

END USER LICENSE AGREEMENT
(FOR RESALES THROUGH BUSINESS PARTNER)

Thank you for purchasing an eGain Corporation's ("eGain", "Us" or "We") product or service (each an "eGain Offering") through eGain's authorized reseller or distributor ("Business Partner").

BY PLACING AN ORDER FOR AN EGAIN OFFERING WITH EGAIN OR BUSINESS PARTNER, CLICKING TO ACCEPT THIS END USER LICENSE ("AGREEMENT"), OR USING OR ACCESSING ANY EGAIN OFFERING, YOU AGREE TO ALL THE TERMS AND CONDITIONS OF THIS AGREEMENT, WHICH SHALL BE EFFECTIVE FROM THE FIRST OF THE FOREGOING TO OCCUR ("AGREEMENT EFFECTIVE DATE"). IF YOU ARE USING AN EGAIN OFFERING ON BEHALF OF A COMPANY OR OTHER ENTITY, THEN "CUSTOMER" OR "YOU" MEANS THAT ENTITY, AND YOU ARE BINDING THAT ENTITY TO THIS AGREEMENT. YOU REPRESENT AND WARRANT THAT YOU HAVE THE LEGAL POWER AND AUTHORITY TO ENTER INTO THIS AGREEMENT AND THAT, IF THE CUSTOMER IS AN ENTITY, THIS AGREEMENT AND EACH ORDER OR STATEMENT OF WORK IS ENTERED INTO BY AN EMPLOYEE OR AGENT WITH ALL NECESSARY AUTHORITY TO BIND THAT ENTITY TO THIS AGREEMENT. THIS AGREEMENT INCLUDES ANY ORDERS AND STATEMENTS OF WORK AS WELL AS ANY POLICIES OR EXHIBITS LINKED TO OR REFERENCED HEREIN. YOU HEREBY WAIVE ANY RIGHTS OR REQUIREMENTS UNDER ANY LAWS OR REGULATIONS IN ANY JURISDICTION WHICH REQUIRE AN ORIGINAL (NON-ELECTRONIC) SIGNATURE OR DELIVERY OR RETENTION OF NON-ELECTRONIC RECORDS, TO THE EXTENT PERMITTED UNDER APPLICABLE LAW.

THIS END USER LICENSE AGREEMENT WAS LAST UPDATED ON MARCH 16, 2020.

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SECTION 1. GENERAL

- 1.1 **Agreement Term.** This Agreement shall be in effect from the Agreement Effective Date and shall remain in effect until termination as permitted hereunder.
- 1.2 **eGain Offerings Generally.** Subject to the terms of this Agreement, eGain shall provide the applicable eGain Offering(s) to

Customer as identified in a written order form or statement of work (each may hereinafter be referred to as an “Order”) entered into by eGain with Customer, or with Business Partner purchasing on behalf of Customer. eGain reserves the right, in its discretion, to make changes to the eGain Offering(s), including issuing enhancements, modifications, new versions, and making changes to the format, medium or method of delivery, so long as such changes do not materially adversely affect the functionality of the purchased eGain Offering(s).

- 1.3 **Purchases through or by a Business Partner.** In instances where Customer purchases through a Business Partner, final prices and terms and conditions of sale will be as agreed between Customer and the Business Partner from which Customer makes such purchases; however, the terms set forth in this Agreement are applicable to Customer’s use of, and the performance of, eGain’s Offerings (unless eGain specifically requires Customer to click and accept a different end user license agreement for any specific eGain Offering resold by a Business Partner, in which case, such different end user license agreement shall govern the Customer’s use of, and the performance of, the specific eGain offering resold by a Business Partner). Unless agreed otherwise in writing between eGain and Business Partner, any Business Partner purchasing any eGain Offerings on behalf of an end customer, shall fully comply with this Agreement as if it is the Customer if the Business Partner has access to, or utilizes any of the purchased eGain Offerings, and shall further require that its end customer(s) comply with the terms of this Agreement if such end customer has access to, or utilizes any of the purchased eGain Offerings.

SECTION 2. CLOUD SERVICES, CLOUD SERVICES ADD-ONS AND CLOUD SUPPORT

- 2.1 **Cloud Services.** The term “Cloud Services” as used in this Agreement means collectively, the specific eGain cloud services listed in the applicable Order, which consists of (a) eGain software product in object code form made available on eGain cloud platform as a service offerings; and (b) updates thereto (generally available eGain software product maintenance releases, such as error fixes and/or enhancements, provided by eGain in connection with Cloud Support (as defined in Section 2.9 below), not including any new products, features, or enhancements in which eGain generally charges a separate fee). The term “Documentation” means eGain’s then-current technical and functional documentation for the Cloud Services which is made available to Customer with the Cloud Services.
- 2.2 **Cloud Term.** Cloud Services, Cloud Support and subscription-based Cloud Add-Ons purchased by Customer under an Order commence on the Commencement Date and continue for an initial term of three (3) years or as such other term as set forth in the applicable Order (“Initial Cloud Term”). The term “Commencement Date” as used herein means the date on which Customer received the URL and password from eGain or the specified effective date for purchase of additional Cloud Services, Cloud Support and/or Cloud Add-Ons, as applicable under an Order. Following the Initial Cloud Term of an Order, the purchased Cloud Services, Cloud Support and subscription-based Cloud Add-Ons may be renewed for subsequent terms as mutually agreed in writing by the parties (each, a “Renewal Cloud Term”, and together with the Initial Cloud Term, may be referred to as the “Cloud Term”).
- 2.3 **Access Rights Granted.** For the duration of the applicable Cloud Term and subject to Customer’s payment obligations, and except as otherwise set forth in the Agreement or the applicable Order, Customer shall have the non-exclusive, non-assignable limited right to access and use the purchased Cloud Services on Customer’s System, including the Documentation and anything developed by eGain and delivered to Customer as part of the Cloud Services, solely for Customer’s internal business operations, up to the maximum use permitted as specified for the purchased Cloud Services in the applicable Order (“Authorized Use Limitation”). Neither Customer nor its Users acquire under this Agreement any right or license to use the Cloud Services in excess of the scope and/or duration of the Cloud Services stated herein and in the applicable Order. The term “User” as used in this Agreement means Customer employees, agents, contractors, consultants, suppliers or other individuals who are authorized by Customer to use the Cloud Services. The term “System” means computer hardware and operating systems including servers and other equipment.
- 2.4 **Standard Cloud Services Features; Cloud Services Add-Ons.** Cloud Services purchased by Customer in an Order will entitle the Customer to receive certain standard features, service levels or other benefits set forth in Exhibit A attached hereto. If Customer desires to obtain certain additional features, service levels or other benefits with respect to the Cloud Services not provided under the standard Cloud Services purchased by Customer, eGain offers, from time to time, additional Cloud Services Add-Ons that Customer may purchase separately in an Order. Additional terms and conditions covering such Cloud Services Add-Ons are covered in the separate eGain then-current Documentation for such Cloud Services Add-Ons, a copy of which may be requested by Customer from eGain (“Cloud Services Add-Ons”).
- 2.5 **Acceptable Use Policy.** Customer and Business Partner shall not sublicense, license, sell, lease, rent or otherwise make the Cloud Services available to third parties (other than Users who are using the Cloud Services in accordance with Customer authorized use of the Cloud Services). When using the Cloud Services, Customer and Business Partner shall not, and shall ensure that Users do not (collectively, “Acceptable Use Policy”): (a) copy, translate, disassemble, decompile, reverse-engineer or otherwise modify any parts of the Cloud Services; (b) transmit any content, data or information that is unlawful, abusive, malicious, harassing, tortious, defamatory, vulgar, obscene, libelous, invasive of another’s privacy right or right of publicity, or racially or ethnically objectionable; (c) infringe the intellectual property rights of any entity or person; (d) interfere with or disrupt the eGain software or eGain systems used to provide the Cloud Services, or other equipment or networks connected to the Cloud Services; (e) use the Cloud Services in

the operation of a service bureau, outsourcing or time-sharing service; (f) circumvent or disclose the user authentication or security of the Cloud Services or any host, network, or account related thereto; (g) access the Cloud Services for the purpose of building a competitive product or service or copying its features or user interface; (h) store or transmit “SPAM” (defined as unsolicited commercial email or “Malicious Code” (defined as viruses, worms, time bombs, Trojan horses, and other harmful or malicious code, files, scripts, agents or programs); (i) interfere with or disrupt the integrity or performance of the Cloud Services or third-party data contained therein, (j) attempt to gain unauthorized access to the Cloud Services or their related systems or networks; (k) make any use of the Cloud Services that violates any applicable local, state, national, international or foreign law or regulation; (l) perform any penetration testing, vulnerability assessment / scanning; (m) perform activities that may result in URL to become blacklisted; (n) perform any denial of service attacks (DDOS) activities to any part of the platform; (o) perform system or URL load testing. Customer and Business Partner shall use commercially reasonable efforts to prevent unauthorized access to or use of the Cloud Service and notify eGain promptly of any such unauthorized access or use. Customer and Business Partner shall be responsible for Users’ compliance with this Agreement.

- 2.6 **Beta Functionality.** eGain may offer, and Customer may choose, to accept access to functionality that is not generally available and not validated and quality assured in accordance with eGain’s standard processes (“Beta Functionality”). Beta Functionality is described as such in the Documentation for Cloud Services. eGain may require Customer to accept additional terms to use Beta Functionality. Any production use of the Beta Functionality is at Customer’s sole risk. eGain does not warrant the correctness and completeness of the Beta Functionality, and eGain shall not be liable for errors or damages caused by the usage of the Beta Functionality.

- 2.7 **Sessions.** Where applicable, Customer expressly acknowledges and agrees to the following:

“Session” means the period of time a User uses the Cloud Services product. The Session begins when the User first interacts with the Cloud Service product and ends either (a) when the User ends the use of the Cloud Services product, or (b) there is a Timeout. A Session may either be authenticated or unauthenticated. A “Session” may involve an “Agent Session” or a “Self-Service Session”. The following additional definitions shall also apply with respect to the use of a Session:

- “Timeout” means an expired time limit for a logged in User which has been inactive for the Timeout Period.
- “Timeout Period” means a time window configurable in the Cloud Services product. Different default Timeout Periods may apply.
- “Agent User” means a person at a Customer’s (or End Customer’s, as applicable) contact center who interacts with customers via phone, email or chat, in order to fulfill customer requirements and who uses or accesses any Cloud Services product, other than through any eGain’s Self-Service cloud products. Notwithstanding anything contained in this Agreement, an Agent User may only utilize the Cloud Services through a validly purchased concurrent or named agent license.
- “Agent Session” means with a Session commenced by a unique and identified Agent User (may be a concurrent User or a named Agent User) in any Cloud Services product, other than in any eGain’s Self-Service cloud products. The default Timeout Period for an Agent Session is set to fifteen (15) minutes, and in no event will a Timeout Period for an Agent Session be less than fifteen (15) minutes.
- “Self-Service Session” means a Session commenced by a User using any of eGain’s Self-Service cloud products (e.g. “Web Self-Service”, “Virtual Assistant”, etc.).
 - The default Timeout Period for a Self-Service Session is set to five (5) minutes, and in no event will a Timeout Period for a Self-Service Session be less than five (5) minutes.
 - For billing purposes, Customer’s use of any Self-Service cloud product will be calculated based on the occurrence of the number of Self-Service Session Billable Units. Each “Self-Service Session Billable Unit” means a Self-Service Session of up to ten (10) minutes. If a Self-Service Session is opened for more than ten (10) minutes, then it will be counted as multiple Self-Service Sessions. If a Self-Service Session is opened for less than ten (10) minutes, then it will be counted as one (1) Self-Service Session. For example, if a User logs into a Self-Service Session for seven (7) minutes, Customer (or End Customer, as applicable) will be deemed to have used one (1) Self-Service Billable Unit; if a User logs into a Self-Service Session for fifteen (15) minutes, Customer (or End Customer, as applicable) will be deemed to have used two (2) Self-Service Session Billable Units; and if a User logs into a Self-Service Session for twenty-three (23) minutes, Customer (or End Customer, as applicable) will be deemed to have used three (3) Self-Service Session Billable Units.
 - Customer further acknowledges as follows:

- Self-Service Sessions are linked to a Self-Service portal which can either be set up as an internal (agent-facing) portal or an external (customer or third party facing) portal. Accessing such Self-Service portal directly or via APIs will be deemed to consume a Session.
- Agent-facing portals must be set up to restrict anonymous access and agents must be uniquely identified to access such portal and anonymous API calls may not be used in agent-facing scenarios.
- If the Customer utilizes any third-party solutions that access the Self-Service Sessions, Customer must ensure that such third-party system has been configured **not** to allow for 'Multiplexing'. The term "Multiplexing" as used herein shall mean the use of the third-party system to 'pass through' requests, cache them or apply any other method to reduce the Session consumption on the system. Examples of multiplexing include, without limitation:
 - (a) using eGain APIs to routinely extract knowledge data to create a mirrored site on a non-eGain system which is open for general access;
 - (b) using eGain APIs to cache requests for reuse across multiple requests without requiring a unique Session for each User; and/or
 - (c) using a single Session in a third-party solution and continually recycling a single Session to serve multiple Users' Sessions.

- 2.8 **Service Levels and Cloud Support.** The applicable service levels for the Cloud Services are as described in eGain's then-current standard Customer Support Policy for Cloud Installations which is made available by eGain to Customer upon request ("Cloud Support Policy") and which is incorporated into this Agreement. Furthermore, provided that Customer is current on payment of the applicable fees for Cloud Services and Cloud Support, eGain's provision of maintenance and support services for such Cloud Services ("Cloud Support") is as set forth in eGain's then-current standard Cloud Support Policy. For clarity, if Customer has purchased any Cloud Services, Customer must also separately purchase Cloud Support for the term corresponding to the applicable Cloud Term for the purchased Cloud Services. eGain reserves the right to modify such Cloud Support Policy at any time at its sole discretion, provided that applicable Cloud Support and the applicable service levels for the Cloud Services provided under the Cloud Support Policy will not materially degrade during any applicable Cloud Services Term.
- 2.9 **Audit of Customer's Use.** eGain may run reports on the applicable analytics platform from time to time to determine any overages by Customer. If there are overages, eGain shall share the reports with Customer, indicating the overages along with necessary invoices to charge for these overages. During the term of this Agreement, eGain may also audit Customer's compliance with the Acceptable Use Policy. Customer shall reasonably cooperate with eGain's audit and provide reasonable assistance and access to information. Any such audit shall not unreasonably interfere with Customer's normal business operations.
- 2.10 **Updates and Upgrades.** If Customer is current on its payment of fees for Cloud Services, then during the applicable Cloud Term, Customer shall be entitled to receive eGain Updates and Upgrades, made available by eGain at eGain's sole discretion. The term "Updates" and "Upgrades" shall have the meanings as defined in eGain's then-current Cloud Support Policy. eGain will make Customer aware of Updates or Upgrades through notifications and periodic announcements. Upgrades will occur unless the Customer has notified eGain in writing of its reasonable objection to such new Upgrade within thirty (30) days from receipt of the notice. In the event Customer has provided such written objection to eGain, eGain requires that the Customer cooperates closely with eGain to resolve any such objection. Additional charges may apply if Customer unduly delays the implementation of any such required Upgrades.

SECTION 3. EXPERT SERVICES

- 3.1 **Description of Expert Services.** Customer, may from time to time, purchase certain Expert Services from eGain as stated in the applicable Order. The term "Expert Services" as used in this Agreement shall mean the then-current eGain services as described in Exhibit B attached hereto, made available by eGain from time to time for purchase by Customer.
- 3.2 **Modifications to Expert Services.** eGain reserves the right to make modifications to the Expert Services or particular features or components of the Expert Services, from time to time, at its sole discretion. eGain will exercise reasonable commercial efforts to notify Customer of any such material modifications to the Expert Services.

SECTION 4. SUSPENSION AND TERMINATION

- 4.1 **Suspension.** eGain may suspend its performance under this Agreement, in whole or in part, immediately on thirty (30) days prior written notice, without liability to Customer, if Customer fails to pay undisputed amounts when due or otherwise materially breaches this Agreement. eGain will resume performance as soon as commercially practicable upon Customer's cure of the breach (if such breach is capable of cure).

- 4.2 **Termination for Insolvency.** Either party may terminate this Agreement as a whole, including without limitation all executed Orders, at any time with immediate effect on the giving of written notice to the other party if the other party becomes or appears likely to become insolvent or bankrupt, subject to a winding up proceeding, has a receiver appointed or has any proceeding seeking such an appointment filed against it that is not dismissed within thirty (30) days thereafter, is dissolved or in the process of dissolution, makes any arrangement for the benefit of creditors, or initiates or becomes or appears likely to become subject to any other form of an insolvency proceeding.
- 4.3 **Additional Customer's Termination Rights.** Customer may terminate one or more eGain Offerings, if eGain is in breach of any material obligation hereunder with respect to such eGain Offerings and eGain fails to remedy such breach within thirty (30) days after receiving written notice requiring it to do. Unless expressly permitted in Exhibit B for any specific Expert Services, there is no right of Customer to terminate any other eGain Offerings for convenience.
- 4.4 **Additional eGain's Termination Rights** eGain shall have the right to terminate, in its sole discretion, one or more eGain Offerings in any of the following events: (a) if the Customer is in breach of any material obligation hereunder obligation and fails to remedy such breach within thirty (30) days after receiving written notice requiring it to do so; or (b) eGain is prohibited from supplying an eGain Offering under any applicable laws, regulations and other instruments having the force of law governing the Agreement ("Applicable Laws"), provided that eGain shall give Customer as much advance notice as is practicable under the circumstances. In addition, eGain may, in its reasonable determination, deactivate Customer's User name(s) and password(s) and/or temporarily suspend access to the Cloud Services or a portion thereof, if and to the extent eGain can substantiate that the continued use of the Cloud Service may result in harm to the Cloud Services (including the security of the systems used to provide the Cloud Services) or other eGain customers, or the rights of third parties, upon prior written notice to Customer as the circumstances permit.
- 4.5 **Effects of Termination.** Any termination of any eGain Offering under an Order shall have no effect on any other eGain Offerings provided under other existing Orders, which will continue in effect until the expiration or termination of such existing Orders. Upon termination of an Order for an eGain Offering, all rights granted with respect to such eGain Offering will revert to eGain and Customer shall cease all use of the eGain Offering. Customer will destroy or deliver to eGain within ten (10) Business Days of termination all copies of the eGain Offering or any portion thereof in Customer's possession or under its control and will certify to eGain such destruction or delivery. Customer's failure to comply with the obligations of this Section will constitute unauthorized use of the terminated eGain Offering, entitling eGain to equitable relief as provided in this Agreement and other legal and equitable remedies. Termination or expiration of this Agreement for any reason shall not release either party from any obligation or terminate any right under this Agreement which, by its nature, is intended to survive, including the payment obligations under this Agreement. Within fifteen (15) days of any termination of this Agreement or any Order, Customer shall pay to eGain all unpaid fees accrued prior to such termination.
- 4.6 **Customer Data Retrieval.** Customer may request in writing within sixty (60) days after the effective termination or expiration date of the purchased Cloud Services ("Customer Data Retrieval Period"), a copy of its Customer Data (additional charge may apply if there is more than one such request from Customer) . After such Customer Data Retrieval Period, eGain has no obligation to maintain or provide any of Customer Data and shall, unless legally prohibited or is reasonably deemed necessary by eGain to be maintained to prevent fraud, resolve disputes, troubleshoot problems, or enforce this Agreement, be able to dispose of all Customer Data in its systems or control. If Customer desires to obtain data extracts during the Cloud Term, Customer may separately purchase from eGain in an Order the Data Extract Add-On from eGain's Cloud Services Add-Ons. The term "Customer Data" as used in this Agreement means any electronic data or information submitted by Customer or Users to the Cloud Services.

SECTION 5. FEES, INVOICING AND PAYMENT TERMS

5.1 **Fees; Payment Terms.**

5.1.1 *Fees; Expenses; Taxes.* Customer shall pay all amounts owed to eGain in respect of the purchased eGain Offering, including any applicable termination or other fees, as set forth in the Order for such purchased eGain Offering (collectively, the "Fees"). All Fees are exclusive of applicable taxes, and any and all such taxes or levies paid by eGain (other than taxes based on gross or net income of eGain) attributable to this Agreement shall be paid by Customer to eGain.

5.1.2 *Due Date; Interest.* Payment in full of the Fees and applicable taxes is due within thirty (30) days of the date of invoice. Any undisputed amounts not paid by the date due are subject to interest at the lesser of (i) 1.5% per month; or (ii) the maximum rate permitted by law, or to such other late penalty fees as may be imposed by Business Partner on Customer if the order is made through Business Partner.

5.1.3 *Renewal Pricing.* If the Order sets forth a specific dollar amount to be paid for any eGain Offerings purchased on a subscription or time based (each a "Subscription Based eGain Offering"), eGain shall provide Customer with notice of the applicable renewal pricing at least sixty (60) days prior to the applicable renewal term for such Subscription Based eGain Offering. The parties will mutually agree in a new Order Form or an amendment to the existing Order Form on the renewal pricing. Renewal

of promotional or one-time priced subscriptions will be at eGain's then-current list price at the time of the applicable renewal unless agreed otherwise in writing by the parties. For any Subscription Based eGain Offerings, any renewal in which subscription volume or the term length for such Subscription Based eGain Offering has decreased from the prior term will result in re-pricing at renewal without regard to the prior term's per-unit pricing. .

5.1.4 *Price List Modifications.* eGain reserves the right to change its published price list for any eGain Offerings at any time without prior notice.

5.1.5 *Invoice Disputes.* Customer will notify eGain in writing in the event Customer disputes any portion of any fees or taxes paid or payable by Customer under this Agreement. Customer will provide such notice to eGain within 60 days of the date of invoice and the parties will work together to resolve the applicable dispute promptly. Upon expiration of the 60-day period described in this Section, Customer will not be entitled to dispute any fees or taxes paid or payable by Customer.

5.2 **Invoicing.**

5.2.1 *Cloud Services and Cloud Support Fees.* Unless agreed otherwise in the applicable Order, eGain will invoice fees for Cloud Services and Cloud Support for the Initial Cloud Term annually in advance, on the applicable Commencement Date. Unless agreed otherwise in the applicable Order, fees for Cloud Services and Cloud Support for each Renewal Cloud Term will be invoiced annually in advance prior to the start of such Renewal Cloud Term. All fees for Cloud Services are based on Cloud Services subscriptions purchased and not actual usage, and quantities purchased cannot be decreased during the relevant Cloud Term. Once placed, Customer's order for Cloud Services, Cloud Services Add-Ons and Cloud Support is non-cancelable and the sums paid nonrefundable, except as provided in this Agreement. Customer agrees that Customer purchase of subscription(s) for the Cloud Services is neither contingent upon the delivery of any future functionality or features nor dependent upon any oral or written public comments made by eGain, including any roadmaps, with respect to future functionality or features.

5.2.2 *Cloud Services Add-Ons Fees.* Unless agreed otherwise in the applicable Order for the Cloud Services Add-Ons, eGain will invoice Fees for the Cloud Services Add-Ons for each term of the Cloud Services Add-On in advance of such term. With respect to the On-Demand Security Scan Add-On and the eGain On-Site Audit Add-On however, Customer's rights to use such purchased On-Demand Security Scan Add-On and/or the eGain On-Site Audit Add-On commences on the date of purchase of such Cloud Add-Ons, subject to the thirty (30) day advance notice requirement and is for one-time use only by the Customer. For clarity, if Customer has conducted a security scan pursuant to the On-Demand Security Scan Add-On purchased by Customer or has conducted an on-site audit pursuant to the one-time eGain On-Site Audit Add-On purchased by Customer, respectively, then the Customer will be required to purchase additional On-Demand Security Scan Add-On(s) and additional eGain On-Site Audit Add-On(s) for any additional security scan or on-site security audit to be performed by Customer or its designees on eGain's Systems or on eGain's facilities. eGain will invoice Customer upfront for the minimum number of required usage hours specified for such On-Demand Security Scan Add-On and the eGain On-Site Audit Add-On, provided that if Customer utilizes more than the minimum number of required usage hours specified for such Cloud Add-Ons, eGain will invoice Customer in arrears on a time and materials basis for any additional hours utilized by Customer for the security scan or on-site security audit. There is no refund to Customer of any amounts paid by Customer even if Customer utilizes less than the minimum number of required usage hours specified for such Cloud Services Add-On.

5.2.3 *Expert Services.* Unless agreed otherwise in the applicable Order for the Expert Services, eGain will invoice Customer for the selected Expert Services as set forth in Exhibit B for such Expert Services.

SECTION 6. REPRESENTATIONS AND WARRANTIES

6.1 **Limited Warranties.**

6.1.1 *General Warranties.* Each party represents and warrants that (i) it has the right, power and authority to enter into this Agreement and to grant the rights granted to the other party hereunder; and (ii) it will comply with all federal, state, local and international laws, rules and regulations applicable to its business in connection with its use or provision of the eGain Offering(s).

6.1.2 *Cloud Services Warranty.* eGain represents and warrants that during the applicable Cloud Term for the purchased Cloud Services, such Cloud Services will perform in all material respects in accordance with its published Documentation. Customer's exclusive remedy for any breach of the foregoing warranty will be for eGain to use its commercially reasonable efforts to correct such non-compliance; provided however that if eGain fails to remedy such non-compliance in all material ways within a commercially reasonable time, eGain shall, as its exclusive remedy and upon Customer's written request provided to eGain within a commercially reasonable time, terminate the provision of such non-conforming Cloud Services and provide to Customer a refund of any pre-paid, unused fees for the non-conforming Cloud Services allocable to the remainder of the terminated Cloud Term.

6.1.3 **Expert Services Warranty.** eGain warrants that the Expert Services will be performed in a competent and workmanlike manner, in accordance with generally accepted standards of the applicable industry. eGain shall, as Customer's exclusive remedy and eGain's sole liability hereunder, (i) re-perform any part of the Expert Services not performed in compliance with the warranty set forth in this Section 6.1.3 brought to its attention in writing in reasonable detail promptly after that part of the Expert Services was performed and, (ii) if eGain determines that it is unable to comply with such warranty as to a portion of the Expert Services, terminate the applicable Order for such defective Expert Services, and Customer shall be entitled to seek a refund of the fees received by eGain (a) with respect to any non-conforming Expert Services not sold on a subscription or term basis, for that non-conforming portion of the Expert Services, or (b) with respect to any non-conforming Expert Services sold on a subscription or term basis, the portion of the prepaid unused fees allocable to the remainder of the terminated term of such Expert Services. Customer may not make any breach of warranty claim with respect to any part of the Expert Services more than ninety (90) days after such part was performed.

- 6.2 **Disclaimer of Implied Warranties.** EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT AND TO THE EXTENT NOT EXPRESSLY PROHIBITED BY LAW, NEITHER EGAIN NOR ITS VENDORS MAKE ANY REPRESENTATION OR WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, REGARDING ANY MATTER, INCLUDING THE MERCHANTABILITY, SUITABILITY, ORIGINALITY, OR FITNESS FOR A PARTICULAR USE OR PURPOSE, NON-INFRINGEMENT OR RESULTS TO BE DERIVED FROM THE USE OF OR INTEGRATION WITH THE EGAIN OFFERINGS, OR ANY OTHER MATERIALS PROVIDED UNDER THIS AGREEMENT, OR THAT THE OPERATION OF ANY SUCH EGAIN OFFERINGS OR OTHER MATERIAL WILL BE SECURE, UNINTERRUPTED OR ERROR FREE. EGAIN DOES NOT GUARANTEE THAT EGAIN WILL CORRECT ANY ERRORS.

SECTION 7. INDEMNIFICATION

- 7.1 **eGain Indemnity Obligation.** eGain shall defend Customer (at eGain's sole expense) against claims brought against Customer by any third party alleging that an eGain Offering when used by Customer in accordance with the terms and conditions of this Agreement, constitutes an infringement or misappropriation of a patent claim(s), copyright, or trade secret rights protected under U.S., U.K. laws and the laws of the jurisdiction where the Customer is located. eGain will pay damages finally awarded against Customer (or the amount of any settlement eGain enters into) with respect to such claims, and will pay reasonable attorney's fees in connection with such defense. This obligation of eGain shall not apply if the alleged infringement or misappropriation results from (i) use of the eGain Offering in conjunction with any other product or software not supplied, recommended, approved or permitted by eGain, if such claim would not have arisen but for such combination; (ii) use of the eGain Offering in any manner inconsistent with this Agreement; (iii) any modifications to the eGain Offering made by Customer or any third party contractor of Customer without eGain's prior written consent, if such claim would not have arisen but for such modification; or (iv) service or free (no fee) or trial use of the eGain Offering. In the event a claim under Section 7.1 of this Agreement or in eGain's reasonable opinion is likely to be made, eGain may, at its sole option and expense: (i) procure for Customer the right to continue using the affected eGain Offering under the terms of this Agreement; or (ii) replace or modify the affected eGain Offering to be non-infringing without material decrease in functionality. If eGain provides written notice to Customer that the foregoing options are not reasonably available, eGain may terminate this Agreement and/or the applicable Order for the affected eGain Offering.
- 7.2 **Customer Indemnity Obligation.** Customer shall defend eGain (at Customer's sole expense) against claims brought against eGain by any third party arising from or related to (i) any use by Customer of the eGain Offering in violation of any Applicable Laws; or (ii) an allegation that any data, information or materials provided by Customer or Customer's use of the eGain Offering in violation of this Agreement violates, infringes or misappropriates the rights of a third party. Customer will pay damages finally awarded against eGain (or the amount of any settlement Customer enters into) with respect to such claims, and will pay reasonable attorney's fees in connection with such defense.
- 7.3 **Mutual Indemnification.** Each party shall also defend and indemnify the other party against any third-party claim or action for bodily injury, including death, and tangible property damage to the extent directly caused by the indemnifying party's negligence or willful misconduct in the course of performing its obligations under this Agreement.
- 7.4 **Indemnification Procedures.** The obligations under this Section 7 are conditioned on (a) the party against whom a third party claim is brought timely notifying the other party in writing of any such claim, provided however that a party's failure to provide or delay in providing such notice shall not relieve a party of its obligations under this Section 7 except to the extent such failure or delay prejudices the defense; (b) the party who is obligated hereunder to defend a claim having the right to fully control the defense of such claim; and (c) the party against whom a third party claim is brought reasonably cooperating in the defense of such claim. Any settlement of any claim shall not include a financial or specific performance obligation on or admission of liability by the party against whom the claim is brought, provided however that eGain may settle any claim on a basis requiring eGain to substitute for the eGain Offering any alternate substantially equivalent non-infringing product or service. The party against whom a third-party claim is brought may appear, at its own expense, through counsel reasonably acceptable to the party obligated to defend claims hereunder. Neither party shall undertake any action in response to any infringement or misappropriation, or alleged infringement or misappropriation, that is prejudicial to the other party's rights.

- 7.5 **EXCLUSIVE REMEDIES.** THE PROVISIONS OF THIS SECTION 7 STATE THE SOLE, EXCLUSIVE, AND ENTIRE LIABILITY OF THE PARTIES, THEIR AFFILIATES AND THEIR LICENSORS TO THE OTHER PARTY, AND IS THE OTHER PARTY'S SOLE REMEDY, WITH RESPECT TO THIRD PARTY CLAIMS COVERED HEREUNDER AND TO THE INFRINGEMENT OR MISAPPROPRIATION OF THIRD-PARTY INTELLECTUAL PROPERTY RIGHTS.

SECTION 8. LIMITATION OF LIABILITY

- 8.1 **LIABILITY CAP.** SUBJECT TO SECTION 8.3 BELOW, UNDER NO CIRCUMSTANCES AND REGARDLESS OF THE NATURE OF ANY CLAIM OR ACTION (WHETHER CLAIMS OR ACTIONS BASED IN TORT, STRICT LIABILITY, BREACH OF CONTRACT OR BREACH OF WARRANTY) SHALL EITHER PARTY (OR THEIR RESPECTIVE AFFILIATES OR EGAIN'S LICENSORS) BE LIABLE TO EACH OTHER OR ANY OTHER PERSON OR ENTITY ARISING OUT OF OR RELATING TO THIS AGREEMENT (INCLUDING UNDER ANY Order) FOR AN AGGREGATE AMOUNT EXCEEDING: (I) THE FEES PAID TO EGAIN UNDER THE APPLICABLE ORDER ALLOCABLE TO THE EGAIN OFFERING GIVING RISE TO THE CLAIM(S) OR ACTION(S); OR (II) WITH RESPECT TO A SUBSCRIPTION BASED EGAIN OFFERING, THE FEES PAID TO EGAIN FOR SUCH EGAIN OFFERING DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE FIRST INCIDENT GIVING RISE TO THE CLAIM(S) OR ACTION(S). AN "**AFFILIATE**" OF A PARTY MEANS ANY LEGAL ENTITY IN WHICH A PARTY, DIRECTLY OR INDIRECTLY, HOLDS MORE THAN FIFTY PERCENT (50%) OF THE SHARES OR VOTING RIGHTS OR CONTROLS OR IS UNDER COMMON CONTROL WITH THAT LEGAL ENTITY; AND THE TERM "**CONTROL**" MEANS THE DIRECT OR INDIRECT POSSESSION OF THE POWER TO DIRECT OR CAUSE THE DIRECTION OF THE MANAGEMENT AND POLICIES OF AN ENTITY, WHETHER THROUGH OWNERSHIP, BY CONTRACT OR OTHERWISE. ANY SUCH COMPANY SHALL BE CONSIDERED AN AFFILIATE FOR ONLY SUCH TIME AS SUCH INTEREST OR CONTROL IS MAINTAINED.
- 8.2 **CONSEQUENTIAL DAMAGES WAIVER.** SUBJECT TO SECTION 8.3 BELOW, IN NO EVENT SHALL EITHER PARTY OR ANY OF ITS AFFILIATES OR LICENSORS BE LIABLE TO OR THROUGH THE OTHER PARTY FOR ANY OF THE FOLLOWING TYPES OF LOSSES: LOSS OF USE, LOSS OF ANTICIPATED SAVINGS, LOSS OF GOODWILL, LOSS ARISING FROM DAMAGE TO REPUTATION, LOSS OF PROFITS OR LOSS OF BUSINESS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT (IN EACH CASE WHETHER DIRECT, INDIRECT OR CONSEQUENTIAL) AND/OR FOR ANY INDIRECT, SPECIAL, PUNITIVE, OR CONSEQUENTIAL LOSSES HOWSOEVER ARISING AND WHETHER OR NOT THE PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 8.3 **EXCLUSIONS.** NO LIABILITY CAP OR DISCLAIMER OF ANY TYPE OF DAMAGES SHALL APPLY WITH RESPECT TO: (A) A PARTY'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 7 OF THIS AGREEMENT; (B) DAMAGES RESULTING FROM A PARTY'S UNAUTHORIZED USE OR DISCLOSURE OF CONFIDENTIAL INFORMATION IN VIOLATION OF SECTION 9.1 OF THIS AGREEMENT; (C) LIABILITIES ARISING FROM CUSTOMER'S OR ITS USERS' INFRINGEMENT OF EGAIN'S INTELLECTUAL PROPERTY; (D) EGAIN'S RIGHT TO COLLECT UNPAID FEES DUE HEREUNDER; AND/OR (E) ANY PERSONAL INJURY, TANGIBLE PROPERTY DAMAGE OR OTHER LIABILITY THAT, BY LAW, CANNOT BE EXCLUDED OR LIMITED.

SECTION 9. CONFIDENTIALITY

- 9.1 **Confidential Information.** In connection with this Agreement, each party may have access to or be exposed to information of the other party that is not generally known to the public, such as software, product plans, pricing, marketing and sales information, customer lists, "know-how," or trade secrets, which may be designated as confidential or which, under the circumstances surrounding disclosure, ought to be treated as confidential (collectively, "**Confidential Information**"). Confidential Information may not be shared with third parties unless such disclosure is to the receiving party's personnel, including employees, agents and subcontractors, on a "need-to-know" basis in connection with this Agreement, so long as such personnel have agreed in writing to treat such Confidential Information under terms at least as restrictive as those herein. Each party agrees to take the necessary precautions to maintain the confidentiality of the other party's Confidential Information by using at least the same degree of care as such party employs with respect to its own Confidential Information of a similar nature, but in no case less than a commercially reasonable standard of care to maintain confidentiality. The foregoing shall not apply to information that (1) was known by one party prior to its receipt from the other or is or becomes public knowledge through no fault of the recipient; or (2) is rightfully received by the recipient from a third party without a duty of confidentiality. If a recipient is required by a court or government agency to disclose Confidential Information, the recipient shall provide advance notice to other party before making such a disclosure. The obligations with respect to Confidential Information shall continue for three (3) years from the date of disclosure.
- 9.2 **Feedback.** Customer may provide, or eGain may solicit, input regarding the eGain Offerings, including, without limitation, comments or suggestions regarding the possible creation, modification, correction, improvement or enhancement of the eGain Offerings (collectively "**Feedback**"). Customer hereby grants to eGain and its Affiliates a worldwide, perpetual, irrevocable, royalty-free license to use and incorporate into eGain's Offerings any Feedback provided by Customer or Users without

remuneration of any kind to Customer.

SECTION 10. PROPRIETARY RIGHTS; THIRD PARTY PRODUCTS

- 10.1 **Proprietary Rights to eGain Offerings.** Notwithstanding the use of the term “purchase” in this Agreement or elsewhere, all right, title and interest in the intellectual property (including all copyrights, patents, trademarks, trade secrets and trade dress) embodied in the eGain Offerings shall belong solely and exclusively to eGain or the applicable suppliers or licensors, and Customer shall have no rights whatsoever in any of the above, except as expressly granted in this Agreement. eGain’s ownership shall also include any and all system performance data and machine learning, including machine learning algorithms, and the results and output of such machine learning. The eGain Offerings are protected pursuant to copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. In connection with Customer’s use of the eGain Offering(s), Customer must maintain any eGain system operation designations, such as logos and “powered by” icons, provided by eGain.
- 10.2 **Proprietary Rights to Customer Data.** Subject to the limited rights granted by Customer under this Agreement, eGain acquires no right, title or interest from Customer under this Agreement in or to any Customer Data, including any intellectual property rights therein. Customer grants to eGain (including eGain’s Affiliates and sub-processors) the non-exclusive right to access, use and disclose Customer Data for the purpose of and only to the extent necessary for eGain to: (a) provide the Cloud Services, (b) operate and maintain its Systems, (c) prevent or address service or technical problems, or at Customer’s request in connection with customer support matters, and/or (d) comply with Applicable Laws. Customer further agrees that eGain may use and reproduce aggregate anonymized Customer Data (“Aggregated Data”) to improve eGain Offerings, develop new eGain Offerings, show trends about general use of eGain Offerings, and for statistical analysis and business, provided that the Aggregated Data: (a) does not contain any personally identifying information; and (b) does not identify Customer or any particular User in any way. eGain will not modify Customer Data or disclose Customer Data except as compelled by Applicable Laws or as expressly permitted in writing by Customer. Customer shall be responsible for entering Customer Data into the Cloud Services and Customer shall be responsible for the content of the Customer Data supplied by it. Customer agrees that it has collected and shall maintain and handle all Customer Data in compliance with all Applicable Laws, including without limitation, data privacy and protection laws, rules and regulations. Further, Customer is solely responsible for determining the suitability of the Cloud Services for Customer’s business and complying with any regulations, laws, or conventions applicable to the Customer Data and Customer use of the Cloud Service(s). Customer shall maintain commercially reasonable security standards for Customer’s and its Users’ use of the Cloud Services. Customer acknowledges that eGain’s and its Affiliates’ global personnel may have access to Customer Data across international borders in order to provide the applicable purchased eGain Offerings for Customer.
- 10.3 **Third-Party Product Notices.** Customer acknowledges that the eGain Offerings may contain or be accompanied by certain third party hardware, software or other intellectual property (“Third-Party Products”). These Third-Party Products, if any, are identified in, and subject to, special license notices, terms and/or conditions as set forth in the applicable Order, and/or otherwise provided by eGain to Customer (“Third-Party Product Notices”). The Third-Party Product Notices may include important licensing and warranty information and disclaimers. In the event of conflict between the Third-Party Product Notices and the other portions of this Agreement, the Third-Party Product Notices will take precedence (but solely with respect to the Third-Party Products to which the Third-Party Product Notices relate). Customer acknowledges that the Third-Party Products are licensed for use solely with the applicable eGain Offerings and may not be used on a stand-alone basis or with any other third party products.
- 10.4 **Deliverables.** All title and interest and all intellectual property rights, including but not limited to patents, know-how, copyright, trademarks and trade secrets, both existing now and in the future, in or resulting from the Expert Services and any deliverables supplied as part thereof, are vested in and remain solely with eGain. In developing new designs, processes, concepts or products, eGain shall be entitled to use general knowledge, skills or techniques acquired from activities relating to this Agreement or retained by eGain’s personnel in their unaided memories during the course of such activities. Customer is hereby licensed to use the deliverables supplied as part thereof for its own internal business purposes. If Customer is a Business Partner, then in place of the license rights granted to Customer in the foregoing sentence, Customer is entitled to sublicense the use of the deliverables supplied as part thereof, to the End Customer identified in the applicable Order. Any such sublicense shall be for such End Customer’s own internal business purposes only.
- 10.5 **Reservation of Rights.** The rights and licenses granted under this Agreement are only as expressly set forth herein. No other license or right in the eGain Offerings and deliverables is or will be deemed to be granted, whether by implication, estoppel, inference or otherwise, by or as a result of this Agreement or any conduct of either party under this Agreement.

SECTION 11. DATA PROTECTION; SECURITY AUDITS; PENETRATION TESTING

- 11.1 **eGain’s Data Privacy and Security Policy.** The term “Personal Data” as used in this Section 11 means any information that, alone or in combination with other information can be used to identify, locate or contact an individual. For purposes of this

Agreement, eGain operates as the sub-processor appointed by Avaya, Inc. who operates as the processor under the direction of the Customer, who operates as the controller. eGain shall process any Personal Data for the purposes described above in accordance with Avaya's instructions, as otherwise necessary to provide the eGain Offerings, or as otherwise agreed in writing.

SECTION 12. FREE TRIALS.

- 12.1 **Trial Period.** If Customer has registered with eGain via eGain's website or otherwise for a free trial for any eGain Offerings, eGain may, in its sole discretion, make such eGain Offerings available to Customer on a trial basis free of charge until the earlier of any of the following ("**Free Trial Period**"): (a) the end of the free trial period for which Customer is approved by eGain to use the applicable eGain Offering, (b) the start date of any such eGain Offerings subsequently purchased by Customer, or (c) termination by eGain in its sole discretion. Additional trial terms and conditions may appear on the trial registration web page or documentation. Any such additional terms and conditions are incorporated into this Agreement by reference and are legally binding ANY DATA CUSTOMER ENTERS INTO THE APPLICABLE EGAIN OFFERINGS, AND ANY CUSTOMIZATIONS MADE TO THE APPLICABLE EGAIN OFFERINGS BY OR FOR CUSTOMER, DURING THE FREE TRIAL PERIOD WILL BE PERMANENTLY LOST UNLESS CUSTOMER PURCHASES SUCH APPLICABLE EGAIN OFFERINGS AS THOSE COVERED BY THE FREE TRIAL BEFORE THE END OF THE FREE TRIAL PERIOD.
- 12.2 **As Is.** eGain Offerings acquired for trial purposes are provided on an "as is" and "as available" basis and may not be used with production data that has not been masked, anonymized or otherwise rendered unreadable. eGain does not provide technical or other support or offer any representations, warranties or indemnities for such eGain Offerings during the Free Trial Period.

SECTION 13. MISCELLANEOUS.

- 13.1 **Governing Law and Jurisdiction.** The following shall apply:
- (a) if Customer is domiciled in the United States, Canada, or any country in the Asia-Pacific, then (i) this Agreement shall be construed in accordance with and governed for all purposes by the laws of the State of California shall apply, without regard to the conflicts of law principles or to the United Nations Convention on Contracts for the International Sale of Goods or the Uniform Computer Information Transaction Act or any state modified adoption thereof; and (ii) the venue for any claims arising under this Agreement shall be the courts located in Santa Clara County, California, and the parties agree to submit to the exclusive personal jurisdiction of such courts for any disputes hereunder.
 - (b) if Customer is domiciled in the United Kingdom or Europe, Middle East or Africa, then (i) this Agreement shall be construed in accordance with and governed for all purposes by the laws of England; and (ii) the parties submit to the exclusive jurisdiction of the English courts for any disputes hereunder.
- EACH PARTY HEREBY WAIVES ANY RIGHT TO JURY TRIAL IN CONNECTION WITH ANY ACTION OR LITIGATION IN ANY WAY ARISING OUT OF OR RELATED TO THIS AGREEMENT.
- 13.2 **Entire Agreement; No Modifications.** The parties agree that this Agreement (including the Orders and Orders executed by the parties) constitutes the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and undertakings, both written and oral. Except where eGain has expressly reserved its rights to modify any specific part of this Agreement at its sole discretion, this Agreement (including the Orders and Orders executed by the parties) may not be modified except by a writing signed by each of the parties. Customer acknowledges and agrees that eGain is not liable under any Orders or other agreements entered into directly between Customer and any Business Partner.
- 13.3 **Severability; Waiver.** The parties agree that in case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, but this Agreement shall be construed as if such invalid, illegal or other unenforceable provision had never been contained herein. No waiver of any right or remedy hereunder with respect to any occurrence or event on one occasion shall be deemed a waiver of such right or remedy with respect to such occurrence or event on any other occasion.
- 13.4 **Assignment.** Neither party shall assign its rights or obligations hereunder without the other party's advance written consent, which shall not be unreasonably withheld or delayed, except that each party may transfer or assign this Agreement and/or its rights and obligations hereunder without the other party's prior written consent to (i) its Affiliates, or (ii) any successor to its business or assets to which this Agreement relates, whether by merger, sale of assets, sale of stock, reorganization or otherwise, and eGain may in its sole discretion subcontract parts of the applicable eGain Offering to third parties or assign provision of the eGain Offerings to any of eGain's Affiliates, provided eGain shall remain responsible for such performance by its subcontractors or Affiliates hereunder. Subject to the foregoing, this Agreement shall be binding upon the and shall inure to the benefit of the parties hereto and their successors and permitted assigns.
- 13.5 **Non-Solicitation.** In no event shall Customer directly or indirectly solicit for employment, hire or contract with any personnel of eGain, including during the term of the Agreement and for a period of one (1) year thereafter without the written consent of eGain. This prohibition will not apply if an eGain personnel answers Customer's notice of a job listing or opening, advertisement

or similar general publication of a job search or availability for employment on his or her own initiative without any direct or indirect solicitation by Customer or its Affiliates.

- 13.6 **Export.** Export laws and regulations of the United States, United Kingdom and any other relevant local export laws and regulations apply to the eGain Offerings. Customer agrees to comply with all such export laws and regulations (including “deemed export” and “deemed re-export” regulations). Customer further agrees that no data, information, software programs and/or materials resulting from the eGain Offerings (or direct product thereof) will be exported, directly or indirectly, in violation of these laws, or will be used for any purpose prohibited by these laws including, without limitation, nuclear, chemical, or biological weapons proliferation, or development of missile technology.
- 13.7 **Force Majeure.** Nonperformance of either party (other than for the payment of amounts due hereunder) shall be excused to the extent that performance is rendered impossible by strike, fire, flood, governmental acts or orders or restrictions, failure of suppliers, or any other reason where failure to perform is beyond the reasonable control of the non-performing party (each a “**Force Majeure Event**”). Any delay or nonperformance of any provision of this Agreement caused by a Force Majeure Event shall not constitute a breach of this Agreement, and the time for performance of such provision, if any, shall be deemed to be extended for a period equal to the duration of the conditions preventing performance. The other party may, however, terminate this Agreement upon written notice to the other party if such Force Majeure Event continues for a period of ninety (90) days.
- 13.8 **Notices.** Any demand, notice, consent, or other communication required by this Agreement must be given in writing and shall be deemed delivered upon receipt when delivered personally or upon confirmation of receipt following delivery by a nationally recognized overnight courier service, in each case addressed to the receiving party at its address set forth on the applicable Order. Either party may change its address by giving written notice of such change to the other party.
- 13.9 **Order of Precedence.** In the event of conflict or inconsistency between this Agreement and any Order executed between the parties, the terms of this Agreement shall prevail in the absence of an express statement that a particular term of the Order is to prevail. Notwithstanding any language to the contrary therein, no terms or conditions stated in Customer’s purchase order or other order documentation (excluding Orders) shall be incorporated into or form any part of this Agreement, and all such terms or conditions shall be null and void.
- 13.10 **US Government (for US only).** If Customer are a unit or agency of the United States and/or any of its instrumentalities (“**Government**”) or when the eGain Offering is used for the benefit of a unit or an agency of the Government, this provision applies: The eGain Offering shall be deemed “commercial computer software” and “commercial computer software documentation” pursuant to DFAR Section 227.7202 and FAR Section 12.212 (and any successor sections). The use of the eGain Offering including, but not limited to, its reproduction and display, by the Government, shall be governed by this Agreement. Under no circumstances shall eGain be obligated to comply with any Government requirements regarding cost or pricing data or cost accounting requirements. For any of Customer’s use of the eGain Offering that would require compliance by eGain with such Government requirements or in any manner affect eGain’s rights in the eGain Offering, Customer must notify eGain of such Government requirement and obtain a waiver or exemption from such requirements for the benefit of eGain before any Government access to the eGain Offering.

Exhibit A

STANDARD CLOUD SERVICES FEATURES

- ☐ 99.5% production uptime SLA and associated maintenance and support for the Cloud Services as described in the Cloud Support Policy (and subject to the limitations and requirements set forth in the Cloud Support Policy)
- ☐ HTTPS connectivity to eGain Cloud Services
- ☐ Data at rest on self-encrypting drives
- ☐ **Disaster recovery**
 - Eight (8) hours of Recovery Point Objective (RPO)
 - Seventy-two (72) hours of Recovery Time Objective (RTO)
- ☐ Up to ten (10) gigabytes (GB) of storage for Customer's operational, configuration, reporting, and analytics data for every US\$1,000 (or its equivalent in the local currency of the applicable Order converted in accordance with the exchange rates provided in eGain's then-current price list) of the monthly Cloud Services fees paid by Customer under an Order.

* Note that eGain does not retain Customer's analytics data in eGain's Cloud Services for more than thirteen (13) months during any Cloud Term.

EXHIBIT B

EXPERT SERVICES

eGain offers the following Expert Services which Customer may purchase in an Order. Notwithstanding anything contained in the Agreement, eGain reserves the right to modify, add to, or discontinue any of these Expert Services at its sole discretion (except that no such modifications will apply to any Expert Services already purchased by Customer in an Order):

1. Managed Services

1.1 Remote Managed Services

1.1.1 *Remote MS Services.* The following services are available for request by Customer under remote managed services ("Remote MS") purchased by Customer in an Order: (a) Managed Service for Administration; (b) Managed Service for Knowledge Management; and/or (c) Managed Service for Analytics, each as further described in eGain's then-current Managed Services Policy ("Managed Services Policy"), which is incorporated herein by reference and made a part hereof.

1.1.2 *Remote MS Subscription Unit.* Purchase for this option is on a subscription unit basis and each subscription unit for this option is up to a maximum of 8 hours per month for twelve (12) contiguous months ("Remote MS Term"), which is equivalent to Customer having the right to receive up to the maximum of 2 hours a week ("Weekly Remote MS Hours") and for no more than 8 hours per month for Remote MS ("Monthly Remote MS Hours") from eGain during the applicable Remote MS Term. Customer must purchase no less than 1 subscription unit for this option. Any travel and other expenses incurred by eGain's Remote MS personnel in performing any Remote MS for Customer shall be separately reimbursed by Customer. Customer will be automatically charged an additional subscription unit for requesting or Customer using any Remote MS exceeding the subscription unit(s) purchased by Customer.

1.1.3 *No Rollover.* Customer is not entitled to rollover any remaining unused Weekly Remote MS Hours in one (1) week to any other week. Customer is also not entitled to rollover any remaining unused Monthly Remote MS Hours in one (1) month to any other months. Customer is also not entitled to rollover any remaining unused hours for one purchased Remote MS option for use with any other purchased Remote MS option or any purchased Onsite MS option (as defined below).

1.2 Onsite Managed Services

1.2.1 *Onsite MS Services.* The following services are available for request by Customer under onsite managed services ("Onsite MS") purchased by Customer in an Order: (a) Managed Service for Administration; (b) Managed Service for Knowledge Management; and/or (c) Managed Service for Analytics Support, as further described in eGain's then-current Managed Services Policy

1.2.2 *Onsite MS Subscription Unit.* Purchase for this option is on a subscription unit basis and each subscription unit for this option is 1.0 FTE for six (6) contiguous months ("Onsite MS Term"), which is equivalent to Customer having one designated eGain Onsite MS personnel on-site at Customer's facility for up to (i) 40 hours per week for four (4) weeks or (ii) twenty (20) Business Days per month to perform On-Site MS tasks during the applicable Onsite MS Term. Customer must purchase no less than 1 subscription unit for this option. The term "Business Day" as used in this Agreement shall mean a day other than a Saturday, Sunday or a public holiday in the state or territory in which the eGain Offering is to be supplied.

1.3 GDPR Managed Services

1.3.1 *GDPR MS Services.* Customer may purchase GDPR Managed Services ("GDPR MS") if Customer is on a version of eGain's on-premise software product which is earlier than version 17 ("Pre-17 Software Version") and desires to obtain a temporary solution to assist Customer in meeting certain of its obligations under the General Data Protection Regulation 2016/679 ("GDPR") when using any such Pre-17 Software Version, as further described in eGain's then-current Managed Services Policy. Before Customer is permitted to purchase any GDPR Managed Services, Customer must first separately engage eGain in an Order to "lift and shift" the Pre-17 Software Version being utilised by the Customer into the eGain Cloud Services and to subsequently upgrade Customer to the GDPR compliant version 17 of eGain's Cloud Services. Customer shall be entitled to make up to 20 GDPR end-user requests per month for each US\$1,000 of the monthly GDPR Managed Services fee paid by Customer.

1.3.2 *GDPR MS Subscription Unit.* Purchase for this option is priced at twenty-five percent (25%) of the then-current quarterly Cloud Services fees associated with the applicable on-premise product being migrated to Cloud Services.

1.4 Additional Managed Services Requirements

1.4.1 *Managed Services Commencement* Customer understands that the start date of the purchased Managed Services will be determined by eGain after the corresponding Order for such Managed Services has been placed by Customer and accepted by eGain.

1.4.2 *Managed Services Renewal.* Following the initial term of Managed Services, the purchased Managed Services may be renewed for subsequent terms as mutually agreed in writing by the parties.

1.4.3 *Third Party Access Rights.* Customer will be solely responsible for obtaining the right for eGain to have access to and to use all applicable software and hardware in Customer's environment in order for eGain to perform the purchased Managed Services hereunder, including without limitation, all permissions and sublicenses required from third party vendors ("Third Party Access Rights"). eGain will not be liable to Customer for non-performance if eGain's non-performance is caused by Customer's failure to obtain the requisite Third Party Access Rights. Additionally, eGain will not be liable for any damages suffered by Customer by reason of any failure or non-performance in third party software or hardware. Further, Customer will indemnify, defend and hold harmless eGain from any and all damages, losses (including reasonable attorney's fees), claims, and suits, including copyright, trademark or other intellectual property infringement claims which are brought, threatened or maintained against eGain as a result of Customer's failure to obtain the requisite Third Party Access Rights.

1.4.4 *No SLAs.* The provision of Managed Services is not subject to service levels and are provided on a commercially reasonable efforts basis.

1.4.5 *Managed Services Fees.* Unless agreed otherwise in the applicable Order for the Managed Services, eGain will invoice Customer for (a) the selected Remote MS or Onsite MS option purchased annually in advance of each applicable term of such purchased Managed Services, and (b) the GDPR MS option on a quarterly basis in advance. Customer is also required to be current on its payment of the applicable Cloud Services fees if the purchased Managed Services relates to such eGain's Cloud Services.

1.4.6 *Managed Services Travel Expenses.* For Onsite MS, travel and accommodation expenses for the Onsite MS personnel will be billed separately to the Customer. For Remote MS, if desired for any on-premise intervention and pre-approved by Customer, travel and accommodation expenses for any Remote MS personnel performing any services onsite at Customer's facilities will be billed separately to the Customer. Unless agreed otherwise in writing with the Customer, such expenses will be reimbursed by Customer in accordance with eGain's then-current Expense Recovery Policy.

2. PROFESSIONAL SERVICES

2.1 **Orders for Professional Services.** Any implementation and other professional services ("Professional Services") to be provided by eGain to Customer with respect to the Cloud Services shall be purchased separately by Customer in an Order and associated statement of work agreed between the parties. eGain will assign appropriately experienced personnel to perform the Professional Services and will use reasonable endeavors to minimize changes of personnel so assigned. Any timescales set forth in the Order(s) are estimates only and eGain will use all reasonable endeavors to achieve agreed timescales. eGain may, at eGain's expense and with Customer's prior approval (which approval shall not be unreasonably withheld), use subcontractors to perform the Professional Services.

2.2 **Defects Caused by Third Parties.** If Customer elects to have any implementation or other professional services for the Cloud Services provided by a third party, eGain shall have no liability for any defect or failure of the Cloud Service caused by such third-party services, and Customer shall not be entitled to any reduction in fees for the Cloud Services as a result thereof. eGain may deny access to the Cloud Services to any third-party service provider which eGain determines in its reasonable discretion poses a security or confidentiality risk to eGain systems, data or intellectual property.

2.3 **Delays; Rescheduling.** Except where the relevant Order provides otherwise, scheduling of eGain's resources must be agreed to no later than ten (10) Business Days prior to the date work is scheduled to begin. Subsequent scheduling changes requested by Customer may result in additional fees. With respect to Professional Services, delays caused by Customer (or an End Customer, where applicable), under an Order to which eGain has dedicated resources and begun work will be billed to Customer as follows: (i) offsite planned resources will be billed at 50% of the planned hours during the period of the delay; and (ii) onsite planned resources will be billed at 100% of the planned hours during the period of the delay (maximum of 8 hours per Business Day). Delays caused by Customer (or an End Customer, where applicable), that exceed ten (10) Business Days shall entitle eGain to terminate the relevant Order for cause immediately upon written notice.

2.4 **Acceptance.** Unless expressly stated otherwise in the applicable Order, the Professional Services will be deemed to be accepted by Customer upon completion of the activities documented in the Order. If an Order provides for formal acceptance of the Professional Services or any part thereof or of any deliverable(s), then unless provided otherwise in such Order, the following shall apply: (a) eGain will notify Customer when eGain is satisfied that any item is ready for acceptance; (b) within ten (10)

calendar days of notification from eGain (or such other period as mutually agreed upon by the parties in the applicable Order) (“Review Period”), Customer will confirm its acceptance in writing, or, where Customer reasonably believes that the item does not substantially conform with the acceptance criteria stated in the Order, then Customer shall confirm in writing that the item is not accepted, giving reasons in sufficient detail for eGain to be able to promptly remedy the deficiency; and (c) if Customer does not issue written confirmation of acceptance or non-acceptance within the Review Period, then the item will be deemed to be irrevocably accepted. Commercial usage of the Professional Services or part thereof, or of any deliverable, shall constitute acceptance of the Professional Services or the part thereof, or of the deliverable. Commercial usage means use for any business purpose other than tests. Custom Support is not subject to any acceptance requirements.

- 2.5 **Excusable Delay.** eGain shall not be liable for any delay or failure in performance due to or arising in connection with (i) any instructions of Customer or any information provided by Customer or its agents to eGain, (ii) any act or omission of Customer or any third-party supplier of Customer, (iii) any breach by Customer of any of its obligations hereunder, or (iv) the inaccuracy or non-occurrence of any assumption stated in any Order.
- 2.6 **Customer’s Responsibilities.** Customer will provide to eGain, promptly on request, such information and facilities as eGain reasonably requires for the provision of the Professional Services. Customer shall be responsible for procuring all consents, licenses, approvals or permissions as may be necessary to enable eGain to perform the Professional Services. Customer acknowledges and agrees that eGain’s performance is dependent on and subject to performance by Customer or third parties of their obligations associated with the Professional Services in a timely manner and is subject to any assumptions regarding the Professional Services referred to in the Order. eGain reserves the right to charge for any work carried out by eGain or delay caused to eGain which is attributable to Customer’s failure to observe its dependencies as documented in the Order and as amended through Change Control (as defined below).
- 2.7 **Change Control.** Customer will not attempt to change the Professional Services other than through the change control procedure set out in this Section 3.7 (“Change Control”) and will specifically avoid issuing oral or informal instructions to eGain’s personnel. Neither party will be obliged to agree to any requested or recommended change but neither party will unreasonably withhold, delay or condition its agreement where the change would be materially consistent with the subject matter and scope of the existing Services and Agreement. eGain will advise Customer of the likely impact of any requested or recommended change on the price and timescales for the Services. Until such time as any change is agreed in writing by the authorized representatives of both parties, eGain will continue to perform and to be paid for the Professional Services as if such change had not been requested or recommended.
- 2.8 **Professional Services Fees.** All fees for Professional Services will be invoiced to Customer as set forth in the applicable Order for such Professional Services.
- 2.9 **Professional Services Expenses.** Unless agreed otherwise in the applicable Order for the Professional Services, Customer shall reimburse eGain all reasonable travel related expenses incurred by eGain in performing such Professional Services. Unless agreed otherwise in writing with the Customer, such expenses will be reimbursed by Customer in accordance with eGain’s then-current Expense Recovery Policy.
- 2.10 **Termination for Convenience; Effect of Termination for Convenience.** Unless agreed otherwise by the parties in an Order, Customer may also terminate certain non-subscription based Professional Services under an Order for convenience upon thirty (30) days prior written notice to eGain. If Customer terminates non-subscription based Professional Services for convenience, unless agreed otherwise in the applicable Order, Customer shall pay eGain, in addition to the unpaid fees accrued up to the effective date of termination, an amount equivalent to the discounts off eGain’s standard published rates for such non-subscription based Professional Services received by Customer under the Order and any other costs reasonably incurred by eGain in anticipation of performance of the non-subscription based Professional Services to the extent they cannot reasonably be mitigated, and any other termination costs eGain incurs, including, but not limited to, canceling any secondary contracts it undertook in anticipation of performance of the non-subscription based Professional Services.

3. CUSTOM SUPPORT

- 3.1 **Support for Customizations.** Customer may also engage eGain to furnish custom support for applications and other developments (“Customizations”) created by eGain on a Professional Services engagement on an annual basis (“Custom Support”) as further described in the applicable Order for such Custom Support and eGain’s then-current Custom Support Policy which is made available by eGain to Customer upon request and which is incorporated herein (“Custom Support Policy”). eGain is not obligated to provide Custom Support for problems with the Customizations due to unauthorized modifications to the Customizations or to Customer’s or a third party’s negligence
- 3.2 **Custom Support Availability.** If Customer engages eGain for Custom Support and unless agreed otherwise in the applicable Order, such Custom Support will be provided by eGain on an annual basis, commencing from the parties’ execution of the

applicable Order for such Custom Support. Customer may request eGain to provide such Custom Support for the included Customizations during the period of 8:00am to 5:00pm local time (for UK, North America or GMT+5 for APAC) on a Business Day.

- 3.3 **Custom Support Renewal.** Following the initial term of Custom Support, the purchased Custom Support may be renewed for subsequent terms as mutually agreed in writing by the parties.
- 3.4 **Custom Support Fees.** Unless agreed otherwise in the applicable Order for the Custom Support, eGain will invoice Customer for the Custom Support purchased annually in advance of each applicable term of such purchased Custom Support.
- 3.5 **Custom Support Expenses.** Unless agreed otherwise in the applicable Order for Custom Support, Customer shall reimburse eGain all reasonable travel related expenses incurred by eGain in performing such Custom Support. Unless agreed otherwise in writing with the Customer, such expenses will be reimbursed by Customer in accordance with eGain's then-current Expense Recovery Policy.

