



# Service Description

## Clay County Schools Services Offering

11/8/2013

### Service Acknowledgement

AirWatch, LLC ("AirWatch")

Clay County School District, FL

By: *[Signature]*

By: *Nancy G. Racine*

Name: Richard Franco

Name: Nancy G. Racine

Title: VP Global Service Support

Title: Director of Purchasing

Date: 12/11/13

Date: December 9, 2013



## Introduction to your Service Agreement

This service provides for technical support related to the AirWatch Mobile Device Management (MDM) offering. The services provide the capabilities as defined below in this service description (the "Service" or "Services"). The MDM solution allows customers to activate, profile, and track mobile devices and usage. This Service Description ("Service Description") is entered among you the customer ("you" or "Customer") and the AirWatch entity identified on your invoice for the purchase of this Service.

This Service is subject to and governed by Customer's separate signed EULA agreement with AirWatch that explicitly authorizes the sale of this Service. By placing your order for the Services or utilizing the Services and associated software, you agree to be bound by this Service Description and the agreements incorporated by reference herein. If you are entering this Service Description on behalf of a company or other legal entity you represent that you have authority to bind such entity to this Service Description, which case "you" or "Customer" shall refer to such entity.

## Service Overview

The enterprise quick start package is tailored for large organizations with deep integration requirements and those benefitting from additional hands-on assistance and training from a dedicated consultant – remotely. The program including installation and configuration of integrations, as well as mobile security, device management (MDM), application management (MAM), content management (MCM), email management (MEM), and "Bring Your Own Device" (BYOD) policies are setup. 90 days post go-live, AirWatch will conduct a Health Check and adoption assessment of the system usage.

### Enterprise differentiators from standard quick start offering:

- Dedicated consultant assigned
- Hands-on assistance in best practices and configuration
- Full AirWatch academy training
- Regular project status meetings and reviews
- Health Check and adoption assessment included 90 days post go-live

## Service Assumptions

- Alignment of all MDM configurations and policy design with Clay County Schools requirements is the responsibility of Clay County Schools. AirWatch will provide recommendations and assistance.
- Procurement and installation of hardware is the responsibility of Clay County School District. AirWatch will provide recommendations and assistance.
- Installation of software components is the responsibility of Clay County School District. AirWatch will provide recommendations and assistance.
- AirWatch will provide assistance for the creation and setup of production environment.
- All work, documentation and work product(s) will be conducted during typical, local business hours and will be provided in English.
- AirWatch and Clay County School District project management will work closely together to ensure that project scope remains consistent and issues are resolved on a timely basis.
- Initial Installation/Configuration work will be done On-Site.

## Service Cost

- Fixed fee: \$7,500 (5 Onsite Days / 40 Hours)
- Travel and expenses are included in the fixed fee.

### Service Deliverables

Status	Item Description	Owner	Method	Time Required	Notes
<b>Blueprint</b>					
Open	Delivery of MDM Best Practices and ASK Documentation	AirWatch	Electronic	Email Delivery	
Open	Delivery of Administrator and User Manuals				
Open	Delivery of email management approach documentation.				
Open	Delivery of MDM Framework business and configuration worksheet				Customer to select email management method prior to configuration.
Open	Installation of SEG / EIS (Optional)	Customer	Installation	2 Hours	SEG or EIS installation is applicable for SaaS customers.
Open	Customer attends AirWatch Academy sessions	Customer	Class	Email Delivery	
Open	AirWatch Checkpoint Meetings: Kick-off	Joint	Meeting	1 Hours	Kick-off to confirm governance deliverables. Time estimate includes preparation and follow up meetings.
<b>Prepare</b>					
	Customer integrates AirWatch solution with network and enterprise:	Customer		1 Hour	
Open	<i>Integration of ActiveDirectory/LDAP</i>				
Open	<i>Integration of Enterprise Email Management</i>				
Open	<i>Integration of Certificates/PKI</i>				
	AirWatch Setup			4 Hours	
Open	<i>Discussion of basic Location Group Setup</i>				
Open	<i>Discussion of User Group Setup</i>				
	Security Setup				
Open	<i>Configuration of Passcode Policy</i>				

Open	<i>Configuration of Compliance Policies</i>				
	MDM Setup				Mobile Device Management
Open	<i>Discussion of Enrollment Workflow and Approach</i>				
Open	<i>Discussion of Privacy Policies</i>				
Open	<i>Configuration of Wi-Fi Profile</i>				
Open	<i>Configuration of VPN Profile</i>				
	MAM Setup				Mobile Application Management
Open	<i>Setup of Application Management</i>				
	MEM Setup				Mobile Email Management
Open	<i>Configuration of Email Profile</i>				
Open	<i>Configuration of Email Compliance Policies</i>				
	MCM Setup (View)				Mobile Content Management
Open	<i>Setup of Content Management</i>				

**Deploy**

Open	Delivery of Support Procedures and Guidelines	AirWatch	Electronic	Email Delivery	
Open	Support Services	AirWatch	On-Site	32 Hours	Customer specific configuration support and go-live support for non-warranty items
Open	AirWatch Checkpoint Meeting: Wrap up	Joint	Meeting	TBD	Project review and transition to support.

**Project Management**

Open	Project Management Meetings	AirWatch	Electronic	TBD	Weekly meetings on project status
Open	Meeting Minutes				Meetings notes from project meetings
Open	Issues / Enhancements Tracking				Action items spreadsheet
<b>Total AirWatch Effort:</b>				<b>40 Hours</b>	





# Terms and Conditions

Customer	School District of Clay County	Created Date	11/27/2013
Bill To	900 Walnut St	Contact Name	Russell Finney
	Green Cove Springs, FL 32043-3129	Phone	(904) 529-4864
	United States	Email	rfinney@oneclay.net

## Terms & Conditions

1. Use of the AirWatch products are subject to AirWatch's license and support terms and conditions, which are available at [http://www.air-watch.com/downloads/legal/20130815\\_AirWatch\\_EULA.pdf](http://www.air-watch.com/downloads/legal/20130815_AirWatch_EULA.pdf) and which supersede the standard terms of any purchase orders. The acceptance of this quote, as evidenced by your signature below, represents your agreement to license the software described in this quote under these terms and conditions.

2. Third party product warranties, if any, are provided by the manufacturer or publisher of such third party products. AirWatch makes no warranties whatsoever and hereby disclaims any and all warranties and/or liability for any third Party Products or other non-AirWatch products you may purchase from a Reseller.

3. Section 16.2.1 "Governing Law" of the EULA is amended by deleting the phrase "State of Georgia" in its entirety and inserting "State of Florida" in its place.

### 4. LIABILITY ADDENDUM

CUSTOMER is a political subdivision of the state of Florida in that it is owned and governed by The School Board of Clay County, Florida. Notwithstanding any language in this contract to the contrary, nothing in this indemnification agreement shall be construed or interpreted to increase the scope or dollar limit of the CUSTOMER'S/School Board of Clay County, Florida's liability beyond that which is set forth in 768.28 Fla. Stat. , or to otherwise waive CUSTOMER'S/School Board's sovereign immunity, or to require CUSTOMER/School Board to indemnify the CCOP or any other person, corporation or legal entity of any kind or nature whatsoever for injury or loss resulting from any acts other than the negligent acts of CUSTOMER/School Board or its agents, invitees or employees. The CUSTOMER/School Board shall not indemnify any party for attorney's fees or costs other than those court costs which are set forth by Florida Statute or other Florida law as recoverable costs of court.

For questions please contact AirWatch representative below:

AirWatch Contact Will Johnson  
 Phone Number 4048056349  
 Email williamjohnson@air-watch.com

## Acceptance Information

Customer Signature

By *Nancy G. Racine*  
 Name Nancy G. Racine  
 Title Director of Purchasing  
 Date December 9, 2013

AirWatch Signature

By *Russell Finney*  
 Name Russell Finney  
 Title Account Manager  
 Date 12/10/13

Initials nrk



## End User License Agreement

### **IMPORTANT!** READ THIS DOCUMENT CAREFULLY.

THE TERMS AND CONDITIONS OF THIS END USER LICENSE AGREEMENT (THE "EULA") CONSTITUTE A LEGAL AGREEMENT BETWEEN YOU (EITHER AN INDIVIDUAL OR, IF PURCHASED OR OTHERWISE ACQUIRED BY OR FOR AN ENTITY, SUCH ENTITY) ("CUSTOMER") AND AIRWATCH WITH RESPECT TO USE OF THE PROPRIETARY AIRWATCH® SOFTWARE (THE "SOFTWARE"). BY (1) EXECUTING AN AIRWATCH ORDER, (2) INSTALLING, COPYING, DOWNLOADING OR OTHERWISE ACCESSING THE SOFTWARE, (3) ELECTRONICALLY ACCEPTING, OR (4) EXECUTING THIS EULA, CUSTOMER COMPLETELY AND UNEQUIVOCALLY AGREES TO BE BOUND BY THE TERMS OF THIS EULA WITHOUT MODIFICATION. IF CUSTOMER DOES NOT INTEND TO BE LEGALLY BOUND TO THE TERMS AND CONDITIONS OF THIS EULA, CUSTOMER MAY NOT ACCESS OR OTHERWISE USE THE SOFTWARE AND MUST PROMPTLY RETURN ALL COPIES OF THE SOFTWARE AND DOCUMENTATION IN THE MANNER PROVIDED HEREIN.

In consideration of the mutual covenants herein expressed, and other true and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereby agree as follows:

1 **DEFINITIONS.** The following capitalized terms shall have the meanings and applications set forth below:

1.1 **"Affiliate"** means those entities under common control with or controlled by a party, such common control or control being defined as the ownership of more than fifty percent (50%) of the voting equity of the entity or ownership of securities to which are attached voting rights capable of electing more than fifty percent (50%) of the entity's board of directors. Subject to the terms and conditions of this EULA, which shall be fully applicable, any Affiliate of Customer may use the license granted hereunder and, in such event, all references to Customer, shall be deemed to be references to Affiliate. Customer and Affiliate shall be jointly and severally liable hereunder, provided, however that no AirWatch Competitor will be included as a Customer Affiliate.

1.2 **"AirWatch"** means AirWatch LLC and its Affiliates.

1.3 **"AirWatch Competitor"** means any entity that licenses or provides any software, product, or service that is competitive with the Software including companies listed in the Gartner, Inc. "MDM Magic Quadrant" or similar industry publications.

1.4 **"Delivery Date"** means the date Customer is first granted access to the Software under the applicable Software License.

1.5 **"Device"** means Customer's mobile device(s), including but not limited to mobile phone(s), smartphone(s), tablet computer and computing device(s), personal digital assistant(s) (PDAs), enterprise digital assistant(s) (EDAs), ruggedized devices, and any similar or similarly functioning electronic devices, which may be monitored and managed by the Software, whether owned by Customer or by Customer's Users.

1.6 **"Documentation"** means only those written release notes, user guides, and implementation guides published by AirWatch and supplied or made available to Customer by AirWatch.

1.7 **"Effective Date"** means the date on which Customer accepts or is deemed to accept this EULA as provided herein, or if physically executed, the date of last signature.

1.8 **"Embedded Software"** means any software provided as an included part of the Software that is owned by one or more third parties and licensed to AirWatch.

1.9 **"Enhancements"** mean subsequent versions, releases, or upgrades of the Software which AirWatch makes generally available as a part of Maintenance and without payment of an additional License fee.

1.10 **"Hosting Policy"** means AirWatch's hosting policy governing the provision of Hosted Services, as amended from time to time by AirWatch and posted on the AirWatch website.

1.11 **"Hosted Services"** mean the services provided to host, on AirWatch's servers on Customer's behalf, the necessary Software to allow communication and control functions with Devices via internet-based consoles.

1.12 **"Maintenance"** means, for customers who are current on Maintenance fees, maintenance and support services performed in accordance with AirWatch's Maintenance Specifications, and also include access to Updates provided to other licensees of the Software, as well as any Enhancements generally distributed by AirWatch, in its sole discretion.

1.13 **"Maintenance Specifications"** mean AirWatch's Maintenance policies and specifications policy governing the provision of Maintenance, as amended from time to time by AirWatch and posted on the AirWatch website.

1.14 **"Order"** means an AirWatch "Quote," purchase order, and/or any other form or writing that is physically or electronically by both Customer and AirWatch pursuant to which Customer seeks to purchase the offerings subject to this EULA. This EULA is incorporated by reference into any Order without modification. The Order sets forth, as applicable, the (i) number and type of Devices to be licensed, (ii) type of license, (iii) pricing, and (iv) hours and cost of any Software Related Services to be provided.

1.15 **"Software Related Services"** mean Software-related services performed by AirWatch as reflected in an Order or in an SOW pursuant to an Order or an SOW such as installation, activation, training, software configuration, hosting environment configuration, modification, integration, reconfiguration, assessment, optimization, or other Software-related services and excludes professional services for the development of custom software (which would be governed by a separate agreement).

1.16 **"Software"** means the AirWatch® proprietary software in machine-readable, object code form only that is more fully described in the Order, including any Embedded Software or any Update or Enhancement made available to Customer pursuant to any Maintenance purchased by Customer.

1.17 **"SOW"** means a statement of work executed by the parties, specifying the terms and conditions, deliverables, and compensation for delivery of Software Related Services or other items.

1.18 **"Third Party Appliance"** means an off-the shelf, third party manufactured, computer hardware appliance (a server) that is provided by AirWatch and on which a third party operating system and other third party operating software is loaded by the third party manufacturer and on which components of the Software are loaded to support up to a recommended maximum 2,000 Device deployment.

1.19 **"Third Party Software"** means any software or other product that is (i) owned by one or more third parties; (ii) licensed by AirWatch from such third parties; (iii) not included as a part of the Software; and (iv) subsequently sublicensed by AirWatch to Customer, as reflected in an Order.

1.20 **"Updates"** mean corrections to the current version of the Software provided as a part of Maintenance.

All information contained in this document is confidential and for the use of the parties hereto.

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1.21 "User" means an individual user of a Device who is an officer, director, employee, contractor, representative, or agent of Customer or its Affiliate.

2 **LICENSE GRANT.** All licenses granted hereunder are limited, revocable (as provided herein), nonexclusive, non-transferable, world-wide, non-sublicensable licenses to the Software (each a "Software License"). The Software components provided under each Software License include those necessary for the number and type of Devices indicated on each Order. Any Affiliate of Customer may use any Software License granted hereunder and, in such event, all references to Customer shall be deemed to be references to the applicable Customer or Affiliate. All Software Licenses are all subject to (i) the terms, conditions and restrictions set forth in this EULA and (ii) the fees set forth in the applicable Order and the payment requirements set forth in this EULA. All Software Licenses are granted solely for the purposes set forth in this EULA. If AirWatch is to provide Hosted Services pursuant to an Order or SOW, they will be provided as described herein

2.1 **Subscription License.** To the extent reflected in an Order, a Software License provided for the use of the Software on a subscription basis shall be hereinafter referred to as a "Subscription License." The term for Subscription Licenses shall be one (1) year, unless another term is specified in the Order (the "Subscription Period"). The initial Subscription Period begins on the Delivery Date of the first Subscription License. In the event additional Subscription Licenses are added during a Subscription Period, such Subscription Licenses shall be coterminous with the then current Subscription Period and the fees for the same shall be prorated accordingly. Unless Customer terminates Subscription Licenses by notifying AirWatch at least sixty (60) days prior to the expiration of a Subscription Period, such Subscription Licenses shall automatically renew for an additional Subscription Period.

2.2 **Perpetual License.** To the extent reflected in an Order, a Software License provided for the use of the Software on a perpetual basis for the term of this EULA shall be hereinafter referred to as a "Perpetual License."

2.3 **Trial License.** To the extent reflected in an Order, a Software License for evaluation purposes ("Trial") shall be used solely for the purposes of testing and evaluating the Software shall be hereinafter referred to as a "Trial License." The Trial License shall be for a period of thirty (30) days from the Delivery Date or for such other period reflected on the Order (the "Trial Period"). Customer is solely responsible for taking appropriate measures to back up its systems and for taking other measures to prevent any loss of files or data during the Trial. In addition, in connection with the purchase of Subscription Licenses or Perpetual Licenses, Customer shall be entitled to receive up to fifty (50) Trial Licenses free of charge (excluding any Hosted Services or environment set up fees). The Software provided under a Trial License may contain an automatic disabling mechanism that prevents its use after a certain period of time. Under any Trial License, the Software and any related Hosted Services are provided "AS IS" without any additional warranty of any kind and Customer understands and agrees no other warranties stated herein shall be applicable to the Trial License.

2.4 **General License Provisions.** In connection with any Software License, Customer may make a reasonable number of copies of the Software for backup, disaster recovery, and/or archival purposes, provided Customer also reproduces on such copies any copyright, trademark, or other proprietary marking and notice contained in the Software and/or Documentation and does not remove any such marks from the original. Unless otherwise stated herein or in an Order, the Software is licensed on a per Device basis, in which case: (i) the Software may only be used or accessed by Customer on no more than the number of Devices specified on each Order; (ii) the Software License for the Software may be transferred from Device to Device; and (iii) there is no limit on the number of computers from which the Devices may be monitored using the Software. Other than Embedded Software, Customer shall be responsible for activating, obtaining, and/or maintaining any third party components, hardware, or software that become necessary or desirable.

3 **LICENSE RESTRICTIONS.** With respect to Software Licenses where Customer possesses the Software, Customer shall use industry-standard physical, logical, and electronic security and confidentiality systems to protect the Software, using at least the same degree of care it utilizes for the protection of its own software and other confidential and proprietary information. The restrictions set forth in this Section, including all subsections, shall hereafter be referred to as the "License Restrictions." With respect to each Software License, Customer further agrees that it:

3.1 Shall not share with or assign, copy, sublicense, transfer, lease, rent, sell, distribute, install, or otherwise provide to any non-Affiliate party (other than Users) (i) the Software License, (ii) the Software; (iii) any use or application of the Software; or (iv) Customer's rights under this EULA shall not pledge as security or otherwise encumber, the Software;

3.2 Shall use the Software solely (i) for Customer's internal use with Customer's ordinary business operations, (ii) in accordance with all applicable laws and regulations, and (iii) as provided in this EULA, the Documentation, and any supplemental limitations specified or referenced in the relevant Order, if any;

3.3 Shall not use the Documentation except for supporting its authorized use of the Software;

3.4 Other than as expressly set forth in this EULA, shall not (i) modify, adapt, translate, duplicate, disassemble, decompile, reverse assemble, reverse compile, or reverse engineer, or take similar action with respect to the Software for any purpose, or (ii) attempt to discover the underlying source code or algorithms of the Software (unless enforcement is prohibited by applicable law and then, only to the extent specifically permitted by applicable law, and then only upon providing AirWatch with reasonable advance written notice and opportunity to respond);

3.5 For the purpose of designing, modifying, or developing software or services similar in purpose, scope, or function to the Software, shall not engage in competitive analysis, benchmarking, use, evaluation or viewing of the Software or Documentation or create any derivatives based upon the Software, whether for Customer's internal use or for license or for resale;

3.6 Shall not use the Software without obtaining its own Apple Push Notification services (APNs) Certificate from Apple Inc. if Customer uses the Software to manage Devices running on Apple operating systems;

3.7 Shall not employ any AirWatch Competitor to use the Software on its behalf, view the Software or Documentation, or provide management, staging, support, hosting, or similar services with regard to the Software without the prior written consent of AirWatch, and

3.8 Shall not permit any party, whether acting directly or on behalf of Customer, to breach or violate any of these License Restrictions.

4 **THIRD PARTY SOFTWARE AND THIRD PARTY APPLIANCE.** Third Party Software and/or Third Party Appliances ("Third Party Products") may be provided in addition to the Software as a convenience for Customer, but are not required or necessary for the use of the Software. If any Third Party Products are delivered to Customer pursuant to an Order, with respect to such Third Party Products AirWatch hereby (i) assigns, sublicenses, or passes through to Customer all assignable warranties, representations, covenants, and indemnities granted to AirWatch by any third party in connection therewith along with the remedies for breach of such. To the extent that AirWatch is not permitted to take one or more of the foregoing actions, AirWatch will, at Customer's request and expense, enforce the foregoing protections on behalf of Customer to the extent permitted to do so under the terms of the applicable third party license. Other than the foregoing, all Third Party Products listed in an Order is provided "AS IS," with no other warranties of any kind. Any Third Party Software sublicense will terminate when this EULA terminates, when the Software License terminates, or when the Software is no longer being used by Customer. Third Party Software shall be subject to the License Restrictions. IN NO EVENT WILL AIRWATCH BE LIABLE FOR THE PERFORMANCE OF ANY THIRD PARTY PRODUCT OR THE BREACH OF ANY WARRANTY RELATED THERETO. AIRWATCH SPECIFICALLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTIES (INCLUDING ANY WARRANTY OF NON-INFRINGEMENT) AND DISCLAIMS ALL LIABILITY, INCLUDING ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL LOSS OR DAMAGE, INCLUDING WITHOUT LIMITATION, ANY LOST PROFITS OR SAVINGS, AND ANY LOSS OR DAMAGE, CAUSED BY ANY THIRD PARTY PRODUCT.

5 **MAINTENANCE.** Maintenance shall be provided in accordance with AirWatch's then-current Maintenance Specifications. Maintenance is offered for only the Software. AirWatch will provide Maintenance for prior releases and versions for a period of one (1) year following the initial release date of the superseding release or version.

5.1 **Subscription License.** All Subscription Licenses include Maintenance. Maintenance may not be separated from the Subscription License and may not be terminated without also terminating the Subscription License.

5.2 **Perpetual License.** With all Perpetual Licenses, Customer shall subscribe to Maintenance for twelve (12) month periods (each a "Maintenance Period"). Customer hereby subscribes to Maintenance at the price set forth in the Order and the initial Maintenance Period begins on the Delivery Date of Customer's first Perpetual License. Customer may not elect to exclude any of the Software or any of the Devices from Maintenance during the Maintenance Period. At least thirty (30) days prior to the expiration of a Maintenance Period, AirWatch shall provide written notice to Customer of the Maintenance fees for the upcoming Maintenance Period.

Thereafter, with respect to all Devices under license, Customer may elect to (i) renew Maintenance at AirWatch's then-current rates, or (ii), elect not to renew Maintenance. If no written notice of non-renewal is provided to AirWatch prior to the expiration of a Maintenance Period, there shall be an automatic renewal of Maintenance at AirWatch's then-current rates as determined in accordance with this EULA. In the event Customer adds Devices under a Perpetual License during a Maintenance Period, the Maintenance fees for such licenses shall be coterminous with the then current Maintenance Period. Devices shall be prorated from the date they are added to the end of the then-current Maintenance Period. If AirWatch is providing Hosted Services in a shared environment in connection with Devices under Perpetual Licenses and Customer elects to terminate Maintenance or is not current with Maintenance fees or Hosted Service fees, then AirWatch may suspend the Hosted Services, with no further obligation or liability, until such time as the Hosted Service fees are brought current, Maintenance is reinstated, and/or the Maintenance fees are brought current, as the case may be.

5.3 **Trial License.** With respect to any Trial License, Customer will be entitled to receive Maintenance during the Trial Period and no payment of Maintenance fees shall be required.

6 **ADDITIONAL WORK.** To the extent that AirWatch is requested to provide additional Software Related Services to Customer (such as training or installation), they shall be provided pursuant to an Order or SOW, billed at AirWatch's then-current rates for Software Related Services, and invoiced to Customer. Software Related Services provided on Customer's premises shall be subject to AirWatch's reimbursement policies.

7 **HOSTED SERVICES.** Hosted Services are provided when AirWatch will host the Software on Customer's behalf, as set forth in the Order. Hosted Services are provided in accordance with AirWatch's Hosting Policy.

8 **ADDITIONAL ORDERS.** In the event that Customer wishes to place additional Devices under a Software License or avail itself of any other offerings set forth herein, the parties shall execute an Order detailing the number and type of additional Software Licenses and/or other offerings to be obtained. Pricing for such Orders shall be as set forth in the original Order, subject to any pricing changes made pursuant to this EULA, or, if no pricing is provided in the original Order, AirWatch's then-current published prices shall apply.

9 **PAYMENT OBLIGATIONS; RESELLERS.**

9.1 **Payment Obligations.** All fees payable hereunder are due and payable within thirty (30) days of the date of invoice. Any amounts not subject to a good faith dispute that are not paid within forty-five (45) days of the date of invoice will incur interest at a rate equal to the lower of one percent (1.0%) per month or the highest rate then permitted by law. Additionally, AirWatch may suspend Hosted Services and/or Maintenance until the undisputed portion of Customer's account is brought current. All fees and charges referred to herein (including those shown in an Order, an SOW, or any invoice) are exclusive of taxes. Taxes imposed by government agencies, with the exception of franchise taxes and taxes based upon the net income of AirWatch, whether based upon the Software, services, their use, or this EULA (including sales and use taxes) are an additional obligation of Customer. For any future period, AirWatch may increase any or all fees payable hereunder; *provided, however*, that (i) no fee increase shall become effective until sixty (60) days after AirWatch notifies Customer in writing of such fee increase and (ii) each increase shall not exceed AirWatch's then-current published prices.

9.2 **Resellers.** Where separately agreed, Customer may purchase Software Licenses and other offerings hereunder from an AirWatch authorized reseller ("Reseller"), in which case all payments will be to Reseller under the terms agreed between Customer and Reseller. Where Customer purchases any offerings hereunder through a Reseller, any refunds set forth herein (whether as part of a warranty or otherwise) shall only apply to the extent the Customer has paid the relevant fees directly to AirWatch. Should Customer and Reseller terminate their business relationship; in the event Reseller files for bankruptcy protection, sells all or substantially all of its assets, or ceases to do business in the ordinary course; or if Customer otherwise desires to do so, Customer may purchase any offerings as set forth in this EULA directly from AirWatch. In the event that Customer purchases the Software or other AirWatch offerings through an a Reseller and such Reseller has granted Customer rights not contained in this EULA, Customer's sole course of action in the event of a dispute regarding those rights shall be against the Reseller.

10 **CONFIDENTIALITY AND PROPRIETARY RIGHTS.**

10.1 **Confidentiality.** In the course of performance of this EULA, either party ("Discloser") may find it necessary to disclose to the other party ("Recipient"), or Recipient may otherwise obtain from Discloser, certain proprietary information, which includes, but is not limited to that which relates to software, computer codes or instructions, developments, inventions, processes, designs, drawings, engineering, pricing, research, statistics, business plans, product plans, products, services, customers or prospective customers, contractors, licensors, suppliers, markets, marketing, finances, and any other materials that have not been made available to the general public and which have been the subject of reasonable efforts to be kept secret ("**Confidential Information**"). Confidential Information does not include information that: (a) was in the public domain at the time of Discloser's communication thereof to Recipient, (b) becomes part of the public domain after the time of disclosure, through no improper action of Recipient; (c) was in Recipient's possession free of any obligation of confidence at the time of Discloser's communication thereof to Recipient; (d) can be shown by documentation to have been independently developed by the Recipient without the use of or reference to any Confidential Information; (e) is not treated as confidential by Discloser; or (f) is approved for release by Discloser in writing. Recipient shall use any Confidential Information received (or derivatives thereof) solely for the purpose of performing its obligations under this EULA. Recipient shall not disclose or permit any non-Affiliate party access to any Confidential Information, except to Recipient's officers, directors, employees, contractors, representatives, or agents on a need to know basis and where all such officers, directors, employees, contractors, representatives, or agents have confidentiality obligations at least as restrictive as those set forth in this Section. Recipient agrees to use reasonable efforts to protect the confidential or proprietary nature of such Confidential Information (and any derivatives thereof), using at least the same degree of care it utilizes for the protection of its own strictly confidential and proprietary information. The obligations under this EULA will continue: (i) with respect to Confidential Information (and/or derivatives thereof) that does not constitute a trade secret, in perpetuity after the termination of this EULA; and (ii) for any Confidential Information (and/or derivatives thereof) that constitutes a trade secret, for so long as such information remains a trade secret under applicable law. Notwithstanding the foregoing, in the event disclosure is required by court or government order, Recipient shall (x) promptly notify Discloser of such order so that it may seek a protective order or other appropriate remedy and (y) only disclose such Confidential Information to the extent required. All Discloser Confidential Information and derivatives thereof shall remain the property of Discloser and will be returned to Discloser within ten (10) days following the termination of this EULA. Without limiting the foregoing or the License Restrictions, Customer shall not disclose or display any AirWatch Confidential Information, including the Software, to any AirWatch Competitor. The obligations set forth in this Section are hereafter referred to as the "**Confidentiality Obligations.**"

10.2 **Proprietary Rights.** Title to and ownership of the Software and all AirWatch copyrights, names, trademarks, trade names, service marks or any other identifying characteristics are proprietary intellectual property of significant value and goodwill to AirWatch and all associated intellectual property rights relating thereto (the "**AirWatch IP**") are retained by AirWatch. This EULA only grants Customer the limited right to use the AirWatch IP under the terms and restrictions specified in this EULA. Customer does not, and will not, acquire any other right, title or interest in any AirWatch IP, which will at all times remain the exclusive property of AirWatch or the applicable third party licensor to AirWatch. Customer will not remove, suppress, or modify in any way any proprietary marking which is on or in the AirWatch IP, or which is on any media supplied with the AirWatch IP, except where expressly allowed. Customer acknowledges and agrees that AirWatch shall be the sole owner of any Enhancements, Updates, or derivatives of the Software which are developed by AirWatch during and after the term of this EULA. Without limiting the foregoing, Customer expressly acknowledges and agrees that AirWatch shall be the sole owner of any newly-developed intellectual property including but not limited to (i) newly-developed, revised, or modified source code and (ii) inventions where such are related in any way to the Software or AirWatch's general business, regardless of whether such are developed, revised, or modified in response to Customer's requests, suggestions, or ideas, even if performed as Software Related Services paid for by Customer. During the term of this EULA and thereafter, Customer shall not assert the invalidity of the AirWatch IP, or contest AirWatch's right, title or interest therein and thereto, and Customer shall not cause, influence, or assist in any manner whatsoever, any other party to make any such assertions or contest.



**11 LIMITED WARRANTIES; REMEDIES; DISCLAIMERS; LIMITATION OF LIABILITY.**

**11.1 Limited Software Warranty and Remedies.** In connection with Software Licenses granted hereunder, AirWatch warrants that the Software, as delivered by AirWatch to Customer, will substantially perform the functions set forth in the Documentation (the "Software Warranty"). If deviations from the requirements set forth in the Software Warranty occur within the ninety (90) day period following the Delivery Date (the "Software Warranty Period") or so long as Customer is subscribed to and current with Maintenance, upon written notice by Customer to AirWatch, AirWatch will, without additional compensation, either (1) repair, at its facilities, the Software; or (2) replace the Software, in each case to correct the nonconformity. If AirWatch provides written notice to Customer that it is unable to correct the nonconformity within a reasonable period, or if neither option (1) nor (2) is commercially feasible, either party may terminate this EULA and the relevant Software License upon written notice to the other party. Only when such nonconformity results in termination of this EULA as provided in the previous clause during the Software Warranty Period, AirWatch shall refund to Customer (i) the relevant Perpetual License fees and the unused remainder of any prepaid fees for Software Related Services, Maintenance, or Hosting ("Other Fees") paid by Customer and received by AirWatch, or (ii) the relevant Subscription License fees and the unused remainder of any Other Fees paid by Customer and received by AirWatch. The Software Warranty Period is not extended in any way by any Enhancement or Update, by placing more Devices under license, by any delivery of additional Software, or by replacement or repair of the Software. For clarity, newly purchased Software Licenses receive the Software Warranty from their Delivery Date, but purchasing new Software Licenses does not extend the Software Warranty Period for previously purchased Software Licenses. The Software Warranty does not cover situations where: (a) the Software has not been used in accordance with this EULA and the Documentation; (b) the Software has been altered in any way by a party other than AirWatch that is not under the direction or control of AirWatch; (c) the Software is used in an operating environment other than as specified in the Documentation; (d) such nonconformity in the Software is due to abuse, neglect, or other improper use by Customer; or (e) reported errors or nonconformities cannot be reproduced by AirWatch, working, in good faith, with Customer's assistance. This Section sets forth Customer's sole and exclusive remedies with respect to breaches of the Software Warranty.

**11.2 Infringement Claims.** In connection with Licenses granted hereunder, AirWatch, at its sole expense, agrees to defend and indemnify Customer against any third party claim that Customer's use of the Software, as delivered by AirWatch to Customer and used in accordance with this EULA and the Documentation, directly infringes a third party copyright or issued patent or directly misappropriates a trade secret (an "Infringement Claim"), provided that: (i) Customer notifies AirWatch in writing within thirty (30) days of the Infringement Claim; (ii) AirWatch has sole control of the defense and all related settlement negotiations, as long as such settlement shall not include a financial obligation for Customer; and (iii) Customer provides AirWatch with the information, assistance and authority to enable AirWatch to perform AirWatch's obligations under this Section. In any action based on an Infringement Claim, AirWatch, at its option its own expense, may: (1) procure the right for Customer to continue using the Software in accordance with the provisions of this EULA; (2) make such alterations, modifications or adjustments to the Software so that the infringing Software becomes non-infringing without incurring a material diminution in performance or function; (3) replace the Software with a non-infringing substantially similar substitute; or (4) if (1), (2), or (3) cannot be achieved after the exercise of commercially reasonable efforts, either party may terminate the License. If a Subscription License is terminated pursuant to this Section, AirWatch shall refund to Customer the unused remainder of any Subscription License fees and Other Fees prepaid by Customer and received by AirWatch. If a Perpetual License is terminated pursuant to this Section, AirWatch shall refund to Customer the amortized remainder of the Perpetual License fees (based on a three (3) year depreciation period from the Delivery Date) and the unused remainder of any prepaid Other Fees received by AirWatch. If a Trial License is terminated pursuant to this Section, no payment shall be due Customer. In connection with any termination pursuant to this Section, Customer shall comply with all post-termination requirements set forth in this EULA. AirWatch shall have no liability or obligations for an infringement claim pursuant to this Section to the extent that it results from: (a) modifications to the Software made by a party other than AirWatch or under the direct control of AirWatch; (b) the combination, operation or use of the Software with non-AirWatch equipment, devices, software or data, unless the claim would not have occurred but for the use of the Software in the combination, operation or use; (c) use of the Software outside the scope of this EULA or in contravention of the Documentation; (d) AirWatch's use of any designs, plans, instructions, specifications, diagrams or the like, provided by Customer, if any; or (e) Customer's failure to use all available Enhancements and Updates to the Software made available to Customer by AirWatch, if the claim would not have occurred but for such failure. Nothing in this provision shall be construed as a limitation on Customer's ability to retain legal counsel at its own expense to monitor the proceedings. This Section sets forth Customer's sole and exclusive remedies with respect to Infringement Claims.

**11.3 Disclaimers.** EXCEPT AS EXPRESSLY SET FORTH IN THIS EULA, THE SOFTWARE, HOSTED SERVICES, THIRD PARTY APPLIANCE, THIRD PARTY SOFTWARE, MAINTENANCE, UPDATES AND ENHANCEMENTS, SOFTWARE RELATED SERVICES, OR DELIVERABLES PROVIDED AS A RESULT OF THE PERFORMANCE OF MAINTENANCE OR SOFTWARE RELATED SERVICES (COLLECTIVELY, THE "WARRANTED MATTERS") ARE PROVIDED "AS IS" AND AIRWATCH AND ITS LICENSORS, DEVELOPERS, AND OTHER SUPPLIERS (THE "AIRWATCH PARTIES") FURTHER DISCLAIM THAT THE FUNCTIONS CONTAINED IN THE WARRANTED MATTERS WILL MEET THE REQUIREMENTS OF CUSTOMER OR OPERATE ERROR FREE. EXCEPT AS EXPRESSLY SET FORTH IN THIS EULA, THERE ARE NO OTHER WARRANTIES, CONDITIONS, OR REPRESENTATIONS, WHETHER EXPRESS OR IMPLIED BY STATUTE, OPERATION OF LAW, TRADE USAGE, COURSE OF PERFORMANCE OR DEALING OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, FITNESS FOR A PARTICULAR USE, NON-INFRINGEMENT, TITLE, ACCURACY, OR COMPLETENESS; ALL SUCH WARRANTIES BEING SPECIFICALLY AND FULLY DISCLAIMED BY THE AIRWATCH PARTIES. OTHER WRITTEN OR ORAL REPRESENTATIONS OR AFFIRMATIONS OF FACT, INCLUDING BUT NOT LIMITED TO, STATEMENTS FROM AIRWATCH OR ANY OTHER SOURCE REGARDING THE PERFORMANCE OF THE WARRANTED MATTERS THAT ARE NOT CONTAINED IN THIS EULA, SHALL NOT BE BINDING ON THE AIRWATCH PARTIES AND ARE HEREBY EXPRESSLY DISCLAIMED. AIRWATCH FURTHER DISCLAIMS ANY LIABILITY TO CUSTOMER OR USERS FOR ANY DATA OR USAGE CHARGES FOR DEVICES MANAGED BY THE SOFTWARE.

**11.4 Limitation of Liability.** EXCEPT FOR BREACHES OF THE LICENSE RESTRICTIONS, CONFIDENTIALITY OBLIGATIONS, OR A PARTY'S INTELLECTUAL PROPERTY RIGHTS ("IP") OR CLAIMS UNDER THE INDEMNITY PROVISIONS OF THIS EULA, (A) NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES, OR ANY LOST PROFITS, REVENUE, DATA, OR DATA USE AND (B) EITHER PARTY'S MAXIMUM AGGREGATE LIABILITY FOR ALL DAMAGES ARISING OUT OF OR RELATED TO THIS EULA OR ANY ORDER, WHETHER SUCH ACTION IS BROUGHT IN LAW, EQUITY, CONTRACT OR TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), OR OTHERWISE, SHALL BE LIMITED TO THE SOFTWARE LICENSE FEES PAID BY CUSTOMER AND RECEIVED BY AIRWATCH HEREUNDER IN THE LAST TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

**12 INDEMNITY.**

**12.1 Mutual Indemnification.** Each party (the "Indemnitor") shall defend and indemnify the other party and its Affiliates, officers, directors, employees, contractors, agents, successors and assigns (the "Indemnitees") from and against any and all claims, losses, damages, judgments, costs and expenses, including attorneys' fees incurred directly or indirectly ("Claims") by the Indemnitees arising out of or relating to: (i) any breach or violation of the Confidentiality Obligations, or an Indemnitee's IP rights by Indemnitor, (ii) any and all third party Claims related to any negligent acts, fraud, or intentional misconduct of the Indemnitor or its Affiliates or agents, and/or (iii) any personal injury (including death) or damage to property resulting from the Indemnitor's or its Affiliates' or agents' acts or omissions.

**12.2 Procedure.** As a condition to any indemnity claim under this Section, (i) Indemnitees must notify Indemnitor in writing within thirty (30) days of the claim; (ii) Indemnitor must have sole control of the defense and all related settlement negotiations, as long as such settlement shall not include a financial obligation for Indemnitees; and (iii) Indemnitees must provide Indemnitor with the information, assistance and authority to enable Indemnitor to perform Indemnitor's obligations under this Section. Nothing in this provision shall be construed as a limitation on Indemnitees' ability to retain legal counsel at its own expense to monitor the proceedings.

**13 TERM, RENEWAL, AND TERMINATION.**

**13.1 Term and Renewal.** This EULA will commence on the Effective Date and will continue for so long as a valid Order is in place or until Customer ceases use of all offerings hereunder, whichever is later; unless the EULA is earlier terminated as provided herein.

**13.2 Customer Termination.** Customer may terminate this EULA for cause: (i) in the event of a material breach by AirWatch of this EULA that is unremedied for a period of thirty (30) days after receipt of written notice by AirWatch, (ii) immediately with concurrent notice in the event of a breach by AirWatch which, by its nature, cannot be cured, or (iii) as otherwise expressly provided herein. With respect to terminations for cause, except as otherwise expressly and specifically stated in this EULA, no refunds or payments of any kind shall be due Customer.

**13.3 AirWatch Termination.** AirWatch may terminate the EULA and the relevant Software License under this EULA: (i) if Customer ceases or is delinquent in making payments of any applicable Software License fees for a period of thirty (30) days after notification of such delinquency; (ii) in the event of a material breach of this EULA by Customer that is unremedied for a period of thirty (30) days after receipt of written notice by Customer; (iii) as otherwise expressly provided; (iv) immediately with concurrent notice in the event of a breach by Customer which, by its nature, cannot be cured.

**13.4 Customer Obligations upon Termination.** Upon the termination or expiration of this EULA and the related Software Licenses for any reason whatsoever (i) any Software License will automatically and immediately terminate, (ii) Customer will immediately cease and desist from all use of the Software in any way, and (iii) within ten (10) days after the effective date of the termination or expiration of this EULA and any related Software License, Customer is required to uninstall and either return or destroy the applicable Software and provide a written certification executed by an officer of Customer certifying such action. Except for Customer terminations for cause, upon termination, Customer shall pay any fees then owing under this EULA as of the date of termination within thirty (30) days. Terminations are effective upon Customer's compliance with this Section.

**13.5 AirWatch Obligations upon Termination.** Upon the termination or expiration of this EULA and the related Software License for any reason whatsoever, at Customer's request, AirWatch will either provide Customer with instructions to enable Customer to use the report function of the Software to export all Device information from the Software or use the report function of the Software to export all Device information from the Software.

**13.6 Trial License.** At the conclusion of the Trial Period, Customer may terminate this EULA immediately upon notice to AirWatch and shall comply with its obligations hereunder. To the extent that Customer continues to use the Software after the end of the Trial Period, then the Trial License(s) shall convert to Subscription License(s) under this EULA at AirWatch's then-current rates, terms, and conditions.

**13.7 Survival.** The provisions of this EULA that by their sense and context are intended to survive termination of this EULA, shall so survive termination.

**14 NOTICES.** Except as otherwise provided herein, all notices, consents, requests, instructions, approvals, and other communications made, required, or permitted under this EULA will be given to the parties at the addresses listed on the Order by: (i) personal service or recognized international or overnight courier, deemed effective on reported delivery date; or (ii) facsimile transmission or email transmission, deemed effective on delivery date confirmation. Duplicate notices are required to be provided to AirWatch LLC ATTN: Legal, 1155 Perimeter Center West, Suite 100, Atlanta, GA 30338, fax: 404.478.7530, email: notices.legal@air-watch.com.

**15 SURVEYS.** AirWatch shall be entitled to conduct periodic surveys solely for the purposes of determining (i) the number of Devices in use with the Software and (ii) compliance with the terms and conditions of this EULA. Such surveys shall be conducted remotely, at AirWatch's expense, and shall not interfere with Customer's business operations. Alternatively, at AirWatch's request, Customer will use the Software to produce a report containing the information reasonably requested by AirWatch.

#### **16 GENERAL PROVISIONS.**

**16.1 Acceptance of an Additional Order.** Customer's acceptance of an additional Order and reaffirmation of its agreement to the terms and conditions of the EULA and the original Order shall be indicated by Customer (i) executing and returning to AirWatch a new Order or (ii) using any additional Devices with the Software.

**16.2 Governing Law.** This EULA, and all disputes arising hereunder or related hereto, may only be brought before a court of appropriate jurisdiction in the country whose law governs this Agreement as set forth below:

**16.2.1** Except where a provision below applies, this EULA will be governed by and construed in accordance with the laws of the State of Georgia, USA, excluding its principles of conflicts of law and the private international law rules.

**16.2.2** Where Customer is within a member-state of the European Union, a member-state of the European Free Trade Area or any other area of Europe, the Republic of South Africa, or the Middle East, or where the Customer otherwise signs the applicable Order with AirWatch UK Limited, this EULA will be governed by and construed in accordance with the substantive law of England and Wales, excluding principles of conflicts of law and the private international law rules.

**16.2.3** Where Customer is within Australia, New Zealand, or otherwise signs the applicable Order with AirWatch (Australia) PTY LTD, this EULA will be governed by and construed in accordance with the laws of the State of Victoria, Australia, excluding its principles of conflicts of law and private international law rules. The venue and exclusive jurisdiction for any litigation will be in Melbourne, Australia.

**16.3 Disputes.** The parties acknowledge and agree that any breaches of the License Restrictions, the Confidentiality Obligations, or either party's IP rights may give rise to irreparable harm to the non-breaching party for which the granting of monetary damages would not be an adequate remedy, accordingly, the non-breaching party may, in addition to all other available remedies, seek equitable remedies to restrain any continued breach of the License Restrictions or a party's IP rights by the breaching party, as the case may be, without having to prove that actual damage has been sustained by the non-breaching party. No action arising out of this EULA, regardless of form, may be brought more than one (1) year after the claiming party knew or should have known of the cause of action.

**16.4 Export Laws.** The Software is subject to United States export control laws and regulations and may be subject to export or import regulations in other countries. These laws and regulations include licensing requirements and restrictions on destinations, end users, and end use. Customer agrees to comply with all domestic and international export and import laws and regulations that apply to the Software and acknowledges that Customer has the responsibility to obtain any and all necessary licenses to export, re-export, or import the Software and covenants that it shall not, directly or indirectly, sell, export, re-export, transfer, divert, or otherwise dispose of any Software, source code, or technology (including derivative products) received from AirWatch under this EULA to any other party or destination prohibited by the laws or regulations of the United States, without obtaining prior governmental authorization as required by those laws and regulations.

**16.5 Assignment.** This EULA, including any rights, licenses or obligations under this EULA, may not be assigned or otherwise transferred (whether by operation of law, merger, reorganization, or otherwise) by Customer to any non-Affiliate party without the prior written consent of AirWatch and any attempt to do so in violation of the terms hereof shall be null and void.

**16.6 Force Majeure.** A party is not liable under this EULA for non-performance caused by an any failure of performance, equipment, or payment due to causes beyond the reasonable control of such party, if the party makes reasonable efforts to perform. This Section does not operate to relieve either Party of its obligation to make payments then owing.

**16.7 Publicity.** AirWatch may use the name and/or logo of Customer in a list of customers used in marketing materials until requested to cease this use by Customer. Within forty-five (45) days of signing this EULA AirWatch may publish a press release announcing the acquisition of Customer as a customer, provided Customer has an opportunity to review and approve the press release.

**16.8 Independent Contractor.** AirWatch shall at all times be considered an independent contractor under this EULA. Nothing contained herein will be construed to create the relationship between the parties of principal and agent, employer and employee, partners or joint venturers.

**16.9 No Third Party Beneficiaries.** This EULA is for the benefit of Customer and AirWatch and does not provide any third party the right to enforce it or to bring an action for any remedy, claim, liability, reimbursement or cause of action or any other right or privilege.

**16.10 Non-Waiver.** The failure of either party to require the performance by the other party of any provision hereof will not constitute a waiver of that provision or the required performance. The waiver by either party of any breach of any provision of this EULA will only be valid if given in an executed written instrument and any such waiver will not constitute a waiver as to any subsequent breach or continuation of the same breach.

**16.11 Headings.** Headings are used in this EULA for convenience only and shall not affect any construction or interpretation of this EULA.

16.12 **Language.** In the event that AirWatch or another party has provided Customer with a translation of this EULA from the English language to another language, Customer agrees that such translation is provided for convenience only; that the American English language version of this EULA governs the relationship between AirWatch and Customer; and, if there is any conflict between the American English language version of this EULA and such translation, the American English language version shall take precedence. All disputes arising under this EULA shall be resolved in the English language.

16.13 **Entire Agreement.** This EULA constitutes the entire agreement between the parties with respect to the subject matter hereof. This EULA and any related Order supersede and replace all prior understandings, negotiations, commitments, representations, and agreements of the parties relating to the Software and the subject matter hereof. AirWatch's agreement to provide the Software to Customer is expressly conditioned upon the unequivocal application of all terms and conditions included in this EULA to such transaction and any additional or different terms or conditions proposed by Customer (whether by purchase order, counter-offer, acknowledgement, electronic data interchange, vendor enrollment, or otherwise) are hereby expressly objected to and will not be in any way binding upon AirWatch. Although any related Order or SOW is incorporated by reference herein, it is the express agreement of the parties that the terms of this EULA shall supersede any conflicting terms in any related Order or SOW, unless the conflicting terms in such related Order or SOW clearly express an intent to supersede this EULA by directly and specifically referring to the section or sections of this EULA to be superseded and such Order or SOW is executed by an officer of each party. If any term of this EULA is found to be invalid or unenforceable, the remaining provisions will remain effective and such term shall be replaced with a term consistent with the purpose and intent of this EULA. This EULA may only be amended or modified in writing and any modification or amendment to this EULA will be effective only upon execution by an officer of each party.

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