

LIVEACTION, INC.

SOFTWARE LICENSE & MAINTENANCE AGREEMENT

LAST UPDATE: MARCH 2022

BY ACCEPTING THIS AGREEMENT, EITHER BY INDICATING YOUR ACCEPTANCE, BY EXECUTING A QUOTE OR ORDERING DOCUMENT DIRECTLY WITH US OR WITH AN AUTHORIZED RESELLER (HOWEVER TITLED, REFERRED TO HEREIN AS AN "ORDER") THAT REFERENCES THIS AGREEMENT, OR BY DOWNLOADING, INSTALLING AND/OR UTILIZING THE SERVICES (DEFINED BELOW), YOU AGREE TO THIS AGREEMENT. THIS AGREEMENT IS A LEGALLY BINDING CONTRACT BETWEEN YOU AND LIVEACTION, INC. AND SETS FORTH THE TERMS THAT GOVERN THE LICENSE PROVIDED TO YOU HEREUNDER. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THIS AGREEMENT. ANY CHANGES, ADDITIONS OR DELETIONS BY YOU TO THIS AGREEMENT WILL NOT BE ACCEPTED AND WILL NOT BE A PART OF THIS AGREEMENT. IF YOU DO NOT AGREE TO THIS AGREEMENT, YOU MUST NOT DOWNLOAD, INSTALL, OR USE THE SERVICES.

This Software License & Maintenance Agreement (this "Agreement") is entered into by and between LiveAction, Inc., with an address at 960 San Antonio Road, Suite 200, Palo Alto, CA, 94303 ("LiveAction"), and you or the entity on whose behalf you are entering into this Agreement, as applicable ("You"). LiveAction offers evaluation licenses ("Evaluation License"), perpetual licenses ("Perpetual License") and subscription licenses ("Subscription") to its customers.

This Agreement governs Your use of the any version of LiveAction software provided or made available to You previously, concurrently or hereafter (the "Software"), any hardware provided to You in connection with the Software (the "Hardware"), any user manuals, instructions or other documentation (collectively, "Documentation") provided to You or made available by LiveAction for download through its website in connection with the Software, and any support, implementation or other professional services ("Professional Services"). The Software, Hardware, Documentation and Professional Services are collectively referred to as the "Services". For the avoidance of doubt, "Software" does not include any Open-Source Components (as defined below).

1. LICENSE GRANT. Your Order will identify whether you have a Subscription License or a Perpetual License.

If You have ordered a Subscription: Subject to Your continued compliance with the terms of this Agreement, including without limitation Your timely payment of all applicable Fees (as defined below), LiveAction grants You a limited, non-transferable, non-exclusive, non-sublicensable (except as expressly set forth below), revocable subscription license to install and use the Software on one or more hardware platforms during the term of this Agreement. The Subscription begins at the time LiveAction delivers Your license key to You (other than on an evaluation basis) in response to an Order by You and thereafter continues in effect until the date of termination as set forth in this Agreement, in particular and without limitation Sections 10 and 11. Fees are non-refundable if You cancel Your Subscription or the Subscription is terminated by LiveAction for cause. All Subscription licenses granted hereunder shall be term licenses for the term set forth in the relevant Order.

If You have ordered a Perpetual License: Subject to Your continued compliance with the terms of this Agreement, including without limitation Your timely payment of all applicable Fees (as defined below), LiveAction grants You a non-exclusive, non-transferable, non-sublicensable (except as expressly set forth below), fully paid-up and perpetual (subject to termination as set forth herein) license to install and use the Software on one or more hardware platforms during the term of this Agreement. Your Perpetual License begins at the time LiveAction delivers Your license key to You (other than on an evaluation basis) in response to an Order by You and thereafter continues in effect until the date of termination as set forth in this Agreement, in particular and without limitation Section 10. Fees are non-refundable if the license is terminated by LiveAction for cause.

You may request to change Your license type from Perpetual License to Subscription or Subscription to Perpetual License by submitting an amended Order specifying the desired license type to LiveAction. LiveAction shall be free to accept or reject Your request in its sole discretion. If accepted, You shall pay to LiveAction or the respective authorized LiveAction reseller (as applicable) all applicable unpaid license/subscription Fees and Your new Perpetual License or Subscription (as the case may be) shall begin and terminate as described above. As used herein, "hardware platform" means the computer server(s), desktop computer(s), laptop computer(s), appliance(s), or virtual machine(s) determined by the configuration You chose when ordering or downloading the Software at or from LiveAction's website. You may not make any copies of the Software and Documentation except that You may make one copy that You may use solely for backup and recovery purposes. Except as expressly set forth above, this Agreement does not grant you any rights to patents, copyrights, trade secrets, trademarks, or any other rights in or with respect to the Software.

If You have been provided an Evaluation License: The Evaluation License Terms set forth on Exhibit B shall apply for the term of the Evaluation License. In the event of any conflict between a provision on Exhibit B and a provision in the main body of this Agreement, the provision on Exhibit B shall control for the term of the Evaluation License.

LiveAction may provide Professional Services as agreed by the parties in an Order, which Order shall describe the scope of such Professional Services and shall become a part of and shall be subject to the terms of this Agreement.

2. **RESTRICTIONS ON USE.** You shall not, and shall not permit or encourage any third party to: (a) alter, modify, adapt, translate, reverse engineer, disassemble, decompile, or attempt to derive the source code of the Software or any part thereof, except to the extent that such activities are permitted under applicable law; (b) sell, lease, rent, sublicense, redistribute or otherwise transfer or convey the Services to any third party; (c) use the Services for any time-sharing, outsourcing, service bureau, hosting, application service provider or like purposes; (d) remove, alter, or obscure in any way the proprietary rights notices (including copyright, patent, and trademark notices and symbols) of LiveAction or its suppliers contained on or within any copies of the Software or Documentation; (e) use the Services other than as described in the applicable Documentation, or with any unsupported software or hardware (as described in the applicable Documentation); (f) disclose the results of any benchmark tests on the Services without LiveAction's prior written consent; or (g) use the Services for any unlawful purpose. Any violation of any of the foregoing restrictions shall be a material breach of this Agreement.
3. **HARDWARE.** If included in Your Order and subject to the terms of this Agreement, LiveAction will provide the Hardware to You for use in connection with Software. For Subscription Licenses: In the event that the Hardware includes or incorporates any software code (include without limitation any firmware, operating system or other software), such software code shall be deemed "Software" licensed to You solely under the terms of this Agreement except as expressly provided below. You will use reasonable care in the use of the Hardware and protect the Hardware from theft, damage or misuse. You assume the entire risk of loss, damage, or theft of the Hardware while in Your possession. You shall not, and shall not allow others to, reverse engineer, de-compile or disassemble the Hardware, or otherwise attempt to discover any underlying proprietary or confidential information. You will use the Hardware solely in connection with the Software and in technical configuration specified by LiveAction. For Perpetual Licenses: Title and all risk with respect to the Hardware will pass to You upon shipment by LiveAction. In the event that the Hardware includes or incorporates any software code (include without limitation any firmware, operating system or other software), such software code shall be deemed "Software" licensed to You solely under the terms of this Agreement except as expressly provided below. LiveAction's obligations with respect to the support and maintenance services set forth in Section 7 shall be subject to all use of the Hardware by You being solely in connection with the Software and in the technical configuration specified by LiveAction. Notwithstanding anything to the contrary contained herein, all Fees (as defined below) for Hardware are nonrefundable and non-cancellable, and in no event shall You be entitled to any refund, partial or otherwise, of Fees paid for Hardware, regardless of any termination of this Agreement.

- 4. OWNERSHIP; RESERVATION OF RIGHTS.** LiveAction and its licensors or suppliers own and retain all right, title and interest, including all copyrights, patents, trade secret rights, trademarks, and other intellectual property rights, in and to the Services and any improvements, modifications, or enhancements thereto. All copies of the Software and Documentation provided or made available to You are licensed, not sold. Except as expressly provided herein, this Agreement does not grant You any rights under LiveAction's or its licensor's patents, copyrights, trade secrets, trademarks or other intellectual property rights, and all rights not expressly provided to You hereunder are reserved by LiveAction and its licensors.
- 5. FEES; PAYMENT.** You agree to pay to LiveAction or the respective authorized LiveAction reseller (as applicable) all applicable license and maintenance fees set forth in LiveAction's Quote, or as mutually agreed in writing between You and LiveAction or as agreed between an authorized LiveAction reseller on Your behalf and LiveAction ("**Fees**"). LiveAction will invoice You in advance for all applicable Fees at the billing address You provided to LiveAction at the time of ordering the Services or at any later time. Each invoice shall be payable within 30 days of invoice date, and late amounts shall accrue 1.5% interest per month. All Fees are non-refundable, and denominated and payable in United States dollars. All Fees are exclusive of any taxes (whether personal or sales), tariffs, duties or similar charges of any kind arising out of this Agreement other than taxes on LiveAction's net income (collectively, "**Taxes**"), and any applicable Taxes are Your sole responsibility.
- 6. RECORDS AND AUDIT.** You shall establish and maintain complete and accurate records related to Your access and use of the Services, and any such other information as reasonably necessary for LiveAction to verify Your compliance with the terms of this Agreement. Upon prior notice, LiveAction or its representative may inspect such records to confirm Your compliance with the terms of this Agreement.
- 7. SUPPORT AND MAINTENANCE.** Subject to Your continued compliance with the terms of this Agreement, LiveAction will provide You with support and maintenance services related to the Software and Hardware in accordance with the LiveAction Maintenance Program Terms & Conditions attached hereto as Exhibit A (the "**Maintenance Program Terms**"), during the applicable Maintenance Term (as defined in the Maintenance Program Terms). The Maintenance Program Terms are incorporated herein by reference. Upon being provided to You by LiveAction hereunder, any Maintenance Revisions (as defined in the Maintenance Program Terms) shall be considered part of the Software and subject to the terms and conditions of this Agreement. You must install such Maintenance Revisions as soon as practicable after receipt and in accordance with LiveAction's instructions. You acknowledge and agree that any failure to install Maintenance Revisions may limit LiveAction's ability to provide You with maintenance and support and may limit the functionality, performance and/or operation of the Software. All support and maintenance services will be provided only with respect to the two most recent versions of the Software.
- 8. FEEDBACK.** Any feedback, comments, suggestions, bug reports, log files, or other information provided by You to LiveAction related to or in connection with the Services ("**Feedback**") shall be provided on a non-confidential basis (notwithstanding any notice to the contrary you may include in any accompanying communication), and LiveAction may use such Feedback for any business purposes without restriction, including without limitation for product development and support. You hereby grant LiveAction a perpetual, irrevocable, nonexclusive license under all rights necessary to incorporate and use such Feedback for any purpose.
- 9. CONFIDENTIALITY.**
 - (a)** Each party acknowledges that the other party treats its products, development processes, business methods, business information, and prices as confidential and that they constitute the commercially valuable proprietary products and/or services and trade secrets of the respective party, regardless of whether they may be copyrighted, patented or trademarked.
 - (b)** During the term of this Agreement, each party (the "**Receiving Party**") will learn or receive information about the other (the "**Disclosing Party**") which the Disclosing Party treats as confidential, including but not limited to all business, technical, marketing, financial and customer-related data

("Confidential Information"). For the avoidance of doubt, the Software and Documentation are the Confidential Information of LiveAction. The Receiving Party agrees that Confidential Information received from the Disclosing Party shall be treated as confidential and protected in the same manner as the Receiving Party treats its own confidential information (but in no event less than reasonable care). The Receiving Party agrees: (i) not to use any Confidential Information of the Disclosing Party for any purpose other than exercising its rights and fulfilling its obligations hereunder; (ii) not to transfer, distribute or disclose to any third party any Confidential Information of the Disclosing Party, except as expressly authorized in writing by the Disclosing Party; (iii) not to reverse engineer, disassemble, decompile or design around the Disclosing Party's Confidential Information; (iv) to not remove or obscure any designations of confidentiality on any Confidential Information; and (v) to confine knowledge and use of the Confidential Information received from the Disclosing Party to those of its employees and contractors who require such knowledge and use of the information in the ordinary course of and scope of their employment pursuant to this Agreement. Notwithstanding the foregoing, Confidential Information shall not include information which has entered the public domain by no action of the Receiving Party hereunder, was already rightfully in the possession of the Receiving Party when received from the Disclosing Party, is received from a third party without breach of any obligation owed to the Disclosing Party or was developed independently by the Receiving Party by individuals without access to the Disclosing Party's information.

(c) The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to such Confidential Information.

(d) The obligations of the parties, with regard to the Confidential Information of the other that constitutes trade secrets, shall remain in effect for as long as such Confidential Information shall remain a trade secret under applicable law. All other Confidential Information shall remain protected during the term of this Agreement and for three (3) years thereafter.

(e) Each of You and LiveAction acknowledge that the damages for unauthorized and/or improper disclosure of the Confidential Information of the Disclosing Party may be irreparable; therefore, the parties may seek equitable relief, including injunction and preliminary injunction for such alleged breaches.

(g) Upon any termination of this Agreement or the parties' working relationship, and all Confidential Information shall be returned to the Disclosing Party or, at the Disclosing Party's option, destroyed. Upon request the Receiving Party shall confirm to the Disclosing Party in writing that all such Confidential Information has been fully returned or destroyed in compliance herewith. Notwithstanding the foregoing, the Receiving Party shall not be required to purge its back-up systems of Confidential Information and the Receiving Party may retain necessary Confidential Information for legal and evidentiary purposes, provided such Confidential Information remains subject to the confidentiality and is destroyed in the normal process of the Receiving Party reasonable record retention policies and procedures.

- 10. TERM OF SUBSCRIPTIONS.** The initial term of this Agreement and Your Subscription for the Software will continue until the end of the subscription period You have purchased, unless this Agreement is terminated earlier in accordance with its terms (the "Initial Term"). Upon expiration of Your subscription period, Your Subscription will automatically renew for additional successive terms, each equal in length to the Initial Term, unless this Agreement is terminated earlier in accordance with its terms or either party gives the other party written notice of non-renewal at least 60 days prior to the expiration of the then current term (each a "Renewal Term"). Notwithstanding the length of the Software Subscription term, the maximum term for maintenance and support of Hardware is five (5) years.

- 11. TERMINATION.** This Agreement and the licenses granted to You hereunder terminate immediately if You violate any of the terms or conditions of this Agreement. LiveAction may also terminate this Agreement if You (i) terminate or suspend Your business, (ii) become insolvent or unable to pay Your debts as they mature, make an assignment for the benefit of creditors, or become subject to direct control of a trustee, receiver or similar authority, or (iii) become subject to any bankruptcy or insolvency proceeding under federal or state statutes. In the event of any expiration or termination of this Agreement, all licenses granted hereunder terminate immediately and (a) You must immediately cease using the Software, remove it from the hardware platform on which You installed it, and (b) destroy any copies of the Software and Documentation in your possession or control, or return all such copies to LiveAction at the address written above. Should You choose to destroy the Software and/or Documentation, You hereby agree to provide written certification of such destruction upon LiveAction's request. Termination of this Agreement shall not prevent LiveAction or its licensors from claiming any further damages. Sections 4, 5, 6, 8, 9, 11, 13, 14, and 16 through 26 shall survive any termination or expiration of this Agreement.
- 12. LIMITED WARRANTY.** LiveAction warrants, for a period of 90 days from the date You first downloaded the Software (the "Warranty Period"), that (i) the Software will operate substantially in accordance with the applicable Documentation and (ii) the media on which the Software and Documentation is distributed, if any, will be free from material defects in materials and workmanship. The foregoing warranties shall apply only if (a) the Software has been properly installed and used at all times and in accordance with the applicable Documentation; and (b) no modification, alteration or addition has been made to the Software by persons other than LiveAction or its authorized representative(s). For the avoidance of doubt, the foregoing warranties are not made with respect to the Evaluation Version. In the event of a breach of the foregoing warranties, you may contact LiveAction for repair or replacement of the Software, or a refund of the license Fee paid by you under this Agreement, at the sole discretion of LiveAction. Any replacement Software provided by LiveAction will be warranted for the remainder of the original warranty period. If You have purchased a Subscription, the limited warranty provisions of this Section 12 shall also apply to the Hardware, if any. **THE FOREGOING IS YOUR SOLE AND EXCLUSIVE REMEDY, AND LIVEACTION'S SOLE AND EXCLUSIVE LIABILITY, FOR BREACH OF ANY OF LIVEACTION'S WARRANTIES REGARDING THE SERVICES SET FORTH IN THIS AGREEMENT.**
- 13. WARRANTY DISCLAIMER.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE WARRANTIES EXPRESSLY STATED HEREIN ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES. OTHER THAN AS EXPRESSLY SET FORTH ABOVE, THE SERVICES ARE PROVIDED AS IS AND LIVEACTION AND ITS RESELLERS, SUPPLIERS AND LICENSORS DISCLAIM ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF TITLE, UNINTERRUPTED USE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. NEITHER LIVEACTION NOR ITS RESELLERS, SUPPLIERS OR LICENSORS WARRANT THAT THE SERVICES WILL BE FREE FROM ERRORS, WILL MEET YOUR PARTICULAR NEEDS, WILL BE FREE FROM BUGS, THAT USE OF THE SERVICES WILL BE UNINTERRUPTED, OR THAT ANY ERRORS OR BUGS WILL BE CORRECTED. YOU ASSUME FULL RESPONSIBILITY FOR THE SELECTION OF THE SERVICES TO ACHIEVE YOUR INTENDED RESULTS AND FOR THE INSTALLATION, USE AND RESULTS OBTAINED THEREFROM. WITHOUT LIMITING THE FOREGOING, LIVEACTION, ITS RESELLERS, SUPPLIERS AND LICENSORS SPECIFICALLY DISCLAIM ALL LIABILITY IN CONNECTION WITH USE OF THE SERVICES FOR, AND YOU AGREE NOT TO USE THE SERVICES FOR, ANY MEDICAL, LIFE-SAVING, AVIATION AND/OR NUCLEAR ACTIVITIES. THE FOREGOING PROVISIONS WILL BE ENFORCEABLE TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. ALL OPEN-SOURCE COMPONENTS ARE PROVIDED "AS IS" AND WITHOUT WARRANTY OF ANY KIND.
- 14. LIMITATION OF LIABILITY.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL LIVEACTION, ITS RESELLERS, SUPPLIERS AND LICENSORS OR ITS AND THEIR RESPECTIVE OFFICERS, DIRECTORS, SHAREHOLDERS, MEMBERS, EMPLOYEES, AND AGENTS (COLLECTIVELY, THE "LIVEACTION PARTIES") BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, LOSS OF REVENUE, LOSS OF INFORMATION, LOSS OF DATA, LOSS OF GOODWILL, BUSINESS INTERRUPTION OR WORK STOPPAGE, COMPUTER FAILURE, MALFUNCTION, OR BUSINESS INTERRUPTION) ARISING OUT OF THE USE OF OR INABILITY TO USE THE SERVICES, INCLUDING FOR THE AVOIDANCE OF DOUBT

ANY OPEN-SOURCE COMPONENTS, HARDWARE, DOCUMENTATION OR SERVICES, EVEN IF THE LIVEACTION PARTY(IES) HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE MAXIMUM CUMULATIVE LIABILITY, AND THE MAXIMUM CUMULATIVE REMEDY YOU MAY RECOVER FROM THE LIVEACTION PARTIES, SHALL BE LIMITED TO THE LICENSE FEE ACTUALLY PAID BY YOU TO LIVEACTION FOR THE SERVICES HEREUNDER IN THE TWELVE MONTHS PRECEDING THE EVENT GIVING RISE TO THE CLAIM. YOU ACKNOWLEDGE AND AGREE THAT, NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED HEREUNDER, LIVEACTION'S PRICING OF ITS FEES UNDER THIS AGREEMENT REFLECTS THE FOREGOING ALLOCATION OF RISK AND LIMITATION OF LIABILITY UNDER THIS AGREEMENT.

- 15. INTELLECTUAL PROPERTY INDEMNIFICATION.** LiveAction will defend at its own expense any third party legal actions brought against You to the extent arising out of or resulting from claims that the Software infringes or violates any United States copyright of any third party during the term of this Agreement ("Claim"), on the condition that You promptly notify LiveAction of the Claim and give LiveAction sole and exclusive control of the defense and settlement of the Claim. You may not settle or compromise any Claim without LiveAction's prior written consent. If You are, or may become, legally prohibited from continued use of the Software by reason of an actual Claim, LiveAction will, at its sole option, (a) obtain for You the right to use the Software, (b) replace or modify such Software so that it is no longer subject to a Claim, but performs similar functions, or (c) immediately terminate this Agreement and refund to You the license Fees You have paid in respect of the Software. LiveAction will have no liability for any Claim based on or related to (i) the Evaluation Version, (ii) use of any other than the most recent release of the Software or failure to timely implement any Maintenance Revision made available to You by LiveAction, (iii) any use of the Software, modification of Software, or the combination of the Software with any other software that is not approved in writing by LiveAction, (iv) any Open-Source Components or other third party materials, (v) negligence, abuse, misapplication or misuse of the Software, Hardware or Documentation by You or on Your behalf or (vi) any copyright issued or application published after the effective date of this Agreement. THIS SECTION STATES LIVEACTION'S SOLE AND EXCLUSIVE LIABILITY, AND YOUR SOLE AND EXCLUSIVE REMEDY, WITH RESPECT TO INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS OF ANY KIND.
- 16. USE INDEMNIFICATION.** You hereby agree to defend, indemnify, and hold the LiveAction Parties harmless from and against any liability, loss, injury, damage, cost or expense (including reasonable attorneys' fees) incurred by the LiveAction Parties arising out of or in connection with a third party claim arising from Your breach of this Agreement or Your use of the Services.
- 17. EQUITABLE REMEDIES.** You hereby agree that LiveAction would be irreparably damaged if the terms of this Agreement were not specifically enforced, and therefore you agree that LiveAction shall be entitled, without bond, other security, or proof of damages, to appropriate equitable remedies with respect to breaches of this Agreement, in addition to such other remedies as LiveAction may otherwise have available to it under applicable laws. In the event any litigation is brought by either party in connection with this Agreement, the prevailing party in such litigation shall be entitled to recover from the other party all the costs, attorneys' fees and other expenses incurred by such prevailing party in the litigation.
- 18. ASSIGNMENT.** Neither party may assign or transfer this Agreement without the prior written consent of the other party, provided that LiveAction may assign or otherwise transfer this Agreement without Your consent in connection with a corporate reorganization, merger, acquisition, sale of assets or stocks, or change of control of LiveAction.
- 19. GOVERNING LAW; JURISDICTION.** This Agreement shall be governed by, and interpreted in accordance with, the laws of the State of California, notwithstanding any conflicts of law provisions, and specifically excluding the provisions of the United Nations Convention on Contracts for the International Sale of Goods. All disputes arising out of or related to this Agreement will be subject to the exclusive jurisdiction of the state courts located in Santa Clara County, California, and the federal courts located in the Northern District of California, and the parties agree and submit to the personal and exclusive jurisdiction and venue of these courts.

- 20. ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement and understanding between You and LiveAction regarding the subject matter herein. No change to this Agreement shall be binding upon LiveAction unless specifically agreed to in a written amendment to this Agreement signed by an authorized representative of LiveAction. Any terms and conditions of a purchase order or other ordering document for the Services (other than an executed Order that references this Agreement) shall not be binding upon and are specifically disclaimed by LiveAction, and this Agreement shall supersede any such terms. Notwithstanding the foregoing, in the event You have separately negotiated an agreement with LiveAction the terms and conditions of such negotiated agreement shall control over and supersede this Agreement.
- 21. SEVERABILITY; WAIVER.** If any provision of this Agreement is found to be illegal or unenforceable, such provision shall be reformed to the extent necessary to make it enforceable, and the remaining provisions of this Agreement shall continue to be valid and enforceable to the fullest extent permitted by law. The failure of either party to enforce its rights under this Agreement at any time for any period shall not be construed as a waiver of such rights.
- 22. EXPORT CONTROLS.** The Services and any technical data related to the Services may not be exported, reexported or used in any manner in violation of the laws, statutes, executive orders or regulations of the United States of America or of any country to which the Services have been legally exported or re-exported. You shall fully comply with all applicable United States and foreign export law, regulations and license restrictions relating to the Services. Without limiting the foregoing, the Services may not be downloaded or otherwise exported or re-exported (i) into (or to a national or resident of) any country to which the U.S. has embargoed goods; (ii) any end user known, or having reason to be known, will utilize them in the design, development or production of nuclear, chemical or biological weapons; or (iii) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Commerce Department's Table of Denial Orders. By downloading or using the Services, You are agreeing to the foregoing and You are representing and warranting that You are not located in, under the control of, or a national or resident of any such country or on any such list.
- 23. U.S. GOVERNMENT RESTRICTED RIGHTS.** The Software and Documentation, and any technical data related to the Software or Documentation, is a "Commercial Item" as that term is defined at 48 C.F.R. §2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation," as such terms are used in 48 C.F.R. §12.212 or 48 C.F.R. §227.7202, as applicable. If the end user of the Software is the U.S. Government or an agency or department thereof, the Software is only delivered as a Commercial Item subject to the license grant and the other terms and conditions set forth in this Agreement. Acquisition of the Software by the U.S. Government or an agency or department thereof shall only be under FAR or DFAR provisions for ACQUISITION OF COMMERCIAL ITEMS and any such acquisition shall not alter the grant or the terms and conditions of this Agreement.
- 24. PRIVACY POLICY.** Please refer to our privacy policy which can be found at www.liveaction.com/index.php/privacy-policy/ as amended by LiveAction from time to time, for information on how we collect, use and disclose information from our users.
- 25. OPEN-SOURCE COMPONENTS.** Certain third-party software tools included in or with the Software are open-source tools subject to open-source copyright license agreements ("Open-Source Components"). Open-Source Components are not provided by or warranted by LiveAction, and such Open-Source Components are excluded from any licensing fee charged by LiveAction for any of its Services.
- 26. INDEPENDENT PARTIES.** The parties are independent contractors. No joint venture, partnership, employment, or agency relationship exists between You and LiveAction as a result of this Agreement or use of the Services.

EXHIBIT A

LIVEACTION: MAINTENANCE PROGRAM TERMS & CONDITIONS

These Maintenance Program Terms govern the support and maintenance services provided by LiveAction to You under the Agreement. All support and maintenance services will be provided only with respect to the two most recent versions of the Software.

MAINTENANCE REVISIONS

“Maintenance Revision” means any update, upgrade, release or other adaptation or modification of the Software, including any updated Documentation, that LiveAction may provide to You from time to time, which may include, among other things, error corrections, enhancements, improvements or other changes to the user interface, functionality, compatibility, capabilities, performance, efficiency or quality of the Software, but does not include any New Version. A **“New Version”** means any version of the Software that LiveAction may from time to time introduce and market generally as a distinct licensed product (as may be indicated by LiveAction’s designation of a new version number), and which LiveAction may make available to You at an additional cost under a separate license and maintenance agreement.

TERM**For Subscription Licenses**

The initial and any renewal term of these Maintenance Program Terms (**“Maintenance Term”**) will correspond to the Initial Term and any Renewal Term of Your Subscription as provided in the Agreement and will continue and automatically renew until the end of such Initial and any Renewal Term, unless the Agreement is terminated earlier in accordance with its terms, including without limitation Your failure to pay LiveAction’s then-current license or support Fees when due. Notwithstanding the foregoing, LiveAction may elect at any time to not renew these Maintenance Program Terms in the event LiveAction generally ceases providing support and maintenance services for the Software to its customers, in which case LiveAction will provide You at least 90 days’ written notice of its intent not to renew. Notwithstanding the length of the Software term, the maximum term for maintenance and support of Hardware is five (5) years.

For Perpetual Licenses

If You have purchased a Perpetual License, the initial term of these Maintenance Program Terms (**“Initial Maintenance Term”**) will continue until the end of the initial maintenance period You purchased in Your Order, unless this Agreement is terminated earlier in accordance with its terms, including without limitation, Your failure to pay the then-current Maintenance Fee (as defined below) when due. Upon expiration of Your Initial Maintenance Term, Your maintenance term will automatically renew for additional successive terms, each equal in length to the Initial Maintenance Term, unless this Agreement is terminated earlier in accordance with its terms or either Party gives the other Party written notice of non-renewal at least 60 days prior to the expiration of the then current term (each a **“Renewal Maintenance Term”**).

In the event You wish to renew these Maintenance Program Terms after termination, LiveAction may, as a condition of renewal after termination, charge a reinstatement fee (not to exceed half of the then-applicable Maintenance Fee) in addition to the Maintenance Fee; and for requests to renew the Maintenance Program Terms thereafter, LiveAction may in its discretion refuse renewal. In addition, LiveAction may elect at any time to not renew these Maintenance Program Terms in the event LiveAction generally ceases providing support and maintenance services for the Software to its customers, in which case LiveAction will provide You at least 90 days’ written notice of its intent not to renew.

SUPPORT AND MAINTENANCE SERVICES

LiveAction will provide to You during the term of these Maintenance Program Terms (as they may be renewed) the following support and maintenance services with respect to the Software and the Hardware (if any):

- Maintenance Revisions that are generally made available by LiveAction to its customers who have contracted to receive support and maintenance services from LiveAction, as such Maintenance Revisions become available, but not including platform extensions or product extensions to different hardware platforms or different windowing system platforms or different operating system platforms not listed in the Software's specifications in the Documentation;
- Updates to Documentation as may from time-to-time become available;
- Technical Support – Please visit <http://liveaction.com/support/technical-support/> for technical support trouble ticket submissions and current phone number, or email LiveAction's Technical Support at support@liveaction.com. Normal business hours during which LiveAction will provide technical support are posted on LiveAction's website.

LiveAction's obligations to provide the foregoing services are subject to Your:

- Promptly providing notice to LiveAction's designated email address of any bugs or apparent programming error You become aware of;
- Providing LiveAction with such information as it may reasonably request to identify and replicate the bug or error, such as error diagnostic messages, diagnostic memory dumps, operator console logs, data file dumps, application Software listings, and a written explanation of the problem; and
- Using reasonable efforts before contacting LiveAction to resolve the error if it is not clearly related to an error in the Software. Such efforts will include, as appropriate: (1) a technical analyst attempting to resolve end user issues based on personal knowledge or investigation; and (2) diagnostic investigation to define, isolate, and resolve the suspected error.

The Maintenance Program does not cover any support or maintenance of Hardware vendor operating systems and other host system software, including Your own or third-party software.

PERPETUAL LICENSE - MAINTENANCE FEE

If You have purchased a Perpetual License, You agree to pay to LiveAction or the respective authorized LiveAction reseller (as applicable) a Maintenance Fee for the provision of the maintenance and technical support services in accordance with this Exhibit A. The annual Maintenance Fee shall be as per Your Order or as otherwise communicated to You by LiveAction from time to time at the beginning of the applicable Initial Maintenance Term or any Renewal Maintenance Term.

EXHIBIT B

EVALUATION LICENSE TERMS & CONDITIONS

These terms and conditions govern in the event You wish to evaluate certain LiveAction Software, Hardware and/or related Documentation and materials (collectively, the "Evaluation Products") as a proof of concept in a non-commercial, non-production environment (the "Evaluation").

1. Evaluation License.

- a.** The Evaluation will continue for a period of 60 calendar days from the date LiveAction ships the relevant Evaluation Products to You, or the date You first access or download the Evaluation Products (the "Evaluation Period"), and the Evaluation Period may be extended only in writing (email sufficient) at LiveAction's sole discretion.
- b.** LiveAction grants to You a limited, personal, non-exclusive, nontransferable, non-sublicenseable, evaluation license and right to use the Evaluation Products, free of charge, upon Your request and for one time only, for the Evaluation Period and solely for Your internal evaluation of the Evaluation Products' suitability for Your business needs. You will have no right under the Agreement, including under this Exhibit B, to use the Evaluation Products for production, development, commercial use or any other purpose not specifically set forth herein.
- c.** You are responsible for all of Your own costs and expenses associated with the use and maintenance of the Evaluation Products evaluated in the course of the Evaluation and the performance of all testing and evaluation activities.
- d.** LiveAction provides the Hardware, if any, to You for the Evaluation Period. In the event that the Hardware includes or incorporates any software code (include without limitation any firmware, operating system or other software), such software code shall be deemed "Software" licensed to You solely under the terms of this Exhibit B. The Hardware is loaned, not sold to You. You shall keep the Hardware free of all security interests, liens and other encumbrances. You shall not sell, lease, sublicense, assign or otherwise transfer, export or dispose of the Hardware. You will use reasonable care in the use of the Hardware and protect the Hardware from theft, damage or misuse. You assume the entire risk of loss, damage, or theft of the Hardware while in Your possession. You shall not, and shall not allow others to, reverse engineer, de-compile or disassemble the Hardware, or otherwise attempt to discover any underlying proprietary or confidential information. You will use the Hardware solely in connection with the Software and in technical configuration specified by LiveAction.
- e.** Notwithstanding anything to the contrary herein: (i) LiveAction shall have no obligation under this Agreement or otherwise to provide any maintenance or support services with respect to the Evaluation Products; and (ii) LiveAction shall have no obligations to indemnify or otherwise defend You under this Agreement with respect to the Evaluation Version; and (iii) Sections 7, 12 and 15 of the main body of the Agreement (the "Main Agreement") shall not apply with respect to the Evaluation Products.
- f.** Following the end of the Evaluation Period, Your Evaluation License may be converted into a Subscription License or Perpetual License upon execution of a Quote or Order, Your payment of the applicable subscription Fees and Your agreement with the then-current version of the Agreement in effect at the time.
- g.** The Evaluation may be terminated immediately upon notice from LiveAction in its sole discretion.
- h.** Except to the extent such terms conflict with the specific Evaluation License Terms and Conditions set forth in this Exhibit B, all other terms of the Agreement shall apply to Your use of the Services during the Evaluation.

- 2. Intellectual Property Rights & Ownership.** LiveAction and its licensors or suppliers own and retain all right, title and interest, including all copyrights, patents, trade secret rights, trademarks, and other intellectual property rights, in and to the Evaluation Products. You shall keep the Products free and clear of all claims, liens and legal processes of Your creditors, or any other party claiming through You.

3. Termination.

- a. Notwithstanding anything to the contrary herein, upon the expiration or termination of the Evaluation, (i) You shall return to LiveAction all copies of any Software Evaluation Products, LiveAction's Confidential Information, and destroy all electronic copies of any of the foregoing in Your possession and certify to LiveAction in writing that it has done so; and (ii) if You do not choose to enter into a Subscription License or Perpetual License following the Evaluation, You will, within ten (10) days of the end of the Evaluation Period and at Your expense, return any such Hardware Evaluation Products to LiveAction in the same condition as when delivered to You, reasonable wear and tear excepted. All such Evaluation Products are to be returned in the original packing material. If any such Hardware is not returned to LiveAction in the condition set forth above within ten (10) days of the expiration or termination of the Evaluation Period, LiveAction will charge You and You shall pay for the Hardware Evaluation Products at full undiscounted and then-current list price.
- b. Sections 2 through 6 of this Exhibit B will survive termination or expiration of the Evaluation and the Agreement.

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6. Partnership; Obligations. Neither the discussions taking place between the parties nor the exchange of material or information shall be deemed to create any partnership, agency or other relationship, between the parties or to create or impose on either party an obligation to enter into any other agreement with the other party or prohibit either party from entering into discussions and agreements with third parties except as otherwise provided herein.

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