



TERMS OF SERVICE AND END USER LICENSE AGREEMENT

IMPORTANT: PLEASE READ THIS TERMS OF SERVICE AND END USER LICENSE AGREEMENT ("AGREEMENT") CAREFULLY BEFORE USING THE COMINDWARE PROJECT™, COMINDWARE TRACKER™ and COMINDWARE TEAM NETWORK™ SOFTWARE AND ON-LINE SERVICE (REFERENCED HEREIN AS THE "SOFTWARE" AND/OR "SERVICE" AS APPLICABLE). COMINDWARE LTD. ("COMINDWARE" AND ALSO REFERRED TO HEREIN AS THE "LICENSOR") IS WILLING TO LICENSE THE SOFTWARE AND/OR PROVIDE THE SERVICES TO YOU AS AN INDIVIDUAL OR LEGAL ENTITY (REFERENCED HEREIN AS "LICENSEE" OR "YOU") THAT WILL BE UTILIZING THE SOFTWARE AND SERVICE ONLY ON THE CONDITION THAT YOU ACCEPT AND ABIDE BY ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT. THIS AGREEMENT APPLIES TO ANY UPDATES OR SUPPORT SERVICES FOR THE SOFTWARE AND/OR SERVICE PROVIDED TO YOU BY COMINDWARE, UNLESS OTHER TERMS SPECIFICALLY COVER THOSE ITEMS. BEFORE INSTALLING AND USING THE SOFTWARE OR UTILIZING THE SERVICE YOU SHOULD CAREFULLY READ THIS AGREEMENT AND YOU MUST CLICK "I ACCEPT" OR "I AGREE" IF YOU FULLY ACCEPT AND AGREE TO ALL OF THE PROVISIONS OF THIS AGREEMENT. OTHERWISE, CLICK "DO NOT ACCEPT." YOU UNDERSTAND AND ACKNOWLEDGE THAT CLICKING "I ACCEPT" OR OTHERWISE DOWNLOADING, INSTALLING AND OR USING THE SOFTWARE AND SERVICE ESTABLISHES A LEGAL, ENFORCEABLE AND BINDING AGREEMENT BETWEEN YOU AS THE PERSON OR ENTITY LICENSING THE SOFTWARE AND UTILIZING THE SERVICE AND COMINDWARE. IF YOU DO NOT ACCEPT ALL OF THE TERMS OF THIS AGREEMENT, YOU MUST CEASE USING THE SOFTWARE AND SERVICE, AND IMMEDIATELY DELETE ANY SOFTWARE AND ASSOCIATED FILES IMMEDIATELY.

1. Software License Grant (On Premises Installation).

Subject to the terms and conditions of this Agreement, upon purchase of a license to the Software for installation at Licensee's location, Licensor grants and Licensee accepts a nonexclusive, nontransferable, non-assignable license to use Software in accordance with its documentation, only for your own internal use and solely for the specific number of users that you have purchased a license for, except with respect to Comindware Team Network, as set forth below. By virtue of licensing Software and registering license with Comindware, you are entitled to: (1) updates which are released on Comindware's sole discretion, and (2) other electronic services that Comindware may make generally available to its customers, such as an electronically available base of knowledge ("Knowledge Base") to assist in answering general questions about the Software.

Before you run any instance of the Software, you must assign licenses to the Software to a named user (each individual user herein referred to as "Named User"). Named Users may not be reassigned by you to different individuals, except in the event of a job change or termination of employment of such Named User. The Software may not be used on a concurrent basis unless otherwise expressly agreed by the parties in writing. The type of license you have, including all applicable restrictions and limitations (including the number of Named Users, whether the licenses fees are based on the number of users, volume of data, or both, and the length of the license periods, etc.) is set forth on the applicable order provided by you and agreed by Licensor. You may make only one copy of the Software for backup and archival purposes, only in machine readable form, provided that such archival copy is only used for archival purposes and never in a production environment, and is marked with all notices provided by Licensor.

Comindware Project and Comindware Team Network are delivered as an integrated product, and you may not use Comindware Team Network without Comindware Project and vice versa. Upon your purchase of a License for Comindware Project, you may use Comindware Team Network for an unlimited number of users. Comindware Team Network may not be used if you do not purchase at least one license of Comindware Project.

2. Right to Access Software (Subscription Service/Hosted Use of Software).

Subject to the terms and conditions of this Agreement, Comindware grants you a non-exclusive, non-transferable, non- sublicensable license to use the Software as part of the hosted Service on a subscription basis, for your internal business purposes only, for the number of Named Users licensed to you. The Service provides the capability to store and retrieve Your Data (as defined below) on Comindware's systems via the Internet during the Service Period (as defined below). The Service is an internet control product that may consist of client software installed on your personal computer that interacts with Comindware's or its third party providers' servers and/or interacts with Comindware's or its third party providers' servers through third party applications. The client software on your computer connects to a server network infrastructure that is deployed via the Internet and operated as a managed service by Comindware and other service providers. All or portions of the Service provided hereunder may be provided by a third-party provider, including without limitation, credit card processing. The "Service Period" shall begin on the date the Service is activated, and shall continue for the period of time set forth in the applicable order accepted by Comindware.

Comindware will provide you with a free thirty (30) trial for hosted access to the Software, pursuant to the terms of Section 2 below. If at the end of the thirty (30) day hosted trial period you have not elected to purchase a subscription license to the Software, your access to the hosted Software shall be terminated by Comindware.

2.1. Hosting of the Software. For the term of, and in accordance with the terms and conditions of, this Agreement, Comindware will, itself or through third parties, implement and maintain facilities, equipment, and programming, collectively making up a host data center, as necessary to provide you access to the Software via the Internet. You will be responsible for providing your own Internet access and computer equipment needed to access the Service. Service level commitments for the hosted Service are set forth in Schedule 1.

2.2. Transmission of Data. You understand that the technical processing and transmission of electronic communications is fundamentally necessary to your use of the Service. You expressly consent to Comindware's interception and storage of electronic communications and/or Your Data (as hereafter defined), and you acknowledge and understand that your electronic communications will involve transmission over the Internet, and over various networks, only part of which may be owned and/or operated by Comindware. You acknowledge and understand that changes to your electronic communications may occur in order to conform and adapt such data to the technical requirements of connecting networks or devices.

2.3. Privacy and Security. Comindware has taken reasonable actions, including encryption and firewalls, to ensure that your personal information is disclosed only to those designated by you. However, you acknowledge that the Internet is an open system and Comindware cannot and does not warrant or guarantee that personal information will not be intercepted by third parties. Comindware disclaims any liability for interception of any data or electronic communications. Notwithstanding the first sentence in this Section, Comindware may disclose information submitted by you to Comindware if required by law or in the event that Comindware, in good faith, believes disclosure is necessary to (i) comply with legal process, or (ii) protect the rights or property of Comindware Parties or others. Comindware does not sell or rent your personal information to third parties for their marketing purposes without your explicit consent and we only use your information as described in the Privacy Policy. For more information on Comindware's Privacy Policy see <http://www.comindware.com/privacy/>. If you object to your information being used in the manner set forth in the Privacy Statement, you should discontinue use of the Comindware Services and the Software.

2.4. Your Data. You are the owner of all data input provided by you and all your output (collectively "Your Data"). Upon termination of this User Agreement, all of Your Data retained by Comindware in the system database files shall be made available to you for a period of 10 days after the termination of this User Agreement. Thereafter, all of Your Data retained by Comindware in the system database files shall be made available to you only upon your remittance to Comindware of a reasonable fee to cover the servicing and handling of Your Data.

Notwithstanding the foregoing, you acknowledge and agree that it is Comindware's practice to make backup copies of the Your Data. You acknowledge and agree that Comindware may store and maintain Your Data for such period of time as it deems necessary. Subject to the terms and conditions of this Agreement, you grant Comindware a limited, non-exclusive, non-transferable license to copy, store, record, transmit, display, view, print, or otherwise use Your Data to the extent necessary to perform its services pursuant to this Agreement. You agree that the license to store and maintain Your Data shall survive the termination of this Agreement.

Comindware shall maintain in confidence and shall not disclose to any third party Your Data, and Comindware agrees that Your Data will not be used by Comindware for any purposes other than the provision of services to you and as provided in the Comindware's Privacy Statement.

You agree to:

- a.* be solely responsible for the results obtained from use of the Comindware Services and Software;
- b.* be solely responsible for correcting input errors and data corruption problems; and
- c.* be solely responsible for the content of any data file, the selection and implementation of controls on access to Your Data and the use and security of Your Data.

2.5. Access Restrictions. A current Comindware account is required to accept and use the Service. You agree to provide accurate and complete information when you register for the Service and you agree to keep such information accurate and complete during the entire time that you use the Service. You are solely responsible for any consequences arising in whole or in part out of your failure to maintain the confidentiality of your username and/or password. You may access the Service only through the interfaces and protocols provided or authorized by Comindware. You agree that you will not access the Service through unauthorized means, such as unlicensed software clients. If you lose your password or the encryption key for your Comindware account, you may not be able to access your Data. You are solely responsible for protecting the information on your computer such as by installing anti-virus software, updating your applications, password protecting your files, and not permitting third party access to your computer. You are solely responsible for your (and your employees, consultants and affiliates) conduct, use of the Services and Data under the Comindware account.

3. Restrictions; Ownership.

The Software and its structure, organization, source code, and documentation contain valuable trade secrets of Comindware and its licensors, and accordingly you agree not to (and agree not to allow your affiliates, employees, agents or third parties to) (1) sublicense, lease, rent, loan, transfer, or distribute the Software and/or Service or any derivative thereof to any third party, (2) modify, adapt, translate, or prepare derivative works from the Software or Service, (3) decompile, reverse engineer, disassemble or otherwise attempt to derive source code from the Software or Service, (4) decrypt data or extract portions of the Software's files for use in other applications, (5) remove, obscure, or alter Comindware's or any third party's trademarks or copyright or other proprietary rights notices affixed to or contained within or accessed in conjunction with or through the Software or Service, (6) use or permit the Software or Service to be used to perform services for third parties, whether on a service bureau or time sharing basis or otherwise, without the express written authorization of Comindware, or (7) publicly disseminate performance information or analysis (including, without limitation, benchmarks) from any source relating to the Software or Service. You are responsible and liable for the actions of its affiliates, employees, and agents in violation of any term of this Agreement. In addition, certain third party code may be provided with the Software and/or Service, and any use of such third party code is subject to any additional terms and conditions provided in connection therewith. You shall maintain the Software in confidence and prevent disclosure of Software and Service using at least the same degree of care you use for your own similar proprietary information, but in no event less than a reasonable degree of care.

Notwithstanding any references to "purchase", the Software and Service are licensed and not sold pursuant to this Agreement. This Agreement confers a limited license to the Software and Service and does not constitute a transfer of title to or sale of all or a portion of the Software or Service, and Comindware and/or its licensors/supplier retains ownership of all copies of the Software (including any accompanying features and services). You acknowledge that Comindware or third parties own all right, title and interest in and to the Software and Service, portions thereof, or software or content provided through or in conjunction with the Software or Service, including without limitation all intellectual property rights. Except for the license granted in this Section, all rights in and to the Software and Service are reserved, and no implied licenses are granted by Comindware.

4. Activation.

In order to use the Software or the Service, Licensee must complete the designated activation process within the Service or through a link provided within the Software.

5. Termination.

You may terminate this Agreement at any time by destroying all Software and closing your account (as applicable) by following the instructions found at www.comindware.com. This Agreement automatically terminates if you fail to comply with its terms and conditions. You agree that, upon such termination, you will destroy and permanently erase all copies of the Software and that your access rights to the Service will immediately terminate. The terms of the Sections entitled Consent to Collect Non-Personal Information, Restrictions; Ownership, Disclaimer of Warranties, Limitation of Liability, and Miscellaneous will survive expiration or termination. If this Agreement terminates, other than for your failure to comply, COMINDWARE will use commercially reasonable efforts to make your Data available for you to download for a period of three (3) days.

COMINDWARE has no obligation to provide you with a copy of your Data and may remove and discard any Data. You also agree that Comindware may retain your personal information and related account information for a reasonable time after your license has been terminated.

6. Support.

If you are currently enrolled in a support and maintenance program with Comindware, support and maintenance is provided pursuant to Comindware's support and maintenance policy found in your license documents. Comindware shall make available to you support and maintenance consistent with the level of such service purchased. Support policies are subject to change without prior notice. Proof of legal ownership and/or registration is required to obtain support.

COMINDWARE provides no assurance that any specific errors or discrepancies in the Software will be corrected.

7. CEP.

Comindware has instituted a Comindware Customer Experience Program (CEP). You acknowledge and agree that Comindware may occasionally send you administrative communications regarding your account or the Software and/or Service via email. Please see the Comindware Privacy Policy, which is incorporated into this Agreement by reference.

8. Additional Terms of Use.

The Software and Service are intended and offered only for lawful use by individuals or organizations with the legal capacity and authority under applicable law to enter into a contract for such products or services. Comindware does not offer the Software or Service to minors or where prohibited by law. By registering for and/or by using the Software and/or Service, you represent and warrant that you have the legal capacity and authority to enter into a binding agreement to adhere to this Agreement, and that you will use the Software or Service only in accordance with these terms and conditions and with all applicable laws. If an individual is registering or using the Software or Service on behalf of an entity or organization, that individual warrants, represents, and covenants to Comindware that such individual is duly authorized to agree to these Terms and Conditions on behalf of the organization and to bind the organization to them. This Agreement governs all updates, releases or enhancements to the Software or Service that may be provided to you by Comindware.

I. User Conduct and Responsibility; Compliance with Applicable laws. The Software and Service are made available to Licensee for Licensee's internal use (including the transmission of Data stored through the Service) in compliance with all applicable laws, rules and regulations (including local, state, national and international laws and regulations, not limited to United States export laws or those of other territories or jurisdictions) and must not infringe or violate third party rights. Licensee may not use the Software or Service for non-internal use, including but not limited to selling or distributing the Software and/or Service to any third party or utilizing the Software and Service to provide service to a third party. Any unauthorized use of any Service is a violation of this Agreement and certain federal and state laws. Such violations may subject the unauthorized user and his or her agents to civil and criminal penalties.

II. Fair Use Policy. COMINDWARE SHALL HAVE THE ABSOLUTE AND UNILATERAL RIGHT IN ITS SOLE DISCRETION TO DENY USE OF AND ACCESS TO ALL OR ANY PORTION OF THE SOFTWARE OR SERVICE TO USERS WHO ARE DEEMED BY COMINDWARE TO BE USING THE SOFTWARE OR SERVICE IN A MANNER NOT REASONABLY INTENDED BY COMINDWARE OR IN VIOLATION OF LAW OR THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO SUSPENDING OR TERMINATING A USER'S COMINDWARE ACCOUNT WITH COMINDWARE AND THE LICENSE TO USE THE SOFTWARE OR SERVICE.

III. Consent to Collect Non-Personal Information. The Software and Service may collect certain non- personally identifiable information that resides on your computer, including, without limitation, performance metrics relating to the Software, and configuration settings. This information collected will be sent to Comindware and may be used by Comindware or its third party service providers without restriction. The collected information is necessary for the purpose of delivering the functionality of the Software and Service. When you use the Service, you agree that we and our third party service providers may copy and store your data as part of the Service. You understand that electing to access your data from a third party computer may cause the contents of the data to become accessible to individuals other than you and that you accept this risk. You further acknowledge that depending upon the Software or Service you use or the features of the Software or Service you use that accessing your data from any Internet enabled computer may not be possible. In addition, any Data that you transmit or store through the Service may be transferred to a Comindware group in the United States or other countries that may have less data protection laws than the region in which you are situated (including outside the European Economic Area).

IV. Communication, Connections, Service Availability. You are solely responsible for acquiring and maintaining the Internet or telecommunications services and devices required to access and/or use the Service. The Service is provided “as is” and “as available” and Comindware shall not be liable for any downtime of the Service due to reasonable scheduled maintenance, maintenance for critical issues or forces beyond the reasonable control of Comindware. The Software and Service is designed to serve the needs of particular types of users, i.e. individual consumers or business accounts. If you have purchased a Service that is inappropriate for your actual usage, Comindware may require you to switch to an appropriate Service. Comindware may, in our sole discretion and from time to time, establish or amend general operating practices to maximize the operation and availability of the Software or Service and to prevent abuses. As part of these practices, we reserve the right to monitor our system to identify excessive consumption of network resources and to take such technical and other remedies as we deem appropriate. Your consumption of the Service may be deemed excessive if, within any month, your usage greatly exceeds the average level of monthly usage of Comindware’ customers, generally. In the event you are deemed to have violated this policy, we reserve the right to offer an alternative pricing plan or Service that will permit you to continue to use the Service. Comindware may block your access to your data and/or terminate your use of the Software or Service if Comindware reasonably believes that your continued use of the Software or Service may damage, disable, overburden, or impair our servers or networks.

V. Privacy and Data Protection. COMINDWARE assumes no responsibility for the deletion of Data, loss of data or the failure to store Data. Comindware will not decrypt your files unless i) it reasonably believes that it must do so to troubleshoot problems with the Service or ii) it reasonably believes it must do so in order to comply with any law, subpoena, warrant, order, or regulation. Comindware may also provide access to your data to government authorities if Comindware suspects or believes that the data contain a prohibited data or that the data are being used for illegal purposes. You acknowledge that Comindware, its third party service providers or Comindware affiliates may use servers and other equipment to provide the Software or Service that are located in the United States or in other countries where litigants, law enforcement, courts, and other agencies of the government may have the right to access data stored within their jurisdictions upon terms and conditions provided by local law, and that as a result, they may gain access to your data as provided by applicable local law. Comindware has no obligation to monitor the use of the Service and/or Data transmitted or stored through the Service. To the maximum extent possible under applicable law and notwithstanding the provisions of this Agreement, Comindware reserves the right at all times to monitor, review, retain and/or disclose any Data or other information as necessary to satisfy any applicable law, regulation, legal process or governmental request, or to investigate any suspected breach of these Terms and Conditions.

You agree to indemnify, defend, and hold harmless Comindware, its officers, directors, employees and its suppliers from any and all loss, cost, liability, and expense arising from or related to your Data, your use of the Service, or your violation of these terms. You agree to reimburse Comindware for any costs or fees related to its enforcement of this Agreement, including without limitation the expert fees and attorney fees regularly charged by the experts and legal counsel chosen by Comindware.

VI. Changes to the Service and Terms and Conditions. Comindware reserves the right at any time to modify, suspend, or discontinue providing the Service or any part thereof in its sole discretion with or without notice. However, Comindware will use commercially reasonable efforts to notify you of modification, suspension, or discontinuance of the Service either by sending an email to the email address you provide with your registration or by a posting on www.comindware.com. However, in no event will Comindware be liable to you or to any third party for any modification, suspension or discontinuance of the Service with or without notice. From time to time, Comindware may issue new releases, revisions, or enhancements to the Software or Service available to you free of charge or for a fee. New releases, revisions or enhancements may be licensed, downloaded, and installed only to the extent that you hold a valid license to use the Software or Service being updated or upgraded, and you may use them only in accordance with Comindware' then-current Terms and Conditions of Use and any additional license terms that may accompany them. Comindware reserves the right at any time to modify this Agreement in its sole discretion, without liability to you. This Agreement, as amended, will be effective upon acceptance of registration for new users and effective for all existing users fifteen (15) days after the posting of any amended terms on the comindware.com website. You agree to be bound by this Agreement, as modified. If you do not agree to any changes to this Agreement, you must terminate your account immediately, which shall be your sole and exclusive remedy.

9. Disclaimer of Warranties.

THE SOFTWARE AND SERVICE AND ANY THIRD PARTY SOFTWARE AND SERVICES ARE PROVIDED "AS IS," WITH NO WARRANTIES WHATSOEVER. COMINDWARE AND SUCH THIRD PARTIES EXPRESSLY DISCLAIM TO THE FULLEST EXTENT PERMITTED BY LAW ALL EXPRESS, IMPLIED, AND STATUTORY WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT OF PROPRIETARY RIGHTS AND ANY WARRANTIES REGARDING THE SECURITY, RELIABILITY, TIMELINESS, AND PERFORMANCE OF THE SOFTWARE OR SERVICE AND SUCH THIRD PARTY SOFTWARE OR SERVICES. COMINDWARE DOES NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE SOFTWARE OR SERVICE WILL MEET YOUR REQUIREMENTS THAT THE OPERATION OF THE SOFTWARE OR SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT DEFECTS IN THE SOFTWARE OR SERVICE WILL BE CORRECTED. COMINDWARE DOES NOT WARRANT OR MAKE ANY REPRESENTATIONS REGARDING THE USE OR THE RESULTS OF THE USE OF THE SOFTWARE OR SERVICE IN TERMS OF THEIR CORRECTNESS, ACCURACY, RELIABILITY OR OTHERWISE. COMINDWARE DOES NOT REPRESENT OR WARRANT THAT USERS WILL BE ABLE TO ACCESS OR USE THE SOFTWARE OR SERVICES AT TIMES OR LOCATIONS OF THEIR CHOOSING, OR THAT COMINDWARE WILL HAVE ADEQUATE CAPACITY FOR ANY USER'S REQUIREMENTS. NO ORAL OR WRITTEN STATEMENT, INFORMATION OR ADVICE GIVEN BY COMINDWARE, OR ITS RESPECTIVE EMPLOYEES, DISTRIBUTORS, DEALERS, OR AGENTS SHALL CREATE ANY WARRANTIES. YOU UNDERSTAND AND AGREE THAT YOUR DOWNLOAD AND/OR USE OF THE SOFTWARE AND SERVICE, AND ALL THIRD PARTY SOFTWARE OR SERVICES MADE AVAILABLE IN CONJUNCTION WITH OR THROUGH THE SOFTWARE OR SERVICE, IS AT YOUR OWN DISCRETION AND RISK AND THAT YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGES TO YOUR COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OR USE OF THE SOFTWARE OR SERVICE AND SUCH THIRD PARTY SOFTWARE AND SERVICES. SOME STATES OR OTHER JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSIONS MAY NOT APPLY TO YOU. YOU MAY ALSO HAVE OTHER RIGHTS THAT VARY FROM STATE TO STATE AND JURISDICTION TO JURISDICTION.

10. Liability Limitations.

UNDER NO CIRCUMSTANCES SHALL COMINDWARE, OR ITS SUPPLIERS, RESELLERS, PARTNERS OR THEIR RESPECTIVE AFFILIATES BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES ARISING FROM OR RELATED TO THE SOFTWARE OR SERVICE, WHETHER SUCH CLAIM IS BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, (EVEN IF ANY SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES). WITHOUT LIMITING THE FOREGOING, THE TOTAL AGGREGATE LIABILITY OF COMINDWARE, AND ITS SUPPLIERS, RESELLERS, PARTNERS AND THEIR RESPECTIVE AFFILIATES ARISING FROM OR RELATED TO THIS AGREEMENT SHALL NOT EXCEED THE AMOUNT, IF ANY, PAID BY YOU TO COMINDWARE FOR THE SOFTWARE OR SERVICE. IF THE SOFTWARE AND SERVICE ARE PROVIDED WITHOUT CHARGE, THEN COMINDWARE AND ITS SUPPLIERS SHALL HAVE NO LIABILITY TO YOU WHATSOEVER IN EXCESS OF \$100.00. THE FOREGOING LIMITATIONS OF LIABILITY SHALL APPLY WHETHER THE DAMAGES ARISE FROM USE OR MISUSE OF AND RELIANCE ON THE SOFTWARE OR SERVICE, FROM INABILITY TO USE THE SOFTWARE OR SERVICE, TO USE OR RETRIEVE ANY BACKUP DATA, OR FROM THE INTERRUPTION, SUSPENSION, OR TERMINATION OF THE SOFTWARE OR SERVICE (INCLUDING SUCH DAMAGES INCURRED BY THIRD PARTIES). SUCH LIMITATION SHALL APPLY NOTWITHSTANDING A FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY AND TO THE FULLEST EXTENT PERMITTED BY LAW. SOME STATES OR OTHER JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR INCIDENTAL, CONSEQUENTIAL, OR DIRECT DAMAGES, SO THE ABOVE LIMITATIONS AND EXCLUSIONS MAY NOT APPLY TO YOU. THE SOFTWARE AND SERVICE ARE NOT INTENDED FOR USE IN CONNECTION WITH ANY NUCLEAR, AVIATION, MASS TRANSIT, OR MEDICAL APPLICATION OR ANY OTHER INHERENTLY DANGEROUS APPLICATION THAT COULD RESULT IN DEATH, PERSONAL INJURY, CATASTROPHIC DAMAGE, OR MASS DESTRUCTION, AND LICENSEE AGREES THAT LICENSOR WILL HAVE NO LIABILITY OF ANY NATURE AS A RESULT OF ANY SUCH USE OF THE SOFTWARE. LICENSOR SHALL NOT BE LIABLE FOR DAMAGES TO LICENSEE'S HARDWARE AND SOFTWARE, LOSS, DESTRUCTION OR CORRUPTION OF LICENSEE'S DATA, LOSS OF REVENUE OR PROFITS AS A RESULT OF LICENSEE'S USE OF THE SOFTWARE.

11. Licensee Indemnity.

You agree to indemnify and defend Comindware, and hold it harmless from all costs, including attorney's fees, arising from any claim that may be made against Comindware by any third party as a direct or indirect result of any use by your of the Software and or Service.

12. Export Restriction.

You will not remove or export from the United States or the country originally shipped to by Comindware (or re-export from anywhere) any part of the Software or any direct product thereof except in compliance with applicable export laws and regulations, including without limitation, those of the U.S. Department of Commerce.

13. Government End Users.

This Agreement applies to all Software and Service acquired directly or indirectly by or on behalf of the United States Government. The Software and Service are commercial products, provided on the open market at market prices, and was developed entirely at private expense and without the use of any U.S. Government funds. If the Software or Service is supplied to the Department of Defense, the U.S. Government acquires only the license rights customarily provided to the public and specified in this Agreement. If the Software or Service is supplied to any unit or agency of the U.S. Government other than the Department of Defense, the license to the U.S. Government is granted only with restricted rights. Use, duplication, or disclosure by the U.S. Government is subject to the restrictions set forth in subparagraph (c) of the Commercial Computer Software Restricted Rights clause of FAR 52.227-19.

14. Miscellaneous Provisions.

You acknowledge and agree that the Software which is the subject of this Agreement may be controlled for export purposes. You agree to comply with all United States export laws and regulations, and you shall not and shall not allow any third-party to remove or export from the United States or allow the export or re-export of any part of the Software or Service or any direct product thereof: (i) into (or to a national or resident of) any embargoed or terrorist- supporting country; (ii) to anyone on the U.S. Commerce Department's Table of Denial Orders or U. S. Treasury Department's list of Specially Designated Nationals; or (iii) to any country to which such export or re-export is restricted or prohibited, or as to which the United States government or any agency thereof requires an export license or other governmental approval at the time of export or re-export without first obtaining such license or approval. You warrant that you are not located in, under the control of, or a national or resident of any such prohibited country or on any such prohibited party list.

The Software and Services are further restricted from being used for the design or development of nuclear, chemical, or biological weapons or missile technology, or for terrorist activity, without the prior permission of the United States government. You assume sole responsibility for any required export approval and/or licenses and all related costs and for the violation of any United States export law or regulation. This Agreement shall be governed by the laws of the State of Washington, exclusive of its conflicts of laws provisions and without regard to the United Nations Convention on Contracts for the International Sale of Goods, and any suit under this Agreement shall exclusively be brought in a federal or state court in the State of Washington. Any action against Comindware under this Agreement must be commenced within one year after such cause of action accrues. The failure of Comindware to exercise or enforce any right or provision of this Agreement does not constitute a waiver of such right or provision. If for any reason a court of competent jurisdiction finds any provision or portion of this Agreement to be unenforceable, the remainder of this Agreement will continue in full force and effect. This Agreement, which incorporates the Comindware Privacy Policy, constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes and replaces all prior or contemporaneous understandings or agreements, written or oral, regarding such subject matter. Any waiver of any provision of this Agreement will be effective only if in writing and signed by Comindware. You may not assign or transfer any of your rights or obligations under this Agreement to a third party without the prior written consent of Comindware. Comindware may freely assign this Agreement. Any attempted assignment or transfer in violation of the foregoing will be void from the beginning.

15. Contacting Comindware.

Users with questions about this Agreement or the Privacy Policy may contact Comindware at www.comindware.com.

Schedule 1 – SERVICE LEVEL COMMITMENT

Service Level Commitment

Comindware commits to provide 99.5% uptime with respect to the Comindware Service during each month for the term of this Agreement, excluding regularly scheduled maintenance times.

If in any month this uptime commitment is not met by Comindware and you were negatively impacted (i. e., attempted to log into or access the Comindware Service and failed due to the unscheduled downtime of the Comindware Service), Comindware shall provide, as the sole and exclusive remedy, a service credit equal to one month's fee for the use of the Comindware Service.

Notwithstanding the foregoing, Comindware will have no responsibility for downtime arising from (i) modifications of the Software made by you or another party other than Comindware if such downtime would not have arisen but for such modifications or (ii) combination or use of the Software with other products if such downtime would not have arisen but for such combination or use.

Scheduled and Unscheduled Maintenance

Regularly scheduled maintenance time does not count as downtime. Maintenance time is regularly scheduled if it is communicated in accordance with the notice section set forth below at least two full business days in advance of the maintenance time. Regularly scheduled maintenance time typically is communicated at least a week in advance, scheduled to occur at night on the weekend, and takes less than 10-15 hours each quarter. Comindware hereby provides notice that every Monday 3:00am - 3:20am Eastern Time is reserved for routine scheduled maintenance for use as needed.

Comindware in its sole discretion may take the Comindware Service down for unscheduled maintenance and in that event will attempt to notify you in advance in accordance with the Notice section set forth below. Such unscheduled maintenance will be counted against the uptime guarantee.

Credit Request

In order to receive a credit under this service level commitment, you must request it simply by emailing Comindware at support@comindware.com, within five days of the end of the applicable month. If you submit a credit request and do not receive a prompt automated response indicating that the request was received, you must resubmit the request because the submission was not properly received and will not result in a credit. If you are past due or in default with respect to any payment or any material contractual obligations to Comindware, you are not eligible for any credit under this Service Level Commitment. The service credit is valid for up to two years from the month for which the credit was issued. Comindware shall calculate any service level downtime using Comindware's system logs and other records.

Updates/Notice

This Service Level Commitment may be amended by Comindware in its discretion but only after providing thirty (30) days advance notice. Notices will be sufficient if provided to a user designated as an administrator of your account either: (a) as a note on the screen presented immediately after completion of the log in authentication credentials at the log in screen, or (b) by email to the registered email address provided for the administrator(s) for your account.

Exclusion of Beta and Demonstration Accounts

Beta and demonstration accounts and other test environments are expressly excluded from this or any other service level commitment.