SOFTWARE LICENSE AGREEMENT

- For commercial transactions only -

1.   PARTIES AND INTRODUCTION

1.1   **Parties.** This Software License Agreement (**Agreement**) is entered into between

Matrix42 AG

incorporated and registered in Frankfurt, Germany
with company number HRB 100049
whose registered office is at Elbinger Strasse 7, 60487 Frankfurt, Germany

(**Matrix42**)

and

_____[*full legal name*]

incorporated and registered in the State/Commonwealth of _____, United States
whose principal office address is

(**Customer**).

1.2 **Introduction.** Matrix42 is the legal and beneficial owner and licensor of certain Matrix42 Workspace Management software products listed in the Offer and the Customer wishes to license software products from Matrix42. Matrix42 has agreed to provide and the Customer has agreed to take and pay for such software products subject to the terms and conditions of this Agreement.

2.   INTERPRETATION

2.1   **Definitions.** The definitions in this clause apply in this Agreement:

Authorized Devices: the devices through which the Customer is authorized to use the Software and Documentation, as determined by the Customer;

Authorized Usage Unit Limitation: the maximum number of Authorized Users or Authorized Devices authorized to use the Software as set out in Schedule 1;

Authorized Users: those employees, agents and independent contractors of the Customer who are authorized to use the Software and Documentation, as determined by the Customer;

Business Day: any day which is not a Saturday, Sunday or U.S. Federal public holiday;

Confidential Information: information that is proprietary or confidential, including trade secrets, and is either clearly labelled as such or which ought reasonably to be considered proprietary or confidential;

Effective Date: _____ __, 201_, the effective date of this Agreement;

Documentation: the documents provided by Matrix42 for the Software, in either printed text, electronic format or machine-readable form, including the technical documentation, program specification and operations manual (whether pursuant to this Agreement or otherwise);

Fee: the fees payable by the Customer to Matrix42 are as set out in the Offer, as amended in accordance with clause 8.6 together with such other charges as may be payable pursuant to this Agreement;

Initial Term: the period of 12 months starting on the Effective Date;

Intellectual Property Rights: means rights in and/or to any patents, trade secrets, trademarks, service marks, rights (registered or unregistered) in any designs, applications for any of the foregoing, trade or business names, copyright (including rights in computer software) and topography rights, know-how, secret formulae and processes, lists of suppliers and customers and other proprietary knowledge and information, internet domain names, rights protecting goodwill and reputation, database rights (including rights of extraction) and all rights and forms of protection of a similar nature to any of the foregoing or having equivalent effect anywhere in the world and all rights under licenses and consents in respect of any of the rights and forms of protection mentioned in this definition;

Modification: any modified version of the Software which may be made available by Matrix42 to Customer pursuant to this Agreement;

Offer: the offer made by Matrix42 to Customer in respect of the provision of the Software pursuant to this Agreement, which was dated on the date set out in Schedule 1;

Perpetual License: has the meaning given in clause 4.1(b);

Renewal Period: has the meaning given in clause 14.1;

Site: the premises from which the Customer carries out its business as stated above;

Software: the computer programs set out in the Offer and any Modification which is acquired by the Customer during the Term (whether pursuant to this Agreement or otherwise);

Specification: the parts of the Documentation detailing the specification of the Software;

Term: the term of this Agreement as determined in accordance with clause 14.1;

Term License: has the meaning given in clause 4.1(a); and

Third Party Software: software that has been produced by third parties, as indicated in the Offer.

2.2 **Interpretation.** The rules of interpretation in this clause apply in this Agreement:

(a)   clause, schedule and paragraph headings shall not affect the interpretation of this Agreement;

(b)   a person includes an individual, corporate or unincorporated body (whether or not having separate legal personality), a limited liability company, a partnership, whether limited or otherwise, and its successors or permitted assigns;

(c)   a reference to a company shall include any company, corporation, limited liability company, partnership, whether limited or otherwise, or other body corporate, wherever and however incorporated or established;

(d)   words in the singular shall include the plural and vice versa;

(e)   a reference to one gender shall include a reference to the other genders;

(f)   a reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it;

(g)   a reference to writing or written includes faxes but not e-mail; and

(h)   references to clauses and schedules are to the clauses and schedules of this Agreement; references to paragraphs are to paragraphs of the relevant schedule to this Agreement.

2.3 **Schedules.** Each of the schedules shall have effect as if set out in this Agreement.

2.4 **Conflict.** In the case of conflict or ambiguity between any provision contained in the body of this Agreement and any provision contained in the schedules, the provision in the body of this Agreement shall take precedence.

3.   OFFER VALIDITY, DELIVERY AND INSTALLATION

3.1 **Offer validity.** The Customer acknowledges and agrees that the Offer shall be valid for the period set out in the Offer (Schedule 1) or, if no such period is set out, for a period of four weeks starting on the date of the Offer.

3.2 **Delivery.** Matrix42 shall deliver one copy of the Software electronically or on a disk (as determined by Matrix42 in its absolute discretion) to the Customer at the address for the Customer (stated above) within 14 days of execution of this Agreement. Risk of loss in any tangible media on which the Software is delivered shall pass on delivery.

3.3 **Installation.** The Customer shall install the Software. If the Customer wishes to purchase installation or other services, the Customer shall notify Matrix42 in writing. Matrix42 shall evaluate such request and, if it agrees to the request, the parties shall document the purchase of additional services through a written amendment to this Agreement.

4.   LICENSE

4.1 **License to use the Software.** Subject to the Customer paying the Fee in accordance with clause 8 the restrictions set out in this clause 4, the Authorized Usage Unit Limitation and the other terms and conditions of this Agreement, Matrix42 grants to the Customer a non-exclusive, non-transferable license:

(a)   if the Offer indicates that the license to which it relates is to be term-limited, for such term (a Term License); or

(b)   if the Offer indicates that the license to which it relates is to be perpetual, in perpetuity (unless Matrix42 terminates this Agreement or the Customer uses the Software in material breach of this Agreement, in which case it shall terminate with immediate effect) (a Perpetual **License**),

to use the Software (in object code form) and the Documentation at the Site only, solely for the Customer's internal business purposes.

4.2 **Undertakings.** The Customer undertakes that:

(a) it shall ensure that the Software is installed on designated equipment only;

(b)   it shall keep a complete and accurate record of the Customer's and its Authorized Users' use of the Software and produce such record to Matrix42 on request;

(c)   it shall pay for broadening the scope of the license granted under this Agreement to cover the unauthorized use, an amount equal to the fees which Matrix42 would have levied (in accordance

with its normal commercial terms then current) had it licensed any such unauthorized use on the date when such use commenced together with interest at the rate provided for in clause 8.3, from such date to the date of payment.

(d)   it shall permit Matrix42 to access its records, systems and premises in order to audit its use of the Software in order to establish whether the Authorized Usage Unit Limitation and the terms of this Agreement are being complied with. Such audit may be conducted no more than once in any three month period, at Matrix42's expense, (unless an audit is conducted due to a breach of any term of this Agreement by the Customer in which case it shall not be so numerically restricted), and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially and materially interfere with the Customer's normal conduct of business; and

(e)   if any of the audits referred to in clause 4.2(d) reveal that the Customer has exceeded the Authorized Usage Unit Limitation and therefore underpaid the Fee payable to Matrix42, then without prejudice to Matrix42's other rights, the Customer shall pay to Matrix42 an amount equal to such underpayment as calculated in accordance with the prices set out in the Offer within 10 Business Days of the date of the relevant audit.

4.3 **License restrictions.** The Customer shall not, and shall ensure and warrant that the Authorized Users do not:

(a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties:

(i)   and except to the extent expressly permitted under this Agreement, the Customer shall not attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means; or

(ii) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software;

(b) the Customer shall not use all or any part of the Software and/or Documentation in order to build a product or service which competes in any manner with the Software and/or Documentation or any other services, software or products offered by Matrix42;

(c) the Customer shall not use the Software and/or Documentation to provide services to third parties;

(d) subject to clause 22.1, the Customer shall not license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Software and/or Documentation available to any third party;

(e) remove or alter any copyright notices, serial numbers or other markings used to identify the Software; and

(f) the Customer shall not attempt to obtain, or assist third parties in obtaining, access to the Software and/or Documentation, other than as provided under this clause 4.3.

4.4 **Unauthorized access.** The Customer shall prevent any unauthorized use of the Software and/or the Documentation and, in the event of any such unauthorized use, promptly notify Matrix42 in writing.

4.5 **Responsibility for Authorized User acts and omissions.** The Customer shall ensure and warrant that its Authorized Users strictly comply with the provisions of this Agreement and shall be responsible and vicariously liable for the negligence, acts and omissions of Authorized Users as if such negligence, acts or omissions were its own.

5. ADDITIONAL LICENSES

5.1 **Purchase of additional licenses.** If the Customer wishes to purchase additional licenses to use the Software and the Documentation, the Customer shall notify Matrix42 in writing. Matrix42 shall evaluate such request and, if it agrees to the request, the parties shall document the purchase of additional licenses in a written amendment to the Agreement (including such amendments to the Fees and to the Authorized Usage Unit Limitation as are necessary to reflect the additional licenses).

6. MATRIX42'S OBLIGATIONS

6.1 **Warranties.** Matrix42 undertakes that the Software will conform in all material respects to the Specification for a period of 90 days from the Effective Date (**Warranty Period**). If, within the Warranty Period, Matrix42 breaches this clause 6.1 Matrix42 will, at its expense, use commercially reasonable endeavors to correct any such breach promptly. Such correction constitutes the Customer's sole and exclusive remedy for any breach of this clause 6.1. Notwithstanding the foregoing, Matrix42:

(a) DOES NOT WARRANT THAT THE CUSTOMER'S USE OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE; OR THAT THE SOFTWARE, DOCUMENTATION AND/OR THE INFORMATION OBTAINED BY THE CUSTOMER THROUGH THE SOFTWARE WILL MEET THE CUSTOMER'S REQUIREMENTS;

(b) EXCEPT AS EXPRESSLY SET FORTH HEREIN, EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THE SOFTWARE, DOCUMENTATION OR ANY OTHER SERVICES HEREUNDER AND THE INTELLECTUAL PROPERTY INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE AND NO REPRESENTATIVE OF MATRIX42 IS AUTHORIZED TO GIVE ANY ADDITIONAL WARRANTY; and

(c) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Software and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

6.2 **Non-conformance.** The undertaking at clause 6.1 shall not apply to the extent that any non-conformance of the Software with the Specification is caused by use of the Software contrary to Matrix42's instructions or the terms of this Agreement, or modification or alteration of the Software by any party other than Matrix42 or Matrix42's duly authorized personnel, contractors or agents.

6.3 **Similar documentation products and services.** This Agreement shall not prevent Matrix42 from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this Agreement.

7. CUSTOMER'S OBLIGATIONS

7.1 **Customer's Obligations.** The Customer shall:

(a) provide Matrix42 with:

     (i)   all necessary co-operation in relation to this Agreement; and

     (ii) all necessary access to such information as may be required by Matrix42;

(b) comply with all applicable laws and regulations with respect to its activities under this Agreement;

(c) carry out all other Customer responsibilities set out in this Agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, Matrix42 may adjust any agreed timetable or delivery schedule as reasonably necessary;

(d) ensure that the Software is used in accordance with the terms and conditions of this Agreement;

(e) notify Matrix42 in writing as soon as it becomes aware of any unauthorized use of the;

(f) take due care and appropriate measures to prevent third parties from gaining unauthorized access to the Software, including storing original disks, back-up copies, license keys and license certifications in a secured location;

(g) obtain and shall maintain all necessary licenses, consents, and permissions necessary for Matrix42, its personnel, contractors and agents to perform their obligations under this Agreement; and

(h) ensure that its network and systems comply with the relevant specifications provided by Matrix42 from time to time.

8. CHARGES AND PAYMENT

8.1   **Fee.** The Customer shall pay the Fees to Matrix42 in accordance with this clause 8.

8.2 **Invoicing.** Matrix42 shall invoice the Customer as follows:

(a) if the license granted pursuant to this Agreement is a Term License:

     (i)   on the Effective Date for the Fee payable in respect of the Initial Term; and

     (ii) subject to clause 14.1, on the first day of each Renewal Period for the Fee payable in respect of the next Renewal Period; or

(b) if the license granted pursuant to this Agreement is a Perpetual License, on the Effective Date for the Fee payable in respect of the license,

and the Customer shall pay each invoice within 30 days of the date of such invoice.

8.3 **Interest.** Interest shall accrue on such due amounts at an annual rate equal to 5% over the then current base lending rate of Barclays Bank PLC at the date the relevant invoice was issued, commencing on the due date and continuing until fully paid, whether before or after judgment.

8.4 **Non-payment.** If Matrix42 has not received payment within 30 days of the due date, and without prejudice to any other rights and remedies of Matrix42, Matrix42 may, without liability to the Customer, disable the Customer's access to the Software and Matrix42 shall be under no obligation to provide the Software or otherwise perform under this Agreement while the invoice(s) concerned remain unpaid.

8.5 **Amounts.** All amounts and fees stated or referred to in this Agreement:

(a) shall be payable in United States Dollars (US $);

(b) are subject to clause 13.4, non-cancellable and non-refundable;

(c) are exclusive of value added tax, which shall be added to Matrix42's invoice(s) at the appropriate rate; and

(d) are in addition to, and not in lieu of, any additional fees, assessments, levies or governmental charges assessed against the transactions contemplated herein. With the exception of taxes imposed on Matrix42's net income, ad valorem and sales tax as provided by applicable law, all such taxes shall be the Customer's responsibility. The Customer shall pay any such taxes, which Matrix42may be required to collect and remit, upon invoice.

8.6 **Fee increases.** In respect of Term Licenses granted pursuant to clause 4.1(a), Matrix42 shall be entitled to increase the Fee at the start of each Renewal Period upon not less than 90 days' prior notice to the Customer and clause 8.1 shall be deemed to have been amended accordingly, provided that Matrix42 may not increase the Fee by more than 5% unless Matrix42's labor costs have risen by more than 5% during the immediately preceding 12 months.

9.   PROPRIETARY RIGHTS

9.1 **Intellectual Property Rights.** The Customer acknowledges and agrees that Matrix42 and/or its licensors own all Intellectual Property Rights in the Software, any services and the Documentation. Except as expressly stated herein, this Agreement does not grant the Customer any rights to, or in any Intellectual Property Rights or any other rights or licenses in respect of the Software or the Documentation. At Matrix42's expense, the Customer shall provide all reasonable assistance requested by Matrix42 in its protection of its Intellectual Property Rights.

10.   CONFIDENTIALITY

10.1 **Confidential Information.** Each party may be given access to Confidential Information from the other party in order to perform its obligations under this Agreement. A party's Confidential Information shall not be deemed to include information that:

(a) is or becomes publicly known other than through any breach of this Agreement by the receiving party;

(b) was in the other party's lawful possession before the disclosure;

(c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure;

(d) is independently developed by the receiving party, which independent development can be shown by written evidence; or

(e) is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.

10.2 Confidentiality obligations. Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this Agreement.

10.3 Steps to ensure confidentiality. Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement.

10.4 Matrix42 Confidential Information. The Customer acknowledges that details of the Software, and the results of any performance tests of the Software, constitute Matrix42's Confidential Information.

10.5 Relief. Each party agrees that if a court of competent jurisdiction determines it has breached, or attempted or threatened to breach, any of its confidentiality obligations to the disclosing party or the disclosing party's proprietary rights, the disclosing party shall be entitled to obtain appropriate injunctive relief and other available measures restraining further, attempted or threatened breaches of such obligations.

10.6 Survival. This clause 10 shall survive termination or expiry of this Agreement indefinitely, however arising.

11. EXPORT

11.1 Export. Neither party shall export, directly or indirectly, any technical data acquired from the other party under this Agreement (or any products, including software, incorporating any such data) in breach of any applicable laws or regulations (**Export Control Laws**), including United States export laws and regulations, to any country for which the government or any agency thereof at the time of export requires an export license or other governmental approval without first obtaining such license or approval.

11.2 Undertakings. Each party undertakes:

(a) contractually to oblige any third party to whom it discloses or transfers any such data or products to make an undertaking to it in similar terms to the one set out above; and

(b) if requested, to provide the other party with any reasonable assistance, at the reasonable cost of the other party, to enable it to perform any activity required by any competent government or agency in any relevant jurisdiction for the purpose of compliance with any Export Control Laws.

12. INDEMNITY

12.1 Customer indemnity. The Customer shall defend, indemnify and hold harmless Matrix42, and its officers, directors, shareholders, employees, agents, heirs and sub-contractors, against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with any third party claim resulting from (i) the Customer's use of the Software and/or Documentation other than in accordance with this Agreement, (ii) death, bodily injury, damage to tangible personal property caused by the Customer in

connection with this Agreement and (iii) the violation of any third-party's Intellectual Property Rights arising in connection with this Agreement where such violation arises from Matrix42's reliance on, or use of, tools, instructions, specifications, or other materials provided by the Customer, or where the Customer modifies, adds to, or combines with any technology or data, any such intellectual property or (iv) any failure to obtain Intellectual Property Rights or export licenses necessary to permit Matrix42 to perform hereunder, provided that:

(a)   the Customer is given prompt notice of any relevant third party claim;

(b)   Matrix42 does not make any admission of liability, agreement or compromise in relation to any relevant third party claim without the prior written consent of Customer;

(c)   Matrix42 provides reasonable co-operation to the Customer in the defense and settlement of any relevant third party claim, at the Customer's expense; and

(d)   the Customer is given sole authority to defend or settle the claim.

12.2 **Matrix42 indemnity.** Matrix42 shall defend the Customer against any claim that the Customer's use of the Software or Documentation in strict accordance with this Agreement infringes any Intellectual Property Rights (**Third Party IPR Claim**) and shall indemnify the Customer for any amounts finally awarded against the Customer in judgment or agreed in settlement of a Third Party IPR Claim, provided that:

(a)   Matrix42 is given prompt notice of a Third Party IPR Claim;

(b)   the Customer does not make any admission of liability, agreement or compromise in relation to a Third Party IPR Claim without the prior written consent of Matrix42;

(c)   the Customer provides reasonable co-operation to Matrix42 in the defense and settlement of a Third Party IPR Claim, at Matrix42's expense; and

(d)   Matrix42 is given sole authority to defend or settle the Third Party IPR Claim.

12.3 **Other remedies and termination.** In the defense or settlement of any Third Party IPR Claim, Matrix42 may procure the right for the Customer to continue using the Software or Documentation, replace or modify the Software or Documentation so that it becomes non-infringing or, if such remedies are not reasonably available, terminate this Agreement on not less than 2 Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.

12.4 **Limitation on liability.** In no event shall Matrix42, its directors, officers, employees, agents and sub-contractors be liable to the Customer to the extent that the Third Party IPR Claim is based on:

(a)   a modification of the Software or Documentation by anyone other than Matrix42;

(b)   the Customer's use of the Software or Documentation in a manner contrary to the instructions given to the Customer by Matrix42 or otherwise contrary to any term of this Agreement; or

(c)   the Customer's use of the Software or Documentation after notice of the alleged or actual infringement from Matrix42 or any appropriate authority.

12.5 **Sole and exclusive remedies.** The foregoing states the Customer's sole and exclusive rights and remedies, and Matrix42's (including Matrix42's directors, officers, employees', agents' and sub-contractors') entire obligations and liability, for any Third Party IPR Claim.

13. LIMITATION OF LIABILITY

13.1 Scope of limitations and exclusions of liability. This clause 13 sets out the entire financial liability of Matrix42 (including any liability for the acts or omissions of its directors, officers, employees, agents and subcontractors) to the Customer:

(a) arising under or in connection with this Agreement;

(b) in respect of any use made by the Customer of the Software or any part of it; and

(c) in respect of any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.

13.2 Financial Liability. Except as expressly and specifically provided in this Agreement:

(a) the Customer assumes sole responsibility for results obtained from the use of the Software by the Customer, and for conclusions drawn from such use. Matrix42 shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Matrix42 by the Customer in connection with the Software, or any actions taken by Matrix42 at the Customer's direction;

(b) ALL WARRANTIES, REPRESENTATIONS, CONDITIONS AND ALL OTHER TERMS OF ANY KIND WHATSOEVER IMPLIED BY STATUTE OR COMMON LAW ARE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EXCLUDED FROM THIS AGREEMENT AND THE SOFTWARE AND THE DOCUMENTATION ARE PROVIDED TO THE CUSTOMER ON AN "AS IS" BASIS.

13.3 Carve out from limitation of liability. Nothing in this Agreement excludes or limits the liability of Matrix42 for:

(a) death or personal injury caused by Matrix42's gross negligence;

(b) fraud or fraudulent misrepresentation; or

(c) any liability that cannot, by law, be excluded or limited.

13.4 Exclusions of liability and liability cap. Subject to clause 13.2 and clause 13.3:

(a) MATRIX42 SHALL NOT BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE FOR ANY LOSS OF PROFITS, LOSS OF BUSINESS, DEPLETION OF GOODWILL, LOSS OF ANTICIPATED SAVINGS, WASTED EXPENDITURE AND/OR SIMILAR LOSSES OR LOSS OR CORRUPTION OF DATA OR INFORMATION, OR FOR ANY SPECIAL, INDIRECT, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES OR LOSS HOWEVER ARISING, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES;

(b) SUBJECT TO CLAUSE 13.4(C), MATRIX42'S TOTAL AGGREGATE LIABILITY UNDER OR IN CONNECTION WITH THIS AGREEMENT, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, SHALL BE LIMITED TO THE FEE PAID; and

(c) MATRIX42'S TOTAL AGGREGATE LIABILITY PURSUANT TO CLAUSE 12.2 SHALL BE LIMITED TO US $1 MILLION.

13.5 Time limit. Subject to clause 13.3, the Customer may only bring a claim against Matrix42 (whether in contract, tort (including any type of negligence) or otherwise) within 12 months of the date

upon which the relevant cause of action arose.

13.6 **Third party software.** Where Third Party Software is included in the Software, the Customer must bring any claim in relation to defects in the Third Party Software against the provider of such Third Party Software. Customer may only bring a claim against Matrix42 in the event that a claim against the Third Party Software provider remains unanswered, provided that Customer has taken all reasonable steps to enforce its claim. Subject to clause 13.3, Matrix42 shall only be liable to the Customer to the extent that the Third Party Software provider is liable to Matrix42 pursuant to the terms of the Third Party Software license between the Third Party Software Provider and Matrix42.

14. TERM AND TERMINATION

14.1 **Term.** This Agreement shall, unless it expires or is otherwise terminated as provided in this Agreement, commence on the Effective Date and shall:

(a)   if the license granted pursuant to this Agreement is a Term License, continue for the Initial Term and, thereafter, this Agreement shall be automatically renewed for successive periods of 12 months (each a **Renewal Period**), unless either party notifies the other party of termination, in writing, at least three (3) months before the end of the Initial Term or any Renewal Period, in which case this Agreement shall terminate upon the expiry of the applicable Initial Term or Renewal Period; or

(b)   if the license granted pursuant to this Agreement is a Perpetual License, remain in effect thereafter,

and the effective term of this Agreement shall constitute the **Term**.

14.2 **Termination.** Without prejudice to any rights that have accrued under this Agreement or any of the right or remedy available to it, either party may terminate this Agreement with immediate effect by giving written notice to the other party, which notice shall specify the exact date of termination, if:

(a)   the other party fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;

(b)   the other party commits a material breach of this Agreement (other than failure to pay any amounts due under this Agreement) and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;

(c)   the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of Title 11 of the United States Code, the Bankruptcy Reform Act of 1978, or the bankruptcy laws of any other nation;

(d)   the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

(e)   a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole

purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

(f)   an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company);

(g)   the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;

(h)   a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;

(i)   the other party (being an individual) is the subject of a bankruptcy petition or order;

(j)   a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 30 days;

(k)   any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 14.2(c) to clause 14.2(j) (inclusive); or

(l)   the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

14.3 **Accrued rights.** Termination by either party in accordance with the rights contained in this clause 14 shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination.

14.4 **Consequences of termination.** Subject to clause 14.5, on termination of this Agreement for any reason:

(a)   all rights granted to the Customer under this Agreement shall cease;

(b)   the Customer shall cease all activities authorized by this Agreement;

(c)   the Customer shall immediately pay to Matrix42 any sums due to Matrix42 under this Agreement; and

(d)   the Customer shall immediately destroy or return to Matrix42 (at Matrix42's option) all copies of the Software and any Matrix42 Confidential Information then in its possession, custody or control and, in the case of destruction, certify to Matrix42 in writing that it has done so.

14.5 **Survival.** Any provision of this Agreement which expressly or by implication is intended to come into or continue in force on or after termination of this Agreement including, but not limited to, clause 2, clause 4.1(b), clause 10, clauses 12 - 26 inclusive shall remain in full force and effect.

15. WAIVER

15.1 **Waiver.** No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

16. REMEDIES

16.1 **Remedies.** Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are cumulative and in addition to, and not exclusive of, any rights or remedies provided by law. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors, assigns and representatives.

17. ENTIRE AGREEMENT

17.1 **Entire Agreement.** This Agreement contains the whole agreement between the parties relating to the subject matter hereof and supersedes and extinguishes all prior agreements, arrangements and understandings between the parties relating to that subject matter.

17.2 **Non-reliance.** Each party acknowledges that, in entering into this Agreement, it does not rely on any statement, representation, assurance or warranty (whether it was made negligently or innocently) of any person (whether a party to this Agreement or not) (**Representation**) other than as expressly set out in this Agreement.

17.3 **Rights and remedies.** Each party agrees that the only rights and remedies available to it arising out of or in connection with a Representation shall be for breach of contract.

17.4 **Liability for fraud.** Nothing in this clause 17 shall limit or exclude any liability for fraud.

17.5 **Section headings.** All section and clause headings are inserted only for convenience of reference and are not to be considered in the interpretation or construction of any provision of this Agreement.

17.6 **Interpretation.** In the event any claim is made by any party relating to any conflict, omission or ambiguity in this Agreement, no presumption or burden of proof or persuasion shall be implied by virtue of the fact that this Agreement was prepared by or at the request of a particular party or that party's counsel.

18. VARIATION

18.1 **Variation.** No variation or amendment of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorized representatives).

19. SEVERANCE

19.1 **Severance.** If any court or competent authority finds that any provision of this Agreement (or part of any provision) is invalid, unenforceable or illegal, that provision or part-provision shall, to the extent

required, be deemed to be deleted and the validity and enforceability of the other provisions of this Agreement shall not be affected.

19.2 **Modification.** If any invalid, unenforceable or illegal provision of this Agreement would be valid, enforceable or legal if some part of it were deleted, the parties shall negotiate in good faith to amend such provision such that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the parties' original commercial intention.

20. COUNTERPARTS

20.1 **Counterparts.** This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this Agreement, but all the counterparts shall together constitute the one agreement.

21. NO THIRD-PARTY RIGHTS

21.1 **No third party rights.** None of the provisions of this Agreement shall be for the benefit of or enforceable by any person or entity not a party hereto..

22. ASSIGNMENT

22.1 **Assignment by Customer.** The Customer shall not, without the prior written consent of Matrix42, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement. Any assignment without such written consent shall be void.

22.2 **Assignment by Matrix42.** Matrix42 may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.

23. NO PARTNERSHIP OR AGENCY

23.1 **No partnership or agency.** Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership, employer-employee relationship or joint venture between any of the parties, constitute any party the agent of another party, or authorize any party to make or enter into any commitments for or on behalf of any other party.

24. FORCE MAJEURE

24.1 **Force Majeure.** Neither party shall in any circumstances be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control and in such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations, provided that if the period of delay or non-performance continues for 3 months or more, the party not affected may terminate this Agreement by giving 14 days' written notice to the affected party.

25. NOTICES

25.1 **Notices.** Any notice given to a party under or in connection with this Agreement shall be in writing and shall be delivered personally, or sent by pre-paid first-class U.S. mail or recorded delivery or by

commercial courier or nationally-recognized overnight carrier, to each party required to receive the notice as set out below:

(a) Matrix42 AG – Contact Address: Global Service, Elbinger Strasse 7, 60487 Frankfurt, Germany

(b) Customer – Contact Address:

or as otherwise specified by the relevant party by notice in writing to the other party.

25.2 **Receipt of notices.** Any notice shall be deemed to have been duly received:

(a) if delivered personally, when left at the address and for the contact referred to in this clause;

(b) if sent by pre-paid first-class U.S. mail or recorded delivery, at 9.00 am on the second Business Day; or

(c) if delivered by commercial courier or overnight carrier, on the date and at the time that the delivery receipt is signed.

25.3 **E-mail.** A notice required to be given under this Agreement shall not be validly given if sent by e-mail.

25.4 **Exclusion.** The provisions of this clause 25 shall not apply to the service of any proceedings or other documents in any legal action.

26. GOVERNING LAW AND JURISDICTION

26.1 **Governing law.** This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of the United States and the U.S. State/Commonwealth of Georgia, without regard to any conflicts of laws provisions.

26.2 **Jurisdiction.** The parties irrevocably agree that the state and federal courts sitting in or encompassing Fulton County, State of Georgia shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

26.3 **Attorneys' fees.** In the event that any dispute between the parties should result in litigation, mediation, arbitration or any other legal or resolution proceedings, the prevailing party in that dispute shall be entitled to recover from the other party all reasonable fees, costs and expenses of enforcing any right of the prevailing party, including without limitation, reasonable attorneys' fees and expenses.

This Agreement has been entered into on the date stated at the beginning of it.

Schedule 1 Offer

1. Offer Date:

2. Offered Products - Matrix42 Workspace Management
    Please find detailed Offer under the Offer number:

Product Suite:

Matrix42 Corporate

Matrix42 ITSM

Matrix42 Physical

Matrix42 Virtual

Matrix42 Mobile

Matrix42 Compliance

Matrix42 Enterprise Manager for SCCM

Module:

Matrix42 Service Desk

Matrix42 Service Catalog

Matrix42 License Management

Matrix42 Asset Management

Matrix42 Contract Management

Matrix42 Inventory

Matrix42 Client Management

Matrix42 Workflow Studio

Matrix42 Mobile (HD) for iOS

Matrix42 Mobile Device Management

Matrix42 Virtual Management for Citrix

Add On:

Matrix42   Remote   Control

Matrix42   Package   Robot

Matrix42   Package   Cloud

Matrix42 Patch Management

Matrix42 Mobile Content Management

Matrix42 Advanced Management

Matrix42 E-Mail Container

Others:

MATRIX42:

MATRIX42 AG, Elbinger Strasse 7, 60487 Frankfurt, Germany

CUSTOMER:

Name (in block capitals):	
Role/title:	
Place, date:	
Signature:	

Name (in block capitals):	
Role/title:	
Place, date:	
Signature:	

MATRIX42 AG

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E-mail: info@matrix42.com

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asseco
GROUP