

LIVEACTION, INC.

SOFTWARE LICENSE & MAINTENANCE AGREEMENT

LAST UPDATE: DECEMBER 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"), ThreatEye Software-as-a-Service subscription license ("SaaS License"), perpetual licenses for on-premises installed software ("Perpetual On-Prem License") and subscription licenses for on-premises installed software ("Subscription On-Prem License") to its customers. LiveAction's on-premises, installed software shall be referred to as the "On-Prem Software"; LiveAction's ThreatEye Software-as-a-Service software shall be referred to as the "SaaS Software"; and the On-Prem Software and SaaS Software shall be collectively referred to as the "Software".

This Agreement governs Your use of the any version of Software provided or made available to You previously, concurrently or hereafter, any hardware purchased by 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, including training ("Professional Services"). The Software, Hardware, Documentation and Professional Services are collectively referred to as the "Services".

- 1. DESCRIPTION OF LICENSES AND SERVICES.** Your Order will identify whether You have a Subscription On-Prem License, a Perpetual On-Prem License or a SaaS License.
 - a.** If You have ordered a Subscription On-Prem 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 limited, non-transferable, non-exclusive, non-sublicensable, non-assignable (except as expressly set forth below), revocable subscription license to install and use the On-Prem Software on one or more hardware platforms during the term of this Agreement. The Subscription On-Prem 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 Sections 10 and 11. Fees are non-refundable if You cancel Your Subscription On-Prem License or the Subscription On-Prem License is terminated by LiveAction for cause. All Subscription On-Prem licenses granted hereunder shall be term licenses for the term set forth in the relevant Order.
 - b.** If You have ordered a Perpetual On-Prem 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, non-assignable (except as expressly set forth below), fully paid-up and perpetual (subject to termination as set forth herein) license to install and use the On-Prem Software on one or more hardware platforms during the term of this Agreement. Your Perpetual On-Prem 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.

- c.** You may request to change Your license type from Perpetual On-Prem License to Subscription On-Prem License by submitting an amended Order specifying your request 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 Subscription On-Prem License shall begin and terminate as described above.
- d.** If You have ordered a SaaS License:
 - i.** 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, non-assignable (except as expressly set forth below), revocable license to access and use the SaaS Software for Your internal business purposes and in accordance with the subscribed volume set forth on the Order ("Subscribed Volume"). The SaaS License begins at the time LiveAction delivers logon credentials (other than on a trial 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 SaaS License or the SaaS License is terminated by LiveAction for cause. All SaaS Licenses granted hereunder shall be term licenses for the term set forth in the relevant Order. If during a SaaS License term You exceed the Subscribed Volume, the provisions set forth on Exhibit C attached hereto shall apply, and in the event of an Over-Subscribed Situation (as defined on Exhibit C), the covenants, representations and warranties in this Agreement regarding the provision of the Services, including without limitation the Service Level Agreement, shall not apply.
 - ii.** LiveAction will provide the SaaS Software in a manner consistent with technology industry standards, which includes reasonable service interruptions due to scheduled maintenance, unscheduled emergency maintenance, or because of other causes beyond LiveAction's reasonable control. LiveAction's Service Level Agreement is set forth on Exhibit D attached hereto.
 - iii.** "Your Data" means all data, information or material that You submit to the SaaS Software. You represent and warrant that: (A) You own or otherwise have and will have the necessary rights and consents in and relating to Your Data, and (B) You will not knowingly introduce into the SaaS Software any viruses or other harmful code. You are solely responsible for the accuracy, integrity, legality, reliability and appropriateness of Your Data. You further acknowledge that LiveAction does not provide or undertake backup or maintenance services for Your Data, and You shall be solely responsible for backup of all Your Data. You hereby grant to LiveAction a non-exclusive, worldwide, royalty-free, fully paid-up, perpetual and irrevocable license during the term and thereafter to use Your Data that has been anonymized and aggregated with anonymized data of other LiveAction customers ("Anonymous Data") in order to improve and enhance the Software. For clarity, Anonymous Data shall not be identifiable to any customer or to any user.
 - iv.** Each Party has obligations with respect to the security of the SaaS Software and Your Data. Taking into account the nature and types of Your Data, LiveAction will employ reasonable administrative, physical and technical measures in accordance with applicable industry practice, including Soc II Type 2 certification, to protect the SaaS Software and prevent the accidental loss or unauthorized access, use, alteration or disclosure of Your Data under its control during the Term.
 - v.** The Data Processing Addendum located at trustcenter.liveaction.com ("DPA") accompanies this Agreement and sets forth other terms of our agreement that apply to the extent any information You provide to LiveAction via Your use of the SaaS Software for processing by LiveAction includes "personal data" or "personal information" or like term under applicable law; provided, however, that the DPA shall not apply to personal data that LiveAction processes as a controller, including with respect to the personal data of Your Contacts (as defined below). "Your Contacts"

means the name and contact information of those of Your employees who are the business contacts responsible for interacting with LiveAction in connection with our business relationship.

- vi. The SaaS Software retains Your Data for a period of one year (the “Retention Period”) on a daily rolling basis (i.e., Your Data will be erased at the end of the Storage Period, and new data will be stored in its place), so that at any time during the SaaS License term, Your Data derived by the SaaS Service for the most recent Retention Period may be searchable by You; please see the applicable provisions in the SaaS Software user guide for limitations.
 - e. 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 Software or downloading the On-Prem 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 of On-Prem Software that You may use solely for backup and recovery purposes.
 - f. If You have been provided an Evaluation License for either On-Prem or SaaS Software: 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.
 - g. Unless subject to a separate agreement by the parties, LiveAction’s provision of Professional Services shall be 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 sell the Hardware to You for use in connection with Software. 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 (including 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.**
- a. 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. The

- 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.
 - f.** 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 SAAS LICENSES AND SUBSCRIPTION ON-PREM LICENSES.** The initial term of this Agreement and Your license term for Subscription On-Prem Software and/or SaaS 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 the Initial Term, unless the parties agree to auto-renewal in an Order, Your license term will renew for additional successive terms upon the mutual written agreement of the parties (each a “Renewal Term”). Notwithstanding the length of the license 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 and remove all On-Prem Software 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 On-Prem 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 On-Prem Software or accessed the SaaS Software (the "Warranty Period"), that (i) the Software will operate substantially in accordance with the applicable Documentation and (ii) the media on which the On-Prem 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 (as applicable) 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 an Evaluation Version of Software or any Software offered under an Evaluation License. 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 Fees 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 SaaS License, 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 (AS APPLICABLE), USE AND RESULTS OBTAINED THEREFROM. YOU UNDERSTAND THAT: (A) ANY OUTCOME OF THE USE OF THE SERVICES IS LIMITED TO A POINT-IN-TIME EXAMINATION OF YOUR DATA; AND (B) THE SERVICES DO NOT CONSTITUTE ANY FORM OF REPRESENTATION, WARRANTY OR GUARANTEE THAT YOUR SYSTEMS ARE SECURE FROM EVERY FORM OF ATTACK. YOU UNDERSTAND AND ACKNOWLEDGE THAT NOT ALL ANOMALIES OR INTRUSIONS MAY BE REPORTED OR PREVENTED. 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, CONSEQUENTIAL OR PUNITIVE 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 THESE 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 FEES 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 or SaaS Software update 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. However, in the case of any conflict, the terms of an executed Order shall take precedence over a provision in the body of this Agreement. 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 License Fees 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 On-Prem Licenses and SaaS 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 On Prem License and/or SaaS License as provided in the Agreement, unless the Agreement is terminated earlier in accordance with its terms, including without limitation Your failure to pay LiveAction’s then-current License Fees or Maintenance Fees when due. Notwithstanding the foregoing, for On-Prem Software, 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 applicable Software to its customers. Notwithstanding the length of the license term, the maximum term for maintenance and support of Hardware is five (5) years.

For Perpetual On-Prem Licenses

If You have purchased a Perpetual On-Prem 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, unless the parties agree to auto-renewal in an Order, your maintenance term will renew for additional successive terms upon the mutual written agreement of the parties (each a “Renewal Maintenance Term”).

In the event You wish to renew these Maintenance Program Terms after termination, LiveAction shall, 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.

SUPPORT AND MAINTENANCE SERVICES FOR ON-PREM SOFTWARE

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 On-Prem Software 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 ON-PREM LICENSE - MAINTENANCE FEE

If You have purchased a Perpetual On-Prem License, You agree to pay to LiveAction or the respective authorized LiveAction reseller (as applicable) Maintenance Fees for the provision of the maintenance and technical support services in accordance with this Exhibit A. The annual Maintenance Fees 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.

SUPPORT AND MAINTENANCE SERVICES FOR SAAS SOFTWARE

LiveAction will provide to You during the term of Your SaaS License the following support and maintenance services:

- LiveAction will regularly push Maintenance Revisions for SaaS Software to its SaaS Software customers, and such Maintenance Revisions are included in the Fees for the SaaS License;
- 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.

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 (including 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 On-Prem License, Perpetual On-Prem License or SaaS License (as applicable) upon execution of a Quote or Order, Your payment of the applicable 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 You have done so; and (ii) if You do not choose to enter into a license for Software 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.

4. Disclaimer; No Warranty.

THE EVALUATION PRODUCTS AND THE CONFIDENTIAL INFORMATION ARE PROVIDED ON AN "AS IS," "AS AVAILABLE" BASIS, WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED AND LIVEACTION AND ITS RESELLERS, SUPPLIERS AND LICENSORS DISCLAIM ALL WARRANTIES EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE, AND NON-INFRINGEMENT.

5. LIMITATION OF LIABILITY.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL THE LIVEACTION PARTIES (AS DEFINED IN THE MAIN AGREEMENT) 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 EVALUATION PRODUCTS, EVEN IF THE LIVEACTION PARTY(IES) HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED HEREUNDER. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE MAXIMUM CUMULATIVE LIABILITY, AND THE MAXIMUM CUMULATIVE REMEDY YOU MAY RECOVER FROM THE LIVEACTION PARTIES (AS DEFINED IN THE MAIN AGREEMENT) IN CONNECTION WITH AN EVALUATION SHALL BE LIMITED TO \$100.

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.

EXHIBIT C**SERVICE LIMITS AND OVER-SUBSCRIBED SITUATIONS**

1. The inbound volume of Your Data is averaged and assessed every 1 hour.
2. Sustained one-hour periods of inbound data traffic in excess of the Subscribed Volume as set forth on Your Order is deemed a "burst".
3. Bursts that are less than 20% above Your Subscribed Volume are considered normal bursts.
 - a. More than ten normal burst periods over a seven-day period is deemed an "Over-Subscribed Situation."
 - b. You will be notified of the Over-Subscribed Situation and given 30 days to cure by either:
 - i. Reducing Your inbound data volume; or
 - ii. Purchasing more capacity
 - c. LiveAction reserves the right to suspend inbound flows of Your Data after 30 days if the Over-Subscribed Situation is not remedied during such notice period. LiveAction shall have no liability for any data flows that You initiate but which are not received by LiveAction in connection with an Over-Subscribed Situation or Your suspension.
4. Bursts that are more than 20% above Your Subscribed Volume are "extreme bursts".
 - a. Any extreme burst will be deemed an Over-Subscribed Situation.
 - b. You will be notified of the Over-Subscribed Situation.
 - c. LiveAction reserves the right to suspend inbound flows of Your Data immediately upon notice (no cure period). LiveAction shall have no liability for any data flows that You initiate but which are not received by LiveAction in connection with an Over-Subscribed Situation or Your suspension.

EXHIBIT D

SERVICE LEVEL AGREEMENT

This is Exhibit D - Service Level Agreement ("SLA") for SaaS Software to the Software License and Maintenance Agreement ("Agreement") between LiveAction, Inc. and You. Capitalized terms defined in this SLA shall have the meanings ascribed to them herein. Capitalized terms used in this SLA but not defined herein, shall have the meanings ascribed to them in the Agreement.

1. Definitions.

"Availability Percentage" means:

$((N \text{ minus } O) \text{ divided by } N) \text{ times } 100$

where

"N" is the total number of hours in any Month minus Excluded Downtime;

and

"O" is the total number of hours or portions thereof in any Month, other than Excluded Downtime, that the SaaS Software is not accessible by You.

"Excluded Downtime" means the total number of hours or portions thereof in a Month of (i) Scheduled Maintenance, (ii) Emergency Maintenance, (iii) downtime caused by errors or failures in equipment, the Internet and other networks not within LiveAction's control, and (iv) downtime caused by Your exceeding Your Service Limits.

"LiveAction Support Hours" means 8 hours per day, 5 days per week, 52 weeks per year (except for US federal holidays), and 24 hours per day, 7 days per week for Priority 1 Issues.

"Month" means a calendar month.

"Service Credit" shall mean the credit issued for a Service Outage as set forth below in Section 3.

"Service Outage" shall mean an event where LiveAction has failed to meet the Service Level in Section 2(a) below.

2. Service Level.

- a. Service Level.** LiveAction warrants: (i) that the Availability Percentage of the SaaS Software shall be at least 99.95% during each Month ("Service Level"); and (ii) the functionality or features of the SaaS Software may change but will not materially decrease during any paid term. The warranties in this SLA apply solely to Your use of the SaaS Software within Your permitted Service Limits.
- b. Scheduled Maintenance.** LiveAction may schedule downtime or periods when the SaaS Software will be unavailable so as to improve, repair or otherwise maintain the SaaS Software ("Scheduled Maintenance"). LiveAction will make commercially reasonable efforts to notify Your designated point of contact by phone or email at least one (1) week in advance of upgrades, maintenance and other planned activities that may result in an interruption in the SaaS Software. LiveAction will use commercially reasonable efforts to ensure all such Scheduled Maintenance shall: (i) last no longer than two hours; (ii) be scheduled during weekend hours or between the hours of 11 p.m. and 5 a.m. Eastern; and (iii) occur no more frequently than twice/month excluding emergency maintenance as detailed in section 2(c); provided that LiveAction may request Your approval for extensions of Scheduled Maintenance.
- c. Emergency Maintenance.** On occasion, emergency maintenance may be required to address material security-related issues or technical problems that would impact the availability of the SaaS Software and resolution of which cannot wait until the next Scheduled Maintenance or cannot be

remedied in the course of Scheduled Maintenance ("*Emergency Maintenance*"). LiveAction shall use commercially reasonable efforts to notify Your designated point of contact by phone or email at least two (2) hours in advance of any Emergency Maintenance, and if possible to post on the SaaS Software an appropriate message, where possible, but in any event shall promptly notify You of the Emergency Maintenance and actions being taken in the course thereof once LiveAction becomes aware of an occasion requiring Emergency Maintenance.

3. Service Credits

- a. **Service Credit Amount.** In the event that the Availability Percentage for a Month falls below the Service Level set forth in Section 2(a) of this SLA, then a Service Outage will have occurred and You, within 30 days of the end of the applicable Month, may request a Service Credit equal to 1% of the Month's subscription fee for the affected Service for each 1% by which the Availability Percentage falls below the Service Level. The maximum amount of the Service Credit is 50% of the monthly subscription fee.
- b. **Claims for Service Credit.** Any claims for a Service Credit shall be made by You to LiveAction's customer support organization by email to support@liveaction.com. LiveAction will investigate the claim and will endeavor to respond back to You within fourteen (14) days of receipt of the notification of a claim from You, either (i) accepting Your Service Outage claim, or (ii) with details and documentation supporting a dispute of Your Service Outage claim, in which case the parties shall resolve any such dispute promptly in good faith. Service Credits obtained by You shall have no cash value but will apply as set forth herein against future invoices. Credits will not apply to any other form of Services provided by LiveAction. Your sole and exclusive remedy, and LiveAction's sole and exclusive liability, in the event of a Service Outage, shall be to receive the Service Credits in accordance with the terms of this SLA.

4. **Severity Definitions, Escalations and Procedures.** LiveAction shall provide Support Services in accordance with the severity escalations and procedures set forth at <https://www.liveaction.com/support/technical-support/>.

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