

BT Mobile Device, Application, Content and E-Mail Management Service Annex to the General Service Schedule

BT Reference No. **_**** _****

1. Definitions

The following definitions apply, in addition to those in the General Terms and Conditions and the General Services Schedule of the PSA.

“Advanced Mobile Application Management” means a type of software which allows the Customer to build custom internal applications, or wrap existing internal applications for advanced security.

“BT Administrator” means the BT employee(s) who has access to the Customer Portal and who provides support to the Customer Helpdesk.

“BT Helpdesk” an English-speaking helpdesk that can be accessed by the Customer Helpdesk 24x7 by phoning the number detailed in the Customer Handbook.

“Console” means a web-based administrative console provided by AirWatch UK Limited that provides Customer Administrators with access to the Service tools and information.

“Customer Administrator” means the Customer employee(s) who has access to the Console and who determines what tools and information Users can access on the Portal.

“Customer Handbook” means the handbook produced by BT to provide further information on the Service to the Customer, and which does not form part of the Agreement.

“Customer Helpdesk” means the help desk developed by the Customer to deal with initial User queries on the Service and which contacts with the BT Administrator for support.

“Device” means a device running any of the specified Mobile Platforms, including all peripherals, data, and applications, excluding the Service Software.

“Device Management Platform” means a management and security server which can be configured to provide different levels of functionality dependent on a User’s role.

“End User License Agreement” means the licence agreement for the Service Software to be entered into between the Customer and AirWatch UK Limited substantially in the form set out in Appendix A, as may be amended or supplemented from time to time by AirWatch UK Limited.

“Licence” means the licence granted through and governed by the End User License Agreement.

“Licence Expiry Date” has the meaning given in clause 2.3.

“Licence Minimum Period” means twenty-four (24) months from the date of activation of that Licence within the Portal.

“Minimum Period of Service” means a period, starting on the Operational Service Date, of at least twenty-four (24) months, and will be stated on the Order.

“Mobile Platform” means the mobile operating system defined in the Customer Handbook.

“Mobile Application Management” means a type of software which enables the Customer to distribute, update and manage internal, public and purchased applications across employee, corporate or shared Devices within the Customer organisation.

“Mobile Content Management” means a type of software which allows the Customer to secure documents distribution and mobile access to corporate documents.

“Mobile Device Management” means a type of software which allows the Customer to enrol Devices in their enterprise environment and which allows configuration of Device settings over-the-air including to: enforce security policies and compliance; secure mobile access to corporate resources; and remotely lock and wipe managed Devices.

“Mobile E-Mail Management” means a type of software which delivers mobile security for the Customer’s corporate e-mail infrastructure.

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“**Portal**” means self-service portal provided by AirWatch UK Limited, showing both the Customer’s and BT’s brands, which allows Users to remotely monitor and manage their smart Devices.

“**Project Manager**” means, in relation to each Party, the person nominated to:

- (a) manage the implementation of the Service;
- (b) be the single point of contact for the other Party in all matters relating to the Service;
- (c) agree with the other Party’s Project Manager a roll-out plan detailing delivery of the Service; and
- (d) co-ordinate with the other Party’s Project Manager the delivery of all Service elements in accordance with the roll-out plan.

“**Service**” has the meaning given in clause 2.1.

“**Service Software**” means the following types of software for smartphones and tablet computers, licensed to the Customer under the End User License Agreement:

- (a) Mobile Application Management;
- (b) Mobile Device Management;
- (c) Mobile E-Mail Management; and
- (d) only if selected by the Customer as set out in the Order:
 - (i) Mobile Content Management; and or
 - (ii) Advanced Mobile Application Management.

“**Trainer**” means the Customer Users who will be trained to provide training to its other Users.

2. Service Delivery

- 2.1. Subject to clause 2.4, BT will provide the ‘BT Mobile Device, Application, Content and E-Mail Management’ service (“**Service**”) to the Customer for the Minimum Period of Service, which will comprise:
 - (a) access to the Service Software;
 - (b) access to the Portal and Console;
 - (c) BT Helpdesk which will take calls from the Customer Helpdesk in relation to the Service; and
 - (d) training as set out in clauses 4.5 and 4.6.
- 2.2. The Customer may allow Users to access the Service on Devices provided by the Customer to the User and/or Devices provided by the Users themselves.
- 2.3. The Licence for each Device will automatically renew at the expiry of the Licence Minimum Period for a further twelve (12) Months, and will continue to renew every twelve (12) Months thereafter, until the date on which the Customer terminates the Licence for a Device in accordance with clause 5.1 (“**Licence Expiry Date**”).
- 2.4. BT will provide the Service to the Customer, for each Device:
 - (a) starting on the date that a Licence for that Device is activated within the Portal and the Customer has enrolled a Device with the Service; and
 - (b) ending on the Licence Expiry Date.
- 2.5. The Service Management Boundary will be point between the Service and the Portal; or, if there is no Device Software, the Device Management Platform.

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2.6. The Service does not include:

- (a) supply, replacement, or repair of Devices;
- (b) instructions on how to operate a Device;
- (c) assistance with connecting to the public internet;
- (d) assistance for downloading applications;
- (e) assistance resetting SIM PIN code(s);
- (f) assistance with lost SIM cards;
- (g) assistance where e-mail credentials are incorrect;
- (h) assistance with downloading applications from public application stores; and
- (i) enrolment to the program entitled the 'Apple Enterprise Developer Programme'.

2.7. BT is not responsible for Device or Portal configuration.

3. Portal

3.1. The Customer and its Users may access the Portal 24x7 via the internet from any Device that has been enrolled with the Service by logging in with a name and password specific to that Device, which BT will provide to the User at the time of enrolment.

3.2. The Customer may use the Portal to manage and administer User accounts, including specifying configuration and policy settings; performing upgrades and disabling a Device if lost or stolen.

3.3. BT will not provide management information or any reports as part of the Service beyond those that are available within the Portal.

3.4. BT may provide the Portal and the Console to the Customer in a language other than English if requested by the Customer and if such language is currently available.

4. BT's Responsibilities

BT will:

4.1. accept the Order from the Customer twenty (20) Business Days prior to the Operational Service Date;

4.2. charge the Customer the Software Licence Fee from the Operational Service Date regardless of when the Licences are activated within the Portal;

4.3. nominate BT's Project Manager within 7 Business Days from the date the Order is signed;

4.4. create a Customer account on the Portal and provide the login credentials to the Customer;

4.5. provide one (1) day of training to up to four (4) Customer nominated Trainer(s), within timescales and locations agreed with the Customer. The Customer will then be responsible for ensuring the Trainer(s) train all other Users;

4.6. provide one (1) day of additional training for up to four (4) Users who will operate the Customer Helpdesk to enable them to deal with User's queries and, when necessary, report faults;

4.7. only accept faults in connection with the Service from the Customer Helpdesk, and will not accept fault reports from Users. The Customer agrees that if necessary BT may contact a User directly to assist in resolving a fault;

4.8. at its sole discretion, provide access to new releases of the Service Software in accordance with the process set out in the Customer Handbook; and

4.9. at its sole discretion, provide access to any error corrections, bug or fault fixes, for Service Software that it deems necessary from time to time for the Service to continue to operate.

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5. The Customer's Responsibilities

The Customer will:

- 5.1. inform BT at least three (3) months in advance of the end of any Licence Minimum Period (or subsequent twelve (12) month period) of its desire to terminate any Licence;
- 5.2. nominate the Customer's Project Manager within 7 Business Days from the date the Order is signed.
- 5.3. provide contact details of the User(s) who will operate the Customer Helpdesk;
- 5.4. as the controller of personal data, comply with the provisions of any and all applicable laws and regulations governing data protection, and inform its employees that their data will be held and processed by a third party in either the UK, Germany or the Netherlands (by BT or its agent) and be subject to any respective data protection agreement between the Customer and BT;
- 5.5. accept the End User License Agreement, and ensure that all Users accept the End User License Agreement before using the Service;
- 5.6. be responsible for identifying and loading applicable User information onto the Portal;
- 5.7. set up user profiles and access to relevant modules on the Portal;
- 5.8. procure, provide, recall, and dispose, in accordance with any and all applicable laws and regulations, all mobile devices, SIM cards, and associated accessories and peripherals used as part of or in connection with the Service;
- 5.9. ensure all Users are competent in the use of Devices, Mobile Platforms, and applications provided within, distributed via, and installed by the Service;
- 5.10. design, develop, configure and test Device policies, as required;
- 5.11. perform moves, adds, and changes of user accounts on the Customer's directory services (e.g. Active Directory) and email platform (e.g. Microsoft Exchange), as necessary;
- 5.12. perform moves, adds, and changes of Devices, groups, tasks, and all other User and configuration related administration on the Portal;
- 5.13. provide support services for initial User enquiries and filtering of issues beyond the BT Service Management Boundary; and
- 5.14. ensuring that it has the necessary software licenses for applications deployed, configured, or enabled via the Service, including Service Software.

6. Charges and Payment Terms

- 6.1. The Charges for the Service will comprise some or all of the following components, depending on the option selected on the Order:

Component	One-time Charge	Recurring Charge
Mobile Device Management (Inclusive of Application and E-Mail Management)	Set Up Charge Software Licence Fee (Perpetual, On Premise Only) Professional Services Fee Maintenance Fee (Paid in Advance)	Software Licence Fee (Subscription, Per Device, Per Month. Includes Maintenance) Hosting Fee (Per Device, Per Month)
Add-on component to	One-time Charge	Recurring Charge

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Mobile Device Management		
Mobile Content Management ('Secure Content Locker View')	Software Licence Fee (Perpetual, On Premise Only) Professional Services Fee Maintenance Fee (Paid in Advance)	Software Licence Fee (Subscription, Per Device, Per Month. Includes Maintenance)
Advanced Mobile Application Management	Software Licence Fee (Perpetual, On Premise Only) Professional Services Fee Maintenance fee (Paid in Advance)	Software Licence Fee (Subscription, Per Device, Per Month. Includes Maintenance)

6.2. The Software Licence Fee will be calculated based on BT's determination of the number of Licences in use on the first Business Day of a calendar month.

7. Restore Time for Incidents

7.1. Clause 7 of the General Service Schedule does not apply to the Service.

7.2. BT will use reasonable endeavours to provide the Customer with the following restore times for the Service, however the following are estimates only and BT may notify the Customer of changes to these restore times at any time.

BT Category	BT Priority Level	Incident description	Restore time
Critical	1	Service affecting Incident: Problem affects many Sites or there is a complete application loss, regardless of how many users or Sites, where there is no workaround or backup	6 Business Hours
Major	2	Non-service affecting Incident that still requires fix: Problem affects single department, Site or one where system outage has no workaround or backup and risk is moderate	24 Business Hours
Minor	3	Partial loss of service having no discernible impact on users: Problem has low impact, even if it affects many users. Resolution can be deferred without a significant impact to the user, caller or customer	5 Business Days
Query	4	Query	5 Business Days

Appendix A – End User License Agreement



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 AND AIRWATCH UK LIMITED (“AIRWATCH”) WITH RESPECT TO USE OF THE PROPRIETARY AIRWATCH™ SOFTWARE (THE “SOFTWARE”). BY (1) EXECUTING AN ORDER, (2) INSTALLING, COPYING, DOWNLOADING OR OTHERWISE ACCESSING THE SOFTWARE, OR (3) CLICKING TO ACCEPT, YOU COMPLETELY AND UNEQUIVOCALLY AGREE TO BE BOUND BY THE TERMS OF THIS EULA WITHOUT MODIFICATION. 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 TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERMS “YOU,” “YOUR,” OR “COMPANY” SHALL REFER TO SUCH ENTITY. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THE TERMS AND CONDITIONS OF THIS EULA, YOU MAY NOT USE OR COPY THE SOFTWARE. IF YOU DO NOT INTEND TO BE LEGALLY BOUND TO THE TERMS AND CONDITIONS OF THIS EULA, DO NOT ACCESS OR OTHERWISE USE THE SOFTWARE AND DO NOT CLICK “ACCEPT” OR OTHERWISE ASSENT TO THIS EULA.

IN THE EVENT THAT YOU PURCHASE ANY AIRWATCH OFFERINGS THROUGH AN AUTHORIZED RESELLER AND SUCH RESELLER HAS GRANTED RIGHTS TO YOU NOT CONTAINED IN THIS AGREEMENT, YOUR SOLE COURSE OF ACTION IN THE EVENT OF ANY DISPUTE WITH REGARD TO SUCH RIGHTS SHALL BE AGAINST SUCH RESELLER.

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 as set forth below:

1.1 “**Affiliate**” means any entity Controlled by, in common Control with, or having Control over a Party or Reseller. Subject to the terms and conditions of this EULA, which shall be fully applicable, any Affiliate of Company may use the license granted hereunder and, in such event, all references to Company shall be deemed to be references to Affiliate and Company and Affiliate shall be jointly and severally liable hereunder. With respect to Company, any direct competitor of AirWatch, shall be excluded from the term Affiliate.

1.2 “**AirWatch**” means AirWatch UK Limited.

1.3 “**APNs Certificate**” means the certificate required by Apple Inc. for use of the Apple Push Notification service (APNs) which is used to allow the Software to securely communicate with Apple Devices over-the-air.

1.4 “**Business Day**” means a business day, but excludes weekends and the following holidays recognized by AirWatch on the dates on which they are observed by the State of Georgia: New Year’s Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day. The day after Thanksgiving Day and Christmas Eve are also recognized by AirWatch.

1.5 “**Company**” means the Party executing this EULA as Company above.

1.6 “**Confidential Information**” shall have the meaning ascribed thereto in Section 6.1.

1.7 “**Control**” means having at least fifty percent (50%) ownership of, an effective majority of the voting shares of, or voting control over a legal entity.

1.8 “**Deliverables**” mean, as the context dictates, tangible or intangible products delivered to Company as a result of the performance of professional services by AirWatch, either in connection with Maintenance or otherwise.

1.9 “**Delivery Date**” means the date on which Company is first enabled to access the Software.

1.10 “**Derivatives**” mean: (i) for copyrightable or copyrighted material, any translation, abridgment, revision or other form in which an existing work may be recast, transformed or adapted; (ii) for patentable or patented material, any improvement thereon; (iii) for material which is protected by trade secret, any new material derived from such existing trade secret material, including new material which may be protected by copyright, patent or trade secret; and (iv) results of any research, tests or analysis of a Party’s Confidential Information, or intellectual or proprietary property.

1.11 “**Device**” or “**Devices**” is a type of Licensed Unit and means Company’s mobile device(s), mobile phone(s), smartphone(s), tablet computer and computing device(s) (excluding laptop computers), 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 such device is owned by Company or by Company’s Users, all as reflected on the Order.

1.12 “**Documentation**” means only those written user guides, specifications, and manuals supplied or made available to Company by AirWatch that set forth the specifications for the Software and/or explain, facilitate, or instruct in the use of the Software, as such may be updated by AirWatch from time to time. Documentation specifically excludes, without limitation, marketing, advertising, sales, and promotional materials and any oral or email communications regarding Software capabilities or specifications.

1.13 “**Effective Date**” means the date on which Company accepts or is deemed to accept this EULA, whether by click-wrap, shrink-wrap, or as an attachment to an Order signed by Company.

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1.14 **“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. Other than Embedded Software, Company shall be responsible for any third party components, hardware, or software, including those that may become necessary from time to time.

1.15 **“Force Majeure”** means any failure of performance or equipment due to causes beyond the reasonable control of a Party, including but not limited to: acts of God, fire, flood, explosions or other catastrophes; accidents; storms; national emergencies, insurrections, riots, wars; governmental legislation, acts, orders or regulations; unavailability of rights-of-way or materials; strikes, lock-outs, work stoppages, or other labor difficulties; or other similar occurrences.

1.16 **“iOS”** means Apple’s mobile operating system installed on Apple’s Devices including iPhones, iPads, and iPod Touches.

1.17 **“Licensed Unit”** means a Device which is monitored by or otherwise utilizes the Software.

1.18 **“License Fees”** means the license fees paid or payable under a Subscription License, Perpetual License, and/or Trial License, as the context dictates.

1.19 **“Maintenance”** means, for users who are current on Maintenance Fees, maintenance and support services performed in accordance with AirWatch’s Maintenance Specifications and, at a minimum, includes: provision Updates provided generally to other licensees of the Software.

1.20 **“Maintenance Fees”** mean the fees for Maintenance.

1.21 **“Maintenance Specifications”** mean AirWatch’s Maintenance specifications and policies, as amended from time to time by AirWatch.

1.22 **“Order”** means any Quote, purchase order, and/or any other form or writing that is physically or electronically executed by both Company and Reseller and seeks to purchase the offerings subject to this EULA. This EULA shall be deemed incorporated by reference into any Order without modification, except as provided in Section 10.11.

1.23 **“Party”** means either AirWatch and Company and **“Parties”** means both AirWatch and Company.

1.24 **“Perpetual License”** shall have the meaning ascribed thereto in Section 2.2.

1.25 **“Person”** means any natural person, corporation, partnership, limited liability company, or other legal entity.

1.26 **“Quote”** means a quote provided to User by Reseller via physical or electronic means which sets forth (i) the number and type of Licensed Units to be licensed under Subscription Licenses, (ii) the number and type of Licensed Units to be licensed under Perpetual Licenses and the Maintenance therefor, (iii) the number and type of Licensed Units to be licensed under Trial Licenses, and (iv) pricing, and which (a) is physically or electronically executed by Company and (b) incorporates by reference all terms and conditions contained in this EULA, or to which the EULA is attached.

1.27 **“Reseller”** shall mean British Telecommunications plc (or its Affiliates, as applicable), having a reseller agreement with AirWatch through which it and its Affiliates resell the AirWatch Products to Company via Orders.

1.28 **“Software”** means AirWatch’s proprietary software in machine-readable, object code form only that is more fully described in an Order, including (i) the Embedded Software, if any, and (ii) any Updates made available to Company pursuant to any Maintenance purchased by Company.

1.29 **“Software License”** means a Subscription License, Perpetual License, and/or Trial License, as the context dictates.

1.30 **“Subscription License”** shall have the meaning ascribed thereto in Section 2.1.

1.31 **“Trial License”** shall have the meaning ascribed thereto in Section 2.3.

1.32 **“User”** means an individual user of a Licensed Unit who is an officer, director, employee, contractor, representative, or agent of Company or Company’s Affiliate(s).

1.33 **“Updates”** mean error corrections, patches, bug fixes, revisions, new releases, new versions, upgrades, enhancements, and updates of the Software that are generally made available by AirWatch to such users for no fee and may contain substantial new features, functions of performance, and/or extensions or improvements of capabilities (for example, updates from version 1 to version 1.1, 1.1.1 or 2.1), *provided, however*, that to the extent that AirWatch, for a fee, offers to users generally (including those users who have purchased Maintenance) any new products, such products shall not be included in the definition of Updates.

2 **LICENSE GRANT.** The Software components provided under each Software License include those necessary for the number and type of Licensed Units indicated on each Order. Any Affiliate of Company may use any license granted hereunder and, in such event, all references to Company shall be deemed to be references to the applicable Company or Affiliate.

2.1 **Subscription License.** To the extent reflected in an Order, subject to the terms, conditions, payment requirements, and restrictions set forth in this EULA, AirWatch hereby grants to Company a limited, revocable, personal, nonexclusive, non-transferable, world-wide, non-sublicensable license to use the Software on a subscription basis, solely for the purposes, and subject to the restrictions, expressly set forth herein (the **“Subscription License”**). The Order will set forth whether Company will receive Hosted Services in conjunction with the Subscription License.

2.2 **Perpetual License.** To the extent reflected in an Order, subject to the terms, conditions, payment requirements, and restrictions set forth in this EULA, AirWatch hereby grants to Company a limited, paid-up, perpetual (subject only to revocation as provided in this EULA), personal, nonexclusive, non-transferable, world-wide, non-sublicensable license to use the Software solely for the purposes, and subject to the restrictions, expressly set forth herein (the **“Perpetual License”**).

2.3 **Trial License.** If the Software is provided to Company for evaluation purposes (**“Trial”**), the Quote is a zero dollar quote, or as otherwise reflected on the Quote, subject to the terms, conditions, and restrictions set forth in this EULA, AirWatch hereby grants Company a limited, revocable, personal, nonexclusive, non-transferable license to use the Software solely for the purposes of testing and evaluating the Software (the **“Trial License”**) for thirty (30) days from the Delivery Date or for such other trial period reflected on the Quote (the **“Trial Period”**). Company 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. 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 is provided **“AS IS”** without any warranty of any kind and Company understands and agrees that the Trial License is specifically and expressly excluded from the warranties, remedies, and terms set forth in Section 7 and all disclaimers set forth in Section 7.1. In the event Company chooses to continue use of the Software beyond the Trial Period, then the Trial License shall convert to the applicable Subscription or Perpetual License under this EULA at AirWatch or Reseller’s then-current rates, terms, and conditions, including, without limitation, Section 4 of this EULA.

2.4 **General Rights.** In connection with any Software License, Company may make a reasonable number of copies of the Software for backup, testing, disaster recovery, or archival purposes and/or for internal use, provided Company also reproduces on such copies any copyright, trademark or other proprietary markings and notices contained in the Software and/or Documentation and does not remove any such marks from the original. In connection with any Software License, Company may only employ a third party who is a direct competitor of AirWatch to provide management, staging, support, hosting, or

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similar services with regard to the Software on its behalf with the prior written consent of AirWatch. The Order will reflect the initial number of Licensed Units. The Software may only be used or accessed by Company on no more than the number of Devices specified on each Order, but the license for the Software may be transferred from Device to Device. There is no limit on the number of computers from which the Devices may be monitored using the Software.

3 **LICENSE RESTRICTIONS.** Company 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. Company 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 other Person (other than Unit Users) (i) the Software License, (ii) the Software; (iii) any use or application of the Software; or (iv) Company's rights under this EULA;

3.2 Shall use the Software solely for Company's internal use with Company's ordinary business operations, only in accordance with all applicable laws and regulations, and in a manner consistent with this EULA or any supplemental limitations specified or referenced in the relevant Order, if any;

3.3 Shall not use the Software except as specified or referenced in the Documentation or use the Documentation except for supporting its authorized use of the Software;

3.4 Shall not modify, adapt, translate, duplicate (except as expressly set forth in this EULA), disassemble, decompile, reverse assemble, reverse compile, or reverse engineer, or take similar action with respect to the Software for any purpose, or otherwise attempt to discover the underlying source code of the Software, for any purpose (unless enforcement is prohibited by applicable law and then, to only the extent specifically permitted by applicable law, and 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 Company's internal use or for license or for resale;

3.6 Shall not use the Software, and will ensure that the Software is not used, in or in conjunction with any applications where product failure could lead to injury to persons, loss of life or severe property or environmental damage ("**Critical Applications**"); and

3.7 Shall not use the Software without obtaining its own APNs Certificate from Apple if Company uses the Software to manage Devices running on iOS.

4 **MAINTENANCE.**

4.1 **Included Services.** To the extent it is purchased in an Order, Maintenance shall be provided in accordance with AirWatch's then-current Maintenance Specifications. 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.

4.1.1 **Subscription License.** All Subscription Licenses include Maintenance and the periodic license fees for the Subscription License reflected on the Order include all Maintenance Fees. In the case of Subscription Licenses, Maintenance may not be separated from the Subscription License and may not be terminated without also terminating the Subscription License.

4.1.2 **Perpetual License.** Maintenance must be purchased separately with respect to Perpetual Licenses, and may be subscribed to for twelve-month periods (each a "**Maintenance Period**") as set forth in an Order. Company may not elect to exclude any of the Software or any of the Licensed Units from Maintenance during the Maintenance Period.

5 **PAYMENT OBLIGATIONS.** AirWatch acknowledges that Company will pay all fees due for the Software licensed under this EULA to Reseller in accordance with the terms agreed between Company and Reseller.

6 **CONFIDENTIALITY AND PROPRIETARY RIGHTS.**

6.1 **Confidential Information.** 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 information which is confidential ("**Confidential Information**"). "**Confidential Information**" means non-public information concerning a Discloser's operations, methods of doing business, technologies, technical designs, research and development, know how, trade secrets, software source code, software, software documentation, computer programs, algorithms, technical specifications and data, testing and bench-marking procedures and results, customers, personnel, vendors, financial information, and other information which (i) has been the subject of reasonable efforts by Discloser to be kept secret and (ii) is information that would reasonably be considered proprietary or confidential. Confidential Information does not include information that: (a) becomes part of the public domain prior to or after the time of disclosure, through no improper action of Recipient; (b) was already in the possession of Recipient at the time of disclosure; (c) is received by Recipient from a third party, provided that such Confidential Information was not, to Recipient's knowledge, obtained by such third party, directly or indirectly, from Discloser; (d) is developed independently by Recipient without the benefit of any Confidential Information disclosed by Discloser hereunder; (e) is not treated as confidential by Discloser; or (f) is approved for release by Discloser, in its sole discretion, in writing and in advance. 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 Person 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 6.1. 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. If Recipient is required by a governmental agency, law, or court of law to disclose any Confidential Information of Discloser, Recipient must first, if legally permissible, give written notice of the required disclosure to Discloser; take reasonable steps to allow Discloser to seek to protect the confidentiality of the Confidential Information required to be disclosed; and then disclose only that part of the Confidential Information which, in the written opinion of Recipient's legal counsel, it is required to disclose. The obligations under this EULA will continue: (i) with respect to Confidential Information (and/or Derivatives thereof) that does not constitute a trade secret, for a period of five (5) years 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. All Confidential Information and Derivatives thereof will be returned to Discloser within ten (10) days following the termination of this EULA. Without limiting the foregoing or the license restrictions set forth in Section 3, Company shall not disclose any AirWatch Confidential Information, including the Software, to any competitor of AirWatch.

6.2 **Title.** Company acknowledges that the Software (including Updates), any Derivatives, any Deliverables, 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

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AirWatch (the "AirWatch IP") and the Software and all AirWatch IP are owned by AirWatch. This EULA only grants Company the right to use the AirWatch IP specified in this EULA under the terms and restrictions specified in this EULA. Company 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. Company will not remove, suppress or modify in any way any proprietary marking which is on or in the Software, which is visible during their operation, or which is on any media supplied with the Software, except where expressly allowed. Company acknowledges and agrees that AirWatch shall be the sole owner of any Updates, upgrades, new versions, or new releases of the Software or Derivatives or Deliverables that are developed by AirWatch during the term of this EULA and thereafter, all of which shall be AirWatch IP. Without limiting the foregoing, Company expressly acknowledges and agrees that AirWatch shall be the sole owner of any newly-developed intellectual property, including but not limited to newly-developed, revised, or modified source code related in any way to the Software or AirWatch's general business, regardless of whether developed, revised, or modified in response to Company's requests, suggestions, or ideas, even if performed as a part of professional services paid for by Company, all of which shall be AirWatch IP. During the term of this EULA and thereafter, Company shall not assert the invalidity of the AirWatch IP, or contest AirWatch's right, title or interest therein and thereto, and Company shall not cause, influence, or assist in any manner whatsoever, any other Person to make any such assertions or contest.

7 LIMITED SOFTWARE WARRANTY AND REMEDIES; DISCLAIMERS; LIMITATION OF LIABILITY.

7.1 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.

7.2 Disclaimers. EXCEPT AS EXPRESSLY AGREED BETWEEN AIRWATCH AND RESELLER IN A SEPARATE AGREEMENT, THE SOFTWARE, MAINTENANCE, UPDATES, OR ANY DELIVERABLES PROVIDED AS A RESULT OF THE PERFORMANCE OF MAINTENANCE OR OTHERWISE ARE PROVIDED "AS IS" AND AIRWATCH AND ITS LICENSORS, DEVELOPERS, AND OTHER SUPPLIERS (THE "AIRWATCH PARTIES") FURTHER DISCLAIM THAT ANY OF THE FOREGOING WILL MEET THE REQUIREMENTS OF COMPANY OR THAT THEIR OPERATION WILL BE ERROR FREE. TO THE MAXIMUM EXTENT PERMITTED BY LAW, AIRWATCH DISCLAIMS ALL WARRANTIES, CONDITIONS, OR TERMS, WHETHER EXPRESS OR IMPLIED BY STATUTE, OPERATION OF LAW, TRADE USAGE, COURSE OF PERFORMANCE OR DEALING OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, FITNESS FOR A PARTICULAR USE, NONINFRINGEMENT, 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 SOFTWARE ARE NOT CONTAINED IN THIS EULA, SHALL NOT BE BINDING ON THE AIRWATCH PARTIES AND ARE HEREBY EXPRESSLY DISCLAIMED.

7.3 Limitation of Liability. EXCEPT FOR BREACHES OF SECTIONS 3 (LICENSE RESTRICTIONS) OR 6 (CONFIDENTIALITY AND PROPRIETARY RIGHTS), CLAIMS RELATED TO THE INTENTIONAL MISCONDUCT, FRAUD, OR GROSS NEGLIGENCE OF A PARTY, OR THIRD PARTY CLAIMS FOR PERSONAL INJURY, DEATH, OR DAMAGE TO PROPERTY STEMMING FROM THE ACTS OR OMISSIONS OF THE OTHER PARTY: (A) NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES, REPLACEMENT COSTS, OR ANY LOST PROFITS, REVENUE, DATA, OR DATA USE AND (B) EITHER PARTY'S MAXIMUM LIABILITY FOR ANY 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 PORTION OF THE LICENSE FEES PAID BY COMPANY AND RECEIVED BY AIRWATCH IN THE LAST TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE CLAIM, LESS ALL PAYMENTS MADE IN RESPECT OF OTHER CLAIMS SUBJECT TO THIS LIMITATION UNDER THIS EULA.

8 TERM AND TERMINATION.

8.1 Term and General Termination Rights. This EULA will commence on the Effective Date and will continue until the date it is terminated in accordance with the terms in the Order, or as set forth herein. In the event Company and Reseller terminate their relevant agreement, this EULA shall also terminate and Company shall cease using the Software and return or destroy all copies, unless Company and AirWatch separately agree to continue their relationship.

8.2 Company Termination. Company may terminate this EULA: (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, effective upon the return of the Software to AirWatch or (ii) immediately with concurrent notice if AirWatch violates or breaches Section 6 (Confidentiality and Proprietary Rights).

8.3 AirWatch Termination. AirWatch may terminate the EULA and the relevant Software License under this EULA: (i) upon notice from Reseller that the agreement between Company and Reseller has been terminated; (ii) in the event of a material breach of this EULA by Company that is unremedied for a period of thirty (30) days after receipt of written notice by Company; or (iii) immediately with concurrent notice if Company violates or breaches Sections 3 (License Restrictions) or 6 (Confidentiality and Proprietary Rights).

8.4 Effect of Termination.

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8.4.1 **Company Obligations.** Upon the termination or expiration of this EULA and any related Software License for any reason whatsoever (i) any Company License will automatically and immediately terminate, (ii) Company will immediately cease and desist from all use of the Software in any way, (iii) Company shall immediately remove the Software from any and all Central Processing Units (CPUs), hard drives, storage media, servers, and/or Licensed Units on which it is installed, and (iv) within ten (10) days after the effective date of the termination or expiration of this EULA and any related Software License, Company is required to uninstall and either return or destroy the applicable Software and provide a written certification executed by an officer of Company certifying such action. Except as agreed between AirWatch and Reseller, no refunds shall be due upon termination.

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

9 **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 by: (i) personal service, deemed effective on reported delivery date; (ii) recognized international or overnight courier, deemed effective on reported delivery date; (iii) facsimile transmission, deemed effective on delivery date confirmation; or (iv) email transmission, deemed effective on delivery date confirmation. Notice to AirWatch should be sent to AirWatch UK Limited, Phoenix House, 202 Elder Gate, Milton Keynes MK9 1 BE United Kingdom with a copy to notices.legal@air-watch.com. Notice to Company shall be to the address on file with Reseller.

10 GENERAL PROVISIONS.

10.1 **Governing Law.** This EULA, and all disputes arising hereunder or related hereto, 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. The exclusive venue for any litigation arising under this EULA shall be the courts of London, United Kingdom.

10.2 **Disputes.** The Parties acknowledge and agree that any breaches of Sections 3 or 6 may give rise to irreparable harm to the non-breaching Party for which the granting of monetary damages would be an inadequate remedy, accordingly, the non-breaching Party may, in addition to all other available remedies, seek temporary restraining orders or interlocutory, interim, and permanent injunctions or other appropriate orders to restrain any continued breach of Sections 3 or 6 by the breaching Party, as the case may be, without having to prove that actual damage has been sustained by the non-breaching Party.

10.3 **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. Company agrees to comply with all domestic and international export and import laws and regulations that apply to the Software and acknowledges that Company has the responsibility to obtain any and all necessary licenses to export, re-export, or import the Software. More specifically, Company 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 products derived from or based on such technology) received from AirWatch under this EULA to any other person, entity, or destination prohibited by the laws or regulations of the United States, without obtaining prior authorization from the competent government authorities as required by those laws and regulations.

10.4 **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 Company to any other Person without the prior written consent of AirWatch and any attempt to do so in violation of the terms hereof shall be null and void.

10.5 **Force Majeure.** A Party is not liable under this EULA for non-performance caused by a Force Majeure, if the Party makes reasonable efforts to perform. This provision does not relieve either Party of its obligation to make payments then owing.

10.6 **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.

10.7 **No Third Party Beneficiaries.** This EULA is for the benefit of Company 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.

10.8 **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.

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

10.10 **Language.** In the event that AirWatch or another party has provided Company with a translation of this EULA from the English language to another language, Company agrees that such translation is provided for convenience only; that the American English language version of this EULA governs the relationship between AirWatch and Company; 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.

10.11 **Entire Agreement.** This EULA constitutes the entire agreement between the Parties with respect to the subject matter hereof. This EULA supersedes and replaces 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 Company 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 Company (whether by purchase order, counter-offer, acknowledgement, electronic data interchange, or otherwise) are hereby expressly objected to and will not be in any way binding upon AirWatch. 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. Any modification or amendment to this EULA will be effective only upon execution by an officer of each Party.

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