**End User Subscriber License Agreement**

This Agreement (the “Agreement”) is made by and between WARATEK LIMITED, of Level 3, 8 Harcourt Street, Dublin 2, Ireland, registered under company number 465447 (“**WARATEK**” or “**Licensor**”) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_\_ corporation with an address for purposes hereof \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “**Licensee**”) (WARATEK or Licensee may be referred to herein as a “**Party”** and they may be referred to herein collectively as the “**Parties**”)

This Agreement is comprised of the following:

* This End User License Agreement
* Exhibit A – Definitions
* Exhibit B – Commercial Terms
* Exhibit C – Support & Maintenance
* Exhibit D – Training & Quick Start

In the event of a conflict among the above listed documents, the documents are listed in descending order of precedence. For the avoidance of doubt, **Exhibit A** takes precedence over **Exhibits B,** and **C** but not over the End User License Agreement.

NOW THEREFORE, in exchange for the consideration described herein, the Parties agree as follows:

1. **Definitions**

The definitions which apply to this Agreement including all exhibits are attached as **Exhibit A** and incorporated herein by reference.

1. **License Grants**

2.1 WARATEK grants to Licensee a non-exclusive and non-transferable perpetual license subscription to the Software described in **Exhibit B** for the use described in **Exhibit B** and in the Software documentation and as set forth below at the prices set forth in **Exhibit B**. All Licenses granted are subject to the terms and conditions set forth in this Agreement.

2.2 License Key**.** Licensee acknowledges that the Software contains a license key. WARATEK will provide Licensee with a license mechanism and a related key. This mechanism and key pair shall control the modules, functions and features as licensed in accordance and defined in the applicable License Schedule. If Licensee subsequently purchases additional modules and functions, WARATEK shall provide Licensee with additional license keys in order to update the mechanism and license pair. In the event Licensee signs a click-charge subscription for production engines, the mechanism and key pair shall take control of such click-charge counter. Licensee agrees not to acquire or use any license key or similar computer code for the Software provided by another supplier than WARATEK or one of its authorized partners/resellers or distributors.

2.4 Backup/Archival Copy. Licensee may make one (1) backup/archival copy of the Software provided this copy is not installed or Used on any Computer. Licensee may not sell, assign or transfer any copy of the Software, except where specifically set forth in the applicable license terms (such as in the applicable Open Source Software terms). Any copies that Licensee is permitted to make pursuant to this Agreement must contain the same copyright and other proprietary notices that appear on or in the Software. Except as provided for above, Licensee may not copy the Software.

2.5 Any non-compliance with the above stated obligations is considered to be a material breach of this Agreement.

2.6 The WARATEK Software, as well as know-how and the relevant documentation are owned by WARATEK and its structure, organization and code are the valuable trade secrets of WARATEK. Any and all intellectual property rights of the WARATEK Software and integrated third party software (i.e. Adobe PDF Library technology) remain in the ownership of the respective owner(s) which retain title and full ownership rights thereto. The WARATEK Software is also protected by United States and International copyright law and International Treaty provisions.

Except as stated herein, **this Agreement does not grant Licensee any intellectual property rights in the Software or in any component of the Software.** Licensee is only allowed to use the programs contained in the Software for which it has paid the License Subscription Fee and for which it has received the authorization to use the Software.

2.7. Any rights not expressly granted to Licensee are reserved by WARATEK, which retains title and full ownership right under the copyright laws of the United States or any other jurisdiction or foreign laws. Neither WARATEK nor WARATEK’S respective resellers and distributors are obligated to provide, nor is Licensee acquiring any right of any kind with respect to, the source code for the Software. Licensee acknowledges such ownership and intellectual property rights and will not take any action to jeopardize, limit or interfere in any manner with WARATEK’s ownership of or rights with respect to the Software. Furthermore, Licensee agrees not to limit or interfere in any manner with the ownership and intellectual property rights related to integrated third party software program(s).

Except as otherwise expressly permitted in this Agreement, Licensee may not:

* modify or create any derivative works of any Software or Software documentation
* decompile, disassemble, reverse engineer, or otherwise attempt to derive the source code for any Software (except to the extent applicable laws specifically prohibit such restrictions)
* re-distribute, encumber, sell, rent, lease, sublicense the Software, except as to Licensee’s Affiliates.

**3. Support**

3.1Licensee may buy additional Support services from WARATEK (“Initial Support Term”) as provided for in **Exhibit C**. If Licensee buys Support after the Initial Support Term, WARATEK may increase the cost of support by no more than 5% per year.

3.2 Term**.** WARATEK shall provide Support for a term of one (1) year from the effective date of this Agreement. Such term shall be automatically renewed each year for an additional one (1) year renewal term unless one party notifies the other party in writing of its intent not to renew the Support services ninety (90) prior to the expiration of the then current Support term.

3.3 Termination**.** Either party may terminate Support services at the end of any term by giving written notice to the other party at least ninety (90) days prior to the end of such term. Additionally, either party may terminate Support services if the other party breaches any material term or condition of this Agreement and such breach is not remedied within thirty (30) days after receiving written notice thereof. Notwithstanding the foregoing, WARATEK may immediately, by written notice to Licensee, suspend or terminate Support & Maintenance Services if Licensee fails to make any payment due under this Agreement within ten (10) days after WARATEK’s written notice that such payment is overdue. In the event that Licensee terminates this Support for cause, it shall be entitled to a pro rated refund of any fees paid for services not received.

**4.** **Conditions of Service**

4.1 Licensee Assistance. Licensee agrees to provide WARATEK reasonable access to Licensee personnel authorized to answer questions or resolve problems reported by Licensee regarding the Products. Licensee also agrees to implement all Updates and Upgrades provided by WARATEK within a reasonable time which means no longer than twelve (12) months after the commercial release by WARATEK. If the new release is necessary to resolve an existing problem, Licensee agrees to implement such release as soon as reasonably possible. When WARATEK offers a new release and Licensee does not implement such release, WARATEK has no obligation with regard to the problem resolved by the new release**.**

4.2 Retirement of Releases**.** WARATEK shall provide Support for Product versions from the date the version becomes generally available until such version is retired. Unless otherwise set forth in an executed written agreement between the parties to this Maintenance Agreement, WARATEK shall retire prior commercial releases of the Products (i.e. discontinue Maintenance Services) as follows: (i) six (6) months after the commercial release of the subsequent maintenance release; (ii) no sooner than six (6) months after the commercial (generally available) release; (iii) no sooner than twelve (12) months after the commercial release of a new major upgrade.

4.3 Use of Updates**.** Licensee's use of any Updates provided by WARATEK as part of Support shall be governed by all license limitations and restrictions, and all other terms and conditions of this Agreement. WARATEK may, upon thirty days prior written notice to Licensee, change the services included in Support provided, any such change shall not materially or substantially decrease the service level commitments described in Exhibit C. Such changes will not become effective until acceptance and commencement of any renewal term.

**5. Mutual Confidentiality**

5.1 Each party acknowledges and agrees that any and all information emanating from the other's business in any form is “Confidential Information,” and each party agrees that it will not, during or after the term of this Agreement, permit the duplication, use, or disclosure of any such Confidential Information to any person (other than an employee, agent or representative of the other party who must have such information for the performance of its obligation hereunder or in the execution of the duties of his or her employment), unless such duplication, use or disclosure is specifically authorized by the other party in writing. Licensee agrees that Licensor shall expressly be entitled to disclose Confidential Information provided by Licensee to its own employees, agent or representatives as well as to employees of WARATEK. The aforesaid disclosure shall always be strictly confined to the extent that is required in order to fulfill Licensor’s obligations under this Agreement and under a valid Support Agreement with Licensee.

5.2 Each party shall use reasonable diligence, and in no event less than that degree of care which such party uses in respect to its own Confidential Information of like nature, to prevent the unauthorized disclosure or reproduction of such Confidential Information. Without limiting the generality of the foregoing, to the extent that this Agreement permits the copying of Confidential Information, all such copies shall bear the same confidentiality notices, legends, and intellectual property rights designations that appear in the original versions.

5.3 Confidential Information shall not include: information which is in the public domain; information known to the recipient party as of the date of this Agreement, unless the recipient party agreed to keep such information in confidence at the time of its receipt; and information properly obtained hereafter from a source who is not under an obligation of confidentiality with respect to such information. The provisions of this Section 4 shall survive any termination or expiration of this Agreement.

**6. Assignment**.

6.1 Provided Licensee gives Licensee timely written notice, Licensee may assign its rights and obligations under this Agreement without prior written approval by WARATEK to any Licensee Affiliate.

**7. Export Rules**.

7.1 Licensee agrees that the Software will not be shipped, transferred, or exported into any country or used in any manner prohibited by the United States Export Administration Act or any other export laws, restrictions or regulations (collectively the “**Export Laws**”). In addition, if the Software is identified as an export controlled item under the Export Laws, Licensee represents and warrants that it is not a citizen, or otherwise located within, an embargoed nation and not otherwise prohibited under the Export Laws from receiving the Software. All rights to use the Software are granted on condition that such rights are forfeited if Licensee fails to comply with the terms of this Agreement and the applicable Schedules hereto.

8. Limited Warranty and Disclaimer

8.1 Provided that Licensee has paid the applicable license fee, WARATEK warrants that for a period of ninety (90) days from the date of successful completion of Software implementation, the Software substantially conforms to its published specifications and the media on which the Software is furnished will be free of defects in materials and workmanship under normal use. Such warranty shall be extended and continued so long as Licensee pays for Support.

8.2 WARATEK warrants and covenants that : (i) WARATEK has the power and authority to execute and deliver the Agreement; (ii) WARATEK has taken all necessary corporate action to authorize the execution and delivery of the Agreement, and the Agreement is and shall be the legal, valid, and binding obligation of WARATEK enforceable in accordance with its terms; (iii) WARATEK owns or has acquired rights to all proprietary interests in the Software and documentation necessary to grant the licenses set forth in the Agreement; (iv) to the knowledge of WARATEK, the Software contains no virus, Trojan horse, worm, or other software routines designed either to permit unauthorized access by third parties or to disable, erase or otherwise harm Licensee's data, hardware or computer system; (v) the documentation is reasonably sufficient for the operation and maintenance of the Software by reasonably competent and trained End Users; and (vi) all Services provided by WARATEK will be performed in a workmanlike manner pursuant to generally accepted industry standards..

8.3 a) WARATEK AND ITS SUPPLIERS PROVIDE NO REMEDIES OR WARRANTIES, WHETHER EXPRESS OR IMPLIED FOR ANY SAMPLE APPLICATION CODE, ALPHA CODE OR TRIAL VERSION OF THE SOFTWARE. ANY TRIAL VERSION OR TEST VERSION (NON GA VERSION) OR SAMPLE APPLICATION CODE OF THE SOFTWARE ARE PROVIDED “AS IS”.

b) EXCEPT AS SET FORTH IN THE FOREGOING LIMITED WARRANTY WITH RESPECT TO SOFTWARE OTHER THAN ANY SAMPLE APPLICATION CODE OR TRIAL VERSION, WARATEK, ITS SUPPLIERS AND RESELLERS DISCLAIM ALL OTHER WARRANTIES AND REPRESENTATIONS, WHETHER EXPRESSED, IMPLIED OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WARRANTY OF NON-INFRINGEMENT AND TITLE OR QUIET ENJOYMENT. WARATEK DOES NOT WARRANT THAT THE SOFTWARE IS ERROR-FREE OR WILL OPERATE WITHOUT INTERRUPTION.

c) IF APPLICABLE LAW REQUIRES ANY WARRANTIES WITH RESPECT TO THE SOFTWARE, ALL SUCH WARRANTIES ARE LIMITED IN DURATION TO NINETY (90) DAYS FROM THE DATE OF SHIPMENT OF THE SOFTWARE.

d) NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY WARATEK, ITS SUPPLIERS AND RESELLERS OR EMPLOYEES SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF ANY WARRANTY PROVIDED HEREIN.

e) Any and all warranties shall be void if the Software has been modified without authorization by WARATEK or if installed on or used with equipment by LICENSEE which does not meet the minimum requirements necessary for proper operation as set forth by WARATEK and provided to licensee. neither party shall be liable for any failure or delay in performance due to any cause beyond such party’s control including but not limited to accident, acts of God, fire or water damage, acts of war, riots, strikes, lightning, electrical disturbances or other similar causes.

**9. Sole and Exclusive Remedy**

9.1 Licensee’s exclusive remedy for any breach of the warranty as set forth in herein is described below. Provided that Licensee makes a timely written warranty claim to WARATEK within the warranty period, at WARATEK’s sole discretion, WARATEK will either (1) supply Licensee with a copy of the Software that substantially conforms to the published documentation, or (2) provide a replacement for the defective media, or (3) refund a pro-rated portion purchase price of the Software to Licensee.

9.2 WARATEK shall have no responsibility to Licensee for a Software failure if the failure of the Software has resulted from Licensee’s conduct including, without limitation. Misconfiguration, accident, abuse, misapplication, or if the failure arises out of use of the Software with other than a recommended hardware configuration as provided by WARATEK documentation.

**10. Indemnity**

10.1 WARATEK will defend, at its own expense, and hold Licensee harmless against any legal action brought against Licensee based on a claim that the Software infringes an Intellectual Property Right of a third party, and WARATEK will pay any final judgment against Licensee in any such action attributable to any such claim or incurred by Licensee through settlement of such claim. Claims with respect to any of the Open Source Software and/or Third party software programs shall be subject to their respective license agreements and WARATEK disclaims any and all liability with respect to any claims of infringement with respect to those software programs. However, all such defense and payments of final judgment are subject to the conditions that Licensee must: (i) notify WARATEK promptly in writing of such claim, (ii) permit WARATEK to have sole control of the defense, compromise or settlement of such claim, including any appeals, and (iii) reasonably cooperate with WARATEK in the defense or settlement of such claim. WARATEK will pay those costs, damages or reasonable attorney’s fees incurred by Licensee in connection with such action or claim but shall only pay Licensee’s legal fees which were incurred by Licensee after Licensee gave WARATEK notice of the claim and before WARATEK assumed control of the defense.

10.2 Nevertheless, the parties agree that WARATEK’s entire liability under this Agreement for any claim or legal action related to an infringement of a third party Intellectual Property Right shall be limited to 125% of the l amount of the Licensee’s paid License Fees for the Software in the prior twelve (12) months. Should the Software become, or in WARATEK's opinion be likely to become, the subject of any such infringement claim, Licensee shall permit WARATEK, at WARATEK's option and expense, to (i) procure for Licensee the right to continue using the Software, or (ii) replace or modify the Software so that it becomes non-infringing and maintains the same functionality or (iii) terminate the right to use the Software, upon which termination Licensee agrees to promptly destroy all copies of the Software and certify the same to WARATEK, whereupon WARATEK will refund Licensee’s License Fees for the Software up to 100% the total amount of the Licensee’s paid License Fees for the Software in the prior twelve (12) months.

**11. Limitation of Liability**

# 11.1 TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL WARATEK OR ITS RESELLERS OR DISTRIBUTORS OR LICENSEE BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES HOWEVER CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY ARISING OUT OF OR THE INABILITY TO USE THE SOFTWARE EVEN IF ADVISED OF THE POSSIBILITY THEREOF, AND REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT, NEGILGENCE, GROSS NEGLIGENCE, WILLFUL MISCONDUT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED. IN ANY CASE WARATEK’S ENTIRE LIABILITY UNDER ANY PROVISION OF THIS AGREEMENT SHALL NOT EXCEED 100% OF LICENSE FEES PAID TO LICENSOR FOR THE SOFTWARE IN THE PRIOR TWELVE (12) MONTHS.

11.2 The limitations of liability set forth in this Section shall not apply to:(i) claims by a party for breach of Confidentiality; (ii) the extent the party seeking the benefit of the limitation has engaged in wilful misconduct, gross negligence or has intentionally harmed the other party;(iii) claims for personal injury and (iv) claims for which there is actual insurance coverage for such claim and the deductible shall be paid by the party carrying such coverage (in which case the maximum liability of a party shall be the greater of the maximum liability set forth in this section or the amount of actual insurance coverage).

11.3 WHERE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN IMPLIED WARRANTIES; HOWEVER, THE EXCLUSION OF WARATEK’S WARRANTY IN THIS LIMITED WARRANTY SECTION SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW.

**12. License Term and Termination**

12.1 This Agreement shall be effective for the term of the License grant unless terminated earlier, either through mutual agreement by the parties or by Licensee’s breach of the Agreement; provided however, Licensee shall have thirty (30) days from written notice to cure any such breach, if curable. Upon termination, Licensee must immediately destroy the Software and all accompanying written materials and all copies thereof (including copies stored in computer memory) and shall so certify to WARATEK in writing.

**13. Disputes**

13.1 This Agreement will be governed by and construed under the laws of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

13.2 Except for matters which would result in irreparable harm to a party without injunctive relief, the parties agree all disputes arising out of or in connection to this Agreement will be resolved under through binding arbitration under the Rules of the American Arbitration Association (“**AAA**”). For cases where the amount in controversy is $250,000 or less, the case will be heard before an arbitrator appointed by the AAA who shall be an attorney. For cases where the amount in controversy exceeds $250,000, the case will be heard by a panel of 3 arbitrators; one shall be an attorney, the second shall be an industry contracts professional and third shall be a subject matter expert. The arbitration shall be conducted in English in Washington, DC. The arbitrator’s decision will be final and binding and may be enforced in a court. Each party waives its right to trial by jury or a court and agrees that such arbitration/mediation shall be the exclusive methods of resolving disagreements with respect to this License Agreement. This paragraph shall survive any termination of this Agreement.

13.3 This paragraph shall survive any termination of this Agreement. Performance of any obligation required by a party hereunder may be waived only by a written waiver signed by the other party, which waiver shall be effective only with respect to the specific obligation described therein. If any provision hereof is found to be void or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect.

**15. Notices**

All notices or other communications herein provided to be given or which may be given by any party to the other, shall be deemed to have been duly given when made in writing, including an electronic writing which can be authenticated and time stamped or delivered in person, or upon receipt if deposited postage, pre-paid, certified mail, return receipt requested, as follows:

Notices to the Licensee (if different than address above):

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_­\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Notices to WARATEK:

Padraic Gaffney

WARATEK Ltd.

Level 3, 8 Harcourt Street, Dublin 2, Ireland

or to such address as the parties may provide to each other in writing from time to time.

**Signatures**

|  |  |  |
| --- | --- | --- |
| **LICENSEE** | | |
|  |  |  |
| Signature |  |  |
|  |  |  |
| Print Name |  |  |
|  |  |  |
| Title |  |  |
|  |  |  |
| Date |  |  |

|  |  |  |
| --- | --- | --- |
| **WARATEK** | | |
|  |  |  |
| Signature |  |  |
|  |  |  |
| Print Name |  |  |
|  |  |  |
| Title |  |  |
|  |  |  |
| Date |  |  |

**Exhibit A**

**Definitions**

“**Computer**” means one central processing unit (CPU) that accepts information in digital or similar form and manipulates it for a specific result based on a sequence of instructions;

**“End User”** means the Licensee of the WARATEK Software Product who acquires the software for use and not for distribution or resale;

**“End User License Agreement” (EULA)** means this WARATEK End User License Agreement for the WARATEK software program(s) and Products;

**“Fees”** means the fees and expenses specified in this Agreement and the applicable Schedules thereto payable by Licensee to WARATEK in respect of the License, and the Maintenance Services; all fees and expenses are stated without any applicable taxes;

**“GA Release”** means the Generally Released Version of WARATEK Software (excluding Beta and earlier Versions, Custom Versions, Trial Version, Test Versions and Code Samples);

**“Instance”** means one loaded code of the Software to run one thread at a time, no matter whether running on a single or multiprocessor Computer;

**“Intellectual Property Rights”** means all rights in inventions, patents, copyrights, design rights, trade marks and trade names, service marks, trade secrets, know-how and any other intellectual property rights (whether registered or unregistered) and all applications for any of them, anywhere in the world;

**“License”** means the License in respect of the Software granted by WARATEK to the Licensee;

**“Open Source License Terms”** means the license terms applicable to Open Source Software included in WARATEK Products

**“Open Source Software”** means Third Party Software available without charge for use, modification or distribution and generally licensed under the GNU Lesser General Public License, Apache or other open source software license;

**“Remote Access**” means an installation of the WARATEK Software Program(s) where a User accesses the said Software from a remote device. The host device allows one or more Users to use the Software at one time through the remote connection. Each remote access User, network User, or local connection to the remote access host computer who uses the Software is cumulatively counted as one User for license counting purposes;

“**Response Times**” means the times specified in the applicable Maintenance Agreement within which WARATEK shall have commenced analysis of an Incident respectively corrective maintenance after notification from the Licensee of an Incident either by hotline support and advise, a remote diagnostics or if necessary by dispatching a suitably qualified support analyst to the Licensee**;**

**“Seat”** means a workstation or terminal that can be operated by one User at a time;

**“Site”** shallmean one enterprise location (such can be a contiguous number of buildings, a single building or a production site); Remote buildings thereto within a distance of not more than 3miles shall be accepted as being only one production site provided that Licensee’s management and live control is maintained through one licensing server at the central site through live communication. Remote sites (such as local agencies, home offices) with up to two Users shall be considered to be part of one site provided that they do not run any production at the remote site and provided that control is maintained through one licensing server at the central site through live communication;

“**Software**” or “Products” means the WARATEK Software Program(s) (as set forth in the applicable License Schedule with WARATEK) and therein integrated third party software program(s), in each case, supplied by WARATEK or its suppliers or resellers herewith, and corresponding documentation, associated media, printed materials, and online or electronic documentation;

“**Support”** means the services described on **Exhibit C**.

“**Third party software programs**” means in the WARATEK Software integrated third party software such as Adobe PDF Library technology, Datalogics Software etc. and related documentation, and any upgrades, modified versions, updates, additions, and copies thereof;

“**Trial Version**” means a version of the Software, so identified, to be used only to review and evaluate the Software for a specific time period as determined by WARATEK;

**“Updates and Upgrades”** means any updates or upgrades or new releases of the Software made available by WARATEK Software AG, WARATEK or its resellers or distributors to the Licensee as part of Maintenance Services under the terms of this Agreement and the applicable Maintenance Agreement thereto;

“**Use**” means to access, install, download, copy or otherwise benefit from the functionality of the Software in accordance with the Software documentation and as set forth in this Agreement;

“**User**” means any person, program, process, product, or hardware which uses any functionality of the Software;

“**Virtual Machine**” means a computer operating system (guest) running in emulated hardware within a host operating system. A virtual machine is capable of executing the functions supported by its installed operating system. For license counting, a virtual machine is considered to be the equivalent of a physical machine;

**“Warranty Period”** means the period set forth in Section 10 of this End User License Agreement.

**Exhibit B**

**Commercial Terms**

WARATEK will provide the Licensee with XXX production licenses for ***XXXXXXXXXX*** at a cost of $XXX,XXX and with XXX non-production at a cost of $XXX,XXX The term of the license(s) expires XXX days from the effective date of this Agreement unless renewed within 60 days of the expiration of this Agreement.

Each *XXXXXXXXXXX*  license includes the Waratek Agent, Waratek ARMR Rules Engine, (standard rules for known and zero day attacks based on the OWASP Top Ten and SANS 25 as applicable to the Licensee, and a Subscription to routine and out-of-cycle vendor patches issued by software vendors identified by Licensee in writing to WARATEK prior to acceptance and updated on an annual basis. Licensee will also identify software products for which runtime virtual patches will be required prior to acceptance.)

Each license includes installation support, training, standard customer support as outline in Exhibit C, maintenance and software updates during the life of the license subscription agreement. Taxes, if any, are not included herein but will be noted on any Purchase Order and/or Invoice.

Waratek will deliver the custom runtime virtual patches, custom rules, and/or configurations listed below as part of this agreement:

(TO BE INSERTED)

Professional services, if needed and agreed to in a separate addendum to this agreement, will be provided at a rate of $1,500 USD per day plus travel and expenses unless otherwise noted.

# 

**Exhibit C**

# Support & Maintenance

1. **Support Services Availability**
   1. Support services will be available to the Licensee within regular business hours (“Regular Hours”) (Mon-Fri, 8:30AM – 5:30PM of one of the following time zones: GMT, EST, CST, MST, PST, as specified by the Licensee, with the exception of Christmas Day (Dec.25) and New Year’s Day (Jan.1). During Regular Hours, Support services will be available for any types of issues and any issue priorities.
   2. Outside of Regular Hours, during weekends and holidays, namely on Christmas Day and New Year’s Day, Support services will be available only for Critical and High priority issues that have significant business impact and must be addressed immediately.
2. **Contacting Support Services**
   1. During Regular Hours, Dedicated Support Services, as described below, may be accessed by telephone at: **+1 (888) 907-9699**
   2. Support Services may also be accessed by sending an email to [support@waratek.com](mailto:support@waratek.com) or using the Waratek support site at <https://support.waratek.com>
   3. Outside of Regular Hours, Support Services may be accessed by calling a toll-free Support after hours line at +1 (888) 907-9699
3. **Escalation Process**
   1. Any support issue may be escalated either by the Licensee or WARATEK, at any point.  The escalation path is as follows:
   2. On-site Support Analyst (if any)
   3. Account Manager or Account Executive – Johan Beckers, EMEA Sales Director ([jbeckers@waratek.com](mailto:jbeckers@waratek.com?subject=Customer%20Support%20Question)) mobile phone: +32 475 935671
   4. Director, Client Services - Tony O'Keeffe (email: [tokeeffe@waratek.com](mailto:tokeeffe@waratek.com); phone direct: +353 1 524 0746; phone cell: +353 1 86 814 6094)
   5. CTO - John Matthew Holt (email: [johnmatthew.holt@waratek.com](mailto:johnmatthew.holt@waratek.com); phone: +353 87 248 9721)
   6. CEO- John Adams- Office 770-809-1591   Mobile- 404-557-2370  [johnadams@waratek.com](mailto:johnadams@waratek.com)
4. **Response Process, Severity Codes** 
   1. The WARATEK Support model is designed to ensure quick response times and effective delivery of solutions to clients. The First Response is only sent to the Licensee after the support case is:
   2. Properly reviewed and understood
   3. Its priority is assessed
   4. It is assigned to the appropriate resource
5. **Definition of severity levels**
   1. The severity level, assigned by Licensee at the time of communicating a support request, may be changed by mutual written consent during the process of resolving the error. The severity levels are the following:
      1. **Severity 1:** No further work can be performed, or processing capability is so limited that the probability of a serious operational backlog is created. There is no convenient work-around, and the error requires immediate attention. WARATEK will have a support staff working to resolve the error within sixty minutes of notification by Licensee and will ensure continuous support until the error has been resolved to Licensee 's satisfaction. In addition, WARATEK will make every effort to resolve or temporarily circumvent the error within four hours after Licensee 's call. WARATEK will provide the contact persons designated by Licensee with a status report not less than every two hours, unless expressly waived by Licensee. WARATEK will make a permanent correction through a maintenance version of the Product and/or Service.
      2. **Severity 2:** Processing capability is limited and the error has some significant adverse impact on Licensee. WARATEK will give immediate attention to the error and will make every reasonable effort to circumvent the error within one Working Day after Licensee 's call. WARATEK will provide the contact person designated by Licensee with a status report every two hours, unless expressly waived by Licensee. WARATEK will make a permanent correction through a maintenance version of the Software and/or Service.
      3. **Severity 3:** Day to day operational errors not classified as severity 1 or severity 2. WARATEK will give prompt attention to the error and will make every effort to provide a solution as soon as reasonably possible. If required, WARATEK will make a correction in its next maintenance version of the Software.
      4. **Severity 4:** Errors not classified as severity 1, 2 or 3.
6. **Support Levels**

The maximum Response and Correction Times for the different Support Levels are:

|  |  |  |  |
| --- | --- | --- | --- |
| **Severity level** | **Response Time** | | **Correction Time** |
| **Phone** | **Email** |
| 1 | Immediate | 1 hours | 2 business days |
| 2 | Immediate | 4 hours | 4 business days |
| 3 | Immediate | 3 business days | 15 business days |
| 4 |  | See note below | Next Release-See note below |

* 1. Severity level 4 support requests will be dealt with on a first-in/first-out basis after severity level 1, 2 and 3 support requests have been resolved.
  2. WARATEK shall correct severity level 4 support requests in the next release, if received more than ninety days before the release of this release. If received later, they shall be corrected in the following release. There may be intermediate or temporary corrections to these support requests.
  3. All hours during the Support Hours are counted when calculating the Response or Correction Times.
  4. Should a severity level 1 or 2 support request fail to be cleared within the maximum Correction Time, all applicable resources within WARATEK’ shall be called upon to assist in the error resolution.
  5. In case a temporary correction for severity level 1 or 2 is provided, then WARATEK shall provide a final correction within respectively five or ten Working Days after the provision of the temporary correction.

1. **Resolution Process**

WARATEK endeavors to resolve all incidents as quickly as possible during Regular Hours. However, WARATEK shall work continuously on all severity 1 Incidents until such Incidents are resolved. Alternatively, the parties may mutually agree that such a resolution can also be affected by providing a work around and or a hot fix.

1. **WARATEK Support Process and Methodology**
   1. **Dedicated Support Analyst**
      1. The Licensee will be assigned a Dedicated Support Analyst who will regularly provide the latest information about any new product releases and/or product developments and also inform the Licensee about available training opportunities. The Dedicated Support Analyst shall act as the Licensee’s primary contact person in the event that the Licensee should have any technical and/or other problems with the WARATEK products and/or services provided hereunder.
   2. **Named Contacts**
      1. The Licensee shall designate a reasonable number of Named Contacts to request and receive telephone and email support services from WARATEK. All of the Licensee 's support inquiries shall be initiated through these Named Contacts. In order to help ensure an uninterrupted service, the Licensee shall notify WARATEK in writing of any changes related to its designated contact persons.
   3. **Licensee’s Obligations**
      1. In order to ensure effective cooperation and improved support, the Licensee agrees to consider the following:
         1. Multiple environments – Maintain multiple independent development, test and production environments to preserve availability of production systems.
         2. Versions and Platforms – Use only supported WARATEK product versions on supported platforms
         3. Remote access to test environment(s) – Provide WARATEK with access to test environments on an as needed basis to troubleshoot reported incidents in order to replicate reported issues and perform diagnosis
         4. Information currency – Update WARATEK in a reasonably timely manner on changes in the Licensee’s technical infrastructure relevant to WARATEK applications (e.g. product updates, hardware platform modifications, etc.)
         5. Coordination – Alert WARATEK of imminent application upgrades to WARATEK products and/or WARATEK product infrastructure
         6. Adequate testing – Perform pre-production tests with appropriate and adequate amounts of production data.
         7. Incident reporting – Report incidents through WARATEK CRM/Helpdesk