



MASTER SUBSCRIPTION AGREEMENT

THIS MASTER SUBSCRIPTION AGREEMENT ("**AGREEMENT**") GOVERNS YOUR ACQUISITION AND USE OF OUR SERVICES EVENIF SUCH USE IS TEMPORARY OR ON A LIMITED, TRIAL BASIS. YOUR EXECUTION OF THIS AGREEMENT BINDS YOU TO THE TERMS CONTAINED IN THIS AGREEMENT WHICH ARE INCORPORATED INTO AND MAKE A PART OF SUCH ORDER FORM BY THIS REFERENCE. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERMS "YOU" OR "YOUR" SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT EXECUTE THIS AGREEMENT AND MAY NOT USE THE SERVICES. BY EXECUTING THIS AGREEMENT, YOU ACKNOWLEDGE AND REPRESENT THAT YOU ARE NOT A DIRECT COMPETITOR, ARE NOT ACCESSING THE SERVICES FOR COMPETITIVE PURPOSES, INCLUDING BUT NOT LIMITED TO MONITORING PERFORMANCE OR FUNCTIONALITY OR ANY OTHER BENCHMARKING OR COMPETITIVE PURPOSE.

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Definitions.

"**Additional Services**" means the service(s) named and described in an Order Form for the purchase of such Additional Service.

"**Customer Data**" means all electronic data or information submitted by Customer to the Service.

"**Licensors**" means Phase 5 Group or P5G.

"**Order Form**" means the ordering documents representing the initial purchase of the Service, Additional Services, and any subsequent purchases agreed to between the parties in writing from time to time, that are executed hereunder and deemed incorporated into Exhibit A from time to time and that specify, among other things details of the services ordered and the applicable fees.

"**Service**" means the online, web-based eon.phase5group.com service, including associated offline components, and the Software provided by Licensors via designated Websites.

"**Software**" means the online web-based eon.phase5group.com software service.

"User Guide" means the online user guide for the Software, updated from time to time.

"Users" means Customer's employees, consultants, contractors or agents who are authorized to use the Service and have been supplied user identifications and passwords by Customer (or by Licensor at Customer's request).

2. Service.

2.1. Provision of Service. Licensor shall make the Service available to Customer pursuant to the terms and conditions set forth in this Agreement and any and all Order Forms executed hereunder from time to time. If there is any conflict between the terms set forth on an Order Form and this Agreement, the terms of the Order Form shall prevail. Customer agrees that its purchase of subscriptions is not contingent upon the delivery of any future functionality or features nor is it dependent upon any oral or written public comments or other representations made by Licensor with respect to future functionality or features except as expressly set forth herein.

3. Use of the Service.

3.1. Licensor Responsibilities. Licensor shall: (i) in addition to its confidentiality obligations under Section 7, not use, edit or disclose to any party other than Customer the Customer Data; (ii) use commercially reasonable efforts to maintain the security and integrity of the Service and the Customer Data; (iii) provide telephone and online support to Customer's Users; and (iv) use commercially reasonable efforts to make the Service generally available 24 hours a day, 7 days a week, as outlined in the Service Level Agreement in Exhibit B except for: (a) planned downtime; or (b) downtime caused by circumstances beyond Licensor's reasonable control, including acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems not involving Licensor employees, computer or telecommunications failures or delays involving hardware or software not within Licensor's possession or reasonable control, and network intrusions or denial of service attacks, but only to the extent unavailability results notwithstanding the exercise by Licensor of reasonable care and due diligence to avoid or mitigate the same in anticipation of or in response to such causes.

Customer Responsibilities. Customer is responsible for all activities that occur under Customer's User accounts. Customer shall: (i) pay for the Services and all other amounts duly invoiced by Licensor hereunder; (ii) have sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Customer Data; (iii) use commercially reasonable efforts to prevent unauthorized access to, or use of, the Service, and notify Licensor promptly of any such unauthorized use; and (iv) comply with all applicable local, state, federal, and foreign laws in using the Service and, if using the Service outside of the United States, not use the Service in a manner that would violate any federal or state laws of the United States if conducted therein.

3.2. Use Guidelines. Customer shall use the Service solely for its internal business purposes as contemplated by this Agreement and shall not: (i) license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, time share or otherwise commercially exploit or make the Service available to any third party, other than as contemplated by this Agreement; (ii) send spam or otherwise duplicative or unsolicited messages in violation of applicable laws; (iii) send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material, including material harmful to children or violative of third party privacy rights; (iv) send or store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs; (v) interfere with or disrupt the integrity or performance of the Service or the data contained therein; or (vi) attempt to gain unauthorized access to the Service or its related systems or networks.

4. Additional Services. Customer may purchase, and Licensor shall provide, Additional Services pursuant to the terms executed Order Forms hereunder.

5. Fees & Payment.

5.1. User Fees. Customer shall pay all fees specified in all executed Order Forms hereunder and as invoiced by Licensor.

5.2. Invoicing & Payment. Fees for the Service will be invoiced and paid by Customer in accordance with the terms set forth in the relevant Order Form. Unless otherwise stated in the Order Form, fees are due within 30 days from the invoice date (the "Due Date"). Unless otherwise stated in the Order Form, all payments made under this Agreement shall be in United States dollars.

5.3. Overdue Payments. Any payment not received from Customer by the Due Date may accrue, at Licensor's discretion, interest at the rate of 1.5% of the outstanding balance per month (18% per annum), or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid.

5.4. Suspension of Service. When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be made as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Licensor shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer.

5.5. Taxes. Licensor shall state separately on invoices taxes excluded from the fees, and the Customer agrees either to pay the amount of the taxes (based on the current value of the equipment) to you or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

5.6. Billing and Contact Information. Customer shall maintain complete and accurate billing and contact information on the Service at all times.

6. Proprietary Rights.

- 6.1. Reservation of Rights.** Customer acknowledges that in providing the Service, Licensor utilizes (i) the EON name, the EON logo, the eon.phase5group.com domain name, the product and service names associated with the Service, and other trademarks and service marks; (ii) certain audio and visual information, documents, software and other works of authorship; and (iii) other technology, software, hardware, products, processes, algorithms, user interfaces, know-how and other trade secrets, techniques, designs, inventions and other tangible or intangible technical material or information (collectively, "**Licensor Technology**") and that the Licensor Technology is covered by intellectual property rights owned or licensed by Licensor (collectively, "**Licensor IP Rights**"). Other than as expressly set forth in this Agreement, no license or other rights in or to the Licensor Technology or Licensor IP Rights are granted to Customer, and all such licenses and rights are hereby expressly reserved. Licensor shall be the sole and exclusive owner of all rights, title and interest in materials developed or provided in connection with Services and Additional Services.
- 6.2. License Grant.** Licensor grants Customer and its Users a non-exclusive, non-transferable (except in connection with a permitted assignment of this Agreement), non-sublicenseable right to access and use the Service in accordance with the terms of this Agreement.
- 6.3. Restrictions.** Customer shall not (i) modify, copy or create derivative works based on the Service or Licensor Technology; (ii) create Internet "links" to or from the Service, or "frame" or "mirror" any content forming part of the Service, other than on Customer's own intranets or otherwise for its own internal business purposes; (iii) disassemble, reverse engineer, or decompile the Service or Licensor Technology or (iv) take any other action or engage in any other conduct or behavior which interferes with Licensor's rights as set forth herein in order to (A) build a competitive product or service, (B) build a product or service using similar ideas, features, functions or graphics of the Service, (C) copy any ideas, features, functions or graphics of the Service or (D) improperly or illegally misappropriate the Service, the Licensor Technology, Licensor IP Rights or any rights of Licensor associated therewith.
- 6.4. Customer Data.** As between Licensor and Customer, all Customer Data is owned exclusively by Customer. Customer Data shall be considered Confidential Information

subject to the terms of this Agreement. Licensor may access Customer's User accounts, including Customer Data, solely to provide services and respond to service or technical problems or at Customer's request.

7. Confidentiality.

- 7.1. Definition of Confidential Information.** As used herein, "**Confidential Information**" means all confidential and proprietary information of a party ("**Disclosing Party**") disclosed to the other party ("**Receiving Party**"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure, including the Customer Data, the Service, the Licensor Technology, the Licensor IP Rights, business and marketing plans, technology and technical information, product designs, and business processes. Confidential Information (except for Customer Data) shall not include any information that: (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party; (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party; (iii) was independently developed by the Receiving Party without breach of any obligation owed to the Disclosing Party; or (iv) is received from a third party without breach of any obligation owed to the Disclosing Party. Licensor recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which requires that certain information be released, despite being characterized as "confidential" by the vendor.
- 7.2. Confidentiality.** The Receiving Party shall not disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, except with the Disclosing Party's prior written permission.
- 7.3. Protection.** Each party agrees to protect the confidentiality of the Confidential Information of the other party in the same manner that it protects the confidentiality of its own proprietary and confidential information of like kind, but in no event shall either party exercise less than reasonable care in protecting such Confidential Information.
- 7.4. Compelled Disclosure.** If the Receiving Party is compelled by law to disclose Confidential Information of the Disclosing Party, it shall provide the Disclosing Party with prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure.

7.5. Remedies. If the Receiving Party discloses or uses (or threatens to disclose or use) any Confidential Information of the Disclosing Party in breach of this Section 6, the Disclosing Party shall have the right, in addition to any other remedies available to it, to seek injunctive relief to enjoin such acts, it being specifically acknowledged by the parties that any other available remedies are inadequate.

8. Warranties, Disclaimers and Indemnity.

8.1. Warranties. Each party represents and warrants that it has the legal power to enter into this Agreement. Licensor represents and warrants that (i) it will provide the Service in a manner consistent with general industry standards reasonably applicable to the provision thereof; and (ii) it owns or otherwise has sufficient rights to the Service and the Licensor Technology to grant the licenses granted herein.

8.2. Disclaimer. EXCEPT AS EXPRESSLY PROVIDED HEREIN, LICENSOR MAKES NO WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. LICENSOR HEREBY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

9. Limitation of Liability.

9.1. Limitation of Liability. IN NO EVENT SHALL LICENSOR'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, THE SERVICE OR ADDITIONAL SERVICES, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE AMOUNTS ACTUALLY PAID BY AND DUE FROM CUSTOMER PURSUANT TO THE ORDER FORM(S) GIVING RISE TO LIABILITY. The foregoing limitation of liability shall not apply to (1) personal injury or death resulting from Licensor's negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.

9.2. Exclusion of Consequential and Related Damages. EXCEPT IN THE EVENT OF BREACH OF SECTIONS 3.3 AND 6.3, IN NO EVENT SHALL EITHER PARTY

HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS, LOSS OF USE, COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES HOWEVER CAUSED AND, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

- 9.3. Limitation of Action.** Except for actions for non-payment or breach of either party's intellectual property rights, no action (regardless of form) arising out of this Agreement may be commenced by either party more than six (6) years after the cause of action has accrued.

10. Term & Termination.

- 10.1. Term of Agreement.** This Agreement commences on the date Customer first executes it and is non-cancelable, and unless earlier terminated as set forth in Section 10.2 below, continues until their initial term expressed in the Order Form has expired.
- 10.2. Termination for Cause.** When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be made as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Licensor shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer.
- 10.3. Outstanding Fees.** If this Agreement is terminated by Customer for cause in accordance with Section 10.2 (Termination for Cause), Licensor will refund to Customer any prepaid fees covering the remainder of the term of all Order Forms after the effective date of termination. If this Agreement is terminated by Customer for any other reason, Customer will pay any unpaid fees covering the remainder of the term of all Order Forms. In no event will termination relieve Customer of its obligation to pay any fees payable to Licensor for the period prior to the effective date of termination.
- 10.4. Return of Customer Data.** Upon request by Customer made within 30 days of the effective date of termination, Licensor will make available to Customer for download a file of Customer Data. After such 30-day period, Licensor shall have no obligation to maintain or provide any Customer Data and shall thereafter, unless legally prohibited, delete all Customer Data in its systems or otherwise in its possession or under its control.

10.5. Surviving Provisions. The following provisions shall survive any termination or expiration of this Agreement: Sections 1, 5, 6 (excluding Section 6.2), 7, 8, 9, 10 and 11.

11. General Provisions.

11.1. Relationship of the Parties. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.

11.2. No Third-Party Beneficiaries. There are no third-party beneficiaries to this Agreement.

11.3. Notices. All notices under this Agreement which either party gives to the other party shall be in writing and shall be given by personal service, registered or certified mail, return receipt requested, hand delivery courier, or nationally recognized carrier which tracks receipt, to the other party at its address set forth above or such other address for notices as may be provided by such party in writing. Notices shall be deemed delivered upon receipt.

11.4. Waiver and Cumulative Remedies. No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.

11.5. Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.

11.6. Assignment. Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the other party's prior written consent (not to be unreasonably withheld); provided, however, either party may assign this Agreement in its entirety (including all Order Forms), without the other party's consent to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets. Notwithstanding the foregoing, if a party is acquired by, sells substantially all of its assets to, or undergoes a change of control in favor of, a direct competitor of the other party, then such other party may assign this Agreement to such successor entity.

11.7. Governing Law. This Agreement shall be governed exclusively by the Federal laws of the United States without regard to its conflicts of laws rules.

11.8. Export Control Laws. Each party shall comply with all United States and foreign export control laws or regulations applicable to its performance under this Agreement.

Entire Agreement. This Agreement, including all exhibits and addenda hereto and all Order Forms executed hereunder, and the underlying GSA Schedule Contract and Schedule Pricelist, constitutes the entire agreement between the parties, and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and signed by the party against whom the modification, amendment or waiver is to be asserted.

EXHIBIT B
SERVICE LEVEL AGREEMENT

Licensor will use commercially reasonable efforts to make the Service available with a monthly uptime percentage of at least 99% across the subscription period (the “Availability Percentage”). “Availability” shall not include time that the Service is not accessible due to: (a) Scheduled Maintenance; (b) Force Majeure Events; (c) misuse of the Service by Customer or its Users; or (d) problems outside of the Licensor’s hosting environment, including problems with the network, systems, equipment, hardware, software or communications of Customer or its Users. In the event of an unscheduled outage or other unplanned Service issue that materially impacts the Customer’s ability to use the full functionality of the Service, Licensor will take all commercially reasonable steps to restore proper Service as soon as possible.

Licensor shall provide Customer with advance notice of the timing of Scheduled Maintenance and will work with Customer to establish Scheduled Maintenance at times that are commercially reasonable for the nature and type of Service being provided. To the extent commercially reasonable, Licensor shall attempt to perform Scheduled Maintenance during historically low use hours based on average use by its clients. Licensor may conduct emergency maintenance on an “as needed” basis.

Licensor will engage with the Customer in the use of the Service as follows:

- Provision of training materials
- “Power User” training to build Customer capability to deploy the Service
- Technical assistance to support the resolution of user-specific performance issues. Such assistance shall be available during normal business hours, 9 am to 5 pm ET, Monday through Friday
- Communication of the timing and impact of upcoming software release upgrades
- Collecting and collating Customer feedback for consideration in future software releases

In the event that the Availability Percentage falls below 99% in any calendar month, Customer shall receive from Licensor a service credit equal (in percentage) to the service credit Licensor receives from Licensor’s third-party Suppliers for such availability failures. Such percentage credit shall then be applied against the Service Fee paid by Customer to Licensor to determine the Service Credit owing to Company. To receive the service credit, Customer must submit a claim to Licensor that includes the dates and times of each outage incident along with any logs or other documentation that evidence the outage or corroborate the claim. Such claim must be submitted within sixty (60) calendar days of the end of the month in which any such outage occurs. Service credits will be applied against future fees owing to Licensor, provided, however, that if the Service Credit occurs at the end of the term of the Agreement or if any applicable Service Fee has been previously paid in full, the Service Credit shall be refunded to Customer with thirty (30) days of the approved claim.

