



## **ANCHORE RESELLER AGREEMENT**

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Version 2020SEP30

This Anchore Reseller Agreement (“Agreement”), by and between Anchore, Inc. (“Anchore”) with its principal place of business at 800 Presidio Ave., Suite B, Santa Barbara, CA 93101 and Reseller (“Reseller”) is hereby executed upon the date of receipt of an Order for Anchore Products or Services from the Reseller to an Anchore duly authorized distributor (“Distributor”). When a Distributor is not available in the Territory then Anchore shall directly be the Distributor to the Reseller. The parties herein may be referred to individually as a “Party” and collectively as the “Parties.”

PLEASE READ THE AGREEMENT CAREFULLY AS IT GOVERNS YOUR RESELL OF ANCHORE’S PRODUCTS AND SERVICES, UNLESS WE HAVE EXECUTED A SEPARATE WRITTEN AGREEMENT WITH YOU FOR THAT PURPOSE. AS OF THE DATE ON WHICH RESELLER PLACES AN ORDER FOR ANCHORE PRODUCT OR SERVICES WITH A DULY AUTHORIZED DISTRIBUTOR (THE “AGREEMENT EFFECTIVE DATE”), RESELLER, BY AND THROUGH SUCH ACTION, AFFIRMATIVELY ASSENTS TO AND ACCEPTS ALL THE TERMS AND CONDITIONS OF THE AGREEMENT, AND THE AGREEMENT IMMEDIATELY SHALL TAKE EFFECT. RESELLER HEREBY REPRESENTS AND WARRANTS TO ANCHORE THAT THE INDIVIDUAL AFFIRMATIVELY ASSENTING TO AND ACCEPTING SUCH TERMS AND CONDITIONS ON BEHALF OF RESELLER IS DULY AUTHORIZED BY RESELLER AND OTHERWISE POSSESSES ALL CORPORATE AND OTHER LEGAL AUTHORITY TO BIND RESELLER TO ALL SUCH TERMS AND CONDITIONS. ANCHORE MAY AMEND THE AGREEMENT FROM TIME TO TIME IN ITS SOLE DISCRETION AND NOTICE TO RESELLER OF SUCH MODIFICATION AND ACCEPTANCE THEREOF SHALL BE PURSUANT TO THE AGREEMENT.

WHEREAS, Anchore develops, markets, and delivers the Products and Services specified in Exhibit A;

WHEREAS, Reseller is a reseller of software and professional services and is deemed capable of representing and reselling Anchore’s Products and Services to prospective End-Users in the Territory;

WHEREAS, Reseller shall be purchasing Anchore Products and Services from Anchore’s duly authorized Distributors in the Territory if such authorized Distributors exist. Otherwise, Reseller shall be purchasing directly from Anchore as the Distributor;

WHEREAS, capitalized terms used in this Agreement are defined in Section 18 of the Agreement; and

WHEREAS, Reseller desires a nonexclusive, nontransferable, nonassignable and limited right and license to market and sell Products (as defined below) solely as set forth herein, and Anchore agrees to grant to Reseller such right and license solely as set forth herein. Anchore also offers Services in relation to the Products which Reseller is also hereby enabled to resell;

NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement, the Parties agree as follows:

## 1. Reseller License.

1.1 Anchore grants Reseller a nonexclusive, nontransferable, nonassignable and limited right and license to market, distribute and sell Products to End-Users in the Territory, solely as set forth in this Agreement. Reseller will in no event offer or sell Products to any party for ultimate use outside the Territory. Reseller acknowledges and agrees that the rights granted hereunder to distribute and sell Products are limited solely to those specific products identified on Exhibit A hereto (and any subsequent versions or releases of those specific products listed on Exhibit A) and shall not apply to any other products subsequently released by Anchore (unless mutually agreed by the parties in writing). The grant of rights under this Section 1.1 is restricted to Reseller and does not include the right to appoint any sub-resellers or sub-distributors without the prior written consent of Anchore, which may be withheld in its sole discretion.

1.2 Anchore grants Reseller a nonexclusive, nontransferable, nonassignable and limited right and license to use the Marks in marketing the Products and the Services solely in accordance with Section 15 of this Agreement.

1.3 Except as specifically set forth in the Agreement, no express or implied license or right of any kind is granted to Reseller regarding the Products, the Services or the Marks, including, but not limited to, any right to know, use, produce, receive, reproduce, copy, market, sell, distribute, transfer, translate, modify, adapt, disassemble, decompile, or reverse-engineer the Products or Services or create derivative works based on the Products or Services or any portions thereof, or obtain possession of any source code or other technical material relating to the Products.

**2. License Restrictions.** Reseller acknowledges that the Data in the Products is highly valuable and that its disclosure to third parties other than permitted under this agreement represents a significant and irreparable harm to Anchore. Accordingly Reseller will have no right and will not, nor will it allow others to: (i) extract any Data from the Software or use it in any way, except as permitted under this Agreement; (ii) sublicense, resell, rent, lease, distribute, market, commercialize or otherwise transfer rights or usage to the Software for any purpose other than as expressly provided in Section 1; (iii) transfer, use or export the Software in violation of any export laws or regulations of any government or governmental agency.

**3. Delivery.** Anchore will make the Products available to End-Users electronically, together with its Documentation promptly following the execution of an order by the Reseller. If applicable, Anchore will deliver Services pursuant to a fully executed Statement of Work between the End-User and Anchore. Reseller agrees to engage Anchore prior to selling Services to End-Users so that a Statement of Work can be created for the scope of the Services being sold.

## 4. Reseller Obligations.

4.1 Reseller will market and sell the Products and Services to End-Users and resellers in the Territory in accordance with terms of this Agreement. Reseller will cause sufficient personnel to become proficient in the market fit, value proposition, and the competitive differentiation of the Products and Services.

4.2 Reseller will have the authority to market the Products and Services under the terms and conditions of the applicable End-User Agreements only. Reseller shall ensure that the applicable End-User Agreements are passed through to the End-User and that such End-User understands that the purchase and use of the Products and Services are governed by the applicable End-User Agreements. Reseller has and will exercise no authority to make any alterations to the End-User Agreements.

4.3 Reseller has and will exercise no authority to make statements, warranties or representations concerning the Products and Services that exceed or are inconsistent with the marketing materials or technical specifications provided to Reseller by Anchore. Reseller has and will exercise no authority to bind Anchore to any undertaking or performance with respect to the Products and Services.

4.4 Reseller shall not in any manner reproduce, copy or alter any Products or Services or any portion thereof, and Reseller shall use all lawful means possible to prevent persons affiliated with Reseller from doing so without the express written consent of Anchore.

4.5 Reseller represents and warrants that: (a) Reseller will not make any representation or warranty on behalf of Anchore; (b) Reseller will not create any obligation on behalf of Anchore except as specifically agreed to in this Agreement by Anchore; and (c) Reseller shall indemnify and hold Anchore harmless against any loss, damage and expense payable to an unrelated third party arising from a

breach by Reseller of its obligations under this Section 4 and any breach by an End-User of the terms of the applicable End User Agreement that would constitute a breach of this Agreement if performed by Reseller; provided that Anchore gives Reseller prompt notice of, reasonable cooperation in connection with, and sole control over the defense and any settlement thereof.

## **5. Orders and Fulfillment.**

5.1 Reseller will place Orders pursuant to the designated order placement and processing procedures as agreed between the Reseller and Distributor.

5.2 If an End-User requests Services, Reseller may request Anchore to provide such services to the End-User. Any such Services shall be provided upon Reseller's request at Anchore's then-current rates provided to the Reseller by Distributor, subject to the availability of Anchore resources. Anchore will provide the Services to End-User as described in a mutually agreed Statement of Work.

## **6. Fees.**

6.1 Reseller will pay Distributor pursuant to the payment terms and conditions as agreed between the Reseller and the Distributor. If Reseller is purchasing directly from Anchore as the Distributor, then the following additional terms shall apply:

6.1.1 Reseller will pay Anchore the Fees specified in the Order Form for each Order sold by Reseller. Reseller will pay Anchore the Fees within thirty (30) days of receipt of each invoice. Interest may be charged by Anchore on delinquent accounts at the rate of one percent (1%) per month or the maximum amount allowed by law, whichever is less, commencing with the date payment was due. Reseller will pay to Anchore any amounts actually incurred by Anchore in collection of any such delinquent accounts, including attorneys' fees. Anchore may also suspend provision of Services until such delinquency is corrected.

6.1.2 All payments from Reseller to Anchore hereunder will be in U.S. Dollars and shall be made as specified by Anchore. Subject to credit approval (at Anchore's discretion), Reseller will pay Anchore by means of a check or wire transfer to Anchore's bank.

6.1.3 The amounts due to Anchore as set forth herein are net amounts to be received by Anchore, exclusive of all taxes, and are not subject to offset or reduction because of any costs, expenses, or liabilities incurred by Reseller or imposed on Anchore in the performance of this Agreement or otherwise due as a result of this Agreement. All fees are nonrefundable and made without right of setoff or chargeback.

6.1.4 Reseller will be responsible for and will pay directly, any and all taxes, duties and charges incurred in the performance of this Agreement, including, but not limited to, sales and use taxes, withholding taxes, duties and charges imposed by federal, state or local governmental authorities in the United States or elsewhere, but excluding U.S. corporate income taxes of Anchore. Reseller will also be responsible for payment of any license fee, assessment, duty, tax, levy, or similar charge imposed by any foreign government as a result of this Agreement for any transactions contemplated by the parties hereunder. If any applicable law requires Reseller to withhold amounts from any payments to Anchore under this Agreement, (a) Reseller will withhold and remit such amounts to the appropriate taxing authorities and promptly furnish Anchore with tax receipts evidencing the payments of such amounts, and (b) the sum payable by Reseller upon which the deduction or withholding is based will be increased to the extent necessary to ensure that, after such deduction or withholding, Anchore receives and retains, free from liability for such deduction or withholding, a net amount equal to the amount Anchore would have received and retained absent the required deduction or withholding. Reseller will provide its sales tax exemption number and related documentation (including resale exemption certificate) to Anchore as required by state law.

6.2 Reseller will set, in its sole discretion, the fees that it charges End-Users for Products and Services sold by Reseller pursuant to this Agreement.

## **7. Marketing and Press Releases.**

**7.1 Marketing.** Reseller will submit to Anchore, prior to use, distribution, or disclosure, any advertising, promotional and marketing materials, and publicity relating to the Products and Services proposed to be used by Reseller (the "Marketing Materials"). Reseller shall not use, distribute, or disclose the Marketing Materials unless approved by Anchore, which approval will not be unreasonably withheld.

The parties will also collaborate from time to time to discuss in good faith jointly marketing the Products. Anchore will have the right to use Reseller's name and logo in its marketing and publicity materials in a manner approved in writing by Reseller in each instance.

**7.2 Press Releases.** The parties agree that neither party shall issue a press release associated with this Agreement or the relationship hereby formed without mutual agreement in writing.

**8. Reports and Records.** Reseller shall maintain complete and accurate accounting and distribution records, in accordance with generally accepted accounting

practices. During the term of this Agreement, and for two years thereafter, Reseller will keep complete and accurate records and books of account containing all information required for the computation and verification of Fees payable to Anchore and sufficient to establish the End-Users to whom Reseller has sold the Products. Anchore will have the right, on seven days' prior written notice, itself or through an independent certified public accountant or knowledgeable neutral third-party auditor, selected and paid for by Anchore, to conduct an audit of Reseller's records to verify compliance with the terms of this Agreement. Any errors in payment of Fees discovered during such audit shall be corrected and Reseller shall immediately pay the amount of underpayment plus interest thereon from the date such payment was originally due at a rate of 1.0% per month during the time which any sums were overdue and unpaid. If such error is an underpayment in excess of five percent (5%) of such fees due for the period covered by such audit, Reseller shall, in addition to making immediate payment of the additional fees due, plus interest in accordance with the previous sentence, pay to Anchore the reasonable out-of-pocket costs and expenses incurred by Licensor for such audit.

**9. Confidentiality.** For a period of five (5) years from the date of disclosure of the applicable Confidential Information, the Receiving Party shall (a) hold the Confidential Information of the Disclosing Party in trust and confidence and avoid the disclosure or release of such Confidential Information to any other person or entity by using the same degree of care as it uses to avoid unauthorized use, disclosure, or dissemination of its own Confidential Information of a similar nature, but not less than reasonable care, and (b) not use the Confidential Information of the Disclosing Party for any purpose whatsoever except as expressly contemplated under this Agreement; provided that, to the extent the Confidential Information constitutes a trade secret under law, the Receiving Party agrees to protect such information for so long as it qualifies as a trade secret under applicable law. The Receiving Party shall disclose the Confidential Information of the Disclosing Party only to those of its employees and contractors having a need to know such Confidential Information and shall be liable for all violations of this Section 9 by its employees and contractors. The obligations under this Section shall not apply to information that the Disclosing Party can demonstrate (i) was in its possession at the time of disclosure and without restriction as to confidentiality, (ii) at the time of disclosure is generally available to the public or after disclosure becomes generally available to the public through no breach of this Agreement or other wrongful act by the Receiving Party, (iii) has been received from a third

party without restriction on disclosure and without breach of this Agreement by the Receiving Party, or (iv) is independently developed by the Receiving Party without regard to the Confidential Information. In addition, the Receiving Party may disclose Confidential Information as required to comply with binding orders of governmental entities that have jurisdiction over it, provided that the Receiving Party gives the Disclosing Party reasonable written notice if legally permitted to do so. Without granting any rights or licenses under its intellectual property rights, notwithstanding anything to the contrary, each party acknowledges and agrees that the other party, its employees and agents is not prohibited by this Agreement from using and employing their general skills, know-how, and expertise, and to use, disclose, and employ any generalized ideas, concepts, know-how, methods, techniques or skills gained or learned during the course of performing its obligations under this Agreement (excluding the other party's Confidential Information, for the avoidance of doubt).

## **10. Ownership.**

10.1 Reseller acknowledges that nothing herein gives it any right, title or interest in the Products, the Services or the Marks except for Reseller's limited express rights pursuant to Section 1 of this Agreement.

10.2 Reseller acknowledges and agrees that Anchore or its licensors maintain exclusive ownership of the Products in all forms (both object code and source code) and all copies and all portions thereof, the Services and the Marks, including, without limitation, any and all worldwide copyrights, patents, trademarks, service marks, trade names, trade secret, proprietary and confidential information rights and other property rights associated with the Products, Services and the Marks.

10.3 Reseller agrees and acknowledges that Reseller is not obtaining ownership of any intellectual property right in or to any Documentation, training materials, or other works of authorship provided by Anchore to Reseller ("Offering Materials"), other than the rights specifically granted in this Agreement. Reseller will be entitled to keep and use all Offering Materials provided by Anchore to Reseller during the term of this Agreement, but without any other license to exercise any of the intellectual property rights therein, all of which are hereby strictly reserved to Anchore. Unless Anchore grants in writing such rights to do so, Offering Materials may not be re-distributed, disclosed to third parties, lent, hired out, made available to the public, sold, offered for sale, shared, or transferred in any other. All Anchore trademarks, trade names, logos and notices present on the Offering Materials will be preserved.



## 11. Term and Termination.

11.1 This Agreement commences on the Effective Date and will continue for a period of twelve months, and shall automatically renew for additional twelve month periods thereafter, unless (a) either party provides the other party with written notice of its decision to terminate this Agreement within thirty (30) days prior to the end of the then-current term, or (b) the agreement is terminated in accordance with the provisions set forth below.

11.2 Either party may terminate this Agreement with or without cause upon thirty (30) days written notice to the other party.

11.3 Either party may terminate this Agreement by written notice if there has been a material breach hereof by the other party, which material breach has not been cured within thirty (30) days after the date of written notice to the breaching party by the non-breaching party.

11.4 Anchore may terminate this Agreement immediately if Reseller becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits an appointment of a receiver for its business or assets, becomes subject to any proceedings under any bankruptcy or insolvency law, whether domestic or foreign, or is liquidated, voluntarily or otherwise.

11.5 Upon expiration or termination of this Agreement for any reason, Reseller will, at Anchore's option, immediately return to Anchore all Anchore property, including, but not limited to, the Offering Materials and the Proprietary Information of Anchore. All licenses granted by Anchore hereunder to Reseller for such property will immediately cease.

11.6 Termination or expiration of this Agreement for any reason will automatically accelerate the due date of all Anchore related invoices and any other monies due to Distributor by Reseller, which will become due and payable within thirty (30) days on the effective date of termination or expiration.

11.7 Upon termination or expiration of this Agreement, the provisions of this Agreement providing for payment of Anchore related fees to Distributor, protection of Anchore's proprietary rights, warranties, the limitation of liability, indemnities, arbitration and other provisions of this Agreement concerning the ongoing interests of Anchore, including, but not limited to, Sections 5-Fees, 9-Confidentiality, 10-Ownership, 12-Representations and Warranties, 13-Limitation of Liability, 14-Indemnification and 16-Dispute Resolution will continue and survive in full force and effect.

## 12. REPRESENTATIONS AND WARRANTIES.

THE SOFTWARE, SERVICES AND DOCUMENTATION ARE PROVIDED "AS-IS" AND ANCHORE AND ITS SUPPLIERS MAKE NO WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, INTEGRATION, NON-INFRINGEMENT, TITLE, PERFORMANCE, AND ACCURACY AND ANY IMPLIED WARRANTIES ARISING FROM STATUTE, COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE. ANCHORE AND ITS LICENSORS DO NOT WARRANT THAT: (A) THE SOFTWARE WILL FUNCTION UNINTERRUPTED, OR BE SECURE OR AVAILABLE AT ANY PARTICULAR TIME OR LOCATION; (B) ANY ERRORS OR DEFECTS IN THE SOFTWARE WILL BE CORRECTED; (C) THE SOFTWARE IS FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS; OR (D) THE RESULTS OF USING THE SOFTWARE WILL MEET RESELLER'S OR ITS END USERS' REQUIREMENTS. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING DISCLAIMER, THE SOFTWARE, SERVICES AND DOCUMENTATION ARE NOT DESIGNED, MANUFACTURED OR INTENDED FOR USE: (I) IN THE PLANNING, CONSTRUCTION, MAINTENANCE, CONTROL, OR DIRECT OPERATION OF HAZARDOUS ENVIRONMENTS THAT REQUIRE FAIL-SAFE PERFORMANCE, SUCH AS NUCLEAR OR CHEMICAL FACILITIES, AIRCRAFT OR OTHER MODES OF HUMAN MASS TRANSPORTATION, LIFE SUPPORT SYSTEMS, IMPLANTABLE MEDICAL EQUIPMENT, MOTOR VEHICLES, WEAPONS SYSTEMS, OR OTHER USES IN WHICH FAILURE OF THE SOFTWARE, SUPPORT DOCUMENTATION COULD LEAD DIRECTLY TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE, OR (II) WITH ANY INFORMATION, DATA OR TECHNOLOGY GOVERNED BY THE INTERNATIONAL TRAFFIC IN ARMS REGULATIONS.

**13. LIMITATION OF LIABILITY.** IN NO EVENT SHALL EITHER PARTY BE LIABLE IN CONNECTION WITH THIS AGREEMENT FOR FOR ANY INTERRUPTION OF BUSINESS, OR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING LOST PROFITS), REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE,

EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE. EACH PARTY'S TOTAL LIABILITY FOR ANY TYPE OF CLAIM WHATSOEVER ARISING HEREUNDER, SHALL BE LIMITED TO PROVEN DIRECT DAMAGES IN AN AMOUNT NOT TO EXCEED THE AMOUNT PAID BY RESELLER TO DISTRIBUTOR FOR SALES OF ANCHORE PRODUCTS AND SERVICES UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE OF THE CLAIM. IN NO EVENT WILL ANCHORE'S SUPPLIERS HAVE ANY LIABILITY UNDER THIS AGREEMENT. THE FOREGOING LIMITATIONS, EXCLUSIONS AND DISCLAIMERS ARE AN ALLOCATION OF THE RISK BETWEEN THE PARTIES AND WILL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EVEN IF ANY REMEDY FAILS IN ITS ESSENTIAL PURPOSE.

#### **14. Indemnification.**

14.1 Anchore will defend, at its expense, any action (or portion thereof) brought against Reseller based solely on a claim that the Products or Services infringe upon a United States copyright or violate the trade secret rights of any third party. Anchore will indemnify and hold harmless Reseller against damages and costs including reasonable attorneys' fees, penalties and interest finally awarded against Reseller in such actions directly attributable to such claims. Anchore will not be obligated to indemnify any claim of infringement if such infringement arises out of the use or combination of the Products with other software.

14.2 Reseller agrees to indemnify, defend and hold harmless Anchore, its affiliates, and their directors, officers, shareholders, employees and agents from and against any claims, liabilities, losses, damages, causes of action or injuries, together with costs and expenses, including reasonable attorneys' fees, arising out of or resulting from:

- a. Any actions or omissions on the part of Reseller in distributing or marketing the Products or Services;
- b. Any statements, claims, representations or warranties made by Reseller or its employees, agents or representatives, relating to the Products or Services, other than as authorized by Anchore in writing or made in Anchore's own writings; or

14.3 The indemnification set forth in Sections 14.1 and 14.2 is conditioned upon the indemnified party providing the indemnifying party (i) notice of any claim or cause of action upon which the indemnified party intends to base a claim of indemnification hereunder, and (ii) the

indemnified party providing reasonable assistance and cooperation to enable the indemnifying party to defend the action or claim hereunder. The indemnifying party will have the right to defend any action or proceeding involving a claim that the indemnifying party is obligated to indemnify hereunder. The indemnifying party will not be obligated to any claim that is settled by the other party with the prior written consent of the indemnifying party.

#### **15. Use of Marks.**

15.1 In connection with the use of the Marks as permitted in Section 1, Reseller agrees to comply in all respects with any guidelines or directions provided by Anchore with respect to proper usage of the Marks. At the request of Anchore, Reseller will submit to Anchore any and all materials bearing or including any of the Marks, for prior review and approval by Anchore. Upon the request of Anchore, Reseller agrees to discontinue the use of (i) any Marks being used by Reseller in a manner determined by Anchore in its sole discretion to be inconsistent with the guidelines set forth above, or (ii) any trademark, service mark, or tradename deemed by Anchore to create a likelihood of confusion with a Mark.

15.2 Reseller agrees and acknowledges that Anchore owns all right, title and interest in and to the Marks. Reseller covenants and agrees not to file or prepare any application for registration of any of the Marks. Reseller agrees not to adopt, use, file for registration, or register any trademark, service mark, or tradename which may be an infringement of any one or more of the Marks or result in a likelihood or confusion with a Mark.

15.3 Reseller agrees not to commit any acts, directly or indirectly, which may contest, dispute, or otherwise impair the rights, title or interest of Anchore in or to the Marks. Reseller agrees not to claim or assert any rights, title or interest in or to the Marks in any way. The parties agree that all uses of the Marks by Reseller will be in such a manner as to inure at all times to the benefit of Anchore. Reseller will not use any language or display any Marks in such a manner as to create the impression that the Marks belong to and are owned by Reseller. Reseller may not use the Marks in combination with any other trademarks, tradenames, service marks, or other designations, without the prior written approval of Anchore.

15.4 Reseller will promptly notify Anchore of any and all known infringements or known attempted infringements of any Marks. Anchore reserves all rights regarding a decision to initiate any legal action against an alleged infringer, provided that at the request of Anchore, Reseller will provide reasonable assistance to Anchore in connection therewith.

## **16. Dispute Resolution.**

16.1 Each party, to the extent permitted by applicable law, (i) hereby irrevocably submits itself to and consents to the exclusive jurisdiction of the United States District Court for the Central District of California or the Superior Court of Santa Barbara County, California for the purposes of any suit, action or other proceeding in connection with any controversy, claim or dispute relating to this Agreement or to enforce a resolution, settlement, order or award made pursuant hereto, and (ii) hereby waives, and agrees not to assert, by way of motion, as a defense or otherwise, in any such suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of such court, that the suit, action or proceeding is brought in an inconvenient forum or that the venue of the suit, action or proceeding is improper. Each party hereby agrees to the entry of an order and to the confession of judgment to enforce a resolution, settlement, order or award made pursuant to this Section 16.1 by the United States District Court for the Central District of California or the Superior Court of Santa Barbara County, California and in connection therewith hereby waives, and agrees not to assert by way of motion, as a defense or otherwise, any claim that such resolution, settlement, order or award is inconsistent with or violative of any laws or public policy.

16.2 Each party further irrevocably consents to service of process in any action, suit or proceeding by personal service or by the mailing of copies thereof by registered or certified mail, postage prepaid, return receipt requested, to it at its address set forth on the signature page of this Agreement, provided that a reasonable period for appearance is allowed. The foregoing, however, will not limit the right of a party to serve process in any other manner permitted by law. Any judgment against a party or the assets of a party in any suit for which such party has no further right of appeal will be conclusive, and may be enforced in other jurisdictions by suit on the judgment in accordance with Section 16.1, a certified or true copy of which judgment will be conclusive evidence of the fact and of the amount of any indebtedness or liability of such party therein described; provided always that a party seeking to enforce a judgment may at its option bring suit, or institute other judicial proceedings, against another party or any of its assets in the court of any country or place where such other party engages in business or such assets may be found.

## **17. GENERAL.**

**17.1 Entire Agreement.** This Agreement constitutes the entire agreement between the parties concerning the subject matter hereof which does not include the use or distribution of the Products, Documentation or Services in

a manner not permitted under this Agreement. Purchase orders shall be for the sole purpose of defining quantities, prices and describing the Products, Documentation and Services to be provided under this Agreement and to this extent only are incorporated as a part of this Agreement and all other terms in purchase orders are rejected. This Agreement supersedes all prior or contemporaneous discussions, proposals and agreements between the parties relating to the subject matter hereof. No waiver of any provision of this Agreement shall be effective unless in writing and signed by both parties.

**17.2 Severability.** If any provision of this Agreement is held to be invalid or unenforceable, the remaining portions shall remain in full force and effect and such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed to the extent necessary to make such provision valid and enforceable.

**17.3 Waiver.** No waiver of rights by either party may be implied from any actions or failures to enforce rights under this Agreement.

**17.4 Force Majeure.** Neither party shall be liable to the other for any delay or failure to perform due to causes beyond its reasonable control (excluding payment of monies due).

**17.5 No Third-Party Beneficiaries.** Unless otherwise specifically stated, the terms of this Agreement are intended to be and are solely for the benefit of Anchore and Reseller and do not create any right in favor of any third party. The parties are independent contractors and not legal Resellers (notwithstanding any reference to the term "Reseller" herein).

**17.6 Governing Law and Jurisdiction.** This Agreement shall be governed by the laws of the State of California, without reference to the principles of conflicts of law. The provisions of the Uniform Computerized Information Transaction Act and United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. Any litigation related to this Agreement shall be brought in the state or federal courts located in California, and only in those courts and each party irrevocably waives any objections to such venue.

**17.7 Notices.** All notices must be in writing which shall include email and shall be effective three (3) days after the date sent to the other party's headquarters, Attention: Legal Department.

**17.8 Government Regulation.** Reseller acknowledges that the Software is subject to export restrictions by the U.S. government and import restrictions by certain foreign



governments. Anchore shall promptly provide Reseller with all license, classification, and other information available relating to export compliance for the Software and shall cooperate with Reseller regarding the same. Reseller may not export or re-export the Software except in compliance with the U.S. Export Administration Act and the related rules and regulations and similar non-U.S. government restrictions, if applicable. Reseller 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 Software 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; (iii) to any country to which such export or re-export is restricted or prohibited, or as to which the U.S. 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; or (iv) otherwise in violation of any export or import restrictions, laws or regulations of any United States or foreign agency or authority. Reseller agrees to the foregoing and warrants that it is 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 is further restricted from being used for: (a) terrorist activity, or (b) the design or development of nuclear, chemical, or biological weapons or missile technology without the prior permission of the U.S. government. Reseller shall at all times comply with all applicable laws and regulations in its performance under this Agreement, including without limitation any applicable anti-corruption and personal data protection laws.

**17.9 Assignment.** Neither party shall transfer or assign any of its rights or delegate any of its obligations, in whole or in part, whether voluntarily or by operation of law, without the prior written consent of the other party, which shall not be unreasonably withheld. Any purported transfer, assignment, or delegation by either party without such prior written consent shall be null and void *ab initio* and of no force or effect. Notwithstanding the foregoing, without securing such prior consent, either party may upon written notice to the other party assign and transfer this Agreement and its rights and obligations to any successor of such first party by way of merger, consolidation, or the acquisition of substantially all of such first party's business and assets relating to this Agreement.

**17.10 Equitable Remedies and Specific Performance.** Reseller acknowledges that each provision in this Agreement providing for the protection of Anchore's copyrights, Proprietary Information and other proprietary

rights is material to this Agreement. The parties acknowledge that any threatened or actual breach of Anchore's copyrights or other proprietary rights by Reseller will constitute immediate, irreparable harm to Anchore, for which equitable remedies may be awarded by a court of competent jurisdiction.

**17.11 Modifications to Agreement Terms.** Anchore may modify this Agreement at any time. A notice will be sent by email to Reseller notifying Reseller of the changes and describing any modifications made. Modifications will not be retroactive. They will become effective, and will be deemed accepted by Reseller, three (3) days after the date of the notice.

**18. Definitions.** Capitalized terms in this Agreement have the following meanings:

**Confidential Information** means, in every form and media, any and all information, proprietary materials, or trade secrets which should reasonably be considered confidential and which has been or is hereafter disclosed or made available by one party to the other party under this Agreement in connection with the transactions contemplated under this Agreement.

**Disclosing Party** means the party to this Agreement disclosing Confidential Information to the other party.

**Documentation** means the documentation made available electronically as part of the Software, which may be modified from time to time by Anchore.

**End-User or End User** means a customer buying a subscription in accordance with the End-User Agreement for the purpose of using the Products and Services for internal, in-house use only and not for remarketing or distribution of any kind.

**End-User Agreement** means a written agreement by and between Anchore and End-User which shall consist of Schedule E and any applicable product Schedules A through D, as made available in Exhibit A, which may be revised from time to time in the sole discretion of Anchore.

**Marks** means any trademarks, service marks or tradenames of Anchore associated with the Products as designated by Anchore.

**Order or Orders** means orders placed by Reseller to Distributor for Products and Services resold to End-User in accordance with the provisions of this Agreement.

**Order Form** means the order agreement between the Reseller and the Distributor which outlines the details of the Products and Services purchased and any transactional



terms associated with the Order.

**Product or Products** means the products listed in Exhibit A

**Professional Services** means consulting, training, implementation, or other such similar professional services provided under this Agreement as described in a Statement of Work.

**Proprietary Information** means Trade Secrets and Confidential Information.

**Receiving Party** means the party to this Agreement receiving Confidential Information from the other party.

**Services** means collectively, the Professional Services and the Support Services.

**Software** means the object code version of the Anchore software Product(s) listed in Exhibit A.

**Statement of Work** means a statement of work entered into by the parties describing Professional Services to be provided under this Agreement and incorporating the terms of this Agreement.

**Support Services** means the support services offered by Anchore, in connection with the Products, as fully described in the applicable End-User Agreement.

**Territory** means the countries specified in Exhibit B except to the extent limited by U.S. export laws and other applicable import and export laws of the foreign countries listed.

**Trade Secrets** means information which: (a) derives economic value, actual or potential, from not being generally known to, and not being ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

All references in this Agreement to the “purchase” or “sale” of software, or any part thereof, shall mean the acquiring or granting, respectively, of a license to use such software, and to exercise any other rights pertaining to such software, which are expressly set forth in the license agreement accompanying the software.

## **EXHIBIT A**

### **Products and End-User Agreements**

<b>Product Description</b>	<b>Link to End-User Agreement Schedules*</b>
Schedule A - Anchore Enterprise Service Description	<a href="https://anchore.com/legal/schedule-a">https://anchore.com/legal/schedule-a</a>
Schedule B - Anchore Federal Service Description	<a href="https://anchore.com/legal/schedule-b">https://anchore.com/legal/schedule-b</a>
Schedule C - Professional Services Service Description	<a href="https://anchore.com/legal/schedule-c">https://anchore.com/legal/schedule-c</a>
Schedule D - Technical Account Manager Service Description	<a href="https://anchore.com/legal/schedule-d">https://anchore.com/legal/schedule-d</a>
Schedule E - Anchore Master Software License and Services Agreement	<a href="https://anchore.com/legal/mssa">https://anchore.com/legal/mssa</a>

\*Reseller acknowledges that the End-User Agreements may be updated from time to time by Anchore, at its own's discretion. Reseller must convey this condition to the End-Users.

## **EXHIBIT B**

### **Territory**

As mutually agreed by Anchore and Reseller in written correspondence