections and audits and provide reasonable assistance. If an underpayment is discovered, Customer shall promptly pay the underpaid amount. If an underpayment of more than ten percent (10%) for the period audited is discovered, Customer shall promptly reimburse Anchore for the cost of the audit.

At Anchore's request, Customer will promptly provide Anchore with a Software-generated report verifying that Customer is using the Software in accordance with the Master Agreement. Anchore will invoice

Customer, and Customer promptly shall pay Anchore, for any access to and/or use of the Software in excess of that permitted in the applicable Order Form, effective from the date that such access and/or use first exceeded that permitted under such Order Form.

## **6. Limited Warranties**

6.1. *Limited Software Warranties.* Anchore warrants that: (i) the unmodified Software, at the time such Software, or access thereto, as the case may be, initially is made available to Customer, will not contain or transmit any malware, viruses, or worms (otherwise known as malicious computer code or other technology specifically designed to disrupt, disable, or harm Customer's software, hardware, computer system, or network) and (ii) for ninety (90) days after the date on which such unmodified Software, or access thereto, as the case may be, initially is made available to Customer, such unmodified Software will substantially conform to its Documentation. Anchore does not warrant that Customer's use of the Software will be uninterrupted or that the operation of the Software will be error-free. The warranty in this Section 6.1 (Limited Software Warranties) will not apply if Customer modifies the Software or accesses or uses the Software in any way that is not expressly permitted by the Master Agreement and the Documentation. Anchore's only obligation, and Customer's only remedy, for any breach of the warranty in this Section 6.1 (Limited Software Warranties) will be, at Anchore's option and expense, to either (a) repair the Software; (b) replace the Software; or (c) terminate the Master Agreement with respect to the non-conforming Software, and refund to Customer on a pro rata basis the unused, prepaid Fees paid to Anchore by Customer for the defective Software during the then-current Subscription Term.

6.2. *General Warranty.* Each Party hereto represents and warrants to the other Party hereto that (i) such Party has, as of the Effective Date, and thereafter at all times during the Term hereof, shall maintain, the legal power and authority to enter into and continue to perform under the Master Agreement; (ii) such Party shall, and shall cause all the officers, directors, employees, agents, contractors, representatives, and other individuals and entities (collectively, "Representatives") acting on behalf of such Party in connection with the Master Agreement to comply with all applicable laws, rules, and regulations in connection herewith; and (iii) the Master Agreement and each Order Form shall be executed on behalf of such Party only by one of its Representatives possessing all necessary authority to bind such Party in all respects to the terms and conditions of the Master Agreement and Order Form.

6.3. *Warranty Disclaimer.* THE LIMITED WARRANTIES DESCRIBED ABOVE IN THIS ARTICLE 6 (LIMITED WARRANTIES) ARE THE ONLY WARRANTIES ANCHORE MAKES WITH RESPECT TO THE PRODUCTS, SOFTWARE, PROFESSIONAL SERVICES, SUPPORT SERVICES, ANCHORE CONFIDENTIAL INFORMATION, AND OTHER ASPECTS OF THE MASTER AGREEMENT, AND, EXCEPT TO THE EXTENT OF SUCH WARRANTIES, ALL THE FOREGOING ARE PROVIDED "AS-IS" AND "AS-AVAILABLE." ANCHORE DOES NOT MAKE ANY OTHER WARRANTIES AND REPRESENTATIONS OF ANY KIND, AND HEREBY SPECIFICALLY DISCLAIMS ANY OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, DATA ACCURACY, SYSTEM INTEGRATION, QUIET ENJOYMENT, NON-INFRINGEMENT, OR ANY WARRANTIES OR CONDITIONS ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, PROVIDED BY ANCHORE OR ANYONE ELSE WILL CREATE ANY



WARRANTY OR CONDITION, EXCEPT TO THE EXTENT EXPRESSLY STATED IN THE MASTER AGREEMENT.

## 7. Indemnification

To the extent set forth in this Article 7 (Indemnification), each Party hereto will indemnify, defend, and hold harmless the other Party hereto and such other Party's Representatives (collectively, "Indemnitees") from and against any third-party claims, actions, suits, and demands (collectively, "Claims"), and all associated losses, liabilities, judgments, costs, and expenses (including without limitation reasonable attorney fees) (collectively, "Losses"). The indemnified Party (i) to the extent not otherwise prohibited by applicable law, rule, or regulation, promptly will notify the indemnifying Party in writing of the applicable Claim and (ii) will reasonably assist such indemnifying Party in the defense and/or settlement thereof; provided, however, that (a) any failure of such indemnified Party to comply with the provisions of foregoing clause (i) will not abrogate, limit, or diminish the indemnifying Party's obligations under this Article 7 (Indemnification), except to the extent that such indemnifying Party's performance thereof is materially prejudiced by such failure and (b) in no event shall the indemnifying Party settle any such Claim requiring the indemnified Party to admit liability or pay any amounts not otherwise indemnified by the indemnifying Party without such indemnified Party's prior written consent, not to be unreasonably withheld or delayed. This Article 7 (Indemnification) describes the Parties' respective sole remedies and entire liability and obligation for any and all such Claims and Losses.

7.1. *Anchore.* Anchore will indemnify, defend, and hold Customer and the Customer Indemnitees harmless from and against any Claims and Losses arising from allegations that Customer's use of the Anchore proprietary components of the Software in accordance with the Master Agreement and the applicable Order Form infringes a copyright, patent, or trademark, or misappropriates a trade secret, of any third party not affiliated with Customer. If Anchore is unable to resolve any such Claim under commercially reasonable terms, it may, at its option, either: (i) modify, repair, or replace such Software proprietary components (as applicable) as required to avoid the applicable Claim; or (ii) terminate Customer's Subscription to the Software and refund any unearned Subscription Fees prepaid by Customer; provided, however, that the foregoing shall not apply to any Claim or related Losses arising from or relating to (a) the modification of the Software, or the combination, operation, or use of the Software with equipment, devices, software, systems, or data, other than as expressly authorized by the Master Agreement (including the Documentation); (b) Customer's or any of its Indemnitee's failure to cease accessing and/or using the Software after receiving notice from Anchore or any of its Representatives to do so; (c) any matters involving Customer's obligations to indemnify, defend, and hold harmless Anchore herein; (iv) products or services (including use of the Software) that are provided by Anchore free of charge; and (v) any access to or use of Beta Previews.

7.2. *Customer.* Customer will indemnify, defend, and hold Anchore and the Anchore Indemnitees harmless from and against any Claims and Losses arising from or relating to any (i) data, materials, documents, or other information, including without limitation Customer Confidential Information (collectively, "Customer Content"), that Customer provides in connection herewith or otherwise uploads to the Software; (ii) any breach of or default under the Master Agreement by Customer or any act or omission of any Customer



Indemnitee that (a) constitutes negligence or misconduct or (b) if performed or not performed, as the case may be, by Customer, would constitute a breach of or default under the Master Agreement by Customer; (iii) Customer Modifications to the Software; or (iv) any equipment, devices, software, systems, or data, except to the extent provided, or pre-approved in writing, by Anchore, that Customer combines, operates, or uses with the Software.

## **8. Limitation of Liability**

8.1. *Consequential Damages Disclaimer.* TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL ANCHORE BE LIABLE TO CUSTOMER OR TO ANY THIRD PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES (INCLUDING FOR LOSS OF PROFITS, REVENUE, OR DATA) OR FOR THE COST OF OBTAINING SUBSTITUTE PRODUCTS ARISING OUT OF OR IN CONNECTION WITH THE MASTER AGREEMENT OR ANY ORDER FORM, HOWEVER CAUSED, WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED UPON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, AND WHETHER OR NOT CUSTOMER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

8.2. *Limitation of Total Liability.* TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL ANCHORE'S TOTAL CUMULATIVE LIABILITY UNDER THE MASTER AGREEMENT ARISING FROM ANY AND ALL CLAIMS, CAUSES OF ACTION, AND THEORIES OF LIABILITY EXCEED THE FEES CUSTOMER HAS ACTUALLY PAID TO ANCHORE HEREUNDER DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE CLAIM GIVING RISE TO SUCH LIABILITY. IN NO EVENT SHALL ANY LICENSORS OR SUPPLIERS OF ANCHORE HAVE ANY LIABILITY UNDER OR IN CONNECTION WITH THE MASTER AGREEMENT.

## **9. Confidentiality**

9.1. *Definition of Confidential Information.* For the purposes of the Master Agreement, "Confidential Information" means any business, technical, or other data, materials, documents, and other information that either Party hereto discloses to the other Party hereto, in writing, orally, or by any other means, including disclosures like computer programs, code, algorithms, data, know-how, formulas, processes, ideas, inventions (whether patentable or not), schematics and other technical, business, financial, and product development plans, names and expertise of employees and consultants, and customer lists. For the purposes of the Master Agreement, the Software Documentation and all source code, object code, data, and other aspects of the Anchore proprietary components of the Software and Enterprise Feed Service are and will be Anchore's Confidential Information, regardless of whether it is marked as such.

9.2. *Restrictions on Use and Disclosure.* Neither Party will disclose or use the other Party's Confidential Information without the prior written consent of such other Party. In addition, each Party agrees to maintain in confidence and protect the other Party's Confidential Information using at least the same degree of care as it uses for its own information of a similar nature, but in all events at least a reasonable degree of care. Each Party agrees to take all reasonable precautions to prevent any unauthorized disclosure of the other Party's Confidential Information, including, without limitation, disclosing Confidential Information only to its Representatives (i) having a need to know such information for

purposes of performing such Party's duties and obligations under, and exercising such Party's rights hereunder in accordance with the terms and conditions of, the Master Agreement; (ii) who are bound to such Party under appropriate written agreements that impose on such Representatives non-disclosure and restricted use obligations with respect to the other Party's Confidential Information that are at least as stringent as those imposed on such Party herein; and (iii) who are informed of the obligations imposed on such Party under this Article 9 (Confidentiality). Each Party is liable to the other Party for all acts and omissions of such Party's Representatives in connection with the Master Agreement and all Order Forms, including without limitation any such acts and omissions, which, if performed or not performed, as the case may be, by such Party would constitute a breach of or default under the Master Agreement or an Order Form by such Party. The foregoing obligations will not restrict either Party from disclosing Confidential Information of the other Party pursuant to the order or requirement of a court, administrative agency, or other governmental body; provided, however, that, to the extent not prohibited by such order, requirement, or applicable law, the Party required to make such a disclosure (i) shall give reasonable notice to the other Party to enable such other Party to contest such order or requirement and (ii) shall reasonably cooperate with such other Party, at such other Party's sole expense, in connection therewith. The provisions of this Article 9 (Confidentiality) will survive the termination or expiration of the Master Agreement.

9.3. *Exclusions.* The non-disclosure and restricted use obligations set forth in Article 9 (Confidentiality) will not apply with respect to any Confidential Information that: (i) is or becomes publicly known through no fault of the receiving Party; (ii) is rightfully known or becomes rightfully known to the receiving Party without disclosure, use, or proprietary restriction from a source, other than the disclosing Party, who has a lawful right to disclose it; (iii) is approved by the disclosing Party for disclosure without restriction in a written document which is signed prior to such disclosure by a duly authorized officer of such disclosing Party; or (iv) the receiving Party independently develops without access to or use of the other Party's Confidential Information.

## **10. Term and Termination**

10.1. *Master Agreement Term.* The term of the Master Agreement commences on the Master Agreement Effective Date and will continue in effect until its expiration or termination pursuant to and in accordance with the provisions hereof ("Term"); provided, however, that, if the Master Agreement expires or is terminated (other than by Anchore pursuant to Section 10.4 (Termination for Material Breach) hereof) before the expiration or termination of any then-current Subscription Term under an applicable then-current Order Form(s), then such Order Form(s) will remain in full force and effect, and the terms and conditions of the Master Agreement shall remain in full force and effect solely for purposes of, and only to the extent incorporated by reference in, such Order Form(s), subject to the respective terms and conditions thereof; provided further, however, that, for any such termination hereof by Anchore pursuant to Section 10.4 (Termination for Material Breach), Anchore shall have the right, but not the obligation, to immediately terminate any or all then-current Order Form(s) and related Subscriptions without further obligation or liability to Customer. Except to the extent expressly provided otherwise in the Master Agreement, any and all rights granted to Customer in the Master Agreement shall terminate immediately upon any termination or expiration hereof.

10.2. *Subscription Term.* The initial term of each Subscription shall begin on the effective date of the applicable Order Form (“Order Form Effective Date”) and, unless terminated earlier in accordance with the provisions hereof or thereof, shall continue for as long as Customer has paid the initial Subscription Fees set forth therein (“Subscription Initial Term”). Immediately upon expiration of the applicable Subscription Initial Term, the applicable Subscription shall automatically renew at Anchore’s then-current rates for additional consecutive terms of one (1) year each (each a “Subscription Renewal Term” and together with the Subscription Initial Term, collectively, the “Subscription Term”), unless either Party gives the other Party written notice of its intent not to renew the applicable Subscription at least thirty (30) days prior to the end of the then-current Subscription Term. Upon any expiration or termination of the applicable Subscription Term, Customer (i) immediately shall de-install and destroy all Anchore Property (and all copies thereof) in Customer’s possession, custody, and/or control or otherwise provided to Customer for all such Subscriptions and (ii) immediately shall cease and desist from, and cause all its Users to cease and desist from, all access to and use of such Anchore Property for all such Subscriptions and (iii) shall certify in writing to Anchore as to such de-installation, destruction, and cessation promptly after completion thereof.

10.3. *Termination of Order Form for Convenience.* Either Party hereto may terminate an Order Form, with or without cause, upon at least thirty (30) days prior written notice to the other Party before the end of the then-current Subscription Term(s) designated in such Order Form, at which time all such Subscriptions under such Order Form also shall immediately terminate.

10.4. *Termination for Material Breach.* Either Party may terminate the Master Agreement if the other Party materially breaches the Master Agreement and fails to cure such breach within thirty (30) days after the breaching Party receives written notice thereof from the non-breaching Party. In addition, (i) either Party may terminate the Master Agreement immediately upon provision of written notice to the other Party of any breach by such other Party of such Party’s obligations under Article 9 (Confidentiality) hereof and (ii) Anchore may terminate the Master Agreement immediately upon written notice to Customer, in the event that Customer breaches any of the terms of the Master Agreement relating to Anchore’s intellectual property, including without limitation any non-compliance by Customer or any of its Representatives with any provision of Article 2 (License Grant; Ownership).

10.5. *Effect of Termination; Survival.* When the Master Agreement terminates or expires, Customer may not execute additional Order Forms; provided, however, that, except as provided in Section 10.1 (Master Agreement Term) above in connection with any such terminations by Anchore pursuant to Section 10.4 hereof (Termination for Material Breach), any then-active Order Forms will remain in full force and effect, and the terms and conditions of the Master Agreement will remain in full force and effect solely for purposes of, and only to the extent incorporated by reference in, any such Order Forms, subject to the respective terms and conditions thereof. Immediately upon the termination or expiration of an Order Form, as to that Order Form: (i) the Subscription Term for any Products provided under such Order Form immediately will terminate;; (ii) Customer will no longer have the right to use such Products, and all Subscription Licenses therefor granted in the Order Form will automatically terminate; (iii) Customer shall pay to Anchore all unpaid Fees owed to Anchore prior to such termination or expiration; (iv) Customer must destroy all copies of such Products in its possession or control, and certify in writing to Anchore that

it has done so; and (v) Customer will promptly return to Anchore (or, if Anchore requests it, will destroy) all Confidential Information of Anchore provided to Customer. Notwithstanding the foregoing, Customer may continue to access the Software for ninety (90) days after such termination or expiration for the sole purpose of removing Customer Content from the Software; provided, however, that in no event shall Customer use any Products on a production basis during that time.

10.6. *Survival.* The following provisions of the Master Agreement shall survive any termination or expiration hereof: Section 2.4 and Articles 1, 3 (to the extent of any unpaid amounts due and owing to Anchore hereunder), 5, and 7-11. In addition, any terms and conditions of the applicable Order Form, which by their nature reasonably should survive, will survive the termination or expiration of such Order Form.

## **11. General Provisions**

11.1. *Governing Law; Venue.* The Master Agreement will be governed by and construed in accordance with the laws of the State of California, as if performed wholly within that state and without giving effect to the principles of conflict of law. Any legal action or proceeding arising under the Master Agreement will be brought exclusively in the federal or state courts, as the case may be, located in the federal Northern District of California and the Parties hereby irrevocably and unconditionally consent to personal jurisdiction and venue therein and shall in no event seek to transfer such action or proceeding to another federal or state forum. The Parties expressly agree that the United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act will not apply to the Master Agreement. Notwithstanding the foregoing, Anchore may bring a claim for equitable relief in any court with competent jurisdiction to hear such claim.

11.2. *Government Users.* The Products and Documentation were developed solely with private funds and shall be considered "Commercial Computer Software" and "Commercial Computer Software Documentation" as described in Federal Acquisition Regulations 12.212 and 27.405-3, and Defense Federal Acquisition Regulation Supplement 227.7202-3. Any and all Anchore Property provided to Customer pursuant to and governed by Schedule C shall be licensed to the United States Government as restricted computer software and limited rights data. No technical data or computer software is or shall be developed under the Master Agreement. Any and all use, disclosure, modification, distribution, and reproduction of any Anchore Property by the United States Government or its end users or contractors is and shall be subject to the restrictions set forth in the Master Agreement. All other use and other activities with respect to the Anchore Property are prohibited.

11.3. *Export.* The Anchore Property is subject to export restrictions by the United States Government and import restrictions by certain foreign governments, and Customer will comply with all applicable export and import laws and regulations in Customer's use of and other activities in connection with the Anchore Property. Customer shall not, and shall not allow any other individual, entity, or third party to, remove or export from the United States or allow the export or re-export of any part of the Anchore Property or any direct product thereof: (i) into (or to a national or resident of) any embargoed or terrorist-supporting country; (ii) to anyone on the United State Department of Commerce's Table of Denial Orders or United States Department of the Treasury's list of Specially Designated Nationals; (iii) to any country to which

such export or re-export is restricted or prohibited, or as to which the United States Government or any agency thereof requires an export license or other governmental approval at the time of export or re-export without first obtaining all such licenses and approvals; or (iv) otherwise in violation of any export or import restrictions, laws or regulations of the United States Government, any foreign government, or any agency or authority of the foregoing. Customer represents and warrants to Anchore that (a) Customer is not, and at all times during the Term and all Subscription Terms and Order Form terms will not be, located in, under the control of, or a national or resident of any such prohibited country or on any such prohibited Party list and (b) none of Customer's data or other property is, and at all times during the Term and all Subscription Terms and Order Form terms will not be, controlled under the U.S. International Traffic in Arms Regulations. Customer acknowledges and agrees that the Anchore Property is, and at all times during the Term and all Subscription Terms and Order Form terms will be, restricted from being used for the design or development of nuclear, chemical, or biological weapons or missile technology without the prior written permission of the United States Government.

11.4. *No Publicity without Permission.* Anchore may identify Customer as a customer to current and prospective customers. However, Anchore may not use Customer's name or logo in any advertising or marketing materials without Customer's permission.

11.5. *Assignment.* Neither Party may assign or otherwise transfer the Master Agreement, in whole or in part, without the other Party's prior written consent, such consent not to be unreasonably withheld, and any attempt to do so will be null and void, except that Anchore may assign or otherwise transfer the Master Agreement, in whole or in part, upon notice to Customer but without Customer's consent, in connection with a merger, acquisition, corporate reorganization, consolidation, or sale of all or substantially all of Anchore's business or assets relating to the subject matter hereof. A change of control of a Party shall constitute an assignment by such Party for purposes of this Section 11.5 (Assignment).

11.6. *Notices.* Unless otherwise stated herein, any notice, request, demand or other communication under the Master Agreement must be in writing (e-mail is acceptable), must reference the Master Agreement, and will be deemed to be properly given: (i) upon receipt, if delivered personally; (ii) one (1) business day following confirmation of receipt by the intended recipient, if by e-mail; (iii) five (5) business days after it is sent by registered or certified mail, with written confirmation of receipt and email; or (iv) three (3) business days after deposit with an internationally recognized express courier and email, with written confirmation of receipt. Notices can be sent to the address(es) set forth in the Master Agreement, unless a Party notifies the other Party that those addresses have changed.

11.7. *Force Majeure.* Anchore will be excused from any and all failures and delays in connection with performing its obligations hereunder, as well as all liability associated therewith, arising from or relating to any causes or events beyond its reasonable control, including without limitation acts of God, natural disasters, strikes, lockouts, riots, acts of war, epidemics, or power, telecommunication or network failures.

11.8. *Independent Contractors.* The Parties shall be each independent contractors with respect to the

subject matter of the Master Agreement. Nothing contained in the Master Agreement will, or will be deemed or construed in any manner to, create a legal association, partnership, joint venture, employment, agency, fiduciary, or other similar relationship between the Parties, and neither Party shall have the power or authority to bind the other Party contractually or otherwise.

11.9. *Waiver.* A Party's obligation(s) under the Master Agreement can be waived only in a writing signed by each Party's duly authorized representative, which waiver will be effective only with respect to the specific obligation(s) described therein. No failure or delay by a Party hereto in exercising any right hereunder will operate as a waiver thereof, nor will any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right hereunder at law or equity.

11.10. *Entire Agreement.* The Master Agreement, including each and every Order Form and all SOWs and Schedules, constitutes the entire agreement and understanding of the Parties with respect to its subject matter, and supersedes all prior or contemporaneous understandings and agreements, whether oral or written, between the Parties with respect thereto. The terms of any purchase order, written terms or conditions, or other document that Customer submits to Anchore that contains terms that differ from, conflict or are inconsistent with, or are in addition to the terms of the Master Agreement or any Order Form, SOW, or Schedule will be void and of no effect.

11.11. *Amendments; Order of Precedence.* Anchore reserves the right to amend the Master Agreement at any time and will update the terms and conditions thereof in the event of any such amendments. Each such amendment will take effect immediately upon the applicable update by Anchore, and Customer's continued use of any Anchore Property after such amendment takes effect shall constitute Customer's acceptance of such amendments. In the event of a conflict or inconsistency between the terms and conditions of the Master Agreement and those of an Order Form, the Order Form will govern to the extent of such conflict but only with respect to the specific details of that Order Form. Otherwise, the Master Agreement will govern with respect to any such conflict or inconsistency, and no amendment of the terms and conditions of the Master Agreement or any Order Form will be binding upon Anchore unless such amendment (i) arises from the exercise of Anchore's right in the first sentence of this Section 11.11 (Amendments) or (ii) otherwise is set forth in a writing that is executed by the Parties' respective duly authorized representatives.

11.12. *Severability.* If any provision of the Master Agreement is deemed by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the Parties agree to permit such court to modify or reform the Master Agreement to resolve such issue while giving as much effect as possible to the Parties' original intent with respect to the legal and non-legal effect of that provision. Any provision hereof that cannot be modified or reformed in this manner automatically will be deemed deleted herefrom, and the remaining provisions of the Master Agreement will continue in full force and effect.

11.13. *No Third Party Beneficiaries.* Unless otherwise expressly and specifically stated herein, the terms of this Master Agreement are intended to, and shall, be solely for the benefit of Anchore and Customer and do not create any rights in favor of any third party.