

**CITY OF LAKE WORTH BEACH STANDARD ADDENDUM
(Blueframe Software Contract Proposal)**

This Addendum is made as of the December 4, 2023, by and between the **City of Lake Worth Beach**, located at 7 N. Dixie Highway, Lake Worth Beach, FL 33460, a Florida Municipal Corporation (“City”) and **Schweitzer Engineering Laboratories, Inc.**, a large corporation registered to do business in the State of Florida, located at 2350 NE Hopkins Court, Pullman WA 99163 (hereafter identified as “Vendor”).

In consideration of the mutual promises contained in this Addendum and contained within the Vendor’s Blueframe Software Contract Proposal (inclusive of Exhibits “A” and “B”), which is attached hereto as **Exhibit “1”** (with this Addendum and the Vendor’s Blueframe Software Contract Proposal hereafter jointly referred to as the “Contract Documents”), the City and Vendor agree as follows:

SECTION 1 – LIABILITY

1.1 Without waiving any rights to sovereign immunity, and subject to the limitations of and to the extent permitted by Section 768.28, Florida Statutes, as amended from time to time, City agrees to be responsible for its employees negligent acts or omissions arising out of or related to the Contract Documents. Nothing contained in this provision or in any of the Contract Documents shall be construed or interpreted as consent by the City to be sued, nor as a waiver of sovereign immunity beyond the waiver provided in Section 768.28, Florida Statutes, as amended from time to time. The City shall not be required to indemnify Vendor under the Contract Documents. The Vendor shall be responsible for the negligent acts or omissions of its employees arising out of or related to the Contract Documents.

1.2 Vendor shall defend all claims brought against City or its officers, agents, or employees (collectively “Indemnitees”) by a third party (collectively “Third-Party Claims”) and indemnify and hold Indemnitees harmless for all actual and substantiated losses, damages, judgments, costs, expenses, and fees (including reasonable attorney fees) (collectively “Damages”) resulting from Third-Party Claims.

**SECTION 2 – CONTROLLING LAW; VENUE; REMEDIES; ENFORCEMENT COSTS;
JURY TRIAL WAIVER**

2.1 The Contract Documents shall be governed by the laws of the State of Florida. Any and all legal action, including mediation, necessary to enforce the Contract Documents will be held exclusively in Palm Beach County, Florida. Disputes related to or arising out of the Contract Documents shall not be subject to binding or non-binding arbitration. Nothing in the Contract Documents shall be construed as a waiver of the City’s right to venue for all disputes in Palm Beach County, Florida.

2.2 If any legal action or other proceeding is brought for the enforcement of the Contract Documents, or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of the Contract Documents, the parties agree that each party shall be responsible for its own attorney’s fees. Each party also agrees to waive any and all rights to a trial by jury for any and all disputes or claims which may be related to or arise out of the Contract Documents. This provision shall supersede and specifically replace all other conflicting provisions in the Contract Documents.

SECTION 3 - AUTHORITY TO PRACTICE

3.1 Vendor represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business, and that it will at all times conduct its business activities in a reputable manner and in conformance with all applicable laws. Proof of such licenses and approvals shall be submitted to the City upon request.

SECTION 4 - SURVIVABILITY; SEVERABILITY; PREPARATION; WAIVER

4.1 Any provision of the Contract Documents which is of a continuing nature or imposes an obligation which extends beyond the term of the Contract Documents shall survive its expiration or earlier termination. If any term or provision of the Contract Documents, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of the Contract Documents, or the application of such terms or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision shall be deemed valid and enforceable to the extent permitted by law. The Contract Documents shall not be construed more strongly against either party regardless of who was more responsible for its preparation. Failure of a party to enforce or exercise any of its right(s) under this Contract shall not be deemed a waiver of that party's right to enforce or exercise said right(s) at any time thereafter.

SECTION 5 - PUBLIC ENTITY CRIMES, E-VERIFY, AND SCRUTINIZED COMPANIES

5.1 As provided in Sections 287.132-133, Florida Statutes, as amended from time to time, by entering into the Contract Documents, Vendor certifies that it, its affiliates, suppliers, subcontractors and any other contractors who will perform hereunder, have not been placed on the convicted Vendor list maintained by the State of Florida Department of Management Services within the thirty-six (36) months immediately preceding the date hereof.

5.2 If applicable to the Vendor, pursuant to Section 448.095(5), Florida Statutes, the Vendor, and any subcontractor thereof, shall register with and use the E-Verify system to verify the work authorization status of all new employees of the contractor and the subcontractor.

5.3 As provided in Section 287.135, Florida Statutes, as amended from time to time, by entering into the Contract Documents, Vendor certifies that it is not participating in a boycott of Israel. The City and Vendor agree that the City will have the right to terminate the Contract Documents if Vendor is found to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel.

SECTION 6 - ENTIRETY OF CONTRACTUAL AGREEMENT AND CONTROLLING PROVISIONS

6.1 The City and Vendor agree that this Addendum and the other Contract Documents set forth the entire contract between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in the Contract Documents may be added to, modified, superseded or otherwise altered by Vendor, except by written instrument executed by the both parties hereto.

6.2 The contract between the parties consists of this Addendum and the remaining Contract Documents. To the extent that there exists a conflict between this Addendum and the remaining Contract Documents, the terms, conditions, covenants, and/or provisions of this Addendum shall prevail. Wherever possible, the provisions of such documents shall be construed in such a manner as to avoid conflicts between provisions of the various documents.

SECTION 7 – TAXES

7.1 The City is exempt from payment of Florida State Sales and Use Tax. Vendor shall not be exempted from paying sales tax to its suppliers for materials used to fill contractual obligations with the City, nor is Vendor authorized to use the City's Tax Exemption Number in securing such materials. Vendor shall be responsible for payment of its own and its share of its employees' payroll, payroll taxes, and benefits with respect to the Contract Documents.

SECTION 8 – PALM BEACH COUNTY IG

8.1 In accordance with Palm Beach County ordinance number 2011-009, this Addendum and the Contract Documents may be subject to investigation and/or audit by the Palm Beach County Inspector General. Vendor should review Palm Beach County ordinance number 2011-009 in order to be aware of its rights and/or obligations under such ordinance and as applicable.

SECTION 9 – INDEPENDENT CONTRACTOR

9.1 Vendor is, and shall be, in the performance of all services under the Contract Documents, an Independent Contractor, and not an employee, agent, or servant of the City. All persons engaged in any of the services performed pursuant to the Contract Documents shall at all times, and in all places, be an employee of Vendor and shall have no claim under the Contract Documents for compensation of any kind from the City under the Contract Documents or otherwise. Vendor shall be solely responsible for any and all compensation or payment to all persons engaged in any services performed pursuant to the Contract Documents on behalf of Vendor including, but not limited to, all wages, benefits and payroll taxes.

SECTION 10 – PUBLIC RECORDS LAW

10.1 Public Records: Vendor shall comply with Florida's Public Records Act, Chapter 119, Florida Statutes (the "Public Records Act"), and, if determined to be acting on behalf of the City as provided under section 119.011(2), Florida Statutes, specifically agrees to:

- a. Keep and maintain public records required by the City to perform the services.
- b. Upon request from the City's custodian of public records or designee, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
- c. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Contract Documents following completion of the Contract Documents if the Vendor does not transfer the records to the City.
- d. Upon completion of the Contract Documents, transfer, at no cost, to the City all public records in possession of Vendor or keep and maintain public records required by the City to perform the service. If Vendor transfers all public records to the City upon completion of the Contract Documents, Vendor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Vendor keeps and maintains public records upon completion of the Contract Documents, Vendor shall meet all applicable requirements for retaining public records. All records stored electronically must be

provided to the City, upon request from the City's custodian of public records or designee, in a format that is compatible with the information technology systems of the City.

IF VENDOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE VENDOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE CONTRACT DOCUMENTS, PLEASE CONTACT THE CUSTODIAN OF PUBLIC RECORDS OR DESIGNEE AT THE CITY OF LAKE WORTH BEACH, ATTN: MELISSA ANN COYNE, AT (561) 586-1662, MCOYNE@LAKEWORTHBEACHFL.GOV, 7 N. DIXIE HIGHWAY, LAKE WORTH, FL 33460.

SECTION 11 – INFRINGEMENT INDEMNITY

11.1 Vendor will defend or settle at its expense a claim or suit brought by a third party against the City arising out of a claim asserting that the work, services, software, repair, materials or other deliverables ("deliverables" hereafter) provided by Vendor under the Contract Documents (if any) infringes any U.S. copyright or any U.S. patent or misappropriates a trade secret. Vendor will indemnify and hold harmless the City against and from damages, costs, and reasonable attorneys' fees, if any and at all levels of trial and appeal or mediation or arbitration, finally awarded in such suit or the amount of the settlement thereof; provided that (i) Vendor is promptly notified in writing of such claim or suit, (ii) Vendor will have the sole control of the defense and settlement thereof, and (iii) City furnishes Vendor, on reasonable request, information available to City for such defense. The City will not admit any such claim without prior consent of Vendor.

a. In the event of a claim of infringement, Vendor shall, at its option:

1. procure for City the right to continue using the deliverables provided under the Contract Documents; or
2. replace or modify the deliverables so that the same becomes non-infringing but substantially equivalent in functionality and performance.
3. If neither of the above actions is reasonably feasible, Vendor will refund to City the fee actually paid by City under the Contract Documents (as amortized on a straight-line basis over the time in which the City was able to use the deliverables).

b. Vendor will have no obligation under this section for infringement if and to the extent that such claim arises from:

1. modification of the deliverables other than by Vendor or by its recommendation; or
2. combination of the deliverables with products other than those supplied by Vendor;
3. the alleged infringement or misappropriation relates to such modification or combination; and/or
4. the specifications or written direction of the City directs Vendor to construct, fabricate or otherwise provide the infringing deliverables, design, apparatus or, article, with Vendor's products, services, or work product.

c. Vendor will also not have any indemnification obligation with respect to a claim: (i) if it has provided City with reasonable changes that would have avoided the problem and the reasonable changes are not fully implemented by City within a reasonable time or (ii) arising out use of the deliverables not in accordance with the Contract Documents.

d. Vendor's obligation to indemnify, defend and hold harmless shall remain in effect and shall be binding upon Vendor whether such injury or damage shall accrue, or may be discovered, before or after termination or expiration of the Contract Documents.

SECTION 12 – BUDGET AND APPROPRIATION

12.1 Vendor acknowledges and agrees that the City is a municipal corporation and political subdivision of the state of Florida, and as such, the Contract Documents are subject to budgeting and appropriation by the City of funds sufficient to pay the costs associated therewith in any fiscal year of the City. Based upon the timeframes set forth in the Contract Documents, the City agrees that it has the funding available for the current fiscal year (FY 2023-2024) and agrees to propose in each applicable fiscal year budget thereafter an amount to cover the City's payment obligations as stated in the Contract Documents; however, the City's future funding obligations as stated herein are all subject to the City's annual budgeting and appropriation process. Vendor understands and agrees that the City's funding obligations hereunder are payable exclusively from duly appropriated or otherwise legally available funds and shall not be construed to be debt, liability or obligation within the meaning of any applicable constitutional or statutory limitation or requirement. Neither the City nor the State of Florida nor any political subdivision or agency thereof has pledged any of its full faith and credit or its taxing power to make any payments under the Contract Documents. In the event the funds budgeted or appropriated are, or are estimated by the City to be, insufficient to pay the costs associated with the City's payment obligations in the Contract Documents in any fiscal year after the current fiscal year, then the City will notify Vendor of such occurrence and either the City or Vendor may terminate the Contract Documents by notifying the other in writing, which notice shall specify a date of termination no earlier than twenty-four (24) hours after giving of such notice. Termination in accordance with the preceding sentence shall be without penalty or expense to the City of any kind whatsoever; however, City shall pay Vendor for all software delivered under the Contract Documents through the date of termination.

SECTION 13 – EVENT OF DEFAULT AND REMEDIES

13.1 Each of the following shall be an "Event of Default" under the Contract Documents: (a) Vendor fails to observe or perform any term, covenant, or condition of the Contract Documents which is required of VENDOR to be observed or performed, and Vendor fails to remedy the same within thirty (30) days after notice from the City; and (b) the City fails to observe or perform any term, covenant, or condition of the Contract Documents which is required of the City to be observed or performed, and the City fails to remedy the same within thirty (30) days after notice from Vendor. However, if the City's or Vendor's Event of Default is of such a nature that it cannot be reasonably cured within the foregoing thirty (30) day period, the defaulting party shall be entitled to a reasonable period of time under the circumstances in which to cure said default, provided that the defaulting party diligently commences such cure within the foregoing 30-day period and thereafter proceeds with the curing of the default.

13.2 Except for the City's non-payment due to a lack of budget and appropriation as set above, if an Event of Default is not cured within the timeframes set forth above by the City,

Vendor shall have all rights and remedies under the Contract Documents against the City. The City shall have all rights and remedies available to it under applicable law including termination of the Contract Documents for breach, the extend allowed herein.

SECTION 14 – NO CONSEQUENTIAL DAMAGES

14.1 In no event shall either party be liable to the other party for any incidental, special, indirect, liquidated, consequential, or punitive damages arising out of or related to the Contract Documents, whether such alleged damages are labeled in tort, contract, or otherwise, and even if a party has been advised of the possibility of such damages.

SECTION 15 – COUNTERPARTS

15.1 The Contract Documents may be executed in one or more counterparts, each of which shall be deemed to be an original and such counterparts will constitute one and the same instrument. The parties agree to accept the execution and delivery of this Contract Documents by electronic means and shall treat the same as an original.

SECTION 16 – COMPLIANCE AND REPORTING

16.1 Each of the parties agrees to perform its responsibilities under the Contract Documents in conformance with all laws, regulations and administrative instructions that relate to the parties’ performance under the Contract Documents. Each party will promptly notify the other of any complaint, claim, suit or cause of action threatened or commenced against it which arises out of or relates, in any manner, to the performance of the Contract Documents. Each party agrees to cooperate with the other in any investigation either may conduct, the defense of any claim or suit in which either party is named, and shall do nothing to impair or invalidate any applicable insurance coverage.

SECTION 17 – INSURANCE

17.1 Prior to commencing any services, the Vendor shall provide proof of insurance coverage as required hereunder. Such insurance policy(s) shall be issued by the United States Treasury or insurance carriers approved and authorized to do business in the State of Florida, and who must have a rating of no less than “excellent” by A.M. Best or as mutually agreed upon by the City and the Vendor. All such insurance policies may not be modified or terminated without the express written authorization of the City.

<u>Type of Coverage</u>	<u>Amount of Coverage</u>
Professional liability/ Errors and Omissions	\$1,000,000 per occurrence
Commercial general liability (Products/completed operations, insurance broad form property, personal injury)	\$1, 000,000 per occurrence \$2,000,000 annual aggregate
Worker’s Compensation	\$ statutory limits
Cyber and Privacy Liability Insurance	\$1,000,000 per occurrence

The certificates shall clearly indicate that the Vendor has obtained insurance of the type, amount, and classification as required for strict compliance with this section. Failure to comply with the foregoing requirements shall not relieve the Vendor of its liability and obligations under the Contract Documents.

SECTION 18 – NOTICE

18.1 Any notice required to be given under the Contract Documents shall be sent by certified mail (return receipt requested) or by nationally recognized overnight courier as follows to the City:

City of Lake Worth Beach
Attn: City Manager
7 N. Dixie Highway
Lake Worth Beach, FL 33460

and to the Vendor as follows:

SEL
2350 NE Hopkins Court
Pullman, WA 99163

Either party may amend this provision by written notice to the other party.

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IN WITNESS WHEREOF, the parties hereto have caused this Addendum to be executed as of the day and year set forth above.

CITY OF LAKE WORTH BEACH

ATTEST:

By: _____
Melissa Ann Coyne, City Clerk

By: _____
Betty Resch, Mayor

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

APPROVED FOR FINANCIAL SUFFICIENCY

By: _____
Glen J. Torcivia, City Attorney
Director

By: _____
Yannick Ngendahayo, Financial Services

VENDOR:

SCHWEITZER ENGINEERING LABORATORIES, INC.

[Corporate Seal, if required]
STATE OF WASHINGTON
COUNTY OF Whitman

By: _____
Signature of Authorized Representative

THE FOREGOING instrument was acknowledged before me by means of physical presence or online notarization on this 4th day of December, 2023, by Jeremy Nickels [name], as Vice President of Finance [title] of Schweitzer Engineering Laboratories, Inc., a foreign corporation authorized to do business in the State of Washington, and who is personally known to me or who has produced the following as identification and who is authorized to bind the Vendor to the terms and conditions of the Contract Documents:
ID produced: company badge



Signature of Notary Public: _____
Emmi Griffin

EXHIBIT "1"

Vendor's Blueframe Software Contract Proposal with Exhibit A and B (8 pages total)



Software Contract Proposal

City of Lake Worth ("Customer" or "Licensee").

Licensee and SEL enter into this Software License Agreement (the "Agreement") as of the Effective Date, under which SEL agrees to grant a license under certain Software as further agreed and in consideration of the Fees described herein.

In addition to this signature page, the Agreement includes the following Exhibits which are made part of and form the Agreement:

- A. Software Order Form; and,
- B. Contract Terms and Conditions.

This Agreement along with any additional terms incorporated herein by reference constitute the complete and exclusive understanding and agreement between the Parties and supersede any and all prior or contemporaneous agreements, communications and understandings, written or oral, relating to their subject matter without any prejudice against the drafter of the particular Agreement component. Any terms and conditions contained or referenced by either Party in a quote, purchase order, acceptance, invoice or any similar document purporting to modify the terms and conditions contained in this Agreement are disregarded and have no effect unless otherwise expressly agreed to by the Parties.

The License Term is five years starting on the Effective Date. During the License Term, Licensee may elect to renew the license by notifying SEL in writing prior to 30 days before the end of the License Term.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement by their duly authorized officers or representatives:

City of Lake Worth
7 North Dixie Highway
Lake Worth, FL 33460

Schweitzer Engineering Laboratories, Inc.
2350 NE Hopkins Court
Pullman, WA 99163

By: _____
Name: _____
Title: _____
Date: _____


By: 
Name: Jeremy Nickels
Title: Vice President of Finance
Date: 12/4/23

EXHIBIT A – SOFTWARE ORDER FORM

For a system containing up to 50 Simultaneous Connections, a software licensing quote is as follows:

Sales Item Numbers:

- 9180-BFCC-0001 (QTY 1 = \$0)

Blueframe Operating System Software:

Software Info	License Type	Sales Item Number	Permitted number of Computers	Annual License Fee
Blueframe OS	VM Deployment	9180-BFCC-0001	1	Included with Apps
Total:				Included with Apps

Device Management Applications:

Data Management and Automation DMA Disturbance Monitoring, Configuration Monitoring, Custom Monitoring, and Credential Management. License type is Device Management License for a Device Limit of 225.

Sales Item Numbers:

- 9180-DMAC-0004 (QTY 225 = \$40,500)
- 9180-BFMN-0001 (QTY 1 = \$20,250)

Payment Option	Year 1	Year 1	Year 2	Year 3	Year 4	Year 5	Total
1) Total Annual Cost	\$40,500.00	\$4,050.00	\$4,050.00	\$4,050.00	\$4,050.00	\$4,050.00	\$60,750.00
2) Capital Payment	\$60,750.00	\$-	\$-	\$-	\$-	\$-	\$60,750.00
3) Amortized Payment	\$12,150.00	\$-	\$12,150.00	\$12,150.00	\$12,150.00	\$12,150.00	\$60,750.00

AcSELerator TEAM Value Transfer Eligible Purchases:

The following purchases will apply as a one-time credit to the Blueframe DMA purchase.

Purchase Year	Notes	Value
2019	SO-1166180	\$2,000
2022	SO-1842245	\$9,840
	Total Credit	\$11,840

Total Capital Cost (without taxes or fees): \$60,750.00

Total Capital Cost with Credits (without taxes or fees): \$48,910

Effective Date: Upon Delivery

Notice Contact Information:

Support Contacts: automation_support@selinc.com

EXHIBIT B – CONTRACT TERMS AND CONDITIONS

1. DEFINITIONS.

- 1.1 **"Computer"** means a virtual or physical device that accepts information in digital or similar form and manipulates it for a specific result based on a sequence of instructions, including without limitation virtual machines, servers, desktop computers, laptops, tablets, mobile devices, telecommunication devices, Internet-connected devices, and hardware products capable of a wide variety of software applications.
- 1.2 **"Device"** means a contiguous piece of equipment that generates data that is acted upon by the Software.
- 1.3 **"Enhancements"** means any Updates, upgrades, releases, fixes, enhancements, or modifications to the current version of the Software released by SEL.
- 1.4 **"Extensions"** mean any separate downloadable suite, add-on, command, function, or application, including any example or test module that extends the functionality of the current version of the Software.
- 1.5 **"Internal Business Purpose"** means the use of any of the Software, as applicable, for Licensee's internal business use with Licensee's systems, networks, Devices, and data. Such use includes use of Licensee's systems, networks, or Devices as part of the service offerings offered by Licensee. Such use does not include use of Software for the benefit of third-parties independent of services offered by Licensee.
- 1.6 **"Licensee"** means the person or company named as such in the Order Document(s), if applicable, or the person or legal entity that obtained the Software and on whose behalf it is used. The term Licensee includes any Permitted Affiliates, but expressly excludes any other parent companies, sister companies, subsidiary companies, or other affiliated organizations.
- 1.7 **"Maintenance"** and **"Support"** include the maintenance and support services made available to Licensee under this Agreement (if any), including without limitation as described in Exhibit E.
- 1.8 **"Order Document(s)"** mean the quotation, purchase order, or any equivalent ordering document and the order confirmation that detail the components, solutions, and quantities of Licensee's purchase of the Software either through SEL or one of its authorized resellers. Each Order Document properly issued and accepted by Licensee is deemed to reference this Agreement with respect to the Software.
- 1.9 **"Permitted Affiliates"** means any companies that are affiliated with the Licensee and specified in the Order Document(s).
- 1.10 **"Permitted Number"** means the maximum number of Computers that may be under this Agreement. The "Permitted Number" is one (1) unless otherwise specified in this Agreement or specified in the Software Order Form.
- 1.11 **"Software"** means the SEL Software made available to Licensee, including: (a) all of the information with which this Agreement is provided, including but not limited to: (i) all software files and other computer information; (ii) sample materials provided by SEL; (iii) related explanatory written materials and files (including without limitation user manuals, training guides, other written documentation, executable files, help files and other files); and (b) any modified versions and copies of, and upgrades, updates, and additions to, such information, provided to Licensee by SEL at any time, to the extent not provided under separate terms (collectively, "Updates").
- 1.12 **"Warranty Period"** extends from the Effective Date for a period of 180 days.

2. **LICENSE GRANTS.** Subject to Licensee's continuous compliance with the terms and conditions of this Agreement, including Licensee's timely payment of any applicable License Fees and Support Fees set forth in the Software Order Form, SEL grants to Licensee a non-exclusive, non-transferable, personal, revocable, and limited license to install and use the Software (a) subject to the Special Requirements, (b) during the term of such license ("**License Term**"), (c) limited to the Permitted Number and within the Device Limit; and (d) in a manner consistent with the terms of this Agreement. Unless otherwise defined in this Agreement or related documentation, or at the time of purchase, the License Term is annual. Upon expiration or termination of the License Term, Licensee may not use the Software unless Licensee has renewed the license. SEL licenses (and not sells) the Software to Licensee and no title or ownership interest in the Software is transferred to Licensee. Licensee will take all reasonably appropriate actions, whether by instruction, contract or otherwise, to ensure that Licensee's employees and agents comply with the terms of this Agreement.

- 2.1 **Intellectual Property.** The Software is copyrighted and possibly patented and contains proprietary information and trade secrets belonging to SEL or its affiliates and subsidiaries. Licensee will not remove or obscure any copyright or other intellectual property notices on Software.

- 2.2 Software Enhancements.** SEL grants a license to any Software Enhancement / Extension offered by SEL provided that Licensee hereby acknowledges that use of such Enhancement / Extension is subject to the terms of this Agreement and subsequently executed amendment(s).
- 2.3 Third Parties.** Any consultant, contractor, or agent hired to perform services for Licensee may operate the Software on Licensee's behalf under these terms and conditions, provided that: (a) Licensee is responsible for ensuring that any such third party agrees to abide by and fully comply with the terms of this Agreement on the same basis as applicable to Licensee; (b) such use is only in connection with Licensee's Internal Business Purpose; (c) such use does not represent or constitute an increase in the scope of the licenses provided hereunder; and (d) Licensee remains fully liable for any and all acts or omissions by such third parties related to this Agreement.
- 2.4 Software Restrictions.** Licensee agrees not to: (a) use the Software except as expressly authorized in this Agreement and its Order Document(s); (b) copy the Software (except as expressly permitted herein and as required to run the Software and for reasonable backup purposes); (c) modify, decompile, disassemble, decrypt, extract, or otherwise reverse-engineer Software or otherwise attempt to derive the Software source code or create derivative works based upon all or part of Software; (d) sublicense, transfer, loan, rent, lease, make available via a service provider on a hosted or time sharing basis, or assign the Software or this Agreement to any other person or entity without the prior written consent of SEL (e) disclose to any third party the results of any benchmark tests or other evaluation of the Software; or (f) authorize any third parties to do any of the above except as expressly provided by this Agreement. Licensee may not copy written documentation provided with the Software (except as expressly permitted herein, and then solely for Licensee's Internal Business Purposes).

3. SPECIAL REQUIREMENTS. In addition to the terms as set forth in Section 2, the following Special Requirements apply to the particular Software as indicated in Exhibit A:

- 3.1 VM License.** During the Term, the operating system under the VM License may be executed on the Permitted Number of computers (including servers) for production purposes, and additionally on up to 2 additional Computers for test purposes only. The operating system under the VM License may be used for hardware services, core services, and connection services.
- 3.2 Hardened Compute License.** During the Term, the operating system may be deployed on the Permitted Number of Computers under the Hardened Compute License in an industrial critical deployment installation only on hardened edge computing as an independent control system that is part of the enterprise deployment.
- 3.3 Site Management License.** During the Term, the operating system may be deployed on the Permitted Number of Computers under the Site Management License for the purpose of centrally managing operating systems licensed under the VM License or Hardened Compute License.
- 3.4 Device Management License.** During the Term, the device management Software may be used as an application of the operating system under the VM License, Hardened Compute License or Site Management License for management of a number of devices up to the listed Device Limit for the particular Software. For switch management software, the Devices comprise the managed communication switches.

4. OWNERSHIP. SEL, its suppliers, and/or its licensors own all worldwide right, title and interest in and to the Software, including all existing or pending worldwide patent rights (including patent applications and disclosures); copyright rights (including copyright registrations and unregistered copyrights), trademarks, trade secrets and other rights with respect to confidential or proprietary information and any other intellectual and industrial property rights, whether or not subject to registration or protection; and all rights under any license or other arrangement with respect to the foregoing. Except as expressly stated in this Agreement, SEL does not grant to Licensee any intellectual property rights in the Software, and all right, title, and interest in and to all copies of the Software not expressly granted remain with SEL, its suppliers and/or its licensors. The Software is copyrighted and protected by the laws of the United States and other countries and international treaty provisions. Licensee may not remove or obscure any copyright, trademark, and/or any other intellectual property or proprietary notices from the Software.

5. FEES AND INVOICING.

- 5.1** In order to access and use the Software, Licensee is required to pay to SEL the License Fees set forth in the Order Document(s). The License Fees will be due and payable in accordance with the terms set forth herein. Any failure to pay the License Fees in accordance with an Order Document may result in automatic revocation

and termination of this Agreement. All License Fees are non-refundable once paid except as explicitly allowed herein.

- 5.2** SEL will issue an invoice to Licensee for License Fees and Support Fees. Payment terms are net 30 (payment will be made within 30 days of invoice date) at the address for receipt of invoices stated in the invoice. SEL may, at its own discretion, impose a late charge equal to the lesser of 1.5% per month or the highest applicable rate allowed by law on all amounts not paid when due.
- 5.3** All prices and other charges quoted by SEL under this Agreement are exclusive of any applicable VAT or equivalent tax imposed or levied.
- 6. SOFTWARE VERIFICATION AND AUDIT.** At SEL's written request, Licensee will furnish SEL with a certification signed by an authorized representative verifying that the Software is being used in accordance with the terms and conditions of this Agreement. Upon at least ten (10) days prior written notice and subject to reasonable security requirements, SEL may audit use of the Software to ensure compliance with the terms of this Agreement, including compliance with the Permitted Number and Device Limit. Any such audit will be conducted no more than once annually during regular business hours at Licensee's facilities by SEL personnel, and will not unreasonably interfere with Licensee's business activities. Licensee will provide SEL personnel with reasonable access to the relevant records and facilities relating to the Software. If an audit reveals that Licensee has exceeded the scope of the license under this Agreement and/or the Order Documents, then SEL will issue an invoice to Licensee, and Licensee will promptly (within 30 days) pay SEL any underpaid fees based on SEL's then current price list in effect at the time the audit is completed. If the underpayment exceeds ten percent (10%) of the cumulative annual License Fees paid to SEL by Licensee, then Licensee will also pay SEL's reasonable costs of conducting the audit. If the audit reveals no discrepancy then SEL will not audit Licensee for at least twelve (12) months. This Section survive expiration or termination of this Agreement for a period of three (3) years.
- 7. SOFTWARE WARRANTY.** SEL warrants that for the Warranty Period the Software will substantially achieve any material function described in documentation for the Software as published by SEL. As SEL and its affiliates, licensors, and suppliers' sole liability and Licensee's sole remedy for any failure of the Software to conform to this warranty, SEL will use commercially reasonable efforts to repair or replace (at SEL's option) Licensee's copy of the Software and if SEL is unable to do so within thirty (30) days from the time Licensee gives SEL notice of non-conformance, then SEL will refund all related License Fees paid by Licensee for the non-conforming Software, and this Agreement immediately terminates. Licensee acknowledges that Software is of such complexity that it may have inherent defects. SEL does not provide any warranty if Software's nonconformance is a result of Licensee's abuse, improper use, or unauthorized modification of Software.
- 8. WARRANTY DISCLAIMER.** EXCEPT AS SET FORTH IN SECTION 7 ABOVE, SEL, ITS AFFILIATES, LICENSORS, AND SUPPLIERS PROVIDE THE SOFTWARE AS-IS AND EXPRESSLY DISCLAIM ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, QUIET ENJOYMENT, INTEGRATION, AND WARRANTIES ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE. LICENSEE AGREES THAT, AS BETWEEN LICENSEE AND SEL, LICENSEE IS RESPONSIBLE FOR THE ACCURACY AND QUALITY OF LICENSEE'S DATA INPUT INTO ANY SEL SOFTWARE. BECAUSE THIS DISCLAIMER OF WARRANTY MAY NOT BE VALID IN SOME STATES OR JURISDICTIONS, THE ABOVE DISCLAIMER MAY NOT APPLY IN ALL SITUATIONS.
- 9. LIMITATION OF LIABILITY.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW SEL'S TOTAL CUMULATIVE LIABILITY TO LICENSEE ARISING FROM THE PURCHASE AND/OR USE OF THE SOFTWARE, FROM ALL CAUSES OF ACTION AND ALL THEORIES OF LIABILITY, WILL BE LIMITED TO AND WILL NOT EXCEED THE AMOUNTS PAID BY LICENSEE TO SEL UNDER THE APPLICABLE ORDER DOCUMENT(S) GIVING RISE TO SUCH LIABILITY IN THE TWELVE MONTHS PRIOR TO THE EVENT. IN NO EVENT WILL SEL BE LIABLE TO LICENSEE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES (INCLUDING LOSS OF USE, DATA, OR PROFITS, BUSINESS INTERRUPTION, OR COSTS OF PROCURING SUBSTITUTE SEL SOFTWARE) ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, SUPPORT OR THE USE OR PERFORMANCE OF THE SEL SOFTWARE, WHETHER SUCH LIABILITY ARISES FROM CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, AND WHETHER OR NOT SEL HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE. THE PARTIES HAVE AGREED THAT THESE LIMITATIONS WILL SURVIVE AND APPLY EVEN

IF ANY REMEDY IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. SOME STATES OR JURISDICTIONS DO NOT ALLOW LIMITATION OR EXCLUSION OF CONSEQUENTIAL OR INCIDENTAL DAMAGES, AND ACCORDINGLY, THE ABOVE LIMITATION MAY NOT APPLY IN ALL JURISDICTIONS. SEL MAY BE ACTING ON BEHALF OF ITS AFFILIATES, LICENSORS, AND SUPPLIERS FOR THE PURPOSE OF DISCLAIMING, EXCLUDING, AND LIMITING OBLIGATIONS, WARRANTIES AND LIABILITY, BUT IN NO OTHER RESPECTS AND FOR NO OTHER PURPOSES.

10. TERM AND TERMINATION.

10.1 This Agreement will commence on the Effective Date and continue until expiration or termination. Unless otherwise stated, the initial term of this Agreement is one year from the Effective Date, and the Agreement automatically renews for additional one-year term(s) unless either Party elects to terminate by giving written notice to the other Party at least 30 days before automatic renewal.

10.2 This Agreement may be terminated upon written notice under any of the following:

10.2.1 by either Party if the other Party ceases to carry on business as a going concern, is unable to pay its debts as they fall due, or any distress or execution is levied or threatened against it, or a receiver is appointed in respect of all or any of its assets, or it passes a valid resolution for closing its operations;

10.2.2 By SEL if Licensee attempts to assign, transfer, or materially change any of the rights or responsibilities hereby granted or if there is a material change or transfer in the control or ownership of Licensee, regardless of whether such control ownership is changed or transferred in one transaction or in a series of transactions. This clause does not apply to any such event pursuant to a corporate restructuring or by operation of law or if Licensee obtains written consent of SEL, which consent will not be unreasonably withheld.

10.3 Licensee's rights to the Software terminate upon any violation or termination of this Agreement (including, without limitation, failure to timely pay License Fees) or upon expiration of the License Term. Upon any expiration or termination of this Agreement, the rights and licenses granted hereunder will automatically terminate, and Licensee agrees to immediately cease using the Software and to return or destroy all copies of the Software, including any documentation, and other SEL proprietary or confidential information in Licensee's possession or control and certify in writing the completion of such return or destruction. In the event of termination of this Agreement for any reason other than a material breach by SEL, SEL will have no obligation to refund any License Fees or other fees received from Licensee during the Term. Sections 1, 3, 4, 6, 8, 9, 12, 14, and 16 survive termination of this Agreement.

11. SEVERABILITY. Unless otherwise provided herein, all rights and remedies, whether conferred hereunder or by any other instrument or law, will be cumulative and may be exercised singularly or concurrently. The failure by either Party to enforce any provisions of this Agreement will not constitute a waiver of any other right hereunder or of any subsequent enforcement of that or any other provisions. The terms and conditions stated herein are declared to be severable. If a court of competent jurisdiction holds any provision of this Agreement invalid or unenforceable, the remaining provisions of the Agreement will remain in full force and effect, and the provision affected will be construed so as to be enforceable to the maximum extent permissible by law.

12. EXPORT. Licensee will comply fully with all relevant export laws and regulations of the United States and any other country ("Export Laws") where Licensee uses any of the Software. Licensee certifies that Licensee is not on any of the relevant U.S. Government Lists of prohibited persons, including but not limited to the Treasury Department's List of Specially Designated Nationals, and the Commerce Department's List of Denied Persons or Entity List. Licensee further certifies that Licensee will not export, re-export, ship, transfer, or otherwise use the Software in any country subject to an embargo or other sanction by the United States, including Iran, Syria, Cuba, Sudan and North Korea and that Licensee will not use the Software for any purpose prohibited by the Export Laws, including, but not limited to, nuclear, chemical, missile or biological weapons related end uses.

13. THIRD PARTY CONTENT DISCLAIMER. Certain SEL products embed/contain software code licensed by SEL from one or more third party software licensors ("Third Party Software"). If Third Party Software is provided as a separate package, SEL does not warrant or indemnify any Third Party Software, and such Third Party Software is subject to the standard warranties and terms of use provided by Third Party Software suppliers (copies of which

may be obtained from an SEL customer service representative). Separate executable programs are deemed stand-alone packages, regardless of whether such executable programs are provided on the same media or are available from the same source.

14. CHOICE OF LAW AND DISPUTES. The laws of the State of Washington, USA, excluding conflict of laws principles, govern this Agreement. The Parties reject any applicability of the United Nations Convention on Contracts for the International Sale of Goods. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, will be settled by binding arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, and judgment on the arbitration award may be entered in any court of competent jurisdiction. Arbitration will be held in Seattle, Washington, or another location agreed upon by the Parties, and will be conducted in English. The prevailing Party to any dispute is entitled to recover legal fees and other costs (including without limitation arbitration fees, disbursements, collection costs, and the allocated cost of in-house counsel).

15. SOFTWARE SUPPORT. If agreed herein, SEL will provide Licensee with standard SEL software support through SEL Sales and Customer Service.

16. MISCELLANEOUS.

16.1 Notices. Any notice to SEL pursuant to this Agreement is deemed given when sent by registered or certified mail (return receipt requested), overnight delivery or fax (confirmed receipt and sent by mail) to an authorized officer at the address or fax number provided on the Order Documents(s). Any notice to Licensee pursuant to this Agreement is deemed given when sent by registered or certified mail (return receipt requested), overnight delivery or fax (confirmed receipt and sent by mail) to an authorized officer at the address or fax number provided on the Order Document(s), or, if no such address or fax number is provided in the Order Document(s), at Licensee's registered headquarters.

16.2 Integration. This Agreement along with any additional terms incorporated herein by reference, including any Order Document and any Exhibits hereto, constitute the complete and exclusive understanding and agreement between the Parties and supersede any and all prior or contemporaneous agreements, communications and understandings, written or oral, relating to their subject matter without any prejudice against the drafter of the particular Agreement component. Any terms and conditions contained or referenced by either Party in a quote, purchase order, acceptance, invoice or any similar document purporting to modify the terms and conditions contained in this Agreement is disregarded and has no effect unless otherwise expressly agreed to by the Parties.

16.3 Waiver. Any waiver, modification, or amendment of any provision of this Agreement will be effective only if in writing and signed by duly authorized representatives of both Parties. No failure or delay by either party in exercising any right or remedy, or insisting upon strict compliance by the other party with any obligation in this Agreement, constitutes a waiver of any right thereafter to demand exact compliance with this Agreement.

16.4 Force Majeure. Neither Party will be responsible for any failure or delay in its performance under this Agreement due to causes beyond its reasonable or reasonably foreseeable control, including, but not limited to, labor disputes, strikes, lockouts, shortages of or inability to obtain labor, energy, raw materials or supplies, war, acts of terror, riot, acts of God or governmental action.

16.5 U.S. Government Restricted Rights. Software (including documentation and embedded software) is provided as commercial and restricted computer software. Use, duplication or disclosure by the U.S. Government or any U.S. Government contractor or subcontractor is subject to the restrictions set forth in 48 CFR § 12.212, 48 CFR § 52.227-14, 48 CFR § 52.227-19, or 48 CFR § 227.7202, as applicable.