



These ScienceLogic Standard Terms and Conditions set forth the terms and conditions (collectively, the "Standard Terms") under which ScienceLogic, Inc. ("ScienceLogic") is willing to provide certain Products (including Equipment, perpetual or term-based Software licenses, and Systems) and ScienceLogic Services (each as defined below) to the customer referenced in an accepted Sales Order (defined below) that incorporates these Standard Terms ("Customer" or "you"). Each of ScienceLogic and Customer may be referenced as a "Party." Each mutually executed Sales Order, together with these Standard Terms and all Attachments (defined below) that are incorporated therein, constitutes a separate, binding contract between the Parties (in each separate case, referenced below as the "Agreement"), and collectively such documents form the entire contractual agreement between the Parties regarding the particular subject matter in the Agreement. You represent to ScienceLogic that you have read and understand the Agreement, that, if you are a corporation or other form of organization, you possess the requisite corporate authority to enter into and perform your duties under the Agreement, and that you agree to be bound by all the terms and conditions set forth in the Agreement.

## 1. Definitions.

"Affiliate" means, with respect to either Party, an entity that is controlled by, controls or is under common control with that Party, whereby "control" means the power to direct the management of a company by means of owning a controlling share of the voting securities in such company, by means of board membership, by contractual rights, or by other legal authority.

"Attachment" has the meaning stated in Section 2.2 of these Standard Terms.

"Base Subscription Fee" means the periodic fees payable in consideration for a Subscription License in connection with using the Software to manage a Baseline set of Managed Devices, which fees may be in addition to fees associated with use of the Software for Managed Devices in excess of the Baseline, as further described in Section 3.2 of these Standard Terms.

"Baseline" means, with respect to a Subscription License, Managed Devices that can be concurrently managed by use of the Software that is subject to that Subscription License for the Base Subscription Fee.

"Change Authorization" has the meaning stated in Section 2.1 of these Standard Terms.

"Component Devices" means devices created in the System to represent components within a technology package which are to be individually managed. By way of examples; when monitoring a SAN, the System may create Component Devices representing LUNs, Volumes and Aggregates; when monitoring a load balancer the System may create Component Devices representing VIPs, Pools and Pool Members. Any logical breakout of components are possible, depending on the technology package in question.

"Equipment" is a machine and any hardware components or accessories provided with a machine, or any combination of them.

"Equipment Terms" are defined as stated in Section 4.1 of these Standard Terms.

"End User License Agreement" has the meaning stated in Section 4.2 of these Standard Terms.

"Included Equipment" has the meaning stated in Section 4.1 of these Standard Terms.

"Managed Devices" means the number of individual devices that can be discovered and managed by use of the System. Individual devices are physical network addressable devices and individually managed Component Devices and ScienceLogic Virtual Devices for which the System collects Performance Data, including but not limited to personal computers, workstations, servers, routers, hubs, virtual servers, switches, blades, chassis, storage devices, LUNs, Volumes, load balancers and firewalls. For clarification purposes, each virtual server is considered a separate "Managed Device".

"Notices" have the meaning stated in Section 12.13.

"Performance Data" means periodically collected numeric data relating to the performance of a device or a component of the device. Performance data may be used to plot performance trends or to alert if a particular performance measure falls outside of acceptable bounds.

"Product" means Equipment, Software, System or Third-Party Service.

"Professional Services" are services other than Support and Maintenance provided by ScienceLogic as specified in the Sales Order.

"Required Consents" have the meaning stated in Section 4.5.3 of these Standard Terms.

"Sales Order" means any of ScienceLogic's standard forms of sales order or any valid quote for Products and/or ScienceLogic Services issued by ScienceLogic, mutually accepted by both Parties, that references and expressly states that it is intended by the Parties to be subject to these Standard Terms, and that sets forth the Products and/or ScienceLogic Services to be purchased, the price of each, and any mutually agreed additional terms and conditions.

"ScienceLogic Services" mean, collectively, Professional Services and Support and Maintenance.

"ScienceLogic Virtual Devices" are containers for collected data, logically grouped for management convenience.

"Software" is a commercially available computer software program, whether preloaded on Equipment or provided separately, including related licensed materials such as documentation.

"Subscription License" means a license for Software which is valid for specified, limited period of time, as indicated in a relevant Sales Order, but which is not perpetual in duration.

"Support and Maintenance Services" are the particular support and maintenance services for a Product that are described in [Section 4.5.1](#).

“**System**” means a unit of Equipment and all Software preloaded thereon that may be acquired or licensed under a Sales Order. For example, a computer server upon which Software has been preloaded is a single System.

“**Third-Party Service**” is a service provided by any entity or person other than ScienceLogic, Inc., including services related to Equipment or Software (such as support and maintenance services) provided by the supplier or other third party.

## **2. Agreement Structure.**

**2.1 Sales Order.** ScienceLogic will provide to you the Products and ScienceLogic Services specified in each mutually accepted Sales Order, subject to these Standard Terms and any additional or different terms stated or incorporated by reference into such Sales Order. The Sales Order may require signature if requested by either you or ScienceLogic. You accept the terms of this Agreement and the Sales Order by doing any of the following: (a) signing the Sales Order or issuing a purchase order referencing the Sales Order; (b) using the relevant Product or ScienceLogic Service; or (c) making any payment for the relevant Product or ScienceLogic Service. The use of pre-printed forms, including but not limited to purchase orders, e-mail or acknowledgements, shall be for convenience only and all pre-printed terms and conditions stated on such forms are void and of no effect. When both Parties mutually agree to change the Sales Order, ScienceLogic shall prepare a written description of the agreed change (called a “**Change Authorization**”) that both Parties must sign. The terms of a Change Authorization prevail over the terms of the Sales Order and any of its previous Change Authorizations.

**2.2 Attachments.** You acknowledge that certain Products and ScienceLogic Services are subject to terms and conditions in addition to, or that vary from, those specified in these Standard Terms or the Sales Order. For example, additional terms are set out in documents such as the ScienceLogic Limited Warranty and End User License Agreement. Such additional terms are called “**Attachments**.” By accepting and/or using the relevant Product or ScienceLogic Services or making payment for the same, you agree to abide by the terms and conditions set forth in all such Attachments. Each Attachment forms an integral part of the Agreement and is deemed to be incorporated therein.

**2.3 Conflicting Terms.** If there is a conflict among the terms in these Standard Terms, the Sales Order and an Attachment, the following rules of interpretation apply: (i) the terms of the Sales Order prevail over any conflicting terms in these Terms; (ii) the terms of the Attachment prevail over any conflicting terms in these Standard Terms; and (iii) the terms of the Attachment prevail over any conflicting terms in the Sales Order unless the conflicting term in the Sales Order expressly states that it is modifying the terms and conditions of the Attachment, in which event the Sales Order shall govern that particular conflict.

## **3. Charges and Payment.**

**3.1 General.** In consideration for the Products and ScienceLogic Services provided under the Agreement, you agree to pay to ScienceLogic the amounts set forth in the Sales Order. Unless otherwise provided in the Sales Order, you shall pay such amounts within (thirty) 30 days following the date of invoice, and all payments shall be made in U.S. dollars without offset, reduction or abatement. If any authority imposes a tax, duty, levy or fee, excluding those based on ScienceLogic’s net income, upon any Products or ScienceLogic Services supplied by ScienceLogic under this Agreement, you agree to pay that amount as specified in ScienceLogic’s invoice or supply ScienceLogic with exemption documentation. Your failure to pay according to the terms of this Agreement shall entitle ScienceLogic, without prejudice to its other rights and remedies under this Agreement, (i) to charge interest on a daily basis from the original due date at the rate of the lesser of 1.5% per month or the maximum amount permissible by law, and (ii) at its option, to suspend the provision of ScienceLogic Services. You shall reimburse ScienceLogic for all reasonable costs incurred by ScienceLogic in collecting past due amounts, including wire transfer fees, collection agency fees, reasonable attorney’s fees and court costs. Unless otherwise specified in the Sales Order, ScienceLogic may increase recurring charges for Products and ScienceLogic Services (including hourly rates) under the Sales Order by giving you thirty (30) days written notice, and such increase will apply on renewal of the Sales Order.

### **3.2 Subscription License Payment Terms.**

**3.2.1 Base Subscription Fees.** Upon delivery by ScienceLogic of a license key or other means of activating the purchase of a Subscription License, you agree to pay to ScienceLogic the Base Subscription Fees for the first full calendar year of the License Term, whereby “calendar year” refers to each successive twelve (12)-month period, the first of which is deemed to commence upon delivery of such license key or other means of Subscription License activation. For all subsequent calendar years after the first calendar year of the License Term, you shall pay to ScienceLogic, in advance on an annual basis the next calendar years of the License Term and in the manner set forth in Section 3.2.3 below, the Base Subscription Fees for such calendar year.

**3.2.2 Additional Subscription Fees.** In addition, if your actual usage of the System exceeds the Baseline during any calendar month, you shall pay additional fees (as defined below, the “Additional Subscription Fee”) as follows:

- (1) **Calculation of Actual Usage.** On a daily basis the System will automatically measure and transmit a sample count of the number of Managed Devices that are being concurrently managed by use of the System (the “Daily Managed Device Count”). At the end of each calendar month ScienceLogic will calculate the average Daily Managed Device Count for such month (i.e., the total sum of the Daily Managed Device Counts for such month divided by the number of calendar days in such month) (such average, the “Monthly Managed Device Count”). You acknowledge and agree that ScienceLogic may use your internal network and Internet connection for license metering of your use of the System and transmitting the Daily Managed Device Count data to a license server operated by ScienceLogic, and you agree to provide an open SMTP gateway to allow such transmission of the Daily Managed Device Count data. In the absence of such access to the internal network, Parties shall determine an alternate method for calculating and reporting usage in a timely manner. ScienceLogic shall have the right (at ScienceLogic’s own expense) to conduct periodic audits of your records related to the Daily Managed Device Count data for the purpose of verifying your compliance with the terms of this Agreement.
- (2) **Additional Subscription Fee.** If the Monthly Managed Device Count exceeds the Baseline (such excess, the “Excess”), you shall pay ScienceLogic, in the manner set forth in Section 3.2.3 below, in addition to the Base Subscription Fee, additional fees for such Excess on a scale in accordance with the applicable Sales Order and incorporated herein by reference (the “Additional Subscription Fee”).

**3.2.3 Quarterly Invoice for Additional Subscription Fee.** Not later than the fifteenth (15th) business day following the last day of the First Quarter and each subsequent calendar quarter, whereby “calendar quarter” refers to each successive three (3)-month period, ScienceLogic will provide you with an invoice (the “Invoice”) that shall state the amount of the Additional Subscription Fees, if any, incurred each

month of such calendar quarter, , and any applicable taxes. You shall pay all amounts specified in such Invoice within 30 days of the date of such Invoice. The Base Subscription Fee and Additional Subscription Fee for any fractional month at the beginning or end of the License Term shall be prorated.

#### 4. Additional Product and ScienceLogic Services Terms.

**4.1 Equipment.** Equipment (including Equipment contained in a System) purchased by you is sold subject to any additional or different terms related to such Equipment (including, for example, manufacturer warranty provisions) specified or cross-referenced in the Sales Order or contained in an Attachment provided with such Equipment by ScienceLogic or ScienceLogic's supplier ("Equipment Terms"). You agree that your procurement of Equipment is subject to all such Equipment Terms, and you agree to strictly comply with the applicable Equipment Terms and, if ScienceLogic so requests, to execute a copy of such Equipment Terms and deliver it to ScienceLogic or ScienceLogic's supplier. In the event of any conflict between any such Equipment Terms and this Agreement, the Equipment Terms will govern, but only as they relate to the particular Equipment. If the Software with which the Equipment is provided has been licensed under a Subscription License, then such Equipment is provided only for your use with that Software and only during the applicable license term. Such Equipment is referenced throughout these Standard Terms as "Included Equipment." Notwithstanding any other provision herein, you acknowledge that ScienceLogic retains title to all such Included Equipment. You acknowledge that you acquire no ownership, lease, or other interest in any such Included Equipment. You agree to use all such Included Equipment in a careful and proper manner as contemplated in applicable user documentation. You may not modify any such Included Equipment or permit repairs to be performed on the same by persons other than ScienceLogic's authorized service technicians. If the relevant Sales Order specifies a Baseline, you acknowledge that the Baseline represents the minimum recommended Equipment in connection with the number of Managed Devices for which a license is being purchased under that Sales Order, and that additional Equipment may be required to manage additional Managed Devices, and that additional Equipment is subject to additional charges for which a sales quote may be provided upon request.

**4.2 Software.** Software (including Software that is part of a System) is copyrighted and licensed (not sold) under the terms of the applicable end user license agreement or similar document (an "End User License Agreement") provided with such Software. You agree to strictly comply with the applicable End User License Agreement(s) and, if ScienceLogic so requests, to execute a copy of such End User License Agreement(s) and deliver it to ScienceLogic or ScienceLogic's supplier.

**4.3 Systems.** Systems may be either purchased or (if permitted by ScienceLogic) licensed for a limited term on a subscription basis. Purchased Systems are provided subject to the terms of Sections 4.1 and 4.2 above. Systems licensed for a limited term on a subscription basis are provided subject to Section 4.2 and the additional terms specified in the Sales Order.

**4.4 Third-Party Services.** Third-Party Services are re-sold by ScienceLogic but provided by a Product supplier or other third party under the terms and conditions specified in the Sales Order or in a separate agreement provided as an Attachment by ScienceLogic or ScienceLogic's supplier. If ScienceLogic requests, you will execute a copy of such agreement and deliver it to ScienceLogic or ScienceLogic's supplier.

#### 4.5 ScienceLogic Services.

**4.5.1 Support and Maintenance Services.** If so required by a mutually executed Sales Order, ScienceLogic makes available optional Support and Maintenance Services related to certain Products sold under this Agreement, including certain technical support, upgraded warranty service and post-warranty maintenance service for the Products.

- (1) **Included Equipment.** Support and Maintenance Services for Included Equipment are included within the fees charged under the applicable Sales Order for up to, but not more than, five (5) years after delivery. Should service be necessary due to manufacturing defects, ScienceLogic will either repair or replace the Included Equipment with a new or reconditioned unit at no additional charge. Notwithstanding the foregoing, ScienceLogic has no responsibility for maintenance and/or support of Included Equipment that has been modified in any way or damaged because it is improperly connected to equipment not provided by ScienceLogic, nor for damage or improper operation of the Included Equipment caused by negligence, misuse, abuse, accident or failure to follow operating instructions provided for the Included Equipment. Repair or replacement of Included Equipment constitutes ScienceLogic's sole obligation and your exclusive remedy for any defect in Included Equipment. You shall maintain each System without alteration in its original condition and in conformance with its specifications, and shall provide ScienceLogic or ScienceLogic's designee with all assistance reasonably necessary to permit ScienceLogic access to the System's location to perform inspection, preparation for return, or maintenance (including engineering changes) of the System as is appropriate. You shall not affix, attach or install any accessory, equipment or device in connection with the System that might interfere with the operational capacity of the System. All repairs, parts, supplies, accessories, equipment and devices affixed to the System shall be deemed accessions to the System, and unless such accessions can be removed without damaging the System or interfering with its operational capacity, they shall become the property of ScienceLogic; provided, however, that ScienceLogic may, at its option, have the System restored to its original configuration and condition (ordinary wear and tear excepted) at your expense upon expiration or termination of the License Term (or earlier termination of this Sales Order).
- (2) Except as stated above regarding Included Equipment, your purchase of Support and Maintenance must be specified in a Sales Order, and you agree that all such Support and Maintenance Services are subject to the terms of the Support and Maintenance Agreement cross-referenced and incorporated into the Sales Order. If you have not purchased such Support and Maintenance Services, then ScienceLogic will have no obligation to provide you any technical support for any Product, nor maintenance releases or upgrades for any Software. You acknowledge that, unless otherwise expressly stated in the Sales Order, ScienceLogic does not provide Support and Maintenance Services related to non-ScienceLogic Products; in some instances, however, third-party manufacturers or suppliers may make available for purchase their own support and maintenance, including as a Third-Party Service made available for resale by ScienceLogic.

**4.5.2 Professional Services.** Professional Services (including, for example, Product installation and related training services) are provided by ScienceLogic subject to any additional terms and conditions (if any) specified in the Sales Order. Unless otherwise expressly agreed in writing, all materials and deliverables provided in the course of ScienceLogic's performance of such Professional Services will be considered accepted upon delivery, provided that the same will nevertheless be subject to any express representations or warranties applicable

under the Agreement. Unless otherwise expressly stated in the relevant Sales Order, performance of all professional services must be scheduled within twelve (12) calendar months following initial installation of the relevant Product, or will otherwise be forfeited without refund. Customer agrees to reimburse ScienceLogic for direct travel costs associated with performance of any such professional services if ScienceLogic personnel are required to travel in excess of fifty (50) miles to the location for performance of such services.

**4.5.3 Cooperation.** You agree, at your own expense, to provide ScienceLogic with all reasonable cooperation necessary or appropriate for completion of the ScienceLogic Services, including (if necessary) providing access to properly equipped facilities and obtaining all Required Consents necessary for ScienceLogic to provide the ScienceLogic Services. "Required Consents" are any consents, approvals or grants of rights necessary such that ScienceLogic may access, use, and/or modify any third party software, hardware or other products or information used by you without infringing or violating the rights of any third party (including, by way of example, privacy rights and intellectual property rights of any kind) and without violating any contractual obligations to which you are bound. When ScienceLogic's performance of the ScienceLogic Services requires or is contingent upon your performance of an obligation (including providing Required Consents, approval or notification or taking a recommended corrective action) under this Agreement, and you delay or withhold your performance beyond the agreed time period (or beyond five business days, if a time period is not specified), ScienceLogic will be relieved of its obligation to perform such ScienceLogic Services entirely or, if it is reasonable for ScienceLogic to perform once you perform, until a reasonable period following your performance of your obligation.

**5. Delivery.** All Equipment and tangible items purchased or licensed by you under the Agreement will be shipped F.C.A. (INCOTERMS 2010) from ScienceLogic's or its supplier's warehouse. Risk of loss and damage to any Equipment or other items will pass to you upon ScienceLogic's tender of the deliverable items to the carrier for shipment. You acknowledge that you will bear the costs of shipping and insurance, as well as the risk of loss or damage during shipment, unless otherwise expressly stated in the Sales Order. You acknowledge that, unless otherwise expressly stated in the Sales Order, (i) estimated shipping dates are not guaranteed and are based upon prompt receipt from you of all necessary shipping and other information, and (ii) ScienceLogic may make delivery in installments, in which case each installment shall be separately invoiced and paid for by you without regard to subsequent deliveries. Shipments will be deemed accepted upon delivery, subject to applicable warranties set forth in Section 10 below. For Software to be delivered electronically, delivery is deemed complete upon successful download of the installation files.

**6. Title and Security Interests.** Title to Equipment and any licenses in Software that you purchase under the Agreement shall pass to you upon delivery as described in Section 5 (Delivery) above. However, ScienceLogic reserves, and you grant to ScienceLogic, a purchase money security interest in each Product you purchase and in any proceeds thereof, including insurance proceeds, until ScienceLogic receives all amounts due for such Product, and you agree to execute and deliver all documents reasonably requested by ScienceLogic to perfect, protect and maintain ScienceLogic's security interest. Without limiting the general breadth of the preceding sentence, you authorize ScienceLogic to act as your agent and attorney-in-fact (where permitted by law) for the limited purpose of preparing, executing in your name, and filing on your behalf, a financing statement (for example, a UCC-1 financing statement) to perfect ScienceLogic's purchase money security interest in each Product. Until such time as ScienceLogic has received payment in full for a particular Product and ScienceLogic's security therein has been released, you shall not cause or permit that particular Product to be sold, leased, or made subject to a lien or other encumbrance other than ScienceLogic's security interest.

**7. Installation; Infrastructure.** You acknowledge that (i) unless otherwise expressly agreed in the Sales Order, ScienceLogic is not responsible for installation, maintenance, upgrading, enhancement, or error correction of the Products or for any training or other services relating thereto, and (ii) in order to obtain the benefits desired from the Products, you may need to obtain and integrate with the Products various other products that are not provided by ScienceLogic under this Agreement. You are solely responsible for obtaining any such additional services and products. You also acknowledge that you are solely responsible for procuring and maintaining the systems and infrastructure in which the Products may be installed, and you agree to provide the Storage Area Network (SAN) disk capacity necessary to run the System, including storage capacity necessary to enable the System to retain historical System information for any retention periods that you may require.

**8. Cancellation of Product Orders.** ScienceLogic may cancel any or all Sales Order to the extent the same would otherwise require ScienceLogic to provide any third-party Product, if and to the extent ScienceLogic's third-party supplier does not accept or cancels the applicable order from ScienceLogic.

**9. Term and Termination.**

**9.1 Duration; Termination.** The Agreement, including the Sales Order, together with these Standard Terms incorporated therein, and all applicable Attachments thereto, shall remain in effect for the term specified in the Sales Order unless terminated earlier as provided hereunder. If you have purchased a Subscription License, the License Term shall automatically renew and extend for an additional period equal to the initial License Term, unless either party provides written notice to the other of its intention not to renew the Subscription License at least thirty (30) days prior to the expiration of the then-current License Term; provided, however, that in no event shall the aggregate length of the initial License Term and any renewal periods exceed five (5) years without ScienceLogic's prior written approval. Any such renewal or extension shall apply only the specific Subscription License and not to any other licenses that may have been purchased under the Agreement. Either Party may terminate this Agreement if the other Party materially breaches its obligations under these Standard Terms, the Sales Order, or applicable Attachment(s) and fails to cure such breach within thirty (30) days after the non-breaching Party gives written notice of such breach describing in detail the specific nature and dates of the material breach.

**9.2 ScienceLogic Electronic Self-Help.** After the expiration or termination of a license purchased hereunder, ScienceLogic reserves the right to electronically disable your ability to use the relevant Software upon 10 days' written notice. Such an act by ScienceLogic does not affect your obligation to make complete payment of any amounts owing to ScienceLogic. Prior to ScienceLogic resorting to disabling the System, ScienceLogic will notify you of its intention to use electronic self-help, the nature of the claimed action that entitles ScienceLogic to use electronic self-help and the name and contact information of the person you may contact at ScienceLogic concerning the notice of electronic self-help. ScienceLogic will send notice of ScienceLogic's resort to electronic self-help to the contact person identified on this Sales Order and/or the individual identified as the customer contact in the Agreement.

**9.3 Surrender Obligations.** Following expiration or termination any Subscription License, you shall permit ScienceLogic or ScienceLogic's designee to remove the relevant System(s), in which case you grant ScienceLogic the right to enter the premises where the System is located and remove the System without any legal process or notice and without being liable for trespass or damage. Further, if the System is removed by ScienceLogic or its designee for any reason, ScienceLogic will have no liability whatsoever for any data (including any confidential information) that is left, whether inadvertently or intentionally, in the System. You should remove or delete any of your data

contained in the System prior to such removal of the System. If you fail to return the System upon expiration of the Subscription License, you agree to pay to ScienceLogic the then-current standard price for the same..

**9.4 Survival of Obligations.** Any terms of this Agreement that by their nature extend beyond the expiration or termination of this Agreement, including the terms of [Section 3](#) (Charges and Payment), [Section 11](#) (Limitation of Liability) and [Section 12](#) (General Provisions), shall remain in effect until fulfilled. Termination of the Agreement does not terminate or otherwise affect any other contract between the Parties, including any other Sales Order and Standard Terms and/or Attachments as incorporated therein.

**10. Warranties.** ScienceLogic provides each ScienceLogic Product subject to the warranty terms (if any) specified in the Sales Order or contained in the separate Attachment applicable to and provided with such ScienceLogic Product. ScienceLogic warrants that each ScienceLogic Service will be performed using reasonable care and skill and in accordance with its current description as set forth in this Agreement or the Sales Order. **THESE WARRANTIES ARE YOUR EXCLUSIVE WARRANTIES AND REPLACE ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SYSTEM INTEGRATION, DATA ACCURACY, NON-INFRINGEMENT OR NON-INTERFERENCE.** Unless ScienceLogic specifies otherwise in the Sales Order or separate Attachment applicable to and provided with a Product, ScienceLogic provides non-ScienceLogic Products **WITHOUT WARRANTIES OF ANY KIND.** However, non-ScienceLogic manufacturers or suppliers may provide their own warranties to you.

**11. Limitation of Liability.** Regardless of the nature of the claim or legal theory of liability, and even if ScienceLogic knew or should have known that such damages were possible, in no event will ScienceLogic have liability to you or any third party for any indirect, incidental, consequential, special or punitive damages in connection with this Agreement, including any claims for lost profits, lost data or business interruption, and in no event shall ScienceLogic be liable for damages other than actual direct damages. ScienceLogic's maximum monetary liability in connection with any particular claim in connection with any Sales Order shall be limited to the greater of (i) the charges actually paid by you under the applicable Sales Order, and, in the case of recurring charges, not more than the aggregate of such charges actually paid by you during the twelve (12)-month period prior to the act, omission or event giving rise to such claim; or (ii) one thousand dollars (U.S. \$1,000.00). ScienceLogic's maximum monetary liability in connection with all claims, in aggregate, in connection with any Sales Order, shall be limited in the aggregate to the charges actually paid by you under the applicable Sales Order; or (ii) one thousand dollars (U.S. \$1,000.00). These limits also apply to any ScienceLogic's suppliers and subcontractors, and are the maximums for which ScienceLogic and its suppliers and subcontractors are collectively responsible. These limits do not apply to any damages for bodily injury (including death) and damage to real property and tangible personal property. You acknowledge that this paragraph is an essential part of the Agreement, absent which the economic terms and other provisions of the Agreement would be substantially different.

**12. Credit Check.** You authorize ScienceLogic to inquire into your credit history, including asking consumer reporting agencies or any other references for your credit information, and ScienceLogic reserves the right, in its sole discretion, to refuse to sell you Products, ScienceLogic Services or licenses based on your credit-worthiness, or in the alternative to require a security deposit. In the event that ScienceLogic determines that you credit does not currently meet our requirements, ScienceLogic may terminate the Agreement (or a particular Sales Order) upon written notice at its election, in which event we will refund to you fees that may have been prepaid but unused with regard to the terminated portion of the Agreement.

**13. General Provisions.**

**13.1 Force Majeure.** No delay or default in performance of any obligation by either Party, excepting all obligations to make payments hereunder, shall constitute a breach of this Agreement to the extent such default or delay is caused, directly or indirectly, by an event beyond the reasonable control of the Party unable to perform, including fire, flood, earthquake, elements of nature, acts of war, terrorism, riots, civil disorders, rebellions or revolutions, failure of the Internet or strikes, lockouts or labor difficulties.

**13.2 Amendments and Waivers.** Changes to the Agreement may be made only by a written amendment signed by both Parties that references the particular Sales Order to which the change applies. In the event that the Parties desire to amend these Standard Terms, and if the same have been incorporated into and made applicable to more than one Sales Order, thereby forming multiple independent contracts between the Parties, the relevant written, mutually signed amendment must expressly so state with specificity which Sales Orders the Parties desire to be subject to the amendment. Changes in any other form, including additional or different terms in any purchase order or other written communication from you, are void. No approval, consent or waiver shall be enforceable unless signed by the granting Party and any such approval, consent or waiver shall be effective only in the specific instance and for the specific purpose stated in such writing.

**13.3 Severability.** If any particular provision of this Agreement is held to be invalid or unenforceable, the Parties intend for that provision to be interpreted in the manner that most closely reflects the Parties' original intent while rendering it enforceable, and the remaining provisions of this Agreement shall remain in full force and effect.

**13.4 Assignment.** This Agreement may not be assigned, sublicensed or otherwise transferred, in whole or in part, by you, whether by operation of law or otherwise, without ScienceLogic's prior written consent. Any attempted assignment in violation of this Section will be void. ScienceLogic may perform its obligations through its affiliates and/or through subcontractors selected by ScienceLogic; provided, however, that ScienceLogic shall not be relieved of its obligations under this Agreement by use of such Affiliates or subcontractors.

**13.5 Governing Law; Actions.** All rights, duties and obligations arising from or relating in any manner to the subject matter of this Agreement shall be governed by and construed under the laws of the Commonwealth of Virginia applicable to agreements made and fully performed therein, without regard to its regarding conflicts of law. The United Nations Convention on Contracts for the International Sale of Goods shall not apply. The state courts of the Commonwealth of Virginia or the Federal District Court for the Eastern District of Virginia shall have sole and exclusive jurisdiction to hear and determine any dispute or controversy arising under or concerning this Agreement, provided that ScienceLogic may bring an action for injunctive relief in any court of competent jurisdiction to stop or prevent any violation or infringement of its intellectual property rights. Except for actions related to the protection of the proprietary rights of ScienceLogic and its suppliers, neither Party shall bring a legal action against the other relating to the subject matter of this Agreement more than 2 years after the cause of action arose. Nothing in this Agreement affects any statutory rights that cannot be waived or limited by contract under applicable law.

**13.6 General Interpretative Provisions.** Terms for which meanings are defined in this Agreement shall apply equally to the singular and plural forms of the terms defined. The term "including," whenever used in any provision of this Agreement, means including but without limiting the generality of any description preceding or succeeding such term. Whenever reference is made in this Agreement to "days," the reference means calendar days, not business days, unless otherwise specified. Each reference to a Party shall include a reference to such Party's permitted successors and assigns. The headings of this Agreement are for reference only and shall not affect the meaning or

interpretation of this Agreement. In each case in which a Party's approval or consent is expressly required under this Agreement, such Party shall not unreasonably withhold, condition or delay such approval or consent unless the context clearly states otherwise.

**13.7 Confidentiality.** The Parties agree to keep confidential: (a) the detailed terms of each Sales Order; (b) the subject matter of any dispute relating to this Agreement; (c) the terms of any settlement of any dispute relating to this Agreement and (d) the termination of the Agreement. If a Party is compelled by law to make disclosure of any of the above, prompt notice shall be given to the other Party pursuant to [Section 12.12](#) to allow the non-disclosing Party a reasonable opportunity to oppose such disclosure or obtain a protective order. Except as otherwise provided in this [Section 12.7](#) or the Sales Order or a relevant Attachment, all information exchanged is nonconfidential, and if either Party requires the exchange of confidential information, it shall be made under a separate signed confidentiality agreement.

**13.8 Compliance with Laws.** Each Party shall, at its own expense, comply with all laws relating to its obligations under this Agreement, including those related to data privacy, intellectual property rights, international communications and exportation of technical or personal data. Customer acknowledges that the Products and Services are of U.S. origin and are subject to United States export and economic sanctions laws. Customer agrees to comply strictly with all applicable international and national laws that apply to the Software, including the U.S. Export Administration Regulations, as well as end-user, end-use and destination restrictions issued by U.S. and other governments. The version of the Software supplied to Customer may contain encryption or other capabilities restricting the Customer's ability to export the Software without an export license.

**13.9 Parties Independent.** In making and performing this Agreement, the Parties act and shall act at all times as independent contractors and nothing contained in this Agreement shall be construed or implied to create an agency, partnership, employer and employee relationship or any form of fiduciary relationship between you and ScienceLogic or between a Party and any officer or employee of the other Party.

**13.10 No Third Party Beneficiaries.** This Agreement does not create any benefits, rights, claims, obligations, or causes of action in, to, or on behalf of, any person or entity other than to you and ScienceLogic under this Agreement, except as set forth in [Section 11](#) (Limitation of Liability).

**13.11 Publicity.** You and ScienceLogic shall obtain the other's written consent before publicly using any advertising, written sales promotion, press releases or other publicity matters relating to this Agreement or in which the other's name is used or may reasonably be inferred; provided, however, that ScienceLogic shall have the right, at its own expense to refer to you and a factual description of the Products and ScienceLogic Services provided under this Agreement and reproduce, publicly display, and otherwise use your logo(s) in one press release announcing you as a ScienceLogic customer and in ScienceLogic's list of references, promotional materials (including on ScienceLogic's Web site), internal business planning documents, annual report to stockholders and whenever necessary to comply with generally accepted accounting principles or applicable laws.

**13.12 Notices and Approvals.** Except as otherwise specified in this Agreement, all notices, requests, consents, approvals and other communications (collectively, "[Notices](#)") required or permitted under this Agreement must be given in writing by reputable overnight courier (for example, Federal Express), first class mail, registered or certified, return receipt requested or confirmed facsimile transmission provided that any facsimile Notice must be followed the same day with a delivery of identical Notice by reputable overnight courier for next business day delivery. You and ScienceLogic will provide Notices under this Agreement to the following:

If to you, to the address set forth on the Sales Order.

If to ScienceLogic, to ScienceLogic , Attn: CFO, 10700 Parkridge Blvd., Suite 200, Reston, Virginia 20191, Fax (571) 336-8000.

If no Notice address for you is set forth on the Sales Order, then your address for Notice purposes shall be your last known address. Either Party may substitute its address for Notice purposes by Notice given in accordance with this Section.

**13.13 Affiliate Transactions.** At your request, ScienceLogic will provide Products and/or ScienceLogic Services to your Affiliates under the terms and conditions of this Agreement, in which event you shall be jointly and severally liable for such Affiliate's performance of your obligations under this Agreement with respect to the Products and ScienceLogic Services provided to such Affiliates.

**13.14 Photocopies, Duplicates.** These Standard Terms may be incorporated directly into any mutually accepted Sales Order, and no separate document containing these Standard Terms needs to be signed in order for these Standard Terms to be effective and binding, provided that the Sales Order or other instrument that incorporates these Standard Terms is itself accepted in a contractually binding manner. However, if the Parties do sign any printed copy of these Standard Terms, they may sign multiple copies hereof, and/or they may sign multiple copies of any particular Sales Order, and in any such event they intend that all of those copies will be considered original copies, but together all of those copies represent only one contract. Any reproduction of an executed copy of this Agreement (including the Sales Order or any Attachment) made by reliable means (for example, photocopy or facsimile) is considered an original, unless prohibited by local law; provided, however, that this shall not preclude either Party from requiring the exchange of original signatures.

**13.15 No implications of section titles.** The titles to each of the sections of this Agreement are intended only to facilitate convenient reference; the Parties agree that those titles are not part of the Agreement and should not be used to interpret any part of this Agreement.

**13.16 Entire Agreement.** This Agreement, including these Standard Terms, the Sales Order and all relevant Attachments, constitutes the complete and exclusive agreement between the Parties concerning the subject matter of this Agreement and supersedes all prior or contemporaneous oral or written proposals, negotiations, conversations and other communications between the Parties relating to the subject matter of this Agreement.

**Form Last updated: JANUARY 2016**