

CIRESON
End User License Agreement
v1.4

Please read the following terms and conditions carefully as they describe your right to use the Software Applications. By clicking “accept” and using the Software Applications, you accept these terms and conditions and enter into a legally binding agreement (“**Agreement**”) with Cireson, LLC (“**Cireson**,” “**us**,” “**our**” or “**we**”) on behalf of yourself and your organization. You should review the entire Agreement, including any linked terms, because all of the terms are important and together create a contract that applies to and binds you and your organization, if applicable.

If you do not agree with the terms and conditions below, please do not click “*I accept the Terms of the License Agreement*” and do not access or use the Software Applications.

- 1. Grant of License.** Pursuant to the terms and conditions set forth in this Agreement and the Cireson Invoice, Cireson hereby grants you a non-exclusive, non-transferable license (“**License**”) to use the object code version of the Cireson software application(s) identified on the Cireson Invoice (collectively, the “**Software Applications**”) and any accompanying documentation (“**Documentation**”) on multiple devices. All rights not expressly granted to you hereunder are reserved by Cireson.
- 2. Details and Scope of License.** As a prerequisite to your ability to use the Software Applications as intended, you must have installed the then-current version of Microsoft System Center Service Manager and/or Configuration Manager or other prerequisite platform as defined in the Software’s Documentation. The License is based on a single Production Service Manager Management environment and includes, for no additional cost, the Test and Staging Service Management environments. The License granted hereunder does not extend to any parent company, sister company, subsidiary, or affiliate of your organization without the payment of an additional fees as determined by Cireson, and is limited to the number of Users identified in the license tier on the purchase order. A “**User**” for purposes of this License is any person who works for an organization who has a valid License (whether as an employee, independent contractor or otherwise and whether on a full-time or part-time basis) and who use or accesses the Software Applications. You represent and warrant that you are a permitted “User.”
- 3. Restrictions.** You are prohibited from (i) copying or attempting to copy any Software Application or any portion thereof; (ii) translating, decompiling or creating, or attempting to create by reverse engineering or otherwise, the source code from the object code of any Software Application; (iii) modifying, adapting, translating, or creating any derivative work from any Software Application; (iv) removing any proprietary notices, labels, or marks on any Software Application or related materials; (v) assigning, sublicensing, renting, transferring, publishing, or transmitting or providing any Software Application, or any portion thereof, to any third party without written approval from Cireson; or (vi) downloading, using or otherwise accessing in any manner any Software Application of Cireson if you are a Cireson Competitor. For purposes of this Agreement, a “**Cireson Competitor**” is any entity that licenses or provides any software, product, or service that is competitive with Cireson’s Software Applications including, without limitation, all Microsoft partners and companies operating in the Service Management, Asset Management and Identity Management markets.
- 4. Fees; Payment Terms.**

- a. License Fees. You shall to Cireson the license fee for the total number of Users (as defined in Section 2) identified in the license tier as set forth on your Invoice ("**License Fee**"). If, at any time, your use exceeds the number of Users in the license tier purchased, you shall pay a license upgrade fee equal to the difference between the License Fee(s) already paid and current list price of the appropriate license tier based on your actual usage.
- b. Support and Maintenance Fees. You shall pay to Cireson a fee equal Twenty Percent (20%) of the total License Fees for Support Services and Maintenance Services (each as described in Section 7 below) (the "**Initial Support and Maintenance Fee**") in exchange for Support Services and Maintenance Services for a period of one (1) year from the date of your first use of the Software Application. Support Services and Maintenance Services shall automatically renew and continue for an additional twelve (12) month periods (each, a "**Renewal Support Period**") and Support and Maintenance Fees shall immediately accrue unless terminated by either party in writing not less than ninety (90) days prior to the expiration of the Support Period. To notify Cireson of your election not to renew, you must timely notify Cireson at renewals@cireson.com. Failure to pay Support and Maintenance Fees when due may result in the suspension or loss of services (including, but not limited to, suspension or loss of upgrades, bug fixes, email support, telephone support and portal support. If you elect not to renew Support and Maintenance Services and then later wish to re-subscribe to Support and Maintenance Services, you shall pay the Support and Maintenance Fees you would have owed had you continuously maintained Support and Maintenance Services which shall be calculated from the date of the expiration of last paid Support Period to the date of reactivation of Support and Maintenance Services, plus a reactivation fee equal to ten percent (10%). All Support and Maintenance Fees shall be earned when paid and shall be non-refundable. No pro-rata refunds will be issued for cancellation of Support and Maintenance Services.
- c. Software Assurance Fees. In exchange for Software Assurance as described in the Software Assurance Policy found at www.cireson.com/smwithsa, you must pay Cireson a fee equal to ten percent (10%) of the License Fee ("**Initial Software Assurance Fee**"). The payment of the Initial Software Assurance Fee shall entitle you to Software Assurance for each Stream licensed by Licensee for a period of one (1) year from the date of first use of the Software Application(s). Thereafter, if you wish to continue to obtain the benefits of Software Assurance, you shall pay to Cireson a Software Assurance Fee as determined by Cireson and invoiced to you on an annual basis. All Software Assurance Fees shall be earned when paid and shall be non-refundable. No pro-rata refunds will be issued for cancellation of Software Assurance.
- d. Payment Terms. The License granted to you pursuant to this Agreement, ongoing support services and maintenance services, and software assurance (if applicable) are all subject to the timely payment of fees invoiced. All fees invoiced are due within thirty (30) days of the date of invoice. Interest shall accrue on past due balances at a rate of one and one-half percent (1.5%) for each month or fraction thereof the overdue amount remains unpaid. In the event that any amount remains unpaid after thirty (30) days of the date of the invoice, Cireson may suspend or revoke the License (if the License Fee is not paid or if you are on a subscription model and the Subscription Fees are not paid), or suspend support services and maintenance services) (which includes, but is not limited to, the suspension of upgrades, bug fixes, email support, telephone support and portal support), and/or software assurance (if applicable). The foregoing payment terms do not apply to Users of free Software Applications.

5. Right to Audit and Inspection.

a. Inspection. Cireson, or its designee, shall have the right, upon at least five (5) business days written notice and no more than once per calendar year, to inspect your IT environment and the related books and records at your place of business in order to confirm compliance with the terms and conditions of this Agreement, including, without limitation, the number of Users you reported. Cireson shall have free and full access thereto for such purposes and shall be permitted to make copies thereof and extracts therefrom. All costs related to such inspection shall be borne exclusively by Cireson unless non-compliance with this Agreement is discovered in which case you shall be required to reimburse Cireson for all the costs related to such inspection including any attorney's fees and other professional fees and travel expenses incurred in connection therewith.

b. Discrepancies. In the event that such inspection reveals non-compliance, including, without limitation, the underreporting of the number of Users of the Software Applications and therefore additional License Fees owed to Cireson, you shall pay such discrepancy, plus interest, calculated at ten percent (10%) per annum.

c. Cireson's Duty of Confidentiality at Inspection. In the event that an inspection of your environment, books and records is made, certain confidential and proprietary business information may necessarily be made available to the person or persons conducting such investigation. It is agreed that such confidential and proprietary business information shall be retained in confidence by Cireson and shall not be used by Cireson or disclosed to any third party without your prior express written permission unless required by law. It is understood and agreed, however, that such information may be used in any proceeding based on your non-compliance with the terms and conditions of this Agreement.

d. Survival. The rights granted to Cireson pursuant to this Section entitled "Right to Audit and Inspection" shall survive for five (5) years beyond the expiration or termination of this Agreement.

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

7. **Support and Maintenance.** Assuming your payment of support and maintenance fees invoiced, you will be entitled to support and maintenance services consistent with the then-current support and maintenance policy found at www.cireson.com/smwithsa ("**Support and Maintenance Policy**").

Cireson shall have the right to modify the Support and Maintenance Policy at any time. All support and maintenance fees paid are earned when paid and are non-refundable. No pro-rata refunds will be issued. Users of free Software Applications are not entitled to Support and Maintenance.

8. Your Representations and Warranties.

a. Use of Software Applications. You are solely responsible for all of your activity and for the accuracy, quality, integrity, legality, reliability, appropriateness, and for obtaining ownership rights or right to use of all content, data and other information inputted.

b. Compliance with Laws. You shall abide by applicable local, state, federal and international laws, treaties and regulations in connection with your use of the Software Applications.

c. Notification of Unauthorized Use. You shall notify Cireson immediately of any unauthorized use of any password or other account information or any other known or suspected breach of security or unauthorized use of the Software Applications.

d. Good Standing. You are in good standing with all applicable local, state and federal agencies.

e. Authority. You are authorized to enter into this Agreement and comply with each of its terms and conditions.

f. Non-Disparagement. You agree not to in any way, directly or indirectly, disparage Cireson or the Software to third parties, or make or solicit any comments, statements or the like that may be considered to be derogatory or harmful to the reputation of Cireson or its Software.

g. Non-Competition. You represent and warrant that you are not employed by or in any way affiliated with a Cireson Competitor and that your use of Cireson's Software Applications is for your legitimate business purposes only which are wholly unrelated to competition with Cireson's Software Applications, products or services.

9. Limited Warranty. Cireson warrants that the Software Applications shall operate in substantial accordance with Cireson's Documentation and shall be free from material defects when operated as recommended by Cireson. So long as you continue to timely pay support and maintenance fees or Subscription Fees, as applicable, when invoiced, Cireson shall promptly correct any errors and non-conformities in the Software Applications, pursuant to the severity levels and error resolution process described in the Support and Maintenance Policy. In the event of a breach of the foregoing warranty, Cireson shall correct or replace, at no additional charge, any part of any Software Application found to be defective which shall be your sole and exclusive remedy. The foregoing limited warranty does not apply to Users of free Software Applications. Except to the extent required by your jurisdiction, Cireson makes no warranties, conditions, representations, or terms (express or implied) whatsoever as to any matter related to the use of free Software Applications. Free Software Applications are delivered to you "as is" and with all faults.

10. Disclaimer of Other Warranties. THE WARRANTIES SET FORTH IN SECTION 8 ABOVE ARE IN LIEU OF, AND THIS AGREEMENT EXPRESSLY EXCLUDES (UNLESS OTHERWISE PROHIBITED BY THE LAW OF YOUR STATE OR COUNTRY) ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ORAL OR WRITTEN, INCLUDING,

WITHOUT LIMITATION: (a) ANY WARRANTY THAT THE SOFTWARE APPLICATIONS ARE ERROR-FREE, WILL OPERATE WITHOUT INTERRUPTION, OR IS COMPATIBLE WITH ALL EQUIPMENT AND SOFTWARE CONFIGURATIONS; (b) ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT.

- 11. Limitation of Liability.** CIRESON SHALL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, OR LOSS OF PROFITS, REVENUE, DATA, OR USE OR COST OF PROCUREMENT OF SUBSTITUTE GOODS INCURRED BY YOU OR ANY THIRD PARTY, WHETHER IN AN ACTION IN CONTRACT OR TORT OR BASED ON A WARRANTY, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. Notwithstanding any other provision of this Agreement, Cireson's liability in connection with or relating to this Agreement, whether in contract, tort or otherwise, shall not exceed the amounts actually received by Cireson under this Agreement.

Cireson assumes no responsibility for the correctness of, performance of, or any resulting incompatibilities with, current or future releases of the Software Applications if you have made changes to the software configuration or modifications to any supplied or decompiled source code which changes effect the performance of the Software Applications and were made without prior notification and written approval by Cireson. Cireson assumes no responsibility for the operation or performance of any third-party application.

- 12. Data Collection.** You agree and acknowledge that Cireson will collect a count of the number of End-Users, Analysts, and Assets used by your organization. Cireson collects counts in order to better understand its customers and how they use the Software Applications across their businesses which assists Cireson with license compliance, product improvement and development. Cireson will not share these counts with third parties.

13. Term and Termination.

- a. Automatic Termination. Cireson shall have the right to terminate this Agreement upon written notice if you breach any of the terms and conditions contained herein.
- b. Upon Termination. Upon notice of termination of this Agreement by Cireson, you must cease to use the Software Applications and return any Documentation to Cireson.

14. General.

- a. Force Majeure Event. A "**Force Majeure Event**" means any act or event, whether foreseen or unforeseen that prevents a party (the "**Nonperforming Party**"), in whole or in part, from performing its obligations or satisfying any conditions to the Nonperforming Party's obligations under this Agreement and is beyond the reasonable control of and not the fault of the Nonperforming Party, and the Nonperforming Party has been unable to avoid or overcome by exercise of due diligence. In furtherance of the definition of a Force Majeure Event and not in limitation of that definition, each of the following acts or events is deemed to meet the criteria of the section and to be a Force Majeure Event: war, flood, lightning, drought, earthquake, fire, volcanic eruption, landslide, hurricane, cyclone, typhoon, tornado, explosion, civil disturbance, act of God or the public enemy, terrorist act, military action, epidemic, famine or plague, shipwreck, strike, work-to-rule action, go-slow, or similar labor difficulty, each on an industry-wide, region-wide or nationwide basis. The Nonperforming Party shall not be liable for any loss or delay resulting from any Force Majeure Event and any payment or

timeline for performance of any services shall be reasonably extended to the extent of any such delay resulting from the Force Majeure Event.

b. Binding on Successors and Assigns. The provisions of this Agreement shall be binding upon and inure to the benefit of each of the parties and their respective permitted successors and assigns. Nothing expressed or implied in this Agreement is intended, or shall be construed, to confer upon or give any person, other than the parties, their successors and assigns, any benefits, or rights under or by reason of this Agreement, except to the extent of any contrary provision herein contained.

c. Assignment. This Agreement and the rights and obligations hereunder shall not be assigned or otherwise transferred by you without the prior written consent of Cireson. Cireson may assign or otherwise transfer any of its rights and obligations under this Agreement upon written notice.

d. Jurisdiction and Disputes. This Agreement, including, but not limited to, its validity, interpretation, construction, performance and enforcement, shall be construed in accordance with and governed by the laws of the State of California (without giving effect to its conflicts of law principles). Any party bringing a legal action or proceeding against the other arising out of or relating to this Agreement, or the transactions it contemplates, shall bring the legal action or proceeding in federal or state courts located in San Diego County, California. Each party consents to the exclusive jurisdiction of said courts for the purpose of all legal actions and proceedings arising out of or relating to this Agreement, or the transactions it contemplates. Each party agrees that the exclusive choice of forum set forth in this Section does not prohibit the enforcement of any judgment obtained in that forum or any other appropriate forum. Each party waives, to the fullest extent permitted by law, any objection which it may now or later have to the venue agreed upon herein, and any claim that any action or proceeding brought in any such court has been brought in an inconvenient forum.

e. Notices. Notices required under this Agreement shall be in writing and shall be sent to the party's last known address or email address. Notice will be deemed given (1) as of the day following the day notice is deposited with a reputable overnight courier (e.g., Federal Express, UPS, etc.) charges prepaid, or as of the day following the day of email notice; or (2) as of the third day if the notice is sent certified U.S. Mail, charges prepaid, with return receipt requested; or (3) as of the day of delivery if the notice is hand delivered. Notices sent to Cireson shall be sent to:

Matt Deen, Legal Counsel
Cireson, LLC
3960 W. Point Loma Blvd. H290
San Diego, CA 92110
matt.deen@cireson.com

f. Amendment to Agreement. Cireson may modify and update this Agreement from time to time in Cireson's discretion and such modifications shall apply to you immediately upon written notice (email notice sufficient).

g. Waiver. No failure or delay in exercising any right or remedy or requiring the satisfaction of any condition, and no course of dealing between the parties, shall operate as a waiver or estoppel of any right, remedy or condition as against Cireson. A waiver made in writing on one occasion is

effective only in that instance and only for that purpose that it is given and is not to be construed as a waiver on any future occasion or against any other person.

h. Severability. If any provision of this Agreement is determined to be invalid, illegal or unenforceable, the remaining provisions shall remain in full force and effect, if the essential terms and conditions of this Agreement for both parties remain valid, legal and enforceable. If any essential provision is held invalid, illegal or unenforceable, the parties shall negotiate in good faith to modify this Agreement to fulfill, as closely as possible, the original intents and purposes of this Agreement.

i. Attorney's Fees. Should it be necessary to institute any action to enforce the terms of this Agreement, the parties hereby agree that the substantially prevailing party in any such action shall be entitled to recover its reasonable attorneys' fees, as well as all costs of the action, including, but not limited to court or arbitration tribunal costs, filing fees, exhibit fees, forensic consultant fees, litigation support costs and expert witness fees. Further, recoverable attorney fees and costs shall include the costs for such items for any appeals. This paragraph shall remain independent from any judgment entered to enforce its terms, shall not merge therewith, and shall entitle the prevailing party to attorneys' fees and costs incurred in connection with post judgment collection and enforcement efforts.

[END OF AGREEMENT]