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### 2.0 Term and Termination.

2.1 Provided that the terms and conditions of this EULA are complied with at all times, and subject to the termination provisions below, the licenses provided hereunder are perpetual.

2.2 Client may surrender the licenses granted hereunder at any time by giving written notice to Orion and ceasing use of the Licensed Software.

2.3 Orion may terminate the licenses granted hereunder for cause if Client materially breaches the terms of this EULA or otherwise infringes Orion's intellectual property rights in the Licensed Software, which breach is not remedied within thirty (30) days after the date of written notice to Client of such breach.

2.4 Upon termination of the licenses granted hereunder, Client shall permanently remove any Licensed Software from Client's equipment, back-up media, or other storage locations and either (i) return all copies thereof to Orion or (ii) destroy such copies, as Orion directs.

2.5 The provisions of Section 4, 5, 6, 7 and 9 shall survive the termination of the licenses granted herein.

3.0 Warranty. The Licensed Software is warranted to function in substantial conformity with the Orion documentation provided with it for a period of twelve

(12) months following acceptance of the Licensed Software by Client. **THIS WARRANTY EXTENDS SOLELY TO CLIENT AND IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR USE OR PURPOSE, WHICH ARE EXPRESSLY EXCLUDED.**

3.1 The warranty set forth above shall be void during any period that any of the following circumstances exist:

(a) The Licensed Software is modified by any person except an authorized Orion employee or agent.

(b) The License Software is not used in accordance with the Orion documentation, or other instructions provided by Orion, or by misuse or neglect.

(b) Client fails to install and implement the latest version of the Licensed Software offered to it by Orion or Client's vendor.

(d) Client fails to maintain the equipment configuration and/or the site requirements specified in the Orion documentation or by Client's vendor.

### 4.0 Intellectual Property Infringement.

4.1 Orion represents and warrants that, to its actual, current knowledge, the Licensed Software does not infringe the copyrights, patents, trade secrets or trademarks (collectively "Intellectual Property Rights") of any third party. In the event of a claim, action or proceeding (collectively "Claim") brought against Client for infringement by the Licensed Software of the Intellectual Property Rights of a third party, Orion will at its expense defend against such Claim, provided that Client immediately notifies Orion of such Claim and cooperates fully with Orion and its legal counsel in the defense thereof. Orion may in its discretion (i) contest, (ii) settle, (iii) procure for Client the right to continue using the Licensed Software, or (iv) modify or replace the Licensed Software so that it no longer infringes (while maintaining substantially equivalent functionality and performance to that described in the user documentation.) Client may participate in the defense of such Claim at its own expense. If Orion concludes in its sole judgment that none of the foregoing options are commercially reasonable, and Client's use of the Licensed Software is permanently enjoined as a result of a judgment of a court of competent jurisdiction in respect of such Claim, then Orion will return to Client's outsourcing vendor the Licensed Software license fee(s) paid by Client's outsourcing vendor to Orion on behalf of Client in connection with this EULA less a portion of said fee(s) for Client's use of the Licensed Software, prorated over a period of three (3) years, and the licenses granted in this EULA shall terminate. Client's outsourcing vendor will, in turn, be responsible for returning to Client the corresponding fee(s) paid by Client to outsourcing vendor, less a portion of said fee(s) for Client's use of the Licensed Software, prorated over a period of three (3) years. In addition, in the event such Claim results in a final money judgment against Client which does not arise, wholly or in part, from the actions or omissions of Client, its officers, directors, employees, contractors, agents, or elected officials, or a third party, Orion will indemnify Client therefrom to the extent indemnification for such judgment is not provided under Client's insurance policies (unless Client is self-insured in which case the preceding clause shall not apply). This section 4 states the entire obligation of Orion regarding infringement of intellectual property rights, and it will survive the termination of this EULA.

4.2 Notwithstanding the above, Orion shall have no duty under this Section 4 with respect to, and Client shall not bring an action against Orion for indemnification or other causes of action with respect to any Claim arising from or related to infringements (i) by the equipment or operating system software upon or with which the Licensed Software runs, (ii) arising out of modifications to the Licensed Software not made by or under the direction of Orion, (iii) resulting from use of the Licensed Software to practice any method or process which does not occur wholly within the Licensed Software, or (iv) resulting from modifications to the Licensed Software prepared pursuant to specifications or other material furnished by or on behalf of Client.

### 5.0 Limitation Of Liability.

5.1 The total liability of Orion for any claim or damage arising under this EULA, whether in contract, tort, by way of indemnification or under statute shall be limited to (i) direct damages which shall not exceed the license fees paid hereunder or (ii) in the case of bodily injury or property damage for which defense and indemnity coverage is provided by Orion's insurance carrier(s), the coverage limits of such insurance.

5.2 IN NO EVENT SHALL ORION BE LIABLE, WHETHER IN CONTRACT OR IN TORT, FOR LOST PROFITS, LOST SAVINGS, LOST DATA, LOST OR DAMAGED SOFTWARE, OR ANY OTHER CONSEQUENTIAL OR INCIDENTAL DAMAGES ARISING OUT OF THE USE OR NON-USE OF THE LICENSED SOFTWARE, OR OTHERWISE RELATED TO THIS EULA, REGARDLESS OF WHETHER ORION HAD KNOWLEDGE OF THE POSSIBILITY OF ANY SUCH LOSS OR DAMAGE.

6.0 Confidentiality. Client acknowledges that the Licensed Software and its associated documentation (the "Confidential Information") constitute the trade secrets and proprietary information of Orion. Client shall hold the Confidential Information in confidence and shall not disclose it to third parties except as necessary to exercise the licenses granted hereunder. Without limiting the generality of the foregoing, Client shall use reasonable means, not less than those used to protect its own trade secret and proprietary information, to safeguard the Confidential Information. Client shall not attempt, or authorize or permit others to attempt, to imitate the Licensed Software using the Confidential Information or any part thereof, or to reverse engineer the Licensed Software by any method, now known or later discovered.

7.0 Intentionally deleted.

8.0 Force/Majeure. Neither party shall be liable for delays or failures of performance resulting from circumstances beyond their control, including without limitation, acts of God, transportation delays, riots, acts of war or terrorism, government regulations imposed after the date of this EULA, communications line or other network failures, interruptions or delays, or power failures.

9.0 General Terms.

9.1 This EULA represents the entire agreement between the parties hereto and a final expression of their agreements with respect to the Licensed Software, and supersedes all prior written agreements, oral agreements, representations, descriptions, understandings or negotiations with respect to the matters covered by this EULA. If any term, provision, condition or covenant of this EULA is held to be invalid, void or unenforceable, the rest of the EULA shall remain in full force and effect and shall in no way be affected, impaired or invalidated. No amendment to this EULA shall be effective unless it is in writing and signed by an authorized officer of Orion. No term or provision hereof shall be deemed waived and no breach excused unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to or waiver of a breach by the other, whether express or implied, shall not constitute a consent to, waiver of, or excuse for any other different or subsequent breach. Neither this EULA nor any rights or obligations hereunder shall be assigned or otherwise transferred by Client without the prior written consent of Orion. This EULA shall be binding on and shall inure to the benefit of the heirs, executors, administrators, successors and assigns of the parties hereto, but nothing in this paragraph shall be construed as a consent to any assignment of this EULA except as provided hereinabove. A facsimile of this EULA and its exhibit(s) may be used as an original.

9.2 Except to the extent that this EULA is governed by the laws of the United States, this EULA shall be governed, interpreted and enforced in accordance with the laws of the State of Texas, USA, without regard to its conflict of law provisions or the United Nations Convention for the International Sale of Goods. This EULA shall be performable in Hidalgo County, Texas.

9.3 All notices required to be given under this EULA shall be made in writing by (i) first-class mail, postage prepaid, certified, return receipt, (ii) by regularly scheduled overnight delivery, (iii) by facsimile or email followed immediately by first-class mail, or (iv) by personal delivery, to the address set forth herein, or such other address as provided in writing. Such notices shall be deemed given three (3) days after mailing pursuant to (i) above, or one (1) day after full compliance with (ii), (iii) or (iv) above.

Date: \_\_\_\_\_

Client

By: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Date: \_\_\_\_\_

**ORION COMMUNICATIONS, INC.**

8235 Douglas Avenue Suite 410  
Dallas, Texas 75225

By: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT A  
LICENSED SOFTWARE, LICENSE FEES AND PAYMENT TERMS**

**Licensed Software:**