



HAMMER NON-EXCLUSIVE RESELLER AGREEMENT

Reseller: [COUNTERPARTY LEGAL ENTITY NAME]

Reseller country/state of legal entity: [COUNTERPARTY Country / State]

Territory: [COUNTERPARTY REGION]

Effective Date: [START DATE]

Term: 3 years, subject to renewal

THIS NON-EXCLUSIVE RESELLER AGREEMENT (this “**Agreement**”) is made and entered into as of the Effective Date by and between Hammer Technologies Inc., an Infovista company, a Delaware corporation (“**Hammer Technologies Inc.**”) and Reseller and consists of this signature page and the attached Recitals, Terms and Conditions, Schedules, Exhibits and all other documents attached hereto, which are incorporated in full by this reference.

[COUNTERPARTY LEGAL ENTITY NAME]

Hammer Technologies Inc.

By: _____

By: _____

Name:

Name:

Title:

Title:

Date of Signature:

Date of Signature:

Address for Notices:

[COUNTERPARTY ADDRESS FOR NOTICES]

Attn:

Address for Notices:

Hammer Technologies Inc.
600 Technology Park Drive
Suite 100
Billerica MA 01821, U.S.A.
Attn: Legal Department
Facsimile: +1 978-313-7001

Attached Schedules:

- SCHEDULE 1: TECHNICAL SUPPORT AND MAINTENANCE POLICY
- SCHEDULE 2: MINIMUM TERMS OF THE EULA
- SCHEDULE 3: LIST OF PRODUCTS, PRICE LIST
- SCHEDULE 4: DISCOUNT SCHEDULE
- SCHEDULE 5: FIRST LEVEL TECHNICAL SUPPORT OBLIGATIONS OF RESELLER
- SCHEDULE 6: RESELLER REQUIREMENTS FOR THE RESALE OF HAMMER TECHNOLOGIES INC. PROFESSIONAL SERVICES

RECITALS

- A. Reseller desires to license certain Hammer Technologies Inc. software and purchase certain Hammer Technologies Inc. hardware and services with the intent to market, sublicense and resell the software, hardware, and services in the Territory noted above to its end-user customers; and
- B. Hammer Technologies Inc. is willing to grant a non-exclusive right to the Reseller to market, sublicense and resell certain of its products and services in the Territory to Reseller's end-user customers on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and conditions herein contained, and intending to be legally bound hereby, the Parties mutually agree as follows:

TERMS AND CONDITIONS

1. Definitions:

Defined terms in this Agreement are set out in this Section 1.

- (a) "Agreement" shall mean this Non-Exclusive Reseller Agreement.
- (b) "Anticorruption Laws" shall mean, collectively, (i) the FCPA, (ii) the Bribery Act, both as defined herein; and (iii) any other applicable laws, regulations, orders, judicial decisions, conventions, or international rules regarding corruption, bribery, gifts, and/or gratuities to public officials or private persons.
- (c) "Bribery Act" shall mean the UK Bribery Act 2010, as amended, together with all regulations promulgated thereunder.
- (d) "Customer" or "Customers" shall mean the end-user of the Products.
- (e) "Conform," see Section 9(a).
- (f) "Damages" shall mean all liabilities, claims, damages, losses, costs, expenses (including without limitation attorneys' fees), demands, suits, actions and settlement amounts incurred by a Party.
- (g) "Direct Order" shall mean an Order of a Customer that was initiated through the actions of Reseller, but placed, at the request of the Customer or Reseller, directly with Hammer Technologies Inc..
- (h) "Direct Order Fee" shall mean the commission or finder's fee payable to Reseller in the case of a Direct Order.
- (i) "Effective Date" shall mean the date that Hammer Technologies Inc. executes this Agreement or is otherwise reflected on the covering page.
- (j) "Hammer Technologies Inc." shall mean Hammer Technologies Inc. Inc.
- (k) "Hammer Technologies Inc. Property" means Hammer Technologies Inc.'s proprietary software programs, program code, information and other Intellectual Property Rights.
- (l) "Hammer Technologies Inc. Professional Services" shall mean consulting, implementation, training and other professional services (including subscription-based services) provided by Hammer Technologies Inc. to Reseller or Customers on behalf of Reseller.
- (m) "Hammer Technologies Inc. Technical Support" shall mean technical support and maintenance services provided by Hammer Technologies Inc. to Reseller under Hammer Technologies Inc.

Technical Support and Maintenance Policy, the current version of which is attached as Schedule 1.

- (n) “EULA” means the minimum terms and conditions that Reseller must include in its sub-license or resale agreement to a Customer, as set out in Schedule 2 .
- (o) “FCPA” means the U.S. Foreign Corrupt Practices Act (15 USC 78dd-1, *et seq.*), as amended, together with all regulations promulgated thereunder.
- (p) “Hardware” means any Hammer Technologies Inc. hardware purchased by Reseller and resold to a Customer, or subject to a Direct Order or Referral Fee under this Agreement.
- (q) “Hardware Warranty Period” means the period of one (1) year following delivery of Hardware.
- (r) “Highly Proprietary Information,” see Section 15(a).
- (s) “Infringement,” see Section 11(c).
- (t) “Initial Term” shall mean three (3) years from the Effective Date.
- (u) “Intellectual Property Rights” means all industrial and intellectual property rights of a Party and its licensors from time to time including any patents, design rights or registered design, trademarks or service marks (and any applications throughout the world or the right to apply for any of the foregoing), copyright (including moral rights), know how, confidential information, any business name, trading name or style or brand name and any merchandising rights.
- (v) “Materials” means all user and technical manuals and advertising and marketing information created by or on behalf of Hammer Technologies Inc. to promote and describe its Products and Services.
- (w) “Order” means a purchase order or similar document issued to Hammer Technologies Inc. by Reseller for the procurement of Services or Product under this Agreement and in accordance with Section 3 below.
- (x) “Parties” means Reseller and Hammer Technologies Inc.; “Party” shall mean either of them.
- (y) “Price List,” see Section 3(a).
- (z) “Product” or “Products” means any Hardware or Software made available by Hammer Technologies Inc. for Resale by Reseller as listed at Schedule 3.
- (aa) “Proprietary Information,” see Section 15(a).
- (bb) “Quote” means a quotation by Hammer Technologies Inc. to Reseller for a sale of Hardware or Services or license of Software, as appropriate.
- (cc) “Referral Fees,” see Section 4(d).
- (dd) “Resell” or “Resale” means either the sale by Reseller of Hardware or Services or the license by Reseller of Software, as appropriate, to a Customer.
- (ee) “Schedule” means any of the schedules attached to this Agreement, which shall be deemed to be incorporated herein as an integral part of this Agreement.
- (ff) “Services” means Hammer Technologies Inc. Professional Services or Hammer Technologies Inc. Technical Support purchased by Reseller under this Agreement or subject to a Direct Order under this Agreement.
- (gg) “Software” means any Hammer Technologies Inc. software (in object code), including all

updates, available upgrades and enhancements to software delivered by Hammer Technologies Inc. to Reseller pursuant to Hammer Technologies Inc. Technical Support, and associated Software Documentation subject to an Order from Reseller for Resale to a Customer, or subject to a Direct Order under this Agreement.

- (hh) “Software Documentation” means end user documentation accompanying the Software as published by Hammer Technologies Inc..
- (ii) “Software Warranty Period” means the period ninety (90) days from the date of delivery of the Software.
- (jj) “SOW” or “Statement of Work” means a statement of work or similar document that describes the Hammer Technologies Inc. Professional Services to be performed, including the timing, deliverables, service or Product requirements or specifications, and any other term or condition that is intended to be a variation from the terms of this Agreement.
- (kk) “Territory,” see cover page.
- (ll) “Terms” means the terms and conditions of this Agreement.
- (mm) “Third Party Products,” see Section 9(d)
- (nn) “Tier One Technical Support” means the first level technical support and other maintenance services to be performed by Reseller and which is described in further detail in Section 6(c) and Schedule 5.
- (oo) “Trademarks” means trademarks, service marks and trade names.

2. Appointment of Reseller, Products, and Territory.

- (a) Hammer Technologies Inc. hereby appoints Reseller on a non-exclusive basis as: (i) a sub-licensor of the Software; (ii) a reseller of the Hardware; and (iii) a reseller of the Services. Each of the appointments described in (i), (ii) and (iii) above is limited to the term of this Agreement.
- (b) Reseller may only solicit and/or accept purchase orders for any Product or Service from prospective Customers located in the Territory. If Reseller receives a purchase order for any Product or Service from a prospective Customer located outside the Territory, Reseller shall immediately refer that purchase order to Hammer Technologies Inc.. Reseller may not deliver, tender or perform (or cause to be delivered, tendered or performed) any Product or Service outside of the Territory without the prior written approval of Hammer Technologies Inc.. Notwithstanding anything contained in this Section 2(a) to the contrary, (i) Reseller may solicit and accept purchase orders for Products or Services from a Customer in the Territory, even if such Customer intends to use such Products or Services both inside and outside the Territory; and (ii) if Reseller receives an unsolicited order for Products or Services from a prospective Customer located outside the Territory and such prospective Customer is likely to use such or Services in the Territory, then Reseller may accept such order. Hammer Technologies Inc. reserves the right, in its sole discretion, at any time upon ninety (90) days’ prior written notice to Reseller, to expand or reduce the Territory.
- (c) If and only if local competition law requires that Reseller be permitted to appoint a secondary reseller or sub-distributor to Resell the Products and Services, Reseller is permitted to do on written notice by Hammer Technologies Inc. if: (i) such secondary or sub-distributor confirms in writing to Hammer Technologies Inc. that it will comply with all of Reseller's obligations under this Agreement; (ii) Reseller guarantees the performance of such secondary or sub-distributor through the execution of an appropriate guaranty; (iii) Reseller provides information on such secondary reseller or sub-distributor sufficient for Hammer Technologies Inc. to

conduct proper diligence on such party's appointment; and (iv) Reseller agrees to indemnify Hammer Technologies Inc. for any Damages arising out of or relating to the activities of any secondary or sub-distributor.

- (d) Hammer Technologies Inc. reserves the right to sell or market the Products and Services in the Territory either directly or indirectly through third party agents, dealers, resellers and the like without obligation or liability to Reseller.

3. Ordering Procedure, Prices, and Delivery.

- (a) At the request of Reseller, Hammer Technologies Inc. shall provide Reseller with a Quote for the type and quantity of Products and Services Reseller intends to Resell, the price applicable to such Products and Services and the target delivery timetable or commencement date. Based on a Quote, or independently of a Quote, Reseller may issue an Order referencing the Quote and/or this Agreement. The Order shall include provide appropriate shipping, destination, Customer information and any other information reasonably requested by Hammer Technologies Inc. to enable Hammer Technologies Inc. to fill such Order and comply with applicable regulations. All Orders are subject to approval and acceptance by Hammer Technologies Inc.. Hammer Technologies Inc. shall notify Reseller within five (5) business days of receipt of the Order that it accepts the Order, or identifies with particularity what aspects of the Order are unacceptable. Once agreed, an Order shall be binding on the Parties in accordance with these Terms. All references to an Order in this Agreement shall be deemed to mean an Order agreed by the Parties.
- (b) The price to Reseller for the Products and Services ordered under this Agreement shall be the then applicable list prices for the Territory, F.O.B. Hammer Technologies Inc. plant (Billerica MA, USA), set out at Schedule 3 ("**Price List**"), less the applicable discounts indicated in Schedule 4. Hammer Technologies Inc. may from time to time change the Price List and/or the relevant discount category, and such change shall be effective thirty (30) days after the date of the notice; provided, however, that no price or discount category change shall affect Orders offered by Reseller and accepted by Hammer Technologies Inc. prior to the date such change becomes effective. The Price List shall not be construed in any manner to bind Reseller with respect to the prices it charges its Customer. All amounts expressed in or payable under this Agreement shall be in U.S. dollars unless otherwise stated.
- (c) For each order of Services, other than standardized or packaged services, Hammer Technologies Inc. will prepare and agree with Reseller an SOW.
- (d) Hammer Technologies Inc. shall use commercially reasonable efforts to deliver the Software, Hardware and/or Services to the address(es) and pursuant to the timetables specified in the applicable Quote or SOW, FOB Hammer Technologies Inc., Billerica, MA USA, and no liability shall ensue for any delays in delivery.
- (e) All invoices shall be issued by Hammer Technologies Inc. upon receipt of order. All fees for Software, Hardware and/or Services shall be required to be paid by Reseller in advance, prior to fulfillment by Hammer Technologies Inc.. Notwithstanding the foregoing, Hammer Technologies Inc. may, within its sole discretion, agree to allow the Reseller to provide Hammer Technologies Inc. with an irrevocable Letter of Credit in a form satisfactory to Hammer Technologies Inc. and issued by a bank reasonably acceptable to Hammer Technologies Inc. upon which presentation may be made in Boston, Massachusetts for the associated Order fees. Under no circumstance shall payment be contingent on either payment by Customer or acceptance of the Product by Customer unless expressly agreed in writing by the Chief Financial Officer of Hammer Technologies Inc.. Payments shall be made to the address listed on the invoice, or electronically or by wire transfer, if so directed by Hammer Technologies Inc.. Any

amount not so paid shall be deemed overdue and shall, without prejudice to Hammer Technologies Inc.'s rights in respect of the Reseller's failure to pay when due, be subject to a late payment charge, accruing on a monthly basis from the date payment should have been made of 1.5% per month during the period of delay, or the maximum allowed by applicable law, whichever is less. Payments shall be made in U.S. dollars unless otherwise specified in the invoice. In case of application of exchange controls in the Territory, Reseller shall take all actions necessary to ensure Hammer Technologies Inc. receives full payment of the amounts due.

- (f) Reseller acknowledges that the discounted prices made available to Reseller reflect the economic bargain of the parties and the costs and risks assumed by Hammer Technologies Inc. under the Terms of this Agreement and that any requested modification of these Terms for the benefit of a Customer that increases Hammer Technologies Inc.'s risk or costs may negatively impact the quoted price and any discounts offered against the price.
- (g) The ultimate delivery and/or performance of an Order by Hammer Technologies Inc. shall be subject to the right and ability of Hammer Technologies Inc. to obtain required licenses and permits, under all decrees, statutes, rules and regulations of any controlling government including, but not limited to, that of the United States and agencies or instrumentalities thereof presently in effect or which may be in effect hereafter. Any Order which has been accepted by Hammer Technologies Inc. but which cannot be fulfilled due to such decrees, statutes, rules and regulations shall be considered to have been rejected when submitted to Hammer Technologies Inc. for acceptance or rejection. Reseller shall assist Hammer Technologies Inc., as requested, in obtaining all required licenses or permits by supplying such documentation or information as may be requested by Hammer Technologies Inc..
- (h) Unless Reseller requests otherwise, all Software and Hardware ordered by Reseller shall be packed for shipment and storage in accordance with Hammer Technologies Inc.'s standard commercial practices, unless otherwise set forth in the Order. It is Reseller's obligation to notify Hammer Technologies Inc. in writing of any special packaging requirements (which shall be at Reseller's expense).

4. Direct Orders; Referrals.

- (a) If a Customer within the Territory determines to place a Direct Order, Reseller shall be compensated for bringing the Order to Hammer Technologies Inc. in the form of a Direct Order Fee, which shall equal up to fifteen percent (15%) of net value of the Direct Order for Products. The actual amount of the Direct Order Fee shall be determined in the sole discretion of Hammer Technologies Inc., after taking into consideration various factors, including but not limited to:
 - (i) whether a Customer has required any material change that increases Hammer Technologies Inc.'s risk or costs to the Hammer Technologies Inc. standard purchase terms and conditions as set out in the EULA or this Agreement, and, despite good faith diligent efforts of Hammer Technologies Inc., Customer was not willing to pay increased fees for such Direct Order to compensate Hammer Technologies Inc. for such changes;
 - (ii) the stage of the Order process at which time the Customer determined to place a Direct Order; and
 - (iii) the nature and extent of the relative contributions of the Parties in successfully obtaining the bid from the Customer and completing the Direct Order.
- (b) Direct Order Fees shall be payable in U.S. dollars to Reseller within thirty (30) days of the later to occur of: (X) full payment by the Customer of all amounts due under the Order and (Y) final

acceptance of the Product or Service by the Customer.

- (c) Upon written request of Hammer Technologies Inc., Reseller agrees to provide Tier One Technical Support for Direct Orders for which Reseller shall be paid 50% of the net value of the Direct Order for Hammer Technologies Inc. Technical Support Services. Set out below is an example of the calculation of the fee for Tier One Technical Support in the case of a Direct Order.
- (d) Reseller acknowledges and agrees that as this Agreement is non-exclusive, Reseller shall only be entitled to a Direct Order Fee in connection with Orders that were initiated and quoted by Reseller and not Orders placed by or through other resellers of Hammer Technologies Inc. in the Territory.
- (e) Reseller may refer Customers to Hammer Technologies Inc. for sale or license of Hammer Technologies Inc. products that are not Products available for Resale by Reseller under this Agreement. For each such opportunity that qualifies for a referral fee, the Parties shall execute a referral registration letter in the form supplied by Hammer Technologies Inc.. Hammer Technologies Inc. shall pay Reseller a referral fee (“**Referral Fees**”) for each referred customer in an amount equal to 8% of the Net Eligible Product Fee Revenue accruing to Hammer Technologies Inc. from a referred customer. “Net Eligible Product Fee Revenue” means the net invoice price charged by Hammer Technologies Inc. for the Hammer Technologies Inc. software licensed to or hardware purchased by the referred customer, exclusive of any related or included support, maintenance and/or services fees. Referral Fees shall not be paid for referrals to an existing customer of Hammer Technologies Inc. or other reseller of Hammer Technologies Inc. or to customers for which Hammer Technologies Inc. has submitted a product proposal or conducted an on-site presentation within the twelve (12) month period immediately preceding the date on which the referral is made.

5. Hammer Technologies Inc. Software License; Right to Sublicense and Sell.

- (a) Title to and ownership of all proprietary rights in or related to the Hammer Technologies Inc. Software shall at all times remain with Hammer Technologies Inc. and its licensors. All references in this Agreement to sale, resale or purchase of the Products, or references of like effect, shall, with respect to the Software, mean licenses or sublicenses of the Software. All references in this Agreement to purchasers of the Products, or references of like effect, shall, with respect to the Software, mean Reseller as a licensee or authorized sub-licensees of the Software.
- (b) In consideration of payment of the fees associated with an Order for Software, Hammer Technologies Inc. hereby grants to the Reseller a non-exclusive right, during the term of this Agreement, to Resell Products in the Territory to Customers, provided that a Customer shall have first executed a legally binding end user license agreement directly with Reseller, or has issued a purchase order that includes or accepts terms with Reseller, that are no less favorable to Hammer Technologies Inc. as those defined in the EULA. The EULA shall be a contract between Reseller and Customer. Hammer Technologies Inc. shall be deemed a third-party beneficiary of such EULA. Hammer Technologies Inc. may condition acceptance of an Order upon presentation of a complete copy of the EULA to Hammer Technologies Inc..
- (c) The term of use of the license granted under this Agreement shall be perpetual unless otherwise set forth in the Quote.
- (d) The Reseller may permit its sub-licensee to make a single copy of the Software exclusively for back-up or archival purposes, provided that all copies bear Hammer Technologies Inc.’s proprietary notices. The Reseller may grant its sub-licensees the right to make copies of the

Documentation, in form and quantity only as is reasonably required for sub-licensee's internal use of the Software, consistent with the terms and restrictions contained in these Terms.

- (e) Any attempt to sublicense, resell, transfer or assign any Software, or any portion of Software, except in accordance with this Section 5 shall be null and void.
- (f) All Orders placed under this Agreement shall be for resale only. Reseller may not use any Product or Service for internal use, other than Products purchased by Reseller for non-production use for demonstration, training, or provision of Tier One Technical Support.

6. Other Obligations of Reseller.

- (a) Reseller shall employ competent and experienced sales, support and service personnel so as to promote, sublicense and sell the Products and Services and to render prompt and adequate support and service to End Users of the Hardware and Software in the Territory. Reseller shall at all times during the term of this Agreement make all reasonable efforts to employ at least one support technician qualified to provide Tier One Technical Support. These employees shall not be, in any manner, considered as employees of Hammer Technologies Inc..
- (b) Reseller may, at its option and expense, translate all user and technical manuals and advertising and marketing information with respect to the Products into the languages of its Customers. Reseller shall provide Hammer Technologies Inc. with advance copies of all such materials for approval by Hammer Technologies Inc. prior to distributing any such materials to Customers provided, however, that approval of such materials by Hammer Technologies Inc. shall not act as an endorsement or guarantee of any kind by Hammer Technologies Inc. concerning the content thereof. The English language version of such materials shall control in the event of any discrepancies between any translations and the English language version. Reseller shall assign all copyrights in such translations to Hammer Technologies Inc. and agrees to execute any documents or take such other action necessary to make such assignment. Reseller shall have a non-exclusive right during the term of this Agreement, in connection with its activities pursuant to this Agreement, (i) to use such translations, and (ii) to incorporate such translations into its own manuals, advertising and marketing information. Hammer Technologies Inc. shall not be liable for translation errors made by Reseller or at Reseller's direction or for the non-conformance of such translated materials with laws and regulations in force from time to time in the Territory. Reseller shall indemnify, defend and hold Hammer Technologies Inc. harmless from any third party claims against Hammer Technologies Inc. based on such errors or non-conformance.
- (c) Reseller shall not make any affirmations, representations, warranties or guaranties with respect to the Products to any Customer or other third party or otherwise display, demonstrate, or represent the Products in any manner that is false or misleading, or make warranty or representations as to quality, merchantability, fitness, or any other feature of the Products in any manner that would expand the warranties or representations made by Hammer Technologies Inc. under the License Terms.
- (d) Reseller shall provide Tier One Technical Support to its Customers for each annual period in which the Customer purchases maintenance through Reseller. Tier One Technical Support is defined in Schedule 5. The failure of Reseller to provide Tier One Technical Support shall be deemed a material breach of this Agreement, in which case Hammer Technologies Inc. may: (i) reduce Reseller's discounts for each discount category to Hammer Technologies Inc.'s standard discounts for resellers who do not provide such support; or (ii) terminate this Agreement in accordance with Section 14(a) below.
- (e) With respect to Hammer Technologies Inc. Professional Services to be performed by Hammer

Technologies Inc. for Reseller or its Customer, Reseller shall:

- (i) Arrange for reasonable access to the relevant facilities and equipment, sufficient in all cases to permit the Hammer Technologies Inc. Professional Services to be performed.
- (ii) Arrange for reasonable work space at such facilities for Hammer Technologies Inc. employees, as necessary or appropriate.
- (iii) Ensure that: (x) all equipment, software, documentation, information and personnel required for the performance of such Hammer Technologies Inc. Professional Services is made available to Hammer Technologies Inc. on a timely basis, and (y) all Reseller personnel assigned to assist Hammer Technologies Inc. are familiar with the requirements of Reseller or its Customer, as the case may be, and have the expertise and capabilities necessary to permit Hammer Technologies Inc. to undertake and complete the Hammer Technologies Inc. Professional Services. Hammer Technologies Inc.'s employees shall not be required to communicate in any language other than English.
- (iv) Provide the support to Hammer Technologies Inc. as described in Schedule 6.
- (f) Reseller shall pay its own expenses, including without limitation all travel, lodging and entertainment expenses, incurred in connection with discharging its obligations hereunder. Hammer Technologies Inc. shall not reimburse Reseller for any of those expenses.
- (g) Reseller covenants not to hire any Hammer Technologies Inc. employees assigned to perform Services, without the prior written agreement of Hammer Technologies Inc., even if the request for hiring is initiated by the employee her/himself. This non-hiring covenant is valid during the term of this Agreement and for a one (1) year period immediately following the termination or expiration of this Agreement, as the case may be.
- (h) During this Agreement and for five (5) years following the termination of this Agreement, Reseller shall keep proper records reflecting all inquiries, Orders, transactions and other matters relating to this Agreement and specifically identifying all Products delivered pursuant to this Agreement to any Customer and Hammer Technologies Inc. may, upon written notice of no less than five (5) business days, audit and inspect the records during regular business hours.

7. Other Obligations of Hammer Technologies Inc.. Hammer Technologies Inc. shall, during the term of this Agreement:

- (a) provide Reseller reasonable quantities of marketing and technical literature relating to the Products.
- (b) provide training to Reseller's personnel, at no charge to Reseller, in connection with the marketing, maintenance and support of the Products, up to five (5) days at Hammer Technologies Inc. Billerica facility or Hammer Technologies Inc. UK facility, as appropriate. Additional training can be provided on mutually agreeable terms.
- (c) provide tier 2 and 3 technical support to Reseller and its Customers under Hammer Technologies Inc. Technical Support. Hammer Technologies Inc. Technical Support consists of (a) telephone and web-based technical support, (b) updates, available upgrades and enhancements to Software as they become available for general release, and (c) repair or replacement of Hardware, all of which, together with optional premium services, are more fully described in Schedule 1. Fees for Hammer Technologies Inc. Technical Support are payable annually in advance.
- (d) provide Reseller access to Hammer Technologies Inc.'s secure customer support extranet, which is subject to confidential treatment.

8. Trademarks, Service Marks and Trade Names; Other Intellectual Property Rights; Promotion on Internet.

- (a) Reseller may use Hammer Technologies Inc.'s Trademarks listed in Schedule 7 on a non-exclusive basis in the Territory only for the term of this Agreement and solely for display or advertising purposes in connection with promoting, sublicensing and selling the Products in accordance with this Agreement. Upon expiration or termination of this Agreement, Reseller's right to use the Trademarks shall cease and Reseller shall immediately remove the Trademarks from its web site(s) and from any Reseller marketing materials or documentation. Reseller shall not at any time do or permit any act to be done which may in any way impair the rights of Hammer Technologies Inc. in the Trademarks or any of Hammer Technologies Inc.'s other Intellectual Property Rights. Reseller shall promptly and completely apprise Hammer Technologies Inc. of any actual, threatened or suspected infringement in the Territory of any Intellectual Property Rights of Hammer Technologies Inc.. Except as provided above, Reseller has no rights in the Intellectual Property Rights relating to the Products or of any goodwill associated therewith and Reseller agrees that, except as expressly provided in this Agreement, it shall not acquire any rights in respect thereof and that all such rights and goodwill are, and shall remain, vested in Hammer Technologies Inc. and its licensor(s).
- (b) In order to comply with Hammer Technologies Inc.'s quality control branding standards, Reseller shall: (i) use the Trademarks in compliance with all relevant laws and regulations; (ii) obtain Hammer Technologies Inc.'s prior written approval of each advertisement, display or other promotional material using any of the Trademarks; (iii) accord Hammer Technologies Inc. the right to inspect during normal business hours, without prior advance notice, Reseller's facilities used in connection with efforts to promote the Products in order to confirm that Reseller's use of the Trademarks is in compliance with this Section; and (iv) not modify any of the Trademarks in any way and not use any of the Trademarks on or in connection with any software programs, goods or services other than the Products.
- (c) Without prejudice to the right of Reseller or any third party to challenge the validity of any Intellectual Property Right, Reseller shall not otherwise do or authorize any third party to do any act which would or might invalidate or be inconsistent with any Intellectual Property Right and shall not omit or authorize any third party to omit or do any act which, by its omission, would have such effect or character. Reseller shall have no right to bring infringement proceedings with respect to any of the Trademarks or the Intellectual Property Rights.
- (d) Reseller shall not take any or all of the following actions without the prior written approval of Hammer Technologies Inc.: (i) make any information about Hammer Technologies Inc. or the Products available on the Internet; (ii) link any site on the Internet to any Hammer Technologies Inc. site; and (iii) use any of the Trademarks on any site on the Internet. In no event shall Reseller establish, operate, sponsor or contribute content to any site on the Internet that incorporates Hammer Technologies Inc.'s name as its URL address or any part of such address.
- (e) This Section 8 is not intended to authorize Reseller to actively solicit customers from outside of the Territory. Upon expiration or termination of this Agreement, any rights granted to Reseller under this Section 8 shall terminate.

9. Warranties.

- (a) The Software is not error-free. Hammer Technologies Inc. warrants that during the Software Warranty Period the Software, when installed and used in accordance with the Software Documentation, will operate and perform in all material respects in accordance with the Software Documentation ("**Conform**"). A minor discrepancy between the actual operation,

functionality or performance of the Software and as described in the Software Documentation shall not be considered a failure to Conform. Hammer Technologies Inc. shall attempt, through reasonable efforts, to correct any material failure of the Software to Conform, if such failure is reported to Hammer Technologies Inc. within the Software Warranty Period and Reseller, at Hammer Technologies Inc.'s request, provides Hammer Technologies Inc. with sufficient information (which may include access to the relevant computer system for use of the Software by Hammer Technologies Inc. or its designated personnel) to reproduce the defect in question. If, during the Software Warranty Period, after a reasonable number of attempts, as determined by Hammer Technologies Inc., to correct the failure to Conform, Hammer Technologies Inc. is unable to revise the Software such that it Conforms, then Reseller may, at its option, cancel the Order, return all copies of the Software, and associated Hardware, if applicable, and receive a refund of any fees paid for such non-conforming Software, and associated Hardware, if applicable. This Section states Reseller's exclusive remedy and Hammer Technologies Inc.'s sole liability under the forgoing Software warranty, and if a refund is provided for associated Hardware, under the Hardware warranty set out below in Section 9(b) below as well.

- (b) Hammer Technologies Inc. warrants that, during the Hardware Warranty Period, the Hardware shall be in good working order and will perform, function and operate in all material respects to the relevant Product specifications. Hardware supplied may contain either new or refurbished parts. If refurbished, all components will be warranted as new. Reseller's exclusive remedy and Hammer Technologies Inc.'s sole liability under this warranty shall be for Hammer Technologies Inc. to provide during the Hardware Warranty Period, at no additional charge to Reseller, the parts and labor necessary to restore the Hardware to good working order. Reseller shall notify Hammer Technologies Inc. of the failure of any of the Hardware to perform in accordance with the applicable specifications, and thereafter, pursuant to Hammer Technologies Inc.'s direction, arrange for the delivery of the damaged Hardware to Hammer Technologies Inc. or its designee for repair in accordance with Hammer Technologies Inc. RMA procedures, as described under Schedule 1.
- (c) Reseller acknowledges and agrees that the Hardware is intended for use solely with the Software and with other programs that are approved for installation by Hammer Technologies Inc., and therefore the warranties in Sections 9(a) and 9(b) above shall become void and of no further force and effect if: (i) any software or program other than the Software be installed on the Hardware unless such program is approved for such installation by Hammer Technologies Inc., (ii) the Hardware or Software is integrated with any third party products other than those certified as compatible by Hammer Technologies Inc., or (iii) the Product is subject to abuse or neglect.
- (d) Reseller acknowledges that certain Third-Party Technology (including but not limited to the operating system and anti-virus software that ships with certain Hardware) and third-party hardware products (together, "**Third-Party Products**") are provided by Hammer Technologies Inc. as a "pass through" to Reseller, and such Third Party Products are covered by a warranty offered by the third party hardware or software vendor, not Hammer Technologies Inc. Reseller acknowledges and agrees that Hammer Technologies Inc. makes no warranty of any kind with respect to such Third Party Products, and agrees to look solely to the applicable vendor for warranty support for such Third Party Products. Hammer Technologies Inc. shall provide first level technical support for all Third-Party Products; provided that the level, scope and cost of such support shall be in accordance with the technical support offering of the third-party.
- (e) Hammer Technologies Inc. warrants that all Services shall be performed in a competent and professional manner. Hammer Technologies Inc.'s sole liability and Reseller's exclusive

remedy for breach of this warranty is for Hammer Technologies Inc. to re-perform such Service for no additional charge. The parties agree that, unless otherwise stated in an SOW, all Services shall be completed by Hammer Technologies Inc. within six (6) months of the date of the Order. Any Services not so completed or delivered by such date (other than due to Hammer Technologies Inc. delay) shall be considered rendered and payment therefor nonrefundable. For Services offered pursuant to a monthly or annual subscription, the parties agree that any such subscription must commence within sixty (60) days from the date of the applicable Order, and that such Services shall be deemed commenced by such date in the absence of agreement between the parties to the contrary. Reseller is responsible for all reasonable travel and expenses incurred by Hammer Technologies Inc. while delivering Services. Hammer Technologies Inc. may, in its discretion, utilize subcontractors for any service offering, provided that Hammer Technologies Inc. shall be responsible for the conduct and actions of its subcontractors.

- (f) Hammer Technologies Inc. makes no warranties with respect to the Products and Services except as set out in this Section. Warranties are for the benefit of Reseller only. Reseller shall indemnify and hold Hammer Technologies Inc. harmless against all claims made by a Customer or any person claiming through Customer in an action directly against Hammer Technologies Inc. with respect to, resulting from, or arising out of the Resale of any Product.
- (g) EXCEPT AS NOTED IN THIS SECTION 9 HAMMER TECHNOLOGIES INC. AND ITS THIRD-PARTY LICENSORS AND SUPPLIERS EXPRESSLY DISCLAIM ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, WARRANTIES OR REPRESENTATIONS OF WORKMANSHIP, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, OR THAT THE OPERATION OF THE SOFTWARE WILL BE ERROR FREE.

10. Limitations on Liability.

IN NO EVENT SHALL THE TOTAL AGGREGATE LIABILITY OF HAMMER TECHNOLOGIES INC., ITS EMPLOYEES, DIRECTORS, OFFICERS, AGENTS OR THIRD-PARTY LICENSORS OR SUPPLIERS FOR ANY CLAIM, WHETHER ARISING IN CONTRACT, TORT OR NEGLIGENCE, OR ANY OTHER BASIS IN LAW OR EQUITY, EXCEED THE AMOUNT PAID UNDER THIS AGREEMENT BY RESELLER FOR THE PRODUCT OR SERVICE THAT IS THE SUBJECT MATTER OF THE CLAIM. OTHER THAN WITH RESPECT TO A PARTY'S INDEMNIFICATION OBLIGATIONS, OR A BREACH OF A PARTY'S CONFIDENTIALITY OBLIGATIONS OR THE SOFTWARE LICENSE RESTRICTIONS, NEITHER PARTY NOR ANY OF HAMMER TECHNOLOGIES INC.'S THIRD PARTY LICENSORS OR SUPPLIERS SHALL BE LIABLE TO ANOTHER PARTY FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR OTHER INDIRECT DAMAGES, WHETHER OR NOT SUCH DAMAGES ARE FORESEEABLE, AND/OR THE PARTY HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

11. Indemnification.

- (a) Reseller hereby agrees to indemnify, defend and hold harmless Hammer Technologies Inc., its employees, directors, officers, agents, customers and third-party licensors and suppliers from all Damages arising out of (i) Reseller's breach of this Agreement; (ii) Reseller's failure to comply with relevant laws and regulations; (iii) any claim made to Hammer Technologies Inc. by employees of Reseller or (iv) any representations or warranties made by Reseller which are not authorized by Hammer Technologies Inc. hereunder.
- (b) Hammer Technologies Inc. hereby agrees that, with respect to Reseller's indemnification

obligation for any claim noted under Section 11(a) above: (i) Reseller shall have sole control and authority with respect to the defense or settlement of any such claim, provided that (a) any such settlement or disposition will impose no obligation whatsoever on Hammer Technologies Inc. that is not wholly discharged or dischargeable by Reseller, and imposes no conditions or obligations on Hammer Technologies Inc. other than the payment of monies that are readily measurable for purposes of determining the monetary indemnification or reimbursement obligations of Reseller, and (b) Reseller will be capable of fully performing its obligations pursuant to such settlement or disposition, including the financial capacity to pay when due all sums it is obligated to pay pursuant to such settlement or disposition; and (ii) Hammer Technologies Inc. shall cooperate with Reseller, at the Reseller's sole cost and expense, in the defense of any such claim.

- (c) Hammer Technologies Inc., at its own expense, shall indemnify the Reseller and its officers, agents and employees from and against any action brought against Reseller to the extent that such action is solely based on a claim that the unmodified Software, when used in accordance with these Terms, infringes any copyright, trade secret rights or U.S. or EU member state patent rights of any third party (“**Infringement**”) and Hammer Technologies Inc. shall pay all costs, settlements and damages finally awarded, provided: (i) Hammer Technologies Inc. shall have sole control of the defense and/or settlement of such claim or suit; (ii) the Reseller will notify Hammer Technologies Inc. promptly in writing of each such claim or suit and shall give Hammer Technologies Inc. all information known to the Reseller relating thereto; and (iii) the Reseller will cooperate with any reasonable request of Hammer Technologies Inc. in the settlement or defense of any such claim or suit. The Reseller shall be reimbursed for all reasonable expenses incurred in providing any cooperation requested by Hammer Technologies Inc..
- (d) If all or any part of the Software is, or in the opinion of Hammer Technologies Inc. may become, the subject of any claim or suit for Infringement, or in the event of any adjudication that the Software or any part thereof does infringe, or if the use of the Software or any part thereof is enjoined, Hammer Technologies Inc. may, at its expense and discretion do one or more of the following things: (i) procure for the Reseller's sub-licensee the right to use the Software or the affected part of the Software; (ii) replace the Software or the affected part of the Software with other Software providing substantially similar functionality; (iii) modify the Software or the affected part of the Software to make it non-infringing; or (iv) if none of the foregoing remedies are, in the sole discretion of Hammer Technologies Inc., commercially feasible, refund the aggregate payments paid by the Reseller for the Software or the affected part of the Software less a reasonable amount for the prior use thereof by Reseller (based on a five (5) year straight line life).
- (e) Hammer Technologies Inc. shall have no obligations under this Section to the extent that a claim is based upon: (i) the use of any prior version of the Software if such infringement would have been avoided by the use of the then-current version, which version has been provided by Hammer Technologies Inc. to Reseller or its sub-licensee; (ii) the combination, operation or use of the Software with software or data which was not provided by Hammer Technologies Inc., if such infringement would have been avoided in the absence of such combination, operation or use; or (iii) the use of the Software on or in connection with a computer system other than as specified in the Software Documentation.
- (f) This Section states the entire liability of Hammer Technologies Inc. and the exclusive remedy of the Reseller with respect to any alleged infringement of any third-party rights.

12. Ownership

- (a) Except for the license rights granted hereunder, all right, title and interest in and to the Software, Software Documentation (as well as all test scripts and other similar items delivered by Hammer Technologies Inc. to Reseller) and Hammer Technologies Inc. Property, shall be retained by Hammer Technologies Inc. and its suppliers.
 - (b) Subject to Hammer Technologies Inc.'s reserved rights in the Hammer Technologies Inc. Property, all deliverables arising out of Hammer Technologies Inc. Professional Services shall belong to Reseller upon full payment. In performing the Hammer Technologies Inc. Professional Services, including developing the deliverables, Hammer Technologies Inc. may utilize Hammer Technologies Inc. Property. Hammer Technologies Inc. shall retain all ownership rights in and to the Hammer Technologies Inc. Property. Hammer Technologies Inc. shall retain the unlimited right to use and to sublicense to others the ideas, concepts, techniques or other expertise which it developed or employed in providing the Hammer Technologies Inc. Professional Services or creating the deliverables, in any products and for any purposes (including providing services and developing deliverables for other customers) whatsoever, so long as in doing so Hammer Technologies Inc. does not disclose any Reseller confidential information.
13. Compliance with Laws Generally; Export Controls and Anti-Corruption Laws.
- (a) Reseller shall at all times comply with all laws, regulations, decrees and ordinances of every country and locality as relevant to the transactions contemplated under this Agreement.
 - (b) No Software or underlying information or technology may be downloaded or otherwise exported or re-exported (i) into (or to a national or resident of) Cuba, Iraq, Libya, Sudan, North Korea, Iran, Syria or any other country to which the U.S. has embargoed goods; or (ii) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Commerce Department's Table of Denial Orders ("Export Controls"). Reseller represents and warrants that it is not located in, under the control of, or a national or resident of any such country or on any such list. In addition, if the licensed Software is identified as a not-for-export product, then, unless Reseller has an exemption from the United States Department of State, the following applies: EXCEPT FOR EXPORT TO CANADA FOR USE IN CANADA BY CANADIAN CITIZENS, THE SOFTWARE AND ANY UNDERLYING TECHNOLOGY MAY NOT BE EXPORTED OUTSIDE THE UNITED STATES OR TO ANY FOREIGN ENTITY OR "FOREIGN PERSON" AS DEFINED BY U.S. GOVERNMENT REGULATIONS, INCLUDING WITHOUT LIMITATION, ANYONE WHO IS NOT A CITIZEN, NATIONAL OR LAWFUL PERMANENT RESIDENT OF THE UNITED STATES. BY DOWNLOADING OR USING THE SOFTWARE, YOU ARE AGREEING TO THE FOREGOING AND YOU ARE WARRANTING THAT YOU ARE NOT A "FOREIGN PERSON" OR UNDER THE CONTROL OF A "FOREIGN PERSON."
 - (c) No owner, shareholder (direct or beneficial), officer, director, employee, third party representative, agent, or other individual with any direct or indirect beneficial interest in Reseller, or Reseller's payments under this Agreement, or any family relation of any such person, is a current "Government Official."
 - (d) For purposes of this Agreement, the term "Governmental Official" means any official, elected or appointed; any employee or any agent of any national, state, provincial, or municipal government, or any subdivision, agency, or part thereof; any candidate for political office; political party official; royalty; any honorary government official; any official or employee of any international organization (such as the United Nations, the World Health Organization, NATO, the World Bank, etc.); and any officer, employee, or agent of any government-owned or -controlled enterprise, such as a state owned or controlled telecommunications company.

- (e) Reseller shall notify Hammer Technologies Inc. immediately if, during the term of this Agreement, (i) any owner, shareholder, officer, director, employee, third party representative, agent, or other individual with any direct or indirect connection with or beneficial interest in Reseller, or Reseller's payments under this Agreement, or any family relation of any such person, becomes a Governmental Official; or (ii) there is an acquisition by a Government Official or entity of a legal or beneficial interest in Reseller or in the payments to Reseller received under this Agreement.
- (f) Reseller confirms its understanding of the FCPA and the Bribery Act. Reseller also acknowledges receipt of copies of, and confirms its understanding of, Hammer Technologies Inc.'s Anticorruption Compliance Policy (the "Policy"). Reseller agrees to comply with the Policy and all Anticorruption laws and shall not cause Hammer Technologies Inc. to be in violation of any Anticorruption laws.
- (g) Reseller and its owners, shareholders (direct or beneficial), officers, directors, employees, third party representatives, and agents, and other individuals with any direct or indirect beneficial interest in Reseller or Reseller's payments under this Agreement, will not, directly or indirectly, provide, offer or promise to provide, or authorize the provision of money, gifts, or Anything of Value to any Government Official or political party for the purpose of obtaining or retaining business, obtaining an improper business advantage, or otherwise in violation of the Anticorruption Laws, the local law of any country, or the Policy.
- (h) For purposes of this Agreement, "Anything of Value" means money, gifts over a nominal value, as well as, without limitation: (i) stock or other forms of interest in a business; (ii) entertainment over a nominal value; (iii) charitable contributions; (iv) discounts on products or services not readily available to others; (v) offers of employment, including to friends and family; (vi) assumption or forgiveness of debt; (vii) payment of travel expenses, if not a "bona fide," business expense related to Reseller's or Hammer Technologies Inc.'s business and pre-approved, in writing, by Hammer Technologies Inc.'s Legal Department; and (viii) personal favors.
- (i) Payments made to "obtain or retain business" are defined extremely broadly and can include any payments to which there is a potential business nexus.
- (j) Reseller shall not, directly or otherwise, for the purpose of selling or purchasing products or services, provide, offer or promise to provide, or authorize the provision of Anything of Value or other benefits to a business counterparty (either an entity or individual) except for granting or accepting a discount/rebate or providing product samples, consistent with the Policy. Reseller also shall ensure that no part of any payment, compensation, reimbursement, or fee paid by Reseller or Hammer Technologies Inc. will be used as a corrupt payment, gratuity, emolument, bribe, kickback, or other improper benefit to any Government Official or to any person.
- (k) If Reseller has information or suspects that there may be a violation of any Anticorruption Laws, or the Policy, in connection with its performance under this Agreement, or any work related thereto, Reseller shall immediately notify Hammer Technologies Inc. of such knowledge or suspicion. Reseller shall answer in reasonable detail any questionnaire or other written or oral communications from Hammer Technologies Inc. or its authorized representatives, to the extent the same pertains to compliance with any of the representations and warranties in this Agreement, and Reseller agrees, pursuant to this Section and Section 5(h) of this Agreement, that Hammer Technologies Inc. has the right to reasonable access to Reseller's books and records and to audit Reseller's books and records as they pertain to Hammer Technologies Inc. and the services Reseller is performing for Hammer Technologies Inc.. Representative consents to the written disclosure by Hammer Technologies Inc. of the contents of this Agreement,

including those provisions setting forth Reseller's compensation, to any governmental entity or person.

- (l) Any violation of Export Controls, Anticorruption Laws or the Policy, shall be deemed a material breach of this Agreement. The provisions of this Agreement relating to the compensation of Representative are legal and binding under the laws and policies within the Territory (including, without limitation, taxation and exchange control laws and regulations). With respect both to
- (m) such payment provisions and any payment pursuant thereto, no consent of or notice to such government, or any agency thereof, is required or necessary, except as Reseller may otherwise have previously advised Hammer Technologies Inc. in writing.

14. Term and Termination.

- (a) The term of this Agreement shall begin on the Effective Date and will continue through the Initial Term. The Agreement may be extended by mutual written agreement of the Parties within the final six (6) months of the Initial Term.
- (b) Either Party may terminate this Agreement if the other Party materially breaches any of its obligations, covenants, or warranties under this Agreement, and such breach is not cured within thirty (30) days of receipt of written notice of the breach from the non-breaching Party. If, except as provided in Section 14(b), the cure is not reasonably susceptible to cure within thirty (30) days, the cure period shall be extended for a reasonable period of time (not to exceed ninety (90) days), so long as the breaching Party is diligently pursuing a cure in the opinion of the non-breaching Party.
- (c) Hammer Technologies Inc. may terminate this Agreement, a SOW or Order immediately upon notice to Reseller, and without offering Reseller a cure period:
 - (i) if any breach involves (i) an act, omission or threatened act or omission of Reseller that Hammer Technologies Inc. deems in its sole discretion threatening to any of its Intellectual Property Rights, (ii) any violation, as Hammer Technologies Inc. may determine in its sole discretion, of any Export Control, Anticorruption Law or the Policy, by Reseller, any secondary reseller or sub-distributor (as defined in Section 2(c)) or any other agent of Reseller, or (iii) Reseller engages in any conduct that impairs Reseller's reputation in any material respect or takes any other action that negatively impacts the reputation of Hammer Technologies Inc. or the Products; or
 - (ii) upon the filing of a petition in bankruptcy, insolvency or reorganization against or by Reseller, or Reseller becoming subject to a composition for creditors, whether by law or agreement, or upon Reseller entering into receivership or otherwise becoming insolvent.
- (d) This Agreement may be terminated by either Party, with or without cause, by giving no less than sixty (60) days written notice of termination to the other Party. This Agreement may also be terminated by either party pursuant to Section 16(i) below.
- (e) Either Hammer Technologies Inc. or Reseller may terminate any specific Order(s) or SOW(s) upon the other party's material breach of such Order(s) or SOW(s), provided that (a) the non-breaching party shall first have sent written notice to the breaching party describing the breach in reasonable detail and demanding that it be cured, and (b) the breaching party does not cure the breach within thirty (30) days following its receipt of such notice. On termination due to Reseller's breach, all licenses granted to the Reseller under the Order or SOW shall terminate, the Reseller shall cause all use such Software (and Hardware, if applicable) to cease, shall return the applicable Software Documentation (whether or not modified or merged into other materials) to Hammer Technologies Inc. and shall certify in writing to Hammer Technologies

Inc. that all copies (in any form or media) of the same have been destroyed or returned to Hammer Technologies Inc.. Termination by Reseller shall not relieve the Reseller from making payments for Software, Hardware or Services delivered prior to termination and shall not prevent either party from pursuing any other available remedies.

- (f) Reseller warrants and acknowledges that Reseller does not now have, nor shall have after termination or expiration, any continuing interest or rights to the good will, assets or proceeds of Hammer Technologies Inc., and that Hammer Technologies Inc.'s sole responsibilities and liabilities are as set forth herein. Hammer Technologies Inc.'s right to terminate is absolute, and Reseller acknowledges it has considered the term of this Agreement and the termination provisions in making expenditures of money and time in preparing for the performance of this Agreement and has further considered the possible loss or damage on account of the loss of prospective profits or anticipated sales or on account of expenditures, investments, leases, property improvements or commitments in connection with the good will or business of Reseller resulting from the expiration of this Agreement. Hammer Technologies Inc. shall have no liability to Reseller, and Reseller expressly waives any liability of Hammer Technologies Inc., as a result of termination or expiration of this Agreement in accordance with its terms, for compensation or for damages of any kind, whether on account of the loss by Reseller or such employee of present or prospective sales, investments, compensation or goodwill or otherwise, including without limitation claims relating to loss of profit, goodwill, creation of clientele, portfolio compensation, income equalization compensation, advertising costs, costs of samples, supplies, or equipment, termination of employees, employees' salaries, unrecovered expenditures, investments, inventory purchases, leases, property improvements, or any other items. For further clarity, Reseller, for itself and on behalf of each of its employees, officers, and shareholders, hereby waives any rights which may be granted to it or them under the laws and regulations of jurisdictions included in the Territory or otherwise which are not granted to it or them by this Agreement. Reseller hereby indemnifies and holds Hammer Technologies Inc. harmless from and against any and all claims, costs, damages and liabilities whatsoever asserted by any employee, agent or representative of Reseller under any applicable termination, labor, social security or other similar laws or regulations.
- (g) Termination or expiration of this Agreement shall not affect the obligation of Reseller to pay Hammer Technologies Inc. all amounts owing or to become owing hereunder as a result on or before the date of such termination or expiration, as well as interest thereon to the extent any such amounts are paid after the date they became or will become due pursuant to this Agreement.
- (h) Notwithstanding anything else in this Agreement to the contrary, a party's indemnification obligations arising hereunder and obligations of the Parties under Sections 5(a), 5(b), 5(d), 6(f) and (g), 9(f), 9(f),10, 11,12, 14(e), (f), (g), and (j), 15, and 16 shall survive the termination or expiration of this Agreement, as the case may be.
 - (i) Termination of this Agreement shall not impact any sub-licenses that Reseller has granted prior to the termination date in accordance with this Agreement.
 - (j) Upon termination or expiration of this Agreement, Reseller shall within ten (10) days return to Hammer Technologies Inc. any sample Products, sales collateral, Proprietary Information or other materials provided to Reseller by Hammer Technologies Inc. under this Agreement.

15. Confidentiality; Publicity.

- (a) Reseller agrees that Hammer Technologies Inc. has a proprietary interest in information provided to Reseller by Hammer Technologies Inc., whether in connection with this Agreement

or otherwise, whether in written, oral or visual form, which is (i) a trade secret, confidential or proprietary information and (ii) not publicly known, whether or not annotated by a legend, stamp or other written identification as confidential or proprietary information (hereinafter referred to as “**Proprietary Information**”). Reseller shall disclose the Proprietary Information only to those of its agents and employees to whom it is necessary in order properly to carry out their duties as limited by the terms and conditions hereof. Reseller shall ensure that, both during and after the term of this Agreement, all Proprietary Information disclosed by Reseller to its agents and employees is held in strict confidence by such agents and employees. During and after the term of this Agreement, Reseller, its agents and employees shall not use the Proprietary Information for any purpose other than in connection with Reseller's sublicensing and sale of the Products in the Territory pursuant to this Agreement. Reseller shall, at its expense, return to Hammer Technologies Inc. the Proprietary Information and all copies thereof, together with all notes, summaries, memoranda and the like that contain or refer to the Proprietary Information in whatever media within ten (10) days after the termination or expiration of this Agreement. All such Proprietary Information shall remain the exclusive property of Hammer Technologies Inc. during the term of this Agreement and thereafter. This Section 15 shall also apply to any consultants or subcontractors that Reseller may engage in connection with its obligations under this Agreement.

- (b) The following Proprietary Information shall be deemed to be “**Highly Proprietary Information**”: Hammer Technologies Inc.'s price lists; Customer/prospect lists; Product road maps; bug lists; Hammer Technologies Inc. marketing plans; internal Hammer Technologies Inc. contact information; Hammer Technologies Inc. financial information; pre-released Products and related documentation; information contained in the portion of Hammer Technologies Inc.'s web pages which are accessible only to Customers, as well as instructions on how to access such information; and the terms and conditions of this Agreement.

In addition to its obligations under Section 15(a), Reseller shall not disclose Highly Proprietary Information to any of its agents, employees, consultants or subcontractors unless each such individual or entity shall have first executed a non-disclosure agreement which contains, at a minimum, the confidentiality obligations described in this Section 15. Reseller acknowledges that any breach by any such individual or entity of such non-disclosure agreement shall constitute a material breach by Reseller of this Agreement and a basis for termination of this Agreement under Section 14(c)(i) above.

- (c) Notwithstanding anything contained in this Agreement to the contrary, Reseller shall not be liable for a disclosure of the Proprietary Information or Highly Proprietary Information of Hammer Technologies Inc., if the information so disclosed: (i) was in the public domain at the time of disclosure without breach of this Agreement; or (ii) was known to or contained in the records of Reseller from a source other than Hammer Technologies Inc. at the time of disclosure by Hammer Technologies Inc. to Reseller and can be so demonstrated; or (iii) becomes known to Reseller from a source other than Hammer Technologies Inc. without such source breaching any confidentiality obligations to Hammer Technologies Inc.; or (iv) was disclosed pursuant to court order or as otherwise compelled by law, after giving Hammer Technologies Inc. notice of such requirement and after assisting Hammer Technologies Inc. in reasonable efforts to prevent or limit such disclosure.
- (d) Each Party agrees that any publicity that it shall release in which the other Party is identified shall be subject to the prior written approval of the other Party.

16. Miscellaneous.

- (a) All attachments, schedules and exhibits to this Agreement are made a part of the Agreement as

if fully set forth herein, such that this Agreement, the attachments, schedules and exhibits hereto are deemed and considered one full and complete agreement of Hammer Technologies Inc. and Reseller. This Agreement supersedes and cancels any previous agreements or understandings, whether oral, written or implied, heretofore in effect and sets forth the entire agreement between the Parties with respect to the subject matter hereof. In the event of any discrepancy between this Agreement or any Order or SOW, the terms of this Agreement shall control. No modification or amendment may be made to this Agreement except by written instrument duly signed by a duly authorized representative of Reseller and by the President or Chief Financial Officer of Hammer Technologies Inc..

- (b) This Agreement and the rights and obligations hereunder may not be assigned, delegated or transferred by either party hereto without the prior written consent of the other party, which may be withheld in the other party's absolute discretion; provided, however, that Reseller's consent shall not be required with respect to any assignment, delegation or transfer by Hammer Technologies Inc. to: (i) any company, natural person, partnership or other business entity controlled by, under common control with or controlling Hammer Technologies Inc.; or (ii) an acquirer of all or substantially all of the stock or assets of Hammer Technologies Inc. related to this Agreement, through purchase, merger, consolidation or otherwise. This Agreement shall inure to the benefit of the permitted successors and assigns of each Party.
- (c) This Agreement, which is in English, shall be interpreted in accordance with the commonly understood meaning of the words and phrases hereof in the U.S.A, and its performance of the Parties hereunder shall be construed and governed according to, and any arbitration hereunder shall apply, the laws of the Commonwealth of Massachusetts, U.S.A., excluding its conflict of laws rules, applicable to contracts made and to be fully performed therein, excluding: (i) the United Nations Convention on Contracts for the International Sale of Goods; (ii) the 1974 Convention on the Limitation Period in the International Sale of Goods; and (iii) the Protocol amending the 1974 Convention, done at Vienna April 11, 1980.
- (d) Reseller irrevocably submits to the exclusive jurisdiction of the state or federal courts located in Boston, Massachusetts and irrevocably waives any objection that it may now or hereafter have to any claim that such jurisdiction is not convenient provided, however, that nothing herein shall preclude Hammer Technologies Inc. from instituting proceedings against Reseller or anyone acting by, through or under Reseller, in any place which may have jurisdiction for the purposes of protecting and enforcing Hammer Technologies Inc.'s rights hereunder.
- (e) Reseller shall be considered to be an independent contractor. The relationship between Hammer Technologies Inc. and Reseller shall not be construed to be that of employer and employee, or to constitute a partnership, joint venture or agency of any kind. Reseller shall have no right to enter into any contracts or commitments in the name of, or on behalf of, Hammer Technologies Inc., or to bind Hammer Technologies Inc. in any respect whatsoever. Reseller shall hold Hammer Technologies Inc. harmless and indemnify for any claim that any employee or contractor of Reseller may file against Hammer Technologies Inc. or any of its officers as well as any claim that any authority may commence against Hammer Technologies Inc. because of labor, social security, or tax obligations related to such Reseller's personnel or contractor.
- (f) All notices given under this Agreement shall be in writing and shall be addressed to the Parties at their respective addresses and facsimile numbers set forth above, to the attention of the Chief Financial Officer on behalf of Hammer Technologies Inc. and to the attention of the Reseller signatory noted on the signature page above on behalf of Reseller. Either Party may change its address, facsimile number or contact person for purposes of this Agreement by giving the other Party written notice of its new address, facsimile number or contact person. Any such notice if

given or made by registered or recorded delivery international air mail letter shall be deemed to have been received on the earlier of the date actually received and the date ten (10) calendar days after the same was posted (and in proving such it shall be sufficient to prove that the envelope containing the same was properly addressed and posted as aforesaid) and if given or made by confirmed facsimile transmission shall be deemed to have been received on the date of transmission, unless such date of deemed receipt is not a day on which banks are open for business in Massachusetts, U.S.A., in which case the date of deemed receipt shall be the next such succeeding business day.

- (g) None of the conditions or provisions of this Agreement shall be held to have been waived by any act or knowledge on the part of either Party, except by an instrument in writing signed by a duly authorized officer or representative of such Party. Further, the waiver by either Party of any right hereunder or the failure to enforce at any time any of the provisions of this Agreement, or any rights with respect thereto, shall not be deemed to be a waiver of any other rights hereunder or any other breach or failure of performance of the other Party.
- (h) No rights or licenses with respect to the Products or the Trademarks are granted or deemed granted hereunder or in connection herewith, other than those rights expressly granted in this Agreement.
- (i) Reseller shall be responsible for the payment of all taxes, whether in jurisdictions included in the Territory or in any other jurisdictions, now or hereafter imposed with respect to the transactions contemplated hereunder (with the exception of income taxes or other taxes imposed upon Hammer Technologies Inc. and measured by the gross or net income of Hammer Technologies Inc.) and all customs, duty, tariff and similar fees levied upon delivery of the Products or Services or other deliverables. If paid or required to be paid by Hammer Technologies Inc., the amount thereof shall be added to and become a part of the amounts payable by Reseller hereunder. Reseller agrees that each payment under this Agreement shall be free of all withholdings or deductions of taxes imposed by any jurisdiction of any nature whatsoever, and if any such withholding or deduction is required, Reseller shall pay an additional amount such that, after the deduction of all amounts required to be withheld or deducted, the net amount of Product and Service fees or such other payment actually received by Hammer Technologies Inc. will equal (on an after-tax basis) the amount of Product and Service fees or any such other amount that would be due absent of such withholding. Hammer Technologies Inc. agrees to provide as soon as possible all necessary documentation according to applicable legislation, in order to ensure that any withholding tax will be avoided or sufficiently lowered in accordance with foreign tax treaties. Upon request by Hammer Technologies Inc., Reseller shall timely provide to Hammer Technologies Inc. documentation and proof of payment of taxes and fees paid under this Agreement.
- (j) Neither Party shall be liable in damages, or shall be subject to termination of this Agreement by the other Party, for any delay or default in performing any obligation hereunder (other than payment obligations) if that delay or default is due to any cause beyond the reasonable control and without fault or negligence of that Party; provided, however, that: (i) in order to excuse its delay or default hereunder, a Party shall notify the other Party of the occurrence or the cause, specifying the nature and particulars thereof and the expected duration thereof; (ii) within fifteen (15) calendar days after the termination of such occurrence or cause, such Party shall give notice to the other Party specifying the date of termination thereof; and (iii) if, within sixty (60) calendar days after receiving notice from such Party of the occurrence of such a delay or default, the other Party has not received a notice specifying the date of termination thereof, then such other Party may terminate this Agreement by giving written notice of termination of this

Agreement to such Party, such notice being immediately effective upon such Party's receipt thereof. All obligations of both Parties shall return to being in full force and effect upon the termination of such occurrence or cause. For the purposes of this Section, a "cause beyond the reasonable control" of a Party shall include, without limiting the generality of the phrase, any act of God, act of any government or other authority or statutory undertaking, industrial dispute, fire, explosion, accident, power or telecommunications failure, flood, riot, war (declared or undeclared) or acts of terrorism.

- (k) Each Party covenants that all of its activities under or pursuant to this Agreement shall comply with all applicable laws, rules and regulations. In particular, but without limitation, Reseller shall be responsible for obtaining all licenses, permits and approvals which are necessary or advisable for sublicensing and sales of Products and Services in the Territory and for the performance of its duties hereunder.
- (l) Headings are for reference purposes only, and shall not be used in order to interpret or construe this Agreement.
- (m) Reseller agrees Hammer Technologies Inc. may use Reseller's name and logo and identify Reseller as a reseller of Hammer Technologies Inc. products and services in Hammer Technologies Inc. advertising, promotion and similar public disclosures, including, but not limited to, press releases.
- (n) If any provision of this Agreement is declared invalid or unenforceable by a court having competent jurisdiction, it is mutually agreed that this Agreement shall endure except for the part declared invalid or unenforceable by order of such court. The Parties shall consult and use their best efforts to agree upon a valid and enforceable provision that shall be a reasonable substitute for such invalid or unenforceable provision in light of the intent of this Agreement.
- (o) This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.



Schedule 1

TECHNICAL SUPPORT AND MAINTENANCE POLICY

I. SUPPORT AND MAINTENANCE PROVIDED

- A. Support Contact and Hours Information. Support for Resellers who subscribe to Hammer Technologies Inc. Technical Support shall be available from the following sources:

Email: support@hammer.com

World Wide Web: <https://support.hammer.com/>

Telephone (US and Canada): +1 978-313-7002

Fax (USA and Canada): +1 978-313-7001

Phone (EMEA): UK +44 118 935 7010, Italy +39 059 740 9324

Fax (EMEA): UK +44 118 935 7064, Italy +39 059 740 9301

Standard Support: Support is available in the US and Canada between the hours of 8:00 a.m. and 8:00 p.m. EST, and in EMEA between the hours of 8:30 a.m. and 6:00 p.m. GMT, (as applicable, “**Business Hours**”) Monday to Friday, with the exception of holidays (“**Business Days**”).

Premium Support: Hammer Technologies Inc. offers an optional premium support services program for its OneSight® for Voice, OneSight® for Web and Hammer product lines. Resellers who purchase this premium service are entitled to Standard Support and in addition, 24x7 pager and call-back support for all technical support issues covered under these terms. For Premium Support, target response and resolution times for software are as set out in the table below, with timing on a 24x7 basis.

- B. Severity Levels, Response & Resolution Target Times. Hammer Technologies Inc. will provide technical advice and assistance in connection with the use of Software and/or Hardware (together, the “**Products**”) according to severity level. Hammer Technologies Inc. will use commercially reasonable efforts to meet all target times noted in below, with respect to Software. In order to best resolve the problem, Reseller must make available a contact person to provide ongoing support and cooperation with Hammer Technologies Inc. to identify and support resolution of the technical issue. In order to resolve a technical issue in the most efficient means available, Hammer Technologies Inc. may request remote access to the Software, and Hammer Technologies Inc. and Reseller will cooperate to establish the required network connections using best practices for security and in all cases, in compliance with the network security policies of both parties.

The table below applies with respect to support of Software:

Severity	Definition	Target Response*	Target Resolution Time
1	The Software has ceased to work, which prevents performance of critical day-to-day business activities.	2 Business Hours	Within 72 hours after the error is identified.** The solution may include a temporary workaround or a generally available new release of the Software.
2	The Software use is significantly impacted by the failure of a major function of the software.	4 Business Hours	Within 5 Business Days after error is identified.** The solution may include a temporary workaround or a generally available new release of the Software.
3	The Software is causing a minor problem that is only having a minimal impact on normal operating activities.	8 Business Hours	Within 7 Business Days after error is reproduced. The solution may consist of (a) a change to the Software code in a future release at the discretion of Seller, or (b) other workaround.
4	Product questions (general) or enhancements.	12 Business Hours	Within 10 Business Days. The solution may consist of providing answers to questions, submitting feature requests to product management, and/or making changes to future releases of the Product.

*Response time shall be measured from the time that Reseller has properly notified Hammer Technologies Inc. of the defect through the Hammer Technologies Inc. Technical Support channel, which is limited to the designated toll-free numbers, the <https://support.hammer.com/> portal, or the designated Hammer Technologies Inc. Technical Support email addresses, with sufficient information that enables Hammer Technologies Inc. to identify the error in question as it relates to the specific operating environment of Reseller.

Except with respect to Software that is a Release, or Software that is part of a new Hardware installation (each, a “New Installation**”), in which case an initial reasonable production burn-in period will apply before resolution times are applied.

If Hammer Technologies Inc. determines that an operational or functional error is Hardware-related, or if a Software work-around does not correct the problem and Hammer Technologies Inc. cannot otherwise correct the problem through remote means, Reseller shall follow the return procedures set out in Section D below to return the Product to Hammer Technologies Inc. for resolution, which may then include a Software work-around or code fix, or a Hardware repair or replacement.

- C. Software Updates. Hammer Technologies Inc. will provide Customer all Bug Fixes, Minor Releases, Major Releases, and enhancements to the Software that it makes generally available to its other licensees of the Software under contract for Hammer Technologies Inc. Technical Support for no additional fee, together with all required amendments to the associated Documentation. Major Releases and new Products for which Hammer Technologies Inc. charges separate fees are not included as part of Technical Support. For the purpose of this provision, the following definitions shall apply:

- i. “**Bug Fix**” means a software patch or code intended to fix errors, problems or usability or performance issues in Software and is sometimes designated by a software release designated by a higher number two digits to the right of the decimal (e.g., from version 2.10.2 to 2.10.3);
 - ii. “**Minor Release**” means a new release of Software with minor changes in features, functions or performance, often indicated by a version number designated by a higher number one digit to the right of the decimal (e.g., from version 2.1 to 2.2); and
 - iii. “**Major Release**” means a new release of Software with major changes in features, functions or performance, often indicated by a version number designated by a higher number one digit to the left of the decimal (e.g., from version 2.x to 3.x).
- D. Hardware Repair/RMA. With respect to Hardware, support also includes (i) remote dial-in to the Hardware system for assistance; (ii) US depot hardware repair for Hardware systems that cannot be repaired remotely; and (iii) Hardware replacement for defective components as determined by Hammer Technologies Inc.. If Hammer Technologies Inc. determines that it is necessary for the Reseller to return Hardware to Hammer Technologies Inc. for repair or replacement, the returned Hardware must be accompanied by a Return Material Authorization (“**RMA**”) number. An RMA number will be provided by an Hammer Technologies Inc. support technician. The following procedures will apply to Hammer Technologies Inc.’s repair of Hardware, except as otherwise noted:
- i. Hammer Technologies Inc. will provide an interface to Reseller to manage the return and repair of Hardware.
 - ii. Reseller will email an RMA form to request an RMA number.
 - iii. When contacting Hammer Technologies Inc. for an RMA, Reseller should have the following information available:
 - Model number and serial number of the Hardware;
 - Reason for return and symptoms of problem;
 - Purchase order number to cover charges for out-of-warranty items;
 - Name and phone number of the person to contact if Hammer Technologies Inc. has questions about the Hardware; and
 - Address to which Hammer Technologies Inc. should return the repaired or replaced Hardware.
 - iv. Hammer Technologies Inc. will provide the RMA number within four (4) Business Hours of the determination that it is necessary for the Reseller to return Hardware to Hammer Technologies Inc. for repair or replacement. Reseller must return all Hardware to Hammer Technologies Inc. prior to shipment of replaced Hardware. All Hardware returned by Reseller to Hammer Technologies Inc. must be returned to the Hammer Technologies Inc. factory, shipping prepaid, and packaged according to best commercial practices for electronic equipment. Reseller is responsible for mode and cost of shipment and insurance to Hammer Technologies Inc..
 - v. Reseller must mark the RMA number on the package shipped to Hammer Technologies Inc.. Hardware sent to Hammer Technologies Inc. without RMA numbers will be returned to Reseller, unopened, at Reseller’s expense.
 - vi. Hammer Technologies Inc. seeks to ship the repaired or replacement Hardware to the Reseller within five (5) Business Days of receipt. However, the time required to return the Hardware in good working order will be impacted by a number of factors, including: the time required to order replacement parts, build replacement systems, prepare the replacement systems for return



shipping, and the actual shipping. Hammer Technologies Inc. will use all reasonable good faith efforts to minimize any delays relating from these factors that are within its control.

- vii. Hammer Technologies Inc. will return the repaired or replacement Hardware by the same method (e.g., overnight express, regular express, etc.) utilized by the Reseller in shipping the Hardware to Hammer Technologies Inc.. Hammer Technologies Inc. will pay shipping charges for delivery of repaired or replaced Hardware on return from the Hammer Technologies Inc. factory.

Hammer Technologies Inc. encourages its Resellers to avoid operational disruption that may be caused by the delays inherent in the above RMA procedures by either (a) purchasing spares kits or replacement systems for Hardware to have on hand as a back-up during any repair or replacement down-times, or (b) with respect to Hammer Technologies Inc. Hammer® product, participate in the optional advance replacement program as described in Part VI below.

E. Exclusions. Support specifically excludes:

- defects or errors resulting from any modifications of the Software or Hardware made by any person other than Hammer Technologies Inc. or an authorized agent of Hammer Technologies Inc.;
- any version of the Software released by Hammer Technologies Inc. other than (a) the two most current “point” releases of the current major version; and (b) the last released “point” release of the previous major version;
- incorrect use of the Software or Hardware or operator error, including failure to follow best practices and policies described in Hammer Technologies Inc.’s support policy documentation found at <https://support.hammer.com/>;
- any error caused by fault in the Reseller’s use environment or in any software not supplied by Hammer Technologies Inc. used in conjunction with the Software or Hardware; and
- defects or errors caused by the use of the Software with any third-party products other than those specifically certified for use by Hammer Technologies Inc..

II. OBLIGATIONS OF CUSTOMERS

Hammer Technologies Inc.’s Support policy requires that the Reseller shall:

- ensure that the Software and/or Hardware is used in accordance with the terms of the applicable license agreement between the Reseller and Hammer Technologies Inc.;
- not request, permit or authorize anyone other than an Hammer Technologies Inc. authorized person to provide any maintenance or support services for the Software and/or Hardware;
- co-operate fully with Hammer Technologies Inc.’s personnel in the diagnosis of any error or defect in the Software and/or Hardware; and
- make available to Hammer Technologies Inc., free of charge, all information, facilities and services reasonably required by Hammer Technologies Inc. to enable Hammer Technologies Inc. to perform the support services described in this policy.

III. DISCONTINUATION OF SUPPORT

Hammer Technologies Inc. may, from time to time in its sole discretion, decide to discontinue support for one or more of its Products and shall endeavor to provide Reseller written notice of its decision to discontinue support at least nine (9) months in advance.

IV. REINSTATEMENT OF LAPSED SUPPORT



Should Reseller terminate support from Hammer Technologies Inc., and then seek to reinstate support, Reseller must pay Hammer Technologies Inc. a reinstatement fee equal to fifty percent (50%) of all support fees that would have been due to Hammer Technologies Inc. during the intervening period had the Reseller not terminated.

V. INCORPORATION OF OTHER POLICIES

From time to time, Hammer Technologies Inc. adopts policies regarding matters such as use of anti-virus programs, support of operating systems, and other similar policies. These policies are available at <https://support.hammer.com/>, as may be amended by Hammer Technologies Inc. from time to time, and are incorporated by reference herein. If any of these policies impact the Reseller's use of the Product in any materially adverse respect, Reseller may, within sixty (60) days of the posting of such policy, cancel its maintenance renewal for a pro-rata refund of the maintenance fees.

VI. ADVANCED REPLACEMENT SERVICE

For Hammer Technologies Inc. Service Assurance Group products, Hammer Technologies Inc. offers an advance replacement service program, in consideration of payment of Hammer Technologies Inc.'s then-current annual program fee. Customers who purchase this program are entitled to receive a replacement Hardware unit prior to returning their existing Hardware unit to Hammer Technologies Inc.. The program works as follows: once Hammer Technologies Inc. has determined that the problem is in fact with the Hardware and is not a problem with software installed on the Hardware or the Customer environment, Hammer Technologies Inc. will promptly ship the Customer a replacement Hardware unit (with a target of two (2) Business Days) via next day delivery (for certain configurations, the build and burn process may delay shipment beyond this two (2) business day period). Customers are required to return their existing Hardware unit to Hammer Technologies Inc. within fifteen (15) days of receipt of the replacement unit; if Customer fails to do so, Customer agrees to pay Hammer Technologies Inc. an amount equal to the then-current list price for the replacement Hardware unit. Hammer Technologies Inc. will bear the cost of shipping and will provide Customers with appropriate packing material.

VII. TECHNICAL SUPPORT AND MAINTENANCE SERVICES PRICING

Base Service Offering for Hammer Technologies Inc. Technical Support:

1. Standard telephone, email and web portal support service offering from 8:30 a.m. and 6:00 p.m. GMT
2. Bug Fixes
3. Software Updates – minor releases
4. Software Upgrades – major releases (services not included)
5. Depot basis service for hardware
 - Return to the factory for repair or replacement
 - Spare kits sold separately

Pricing: See Hammer Partner Program in attached Schedule 8



- Authorized
- Silver
- Gold
- Platinum

*Base Service Offering and Add-on Service Options do not include Third Party Products, which service is provided on a pass-through basis only.



Schedule 2

MINIMUM TERMS OF THE EULA

1. Hammer Technologies Inc. sublicensed software (“**Software**”), and Hammer Technologies Inc. hardware (“**Hardware**”), are to be used solely for internal business purposes to test and/or monitor the Customer’s voice and/or web applications and infrastructure. Customer may not use Software or Hardware (Software and Hardware, collectively referred to as a “**Product**”) (a) for the primary benefit of any third party, including without limitation, using the Product to provide voice and/or web application or infrastructure testing or monitoring services for others, whether or not the application or infrastructure being tested or monitored is installed or operated by the Customer, or (b) in a service bureau or time-sharing arrangement. Customer may not sublicense, distribute, rent, lease or transfer the Software to any third party; provided that Customer may authorize third party integrators and consultants to support its installation or implementation of the Product. Customer shall be responsible for the acts and omissions of any consultants retained to assist it with the installation or deployment of the Product.
2. Customer may not alter, adopt, modify, vary, or create derivative works based on the whole or any part of the Software in any way whatsoever, except as permitted by law, nor permit any third party to alter, modify, vary, or create derivative works based on the whole or any part of the Software; and Customer shall not make or permit to be made any translation, alteration, adaptation, enhancement, modification, update or addition to, nor decompile, reverse engineer or disassemble the Software without the prior written consent of Hammer Technologies Inc..
3. When Software is licensed as a part of, in conjunction with, or intended to be used with Hardware, Software may only be used with the Hardware. The Software may include license management components designed to administer usage rights and restrictions. Customers agrees not to permit the circumvention or any attempt to circumvent such technical means to enable usage rights in excess of those purchased. Unless otherwise stated in a quote, Customers may only deploy a single instance of the Software at a single location. Customer shall retain and shall not alter or obscure any notices, markings or other insignia that are affixed to the Software, Hardware or associated documentation or any part thereof at the time of delivery of such Product or associated documentation by Hammer Technologies Inc..
4. Customer acknowledges that certain of Hammer Technologies Inc. products or components thereof may be supplied by third parties. Licensed Software may utilize Open Source Software that may be included as a part of the Software, included in the same medium on which the Software is delivered or as a part of the download of Software received by Reseller, or pre-loaded on Hardware. For the purposes herein, “Open Source Software” means any software for which the source code and certain other rights normally reserved for copyright holders are provided under an Open Source Software License or that is in the public domain, and an “Open Source Software License” is any license to software that meets the Open Source Definition of the Open Source Initiative at <http://www.opensource.org/docs/definition.php>. Because Hammer Technologies Inc. distributes its software in object code form, Hammer Technologies Inc. will provide Customer, on request, with the complete corresponding machine readable source code of Open Source software that is subject to any Open Source License that requires that Hammer Technologies Inc. provide, without charge (other than a charge for the cost of distribution), source code to the software, whether in original form or as modified by Hammer Technologies Inc., for a period of up to three (3) years after delivery of the Software within which the Open Source software is included. Any such Open Source Software

requested and so received by Customer shall be subject to the applicable Open Source License and this license does not modify or abridge any rights or obligations Customer may have under such Open Source License. Any permitted use (or distribution) of Open Source Software separate and apart from use of the Software is governed by the relevant Open Source License and, with respect to which, no indemnification obligations pertain.

5. Hammer Technologies Inc. Products are not fault-tolerant and are not designed, manufactured or intended for use for testing of on-line control equipment in hazardous environments requiring fail-safe performance, such as the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, direct life support machines, or weapons systems, in which the failure of the Software or Hardware could lead directly to death, personnel injury or severe physical or environmental damage (“**High Risk Activities**”). Accordingly, Hammer Technologies Inc. and its suppliers specifically disclaim any express or implied warranty of fitness for High Risk Activities and no license is granted to use the Software or Hardware for such activities.
6. The Software and associated documentation are "commercial computer software" and "commercial computer software documentation," and, as such, the rights of U.S. Government End Users with respect to the Software and documentation, in accordance with FAR 12.212 or DFARS 227.7202-1, as applicable.
7. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, NO WARRANTY, WHETHER EXPRESS OR IMPLIED, IS MADE WITH RESPECT TO THE SOFTWARE, HARDWARE, SOFTWARE DOCUMENTATION OR SERVICES, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS, NEITHER RESELLER NOR CUSTOMER, NOR ANY OF THEIR RESPECTIVE PARENTS, SUBSIDIARIES, SUPPLIERS OR LICENSORS, SHALL BE LIABLE FOR ANY OTHER INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL LOSS, INCLUDING BUT NOT LIMITED TO LOSS OF REVENUE, LOSS OF PROFITS, LOSS OF BUSINESS OR GOODWILL, HOWEVER CAUSED, OR OTHERWISE BE LIABLE IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE AND WHETHER SUCH LOSS ARISES OUT OF OR IN CONNECTION WITH THE USE OF THE SOFTWARE, HARDWARE, SERVICES OR OTHERWISE UNDER THIS AGREEMENT. THE MAXIMUM LIABILITY OF RESELLER, ITS SUPPLIERS AND LICENSORS FOR CLAIMS ARISING FROM OR IN CONNECTION WITH THIS AGREEMENT SHALL BE THE FEES PAID TO RESELLER FOR THE SOFTWARE, HARDWARE OR SERVICES GIVING RISE TO THE CLAIM.
8. Customer may not publish any results of benchmark tests run on the Software.
9. Customer shall comply fully with all relevant export laws and regulations of the United States and other applicable export and import laws to assure that neither the Products, nor any direct product thereof, are exported, directly or indirectly, in violation of applicable laws.
10. Reseller may audit Customer’s use of the Software and report such use to Hammer Technologies Inc. or assign Reseller’s right to audit the Customer’s use of the Software to Hammer Technologies Inc..
11. Hammer Technologies Inc. and its suppliers are third party beneficiaries of the Customer license and may directly enforce the obligations of Customer under the license.



12. The Parties exclude the application of the United Nations Convention on Contracts for the International Sale of Goods.



Schedule 3

LIST OF PRODUCTS, PRICE LIST

Product List:

Hammer

All other product lines are excluded from this agreement unless prior written approval is given in writing by Hammer Technologies Inc. Inc. Chief Financial Officer or Chief Executive Officer.

Products and Services are provided by Hammer Technologies Inc. Inc. at the then-current Hammer Technologies Inc. International Price List as published from time to time.



Schedule 4

DISCOUNT SCHEDULE

Product Orders:

Hammer Technologies Inc. Products	% Discount off International List
Hammer	N/A

Hammer Technologies Inc. Technical Support Orders (Where Tier 1 Technical Support is provided by Reseller):

1 st January – 31 st December	20% off Hammer Technologies Inc. Technical Support List Price
*Hammer Technologies Inc. Technical Support List Prices are set as an established percentage of the Product International List Price, which percentage may be changed from time to time, and depending on options or bundles taken.	

Professional Services:

1st January – 31st December	10% off Hammer Technologies Inc. Professional Services List Price
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Schedule 5

TIER ONE TECHNICAL SUPPORT OBLIGATIONS OF RESELLER

1. Tier One technical support is the first line, direct Customer contact, via a telephone call handling group, provided by the Reseller.

Tier One support includes:

- First contact direct customer/Customer interaction
 - Problem report administration and tracking
 - Account problem/escalation management
 - Initial classification of the customer incident to Hammer Technologies Inc. Severity Levels
 - Information collection and analysis
 - Identification of whether the problem is known and has a known solution
 - Resolution of system configuration issues
 - Troubleshooting and problem reproduction
 - Isolating any network related issues
 - Isolating HW defects down to the FRU level
 - Perform system recovery
 - Perform performance analysis to validate system capacity is not causing the issues
2. The Parties agree that Customers shall not have the right to contact Hammer Technologies Inc. directly for questions related to the Products. All such inquiries will be directed back to Reseller. Reseller technical personnel are expected to be proficient in all related technologies required to support the contracted environments.
 3. Tier One support is “technical support” provided by Reseller personnel. Tier One support includes Level 1 and Level 2 support. Level 2 support is typically provided by experts in the applicable Product and who serve as the escalation point for Reseller’s Level 1 personnel.
 4. Should the Level 2 analyst be unable to resolve a problem, either because of lack of expertise, exhausted troubleshooting knowledge, the Level 2 support engineer may escalate the problem to Hammer Technologies Inc. Tier Two support personnel for resolution. Level 2 personnel of Reseller will continue to diligently work with Tier Two personnel of Hammer Technologies Inc. to accomplish resolution. Level 2 personnel of Reseller will communicate all resolutions back to the Customer.
 5. Escalations should be presented to Hammer Technologies Inc. engineers in the form of an eSupport Service Request data base record, with all pertinent configuration detail and failure information or symptoms documented in detail.
 6. In an effort to maintain an efficient support organization and crisp exchange of information, Reseller will limit the number of support personnel (Level 2) authorized to contact Hammer Technologies Inc. to five (5) and will ensure that these personnel have attended Hammer Technologies Inc. training and maintained training levels sufficient to supported environments.
 7. **The technical tasks to be performed by Reseller include, but are not necessarily limited to, the following:**



- A. Receive and respond to requests received from Customers during contracted hours.
- B. Initial classification of the customer incident to Hammer Technologies Inc. Severity Levels
- C. Install Software updates remotely or at Customer's site.
- D. Under the direction of Hammer Technologies Inc., alert Customers as to the existence of known problems and recommended preventative actions.
- E. Diagnose the cause of Customer problems by:
 - a. verifying that the installed system components and Licensed Software are intended to be compatible with each other;
 - b. verifying that the configuration is valid for the desired operation;
 - c. isolate any HW defects down to the FRU level;
 - d. verifying that maintenance procedures prescribed by Hammer Technologies Inc. have been performed;
 - e. document the steps, results and error messages resulting in the problem from the Customer.
 - f. Perform performance analysis to validate system capacity is not causing the issues
- F. Resolve Customer problems (either directly via an electronic data link or by directing personnel on-site) by:
 - a. correcting invalid configuration;
 - b. installing known and prescribed product updates;
 - c. implementing prescribed work around procedures;
 - d. perform system recovery action to restore operation while problems are analyzed;
 - e. prepare and submit HW RMA's to Hammer Technologies Inc.
 - f. reproduce the problem and/or provide documented evidence of the issue as reported
 - g. isolate and resolve network and environmental issues

8. eSupport ticket requirements:

- A. Problem Summary (100 characters max):
- B. Problem Description: Detailed description of problem and steps taken to reproduce or demonstrate the issue.
- C. System ID:
- D. Product:
- E. Product Software Version:
- F. Problem Category: (Software Problem, Hardware Problem, Defect Report, General Question, Feature Request)
- G. Sub-Category:
 - a. Platform: (Windows, Linux, etc.)
 - b. Platform Version:
- H. Error Message: Describe the exact error message received. If there is no error, describe the symptoms of the problem as clearly as possible.
- I. Provide complete and detailed information on the nature of the problem, including steps to reproduce the issue. Provide Screen Capture(s) of each step in the problem reproduction.
- J. Configuration: upload a copy of the configuration.



- K. Log Files: upload the applicable log files and network or call traces, as appropriate.
 - a. Note: For IPExplorer issues provide PCAP trace(s)
 - L. File Details: Provide details about the file(s) uploaded.
 - M. System access details: Provide system access information and any security restrictions/requirements needed to access the system at fault
9. At the request of Hammer Technologies Inc., Reseller shall deliver, at Reseller's expense, updates and upgrades to the Software or Hardware in accordance with the terms of the Technical Support and Maintenance Policy to Reseller's Customers, as part of the Hammer Technologies Inc. Technical Support purchased by such Customers.
10. Reseller will inform its Customers of Hammer Technologies Inc.'s renewal policies for Hammer Technologies Inc. Technical Support and will use its reasonable efforts to encourage Customers to purchase Technical Support renewals before the completion of Customer's the then-current Hammer Technologies Inc. Technical Support term. Reseller may only provide Updates and/or replacement hardware to Customers who have a then-current right to receive Hammer Technologies Inc. Technical Support. If Hammer Technologies Inc. Technical Support is terminated before its normal conclusion, neither the Reseller nor the Customer shall be entitled to any refund of Hammer Technologies Inc. Technical Support fees.



Schedule 6

**RESELLER REQUIREMENTS FOR THE RESALE OF HAMMER TECHNOLOGIES INC.
PROFESSIONAL SERVICES**

In order for Hammer Technologies Inc. to deliver Hammer Technologies Inc. Professional Services to Reseller for Resale to its Customers, the following procedures must be followed:

- Reseller must gather the necessary information from the Customer to allow Hammer Technologies Inc. to fully evaluate the scope, requested timing and deliverables to meet the expectation of the Customer.
- Reseller will then provide this information to Hammer Technologies Inc.'s designated Service Engineers.
- Hammer Technologies Inc., within 5 business days of receipt, will either (1) provide a project specification quote to more fully evaluate the scope or (2) provide Reseller with a quote of Hammer Technologies Inc.'s ability to perform the requested services to the Customer or (2) advise Reseller of a "No Bid" or (3) contact Reseller to request more information or direct contact with the Customer.
- Once the Hammer Technologies Inc. Professional Services quote is accepted, Reseller must sign-off on the quote and send a copy along with a purchase order to Hammer Technologies Inc.. Hammer Technologies Inc. reserves the right to not accept an order for Hammer Technologies Inc. Professional Services that has been received by Hammer Technologies Inc. after its expiration.

After acceptance by Hammer Technologies Inc., cancellation and rescheduling fees will be charged per the terms and conditions in Agreement.



Schedule 7

HAMMER TECHNOLOGIES INC. TRADEMARKS,
TRADE NAMES AND SERVICE MARKS

Registered Trademarks and Service Marks

Registered Trademarks and Service Marks

Hammer Technologies Inc.[®]
OneSight[®]
Hammer On-Call[®]
Voice Watch[®]

Other Trademarks and Service Marks

Hammer G5[™]
Hammer Call Analyzer[™]
Hammer NetEm[™]
Hammer FX-TDM[™]
Hammer DEX[™]

Schedule 8

Hammer partner program overview

	Authorized	Silver	Gold	Platinum
Annual booking objectives	-	1million\$	3million\$	8million\$
Channel manager	Regional	Regional	Globally dedicated	Globally dedicated
Technical and sales support	Regional	Regional	Regional	Regionally dedicated
PROGRAM REQUIREMENTS				
Sales certification	-	2 required	4 required	6 required
Engineers certifications	-	2 required	4 required	6 required
Marketing alignment	No	No	Yes	Yes
PROGRAM BENEFITS				
Sales support				
Partner discount	15%	20%	25%	30%
Support	-	10% if partner delivers level 1, 25% if partner delivers level 1 and 2	10% if partner delivers level 1, 25% if partner delivers level 1 and 2	10% if partner delivers level 1, 25% if partner delivers level 1 and 2
Access to partner portal	Yes	Yes	Yes	Yes
Lead alignment	-	Yes	Yes	Yes
Access to MDF	Yes	Yes	Yes	Yes
Training	10	15	20	25
Deal registration	Yes	Yes	Yes	Yes
Access to demo lab	Yes	Yes	Yes	Yes
Sales Planning				
Joint annual business plan	-	Yes	Yes	Yes
Sales forecasting / pipeline review	-	Yes	Yes	Yes
Quarterly business reviews	-	Yes	Yes	Yes

Partner Portal, deal registration, partner collateral:

[_https://hammer.channeltivity.com](https://hammer.channeltivity.com)

[_https://www.hammer.com/solutions](https://www.hammer.com/solutions)

Channel Contacts:

US: Rosemary Cormican
 rosemary.cormican@infovista.com

EMEA: Dominic Kleiren
 dominic.kleiren@infovista.com

APAC: Richard Rodwell
 richard.rodwell@infovista.com

VP Global Sales and Channels:
 Kacey Kemmerer
 kacey.kemmerer@infovista.com