**CIRESON, LLC**

**SOFTWARE LICENSE AND MAINTENANCE AGREEMENT FOR PARTNER CUSTOMERS**

**v2.2**

This Software License and Maintenance Agreement for Partner Customers (“***SLMA***” or “***Agreement***”) is between Cireson, LLC and the Partner Customer (“***Licensee***”) listed on this Agreement and on the purchase order submitted to Cireson by the Cireson Reseller. This Agreement is effective when fully executed and upon delivery of the product license keys for the Software (“***Effective Date***”). The SLMA includes by reference the General Terms and Conditions below and each applicable Addendum based on the Software licensed as indicated on Licensee’s Purchase Order and Cireson’s Invoice.

**BACKGROUND REGARDING OREGON PARTNER CUSTOMERS**

1. A “***Partner Customer***” is either a State of Oregon executive agency, board, or commission (as defined in ORS 174.112), or an ORCPP member that purchases a License to Cireson’s Software through a State of Oregon contract with a Cireson Reseller.
2. The Oregon Department of Administrative Services (DAS) holds a State of Oregon contract with a Cireson Reseller. DAS is not a party to this Agreement or a purchaser unless it is the Partner Customer. No other State of Oregon agency may hold an applicable reseller agreement.
3. ‘ORCPP’ is the Oregon Cooperative Procurement Program. ORCPP members are government entities under Oregon law that are parties to an Oregon intergovernmental agreement with DAS, through which members may access certain price agreements to purchase goods and services. See [http://www.oregon.gov/das/Procurement/Pages/Orcppwhat.aspx](https://www.oregon.gov/das/Procurement/Pages/Orcppwhat.aspx).

**GENERAL TERMS AND CONDITIONS**

1. **Grant of License.** Cireson grants to Licensee a non-exclusive, non-assignable, non-transferable, perpetual site license to only those software applications identified on the Purchase Order submitted to Cireson and Cireson’s Invoice to the Cireson Reseller (“***Software***”).
2. **General Scope of License.** In order to use the Software, Licensee shall have installed the then-current version of the prerequisite platform as defined in the Software’s product documentation. Cireson grants Licensee the License to use the Software, in object code form only, for its own business with no right to sublicense. The License granted hereunder does not extend to any parent company, sister company, subsidiary, or affiliate of Licensee without the payment of an additional License Fee and a Support and Maintenance Fee.
3. **Fees.**
   1. License Fees. Licensee shall pay to the Cireson Reseller the license fee invoiced following delivery of the Software (“***License Fee***”).
   2. Support and Maintenance Fees. Licensee shall pay to the Cireson Reseller a fee equal to Twenty Percent (20%) of the total License Fees (“***Support and Maintenance Fee***”) in exchange for one (1) year of Support and Maintenance as described in the [**Support and Maintenance Policy**](http://www.cireson.com/smwithsa), found online at <http://cireson.com/cireson-support-and-maintenance-policy/>. No provision of the Support and Maintenance Policy may conflict with this SLMA. All Support and Maintenance Fees shall be earned when paid and shall be non-refundable. No pro-rata refunds will be issued for cancellation of Support and Maintenance.
   3. License Upgrade Fees. “***License Upgrade Fees***” are described in each applicable Addendum. The Addendum for Service Management and Asset Management is attached as Attachment 2, and the Configuration Manager Portal Addendum is attached as Attachment 3.
   4. Renewal of Support and Maintenance and/or Software Assurance; Special Terms. Notwithstanding the terms and conditions set forth in the Support and Maintenance Policy or the Software Assurance Policy, these special terms shall apply to Licensee. Renewals of Support and Maintenance and Software Assurance will be done by Licensee submitting a purchase order through the State of Oregon’s software reseller price agreement, if applicable. If Licensee elects not to renew Support and Maintenance or Software Assurance and then later wishes to reactivate either, Licensee shall pay the fees for the support period in effect at the time of reactivation. No additional reactivation fee shall be due.
4. **Payment Terms.**
   1. Invoicing and Payments. The Cireson Reseller will submit an initial invoice following the delivery of the product license keys for the Software which shall set forth an itemized description of all Software licensed, the License Fee due, the initial Support and Maintenance Fee, initial Software Assurance Fee (if applicable), and any Taxes, fees or charges due. Upon receipt of a purchase order from Licensee (or the Cireson Reseller) for the renewal of Support and Maintenance and Software Assurance (if applicable), Cireson (or the Cireson Reseller) will submit to Licensee an invoice for payment of the Support and Maintenance Fee and Software Assurance Fee (if applicable) along with any applicable Taxes, fees or charges due. When due, Cireson (or the Cireson Reseller) will submit an invoice for the License Upgrade Fees due along with any applicable Taxes, fees or charges due. Unless otherwise indicated, all invoices shall be paid within thirty (30) days of the date of the invoice.
   2. Late Payments. Should payment in full of any Cireson invoice payable by Licensee not be received by Cireson within forty-five (45) days of the date of receipt of the invoice, interest will accrue on the unpaid balance at a rate of two-thirds of one percent (0.67%) for each month or fraction thereof the overdue amount remains unpaid subject to ORS 293.462. In the event that any amount remains unpaid after forty-five (45) days of the date of receipt of the Cireson invoice, Cireson may upon written notice suspend or revoke the License (if the License Fee or any License Upgrade Fee is unpaid), Support and Maintenance (if the Support and Maintenance Fee is unpaid), or Software Assurance (if applicable), or all of the above. Suspension or revocation does not relieve Licensee from paying fees due pursuant to the terms of this SLMA. The above described remedies are in addition to, and not in lieu of, any other remedies which Cireson may have under applicable law.

**Cireson shall notify Licensee in the event that any amount to be paid through a Cireson Reseller is not timely received from the Cireson Reseller, and provide Licensee with thirty (30) calendar days to resolve the non-payment through the reseller or to proceed as above. Licensee agrees and acknowledges that Cireson may, in accordance with 4.b., suspend or revoke the License (if the License Fee or any License Upgrade Fee is not paid), Support and Maintenance (if the Support and Maintenance Fee is not paid), or Software Assurance (if applicable and if Software Assurance is not paid), or all of the above.**

* 1. Method of Payment. All payments directed to Cireson shall be sent in United States Dollars via wire transfer pursuant to the wire instructions provided to Licensee on or with each Invoice. Licensee is responsible for any wire fees and any currency exchange costs associated with payment to Cireson in United States Dollars.
  2. Taxes, Duties and Other Charges. Fees invoiced by Cireson do not include any local, state, federal or foreign taxes, VAT, levies or duties of any nature (“***Taxes***”) unless otherwise indicated. Licensee is responsible for paying all Taxes, including sales, use, personal property, value-added, excise, custom fees, import duties and any other similar duties and charges, including penalties and interest, imposed by the any United States federal, state, provincial or local government entity or any non-United States government entity on the provision, sale or use of the Software, excluding only United States based taxes on Cireson’s income. If Cireson has the legal obligation to pay or collect Taxes for which Licensee is responsible under this Section, the appropriate amount shall be invoiced to and paid by Licensee unless Licensee provides Cireson with a valid tax exemption certificate authorized by the appropriate taxing authority.

1. **License Compliance Audits and Inspection.**
   1. Inspection. Cireson, or its designee, shall have the right, upon at least thirty (30) days written notice and no more than once per calendar year, to inspect Licensee’s IT environment and the related books and records at Licensee’s place of business in order to confirm compliance with the License and the other terms and conditions of this Agreement. Any on-site inspection will take place during normal business hours and in a manner that does not interfere unreasonably with Licensee’s operations. Licensee shall cooperate with Cireson in good faith and shall provide Cireson with information reasonably requested in furtherance of the verification and inspection. As an alternative to an on-site inspection, Cireson can require Licensee to complete a self-audit questionnaire, which Licensee shall complete in good faith.
   2. Discrepancies. In the event that such inspection reveals non-compliance, including, without limitation, additional License Fees being owed to Cireson because Licensee has not purchased the appropriate License to accommodate its actual usage, Licensee shall, subject to ORS 293.462, pay the License Upgrade Fee within thirty (30) days of invoicing. Licensee will not be charged interest or penalties.
   3. Survival. The rights granted to Cireson pursuant to this Section shall survive for five (5) years beyond the expiration or termination of this Agreement.
2. **Term and Termination.**
   1. Term of License. The License shall continue indefinitely until terminated in accordance with subsection (c) or (d) below.
   2. Support Period for Support and Maintenance. See [**Support and Maintenance Policy**](http://www.cireson.com/smwithsa).
   3. Termination of License by Cireson for Breach of Agreement. In the event of a material breach of this Agreement by Licensee, Cireson shall provide written notice of said breach to Licensee who shall have thirty (30) days following the date of the notice to cure the breach, if the breach is capable of being cured as determined by Cireson in Cireson’s reasonable discretion. Notwithstanding the foregoing, Licensee agrees that Cireson shall have the right to immediately terminate this Agreement in the event Licensee breaches Sections 7 or 8 of this Agreement.
   4. Termination for Lack of Funding. Nothing in this Agreement may be construed to permit any violation of Article XI, Section 7 of the Oregon Constitution or any other law regulating liabilities or monetary obligations of the State of Oregon. Licensee’s payment for fees due after the last calendar day of the current State of Oregon biennium is contingent upon you receiving funding, appropriations, limitations, allotments or other expenditure authority from the Oregon Legislative Assembly (including its Emergency Board) sufficient to allow Licensee, in the exercise of Licensee’s reasonable administrative discretion, to continue to compensate Cireson. Licensee may immediately terminate this Agreement upon written notice if Licensee fails to receive funding, appropriations, limitations, allotments, or other expenditure authority as contemplated by Licensee’s budget or spending plan and Licensee determines, in its assessment and ranking of the policy objectives explicit or implicit in its budget or spending plan, that it is necessary to terminate this Agreement.
   5. Effect of Termination. Upon termination of this Agreement for any reason, Licensee shall pay all amounts then due and payable (unless termination is under Section 6.d.), and shall at Cireson’s option, either (i) return all copies of the Software and other Confidential Information of Cireson in its possession or control, or (ii) destroy all copies of the Software and other Confidential Information of Cireson in Licensee’s possession or control. A duly authorized officer of Licensee shall certify in writing to Cireson that the Licensee has complied with the obligations set forth in this section within thirty (30) calendar days of the effective date of the termination. Licensee’s non-renewal of Support and Maintenance or Software Assurance will not constitute termination.
   6. Survival. The following provisions survive the termination or expiration of this Agreement: Sections 3, 5, 7, 8, 9(g), 10, 11 and 12.
3. **Intellectual Property.**

Subject only to the limited rights granted to Licensee in this Agreement, all Intellectual Property Rights to the Software and any corrections, enhancements, updates or modifications to the Software shall remain the sole property of Cireson. For purposes of this Agreement, “***Intellectual Property Rights***” include all intellectual property rights, whether existing under statute, equity or common law and whether existing under intellectual property, unfair competition, trade secret or other laws, including, but not limited to, (i) copyrights, trademarks, trade secrets, patents, inventions, innovations, designs, logos, trade dress, moral rights, mask works, or rights of publicity or privacy; and (2) any registration, application or right to apply for any registration of any of the aforementioned rights, including all renewals, extensions and restorations thereof, now or hereafter in force and effect. Licensee shall not, at any time during or after the term of the Agreement, dispute or contest, directly or indirectly, Cireson’s exclusive right and title to the Software or the validity of any Intellectual Property Rights of Cireson related thereto. Licensee agrees to execute any documents reasonably requested by Cireson to affect any of the above provisions.

1. **Confidential Information.**

# a. “Confidential Information” Defined. For purposes of this Agreement, “*Confidential Information*” shall mean any and all business, technical or third party information marked ‘confidential’ that is provided, disclosed or made accessible to the other under this Agreement including, but not limited to, business plans, marketing plans, financial data, specifications, drawings, sketches, models, samples, computer programs or documentation, contracts, contacts, research and development, trade secrets, formulae, specifications, data, know-how, formats, strategies, forecasts, budgets, copyrightable works of authorship, trademarks, service marks and like information, whether or not such information is marked as “confidential” or “proprietary.” “Confidential Information” shall be defined broadly to include any information that has commercial value or other utility to the disclosing party and information of disclosing party, which if disclosed, would be detrimental to the disclosing party.

# b. Duty Not to Disclose; Exceptions. The parties shall restrict access to the Confidential Information to employees or agents who have a “need to know.” The parties, employees or agents, shall not disclose the Confidential Information to any third party and shall treat the information in the same way it treats its own Confidential Information of like kind. Cireson acknowledges that, it and its employees, subcontractors or agents in the course of this Agreement may be exposed to or acquire information that is confidential to Licensee. Any information Cireson or its employees or agents receive or acquire relating to Licensee in the performance of this Agreement is deemed to be Confidential Information, with the exception of information which is (i) in the public domain through lawful means and without breach of a party’s confidentiality obligation, (ii) previously known to the receiving party without obligation of confidentiality, (iii) independently developed by the receiving party without the use of or reference to, any of the Confidential Information, (iv) obtained by the receiving party from a third party that does not have an obligation to keep the information confidential, or (v) which is required to be disclosed by compulsory judicial or administrative process, law or regulation; provided, however that if either party is required to disclose Confidential Information, that party shall first give the other party notice along with such information as may be reasonably be necessary to enable the other party to take action to protect its interests. The parties will not make any copies of the Confidential Information without prior approval.

# c. Cireson acknowledges that any of Licensee’s obligations to maintain the confidentiality of Cireson’s proprietary information provided to Licensee is conditioned by and subject to your obligations under the Oregon Public Records Law, Oregon Revised Statutes (ORS) 192.410 to 192.505 which may require disclosure of proprietary information as a “public record” unless exempt under ORS 192.501 or ORS 192.502.

1. **Warranties.**
   1. Authority. Cireson warrants that it has all right, title and interest, free of all liens and encumbrances, in the Software and has the authority to grant the License.
   2. Non-Infringement. Cireson represents and warrants that the Software as delivered to the Cireson Reseller does not infringe, misappropriate, dilute or otherwise violate any third-party intellectual property rights or other proprietary rights.
   3. Limited Warranty. During the Initial Support Period and during each subsequent Renewal Support Period (as each is defined in the Support and Maintenance Policy), Cireson warrants that the Software as delivered to the Cireson Reseller shall operate in substantial conformance with Cireson’s documentation and shall be free from material defects when operated as recommended by Cireson. Cireson shall promptly correct any material defects in the Software pursuant to the severity levels and error resolution process described in Support and Maintenance Policy. In the event of a breach of the foregoing warranty, Cireson shall correct or replace, at no additional charge to Licensee, any part of the Software found to be defective, which shall be Licensee’s sole and exclusive remedy. Any customization or other modification to the Software by Licensee, whether or not done by or with the assistance or consent of a Cireson Licensor, unless done with the provided administrative tools (e.g. changes to the source code) negates this warranty and Cireson shall have no obligation to provide Support to Licensee without the execution of a Services Agreement concerning the provision of professional services by Cireson required to support custom instances of the Software and Licensee’s payment of additional compensation for said professional services. The foregoing limited warranty does not apply to free Software. Except to the extent required by law, Cireson makes no warranties, conditions, representations, or terms (express or implied) whatsoever as to any matter related to the use of free Software. Free Software are delivered “as is” and with all faults.
   4. Support and Maintenance Warranty. Cireson also warrants that any Support and Maintenance provided shall be performed in a professional manner, consistent with industry standards.
   5. No Malware. Cireson represents and warrants that none of the applications comprising the Software as delivered to the Cireson Reseller contains (a) any back door, time bomb, drop dead device or other software routine designed to disable a computer program automatically with the passage of time to prevent authorized use of the Software, or (b) any virus, trojan horse, worm or other components designed to permit unauthorized access, to disable, erase or otherwise harm software, hardware or data.
   6. No Open Source Software. Cireson represents and warrants that none of the applications comprising the Software as delivered to the Cireson Reseller contain any code or materials subject to non-negotiable licenses, including, without limitation, any “open source” or “freeware” software or any other materials requiring that software combined or distributed with such materials be disclosed or distributed in source code form, licensed for the purpose of making derivative works, or re-distributable at no charge or subject to material limitations or conditions.
   7. Disclaimer. LICENSEE ACKNOWLEDGES THAT NO EXPRESS WARRANTIES HAVE BEEN MADE BY CIRESON OTHER THAN THOSE SET FORTH HEREIN. THERE IS NO WARRANTY AGAINST INTERFERENCE WITH LICENSEE’S USE OF THE INFORMATION OR INFRINGEMENT OTHER THAN THOSE SET FORTH HEREIN. THESE WARRANTIES AND THE ASSOCIATED REMEDIES ARE PROVIDED IN LIEU OF ALL OTHER WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, ACCURACY AND FITNESS FOR A PARTICULAR PURPOSE.
2. **Limitation of Liability.**
   1. Except a breach of Sections 1,2, or 7, neither party is liable to the other for any indirect, special, incidental or consequential damages (including punitive and 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.
   2. Notwithstanding any other provision of this Agreement, Cireson’s liability to the other in connection with or relating to this Agreement, whether in contract, tort or otherwise, shall not exceed the License Fee payable to Cireson under this Agreement.
   3. Notwithstanding any other provision of this Agreement, claims against Licensee and Licensee’s obligations under this Agreement are subject to the limitations of Article XI, section 7 of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 through 30.300.
3. **Indemnification by Cireson.**

* 1. Cireson shall defend and indemnify Licensee, and its current or future agents, officials and employees (each an “***Indemnified Party***”) against any third party claim, suit, or proceeding arising out of, related to, or alleging infringement of any patent, copyright, trade secret, or other intellectual property right by the Software in the United States (each an “***Indemnified Claim***”). Cireson’s obligations in the preceding sentence include the retention and payment of attorneys selected by Cireson, and the payment of court costs, costs of litigation, settlements and judgment all at Cireson’s expense.
  2. Cireson’s obligations set forth in subsection do not apply to the extent that an Indemnified Claim regarding intellectual property infringement arises out of: (1) Licensee’s breach of this Agreement; (2) revisions, modification, or customizations of the Software are made without Cireson’s written consent; (3) Licensee’s failure to incorporate Software updates, upgrades or replacements offered by Cireson that would have avoided the alleged infringement; (4) use of the Software in combination with hardware or software not provided by Cireson unless the product documentation refers to combination with such hardware or software (without directing the user not to perform such a combination); or (5) Licensee’s negligence or willful misconduct.
  3. The Indemnified Party shall promptly notify Cireson in writing of any Indemnified Claim for which indemnification is sought, following actual knowledge of such claim; provided, however, that the failure to give such notice shall not relieve Cireson of its obligations hereunder except to the extent that Cireson is materially prejudiced by such failure. In the event that any Indemnified Claim is brought, Cireson shall have the right to undertake control of the defense of such action with counsel of its choice; provided, however, that: (i) Licensee, at its own expense, may participate and appear on equal footing with Cireson provided that Licensee does not take any action to materially prejudice the position of Cireson; (ii) Cireson keeps the Indemnified Party informed of the progress of, and all material developments in relation to, the Indemnified Claim; (iii) if requested by Licensee, Cireson shall provide Licensee with copies of all material information and correspondence which is reasonably relevant to the Indemnified Claim (subject to legal professional privilege and any obligations of confidence that are binding on Cireson); (iv) Cireson shall not consent to judgment or concede or settle or compromise any Indemnified Claim without the prior written approval of Licensee (such approval not to be unreasonably withheld).
  4. Counsel selected by Cireson must accept appointment as a Special Assistant Attorney General under ORS Chapter 180 before counsel may act in the name of, or represent the interests of, the State of Oregon, you, or the State of Oregon’s officers, employees or agents.

1. **Miscellaneous.**
   1. Force Majeure.A “***Force Majeure Event***” means any act or event, whether foreseen or unforeseen that prevents a party (the “***Nonperforming Party***”), in whole or in part, from performing its obligations or satisfying any conditions to the Nonperforming Party’s obligations under this Agreement and is beyond the reasonable control of and not the fault of the Nonperforming Party, and the Nonperforming Party has been unable to avoid or overcome by exercise of due diligence. In furtherance of the definition of a Force Majeure Event and not in limitation of that definition, each of the following acts or events is deemed to meet the criteria of the section and to be a Force Majeure Event: war, flood, lightning, drought, earthquake, fire, volcanic eruption, landslide, hurricane, cyclone, typhoon, tornado, explosion, civil disturbance, act of God or the public enemy, terrorist act, military action, epidemic, famine or plague, shipwreck, strike, work-to-rule action, go-slow, or similar labor difficulty, each on an industry-wide, region-wide or nationwide basis. The Nonperforming Party shall not be liable for any loss or delay resulting from any Force Majeure Event and any payment or timeline for performance of any services shall be reasonably extended to the extent of any such delay resulting from the Force Majeure Event.
   2. Binding on Successors and Assigns. The provisions of this Agreement shall be binding upon and inure to the benefit of each of the parties and their respective permitted successors and assigns. Nothing expressed or implied in this Agreement is intended, or shall be construed, to confer upon or give any person, other than the parties, their successors and assigns, any benefits, or rights under or by reason of this Agreement, except to the extent of any contrary provision herein contained.
   3. Assignment. This Agreement and the rights and obligations hereunder shall not be assigned or otherwise transferred in whole or in part by any act of Licensee or by operation of law without the prior written consent of Cireson. Cireson may assign or otherwise transfer any of its rights and obligations under this Agreement upon written notice to Licensee.
   4. Advertising and Publicity. Licensee agrees to provide marketing support to Cireson, including but not limited to a press release on award of contract and at ‘go-live’, use of Licensee’s logo in marketing materials, website, collaboration on the creation of a case study after ‘go-live’ and the hosting of reference visits for future prospects of Cireson. Licensee will have final review of all marketing or public relations collateral and case study materials and will be provided reasonable notice for reference visit requests.
   5. Incorporation of Oregon Statutes. ORS 279B.220, 279B.230, and 279B.235 are incorporated into this Agreement by reference.
   6. Amendment. Cireson reserves the right to modify this Agreement including the Support and Maintenance Policy, Software Assurance Policy and each Addendum upon written notice to Licensee. Licensee shall have thirty (30) days from the date of the notice to opt out of the modifications. Notwithstanding the foregoing, no amendment or modification of this Agreement, the Support and Maintenance Policy or Software Assurance Policy shall conflict with or otherwise modify any of the parties’ obligations to comply with the specific Oregon Statutes identified in this Agreement.
   7. Waivers. No party shall be deemed to have waived any provision of this Agreement unless such waiver is in writing and executed by the party against who the waiver is sought to be enforced. No failure or delay in exercising any right or remedy or requiring the satisfaction of any condition under this Agreement, and no course of dealing between the parties, shall operate as a waiver or estoppel of any right, remedy or condition. A waiver made in writing on one occasion is effective only in that instance and only for that purpose that it is given and is not to be construed as a waiver on any future occasion or against any other person. To the extent any course of dealing, act, omission, failure, or delay in exercising any right or remedy under this Agreement constitutes an election of an inconsistent right or remedy, that election does not constitute a waiver of any right or remedy, or limit or prevent the subsequent enforcement of any contract provision. No single or partial exercise of any right or remedy under this Agreement precludes the simultaneous or subsequent exercise of any other right or remedy. The rights and remedies of the parties set forth in this Agreement are not exclusive of, but are cumulative to, any rights or remedies now or subsequently existing at law, in equity, or by statute.
   8. Jurisdiction and Disputes. This Agreement, including, but not limited to, its validity, interpretation, construction, performance and enforcement, shall be construed in accordance with and governed by the laws of the State of Oregon (without giving effect to its conflicts of law principles). Any party bringing a legal action or proceeding against the other arising out of or relating to this Agreement or the transactions its contemplates shall bring the legal action or proceeding in federal or state courts located in Marion County, Oregon. Each party consents to the exclusive jurisdiction of said courts for the purpose of all legal actions and proceedings arising out of or relating to this Agreement or the transactions it contemplates. Each party agrees that the exclusive choice of forum set forth in this Section does not prohibit the enforcement of any judgment obtain in that forum or any other appropriate forum. Each party waives, to the fullest extent permitted by law, any objection which it may now or later have to the venue agreed upon herein, and any claim that any action or proceeding brought in any such court has been brought in an inconvenient forum.
   9. Entire Agreement.This Agreement supersedes and cancels all prior agreements, if any, between the parties. No failure or delay in exercising any right or remedy or requiring the satisfaction of any condition under this Agreement, and no course of dealing between the parties, shall operate as a waiver or estoppel of any right, remedy or condition. In the event of any conflict between this Agreement and any End User License Agreement, this Agreement shall control.
   10. Notices. Unless otherwise indicated, notices required under this Agreement shall be in writing and shall be sent to the party’s last known address or email address. Notice will be deemed given (1) as of the day following the day notice is deposited with a reputable overnight courier (e.g. Federal Express, UPS, etc.), charges prepaid, or as of the day following the day of email notice; or (2) as of the third day if the notice is sent certified U.S. Mail, charges prepaid, with return receipt requested; or (3) as of the day of delivery if the notice is hand delivered. Notices sent by email to Cireson shall be sent to:

Matt Deen, Legal Counsel

Cireson, LLC

1431 Pacific Highway, Suite HS

San Diego, CA 92101

[matt.deen@cireson.com](mailto:team@cireson.com)

* 1. Tax Compliance. By executing this Agreement, the undersigned certifies under penalty of perjury that Cireson has complied with the tax laws of the State of Oregon and the applicable tax laws of any political subdivision of this state. Cireson shall, for the duration of this Agreement and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. For the purposes of this section, “tax laws” includes: (i) All Oregon tax laws, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318; (ii) Any tax provisions imposed by a political subdivision of this state that apply to Cireson, to its property, operations, receipts, or income, or to its performance of or compensation for any work performed; (iii) Any tax provisions imposed by a political subdivision of this state that apply to Cireson, or to goods, services, or property, whether tangible or intangible, provided by Cireson; and (iv) Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions. This Agreement will be reported to the Oregon Department of Revenue. The Department of Revenue may take any and all actions permitted by law relative to the collection of taxes due to the State of Oregon or a political subdivision, including (i) garnishing Cireson’s compensation under this Agreement or (ii) exercising a right of setoff against Cireson’s compensation under this Agreement for any amounts that may be due and unpaid to the State of Oregon or its political subdivisions for which the Department of Revenue collects debts.

IN WITNESS WHEREOF, the parties execute this Agreement to be effective as of the Effective Date.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **LICENSEE:** | |  | **CIRESON:** | |
|  | |  | **Cireson, LLC** | |
| INSERT LICENSEE NAME HERE | |  |
| By: |  |  | By: |  |
| [name] |  |  | [name] |  |
| [title] |  |  | [title] |  |
| [date] |  |  | [date] |  |
| [email] |  |  | [email] |  |

License reviewed and approved by Oregon Department of Justice:

Ellen D. Flint, October 31 2017. (GF0978-16)

*See DAS reseller contract or other applicable procurement for contract legal sufficiency approval.*

**SERVICE MANAGEMENT AND ASSET MANAGEMENT ADDENDUM**

In addition to the General Terms and Conditions, the following applies to any license of Cireson Software for Service Management or for Asset Management:

1. **License Details.**

The License Fee for any Cireson Software for Service Management or for Asset Management is based on the license tier as set forth on the Purchase Order submitted to Cireson by the Cireson Reseller and Cireson’s Invoice. Cireson’s license tiers are as follows:

|  |  |
| --- | --- |
| **License Tier** | **Number of End Users** |
| SMB | 1 – 500 |
| SMALL | 501 – 1,000 |
| LOWER MEDIUM | 1,001 – 2,500 |
| UPPER MEDIUM | 2,501 – 5,000 |
| LARGE | 5,001 – 10,000 |
| ENTERPRISE | 10,001 – 15,000 |
| \* Special pricing applies to organizations with 15,001 or more End Users | |

The License is based on a single Production Service Manager Management environment and includes, for no additional cost, the Test and Staging Service Manager environments.

1. **End Users.**

The License is based on the number of persons granted access to the Cireson portal or Cireson Software, or both, by Licensee whether that person is full-time, part-time, an employee, a contractor or a partner (each an “***End User***” and collectively, “***End Users***”). To remain in compliance with the License, Licensee shall ensure that End Users are appropriately assigned to corresponding Active Directory Groups, or some other logical schema used by Licensee.

1. **License Compliance; License Upgrade Fees.**

If, at any time, Licensee’s use exceeds the number of End Users (defined below) in the license tier purchased, Cireson (or the Cireson Reseller) shall notify Licensee of its breach of the License and provide Licensee the opportunity to meet with Cireson’s Customer Success Team (or with the Cireson Reseller) to review the License and Licensee’s usage. If Licensee fails to take corrective action to bring its License back into compliance within thirty (30) days of the date of the notice, a “***License Upgrade Fee***” equal to the difference between the License Fee(s) already paid and current list price of the appropriate license tier shall become immediately due and payable.

1. **Software Assurance.**

As set forth on the Invoice if Licensee has licensed Business Management Solution, Service Management Stream, Asset Management Stream and/or Essentials Management Stream, Licensee shall pay to the Cireson Reseller a fee equal to Ten Percent (10%) of the total License Fees (“***Software Assurance Fee***”) in exchange for one (1) year of Software Assurance as described in the [**Software Assurance Policy**](http://www.cireson.com/smwithsa). All Software Assurance Fees shall be earned when paid and shall be non-refundable. No pro-rata refunds will be issued for cancellation of Software Assurance.

**CONFIGURATION MANAGER PORTAL ADDENDUM**

In addition to the General Terms and Conditions, the following applies to any license of Cireson Software for the Configuration Manager Portal:

1. **License Details.**

The License Fee for any Cireson Software for Configuration Manager Portal is based on the number of Devices. The License Fee is based on the number of Devices (defined below). The License Fee for any Cireson Software for Configuration Manager Portal is based on the license tier as set forth on the Purchase Order submitted to Cireson by the Cireson Reseller and Cireson’s Invoice. Cireson’s license tiers are as follows:

|  |  |
| --- | --- |
| **License Tier** | **Number of Devices** |
| SMB | 1-500 |
| SMALL | 501-1,000 |
| LOWER MEDIUM | 1,001-2,500 |
| UPPER MEDIUM | 2,501-5,000 |
| LARGE | 5,001-10,000 |
| ENTERPRISE (10k-15k) | 10,001-15,000 |
| ENTERPRISE (15k-25k) | 15,001-25,000 |
| ENTERPRISE (25k-50k) | 25,001-50,000 |
| ENTERPRISE (50k-100k) | 50,001-100,000 |
| ENTERPRISE +  \* Special pricing applies to organizations with more than 100,000 Devices | 100,001+ |

The License is based on a single Production Configuration Manager environment and includes, for no additional cost, the Test and Staging Service Manager environments.

1. **Device Defined.**

A “***Device***” is any active or inactive hardware, including, but not limited to, a laptop, desktop, tablet, mobile telephone or server with an installed or managed agent in Microsoft Configuration Manager, which Configuration Manager is reporting back in the Configuration Manager Console.

1. **License Compliance; License Upgrade Fees.**

If, at any time, Licensee’s use exceeds the number of Devices in the license tier purchased, Cireson (or the Cireson Reseller) shall notify Licensee of its breach of the License and provide Licensee the opportunity to meet with Cireson’s Customer Success Team (or with the Cireson Reseller) to review the License and Licensee’s usage. If Licensee fails to take corrective action to bring its License back into compliance within thirty (30) days of the date of the notice, a “***License Upgrade Fee***” equal to the difference between the License Fee(s) already paid and current list price of the appropriate license tier shall become immediately due and payable.