



**NOTE: IF LICENSEE HAS SIGNED A SEPARATE SOFTWARE LICENSE AGREEMENT WITH REDSEAL, INC. FOR THE SOFTWARE COVERED BY THIS AGREEMENT, THE TERMS OF SUCH SIGNED AGREEMENT SHALL GOVERN.**

**DEPENDING ON THE TYPE OF PRODUCT LICENSED TO LICENSEE, EITHER THE TERM SOFTWARE LICENSE AGREEMENT OR THE PER USE CONSULTING SOFTWARE LICENSE AGREEMENT WILL APPLY (“AGREEMENT”).**

YOU SHOULD CAREFULLY READ THE FOLLOWING TERMS AND CONDITIONS BEFORE DOWNLOADING, INSTALLING AND USING THIS PRODUCT, THE USE OF WHICH IS LICENSED BY REDSEAL, INC. (“**REDSEAL**”) TO ITS LICENSEES FOR THEIR USE ONLY AS SET FORTH BELOW. DOWNLOADING, INSTALLING OR OTHERWISE USING ANY PART OF THE SOFTWARE OR DOCUMENTATION INDICATES THAT YOU, ON BEHALF OF YOURSELF AND ANY ENTITY BY WHOM YOU ARE EMPLOYED OR FOR WHOM YOU ARE USING THIS PRODUCT (“**LICENSEE**”) ACCEPT THESE TERMS AND CONDITIONS. YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THIS AGREEMENT AND THAT "YOU" AND "YOUR" WILL REFER TO THAT COMPANY OR ORGANIZATION. IF YOU DO NOT AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT OR DO NOT HAVE THE AUTHORITY SPECIFIED ABOVE, DO NOT DOWNLOAD, INSTALL OR OTHERWISE USE THE PRODUCTS, DO NOT CLICK ON THE "I AGREE" OR SIMILAR BUTTON, AND IF YOU HAVE RECEIVED THE PRODUCTS ON PHYSICAL MEDIA, RETURN THE ENTIRE UNUSED PRODUCT TO REDSEAL OR THE SUPPLIER WHERE YOU OBTAINED IT.

**REDSEAL, INC.  
TERM SOFTWARE LICENSE AGREEMENT**

**1. DEFINITIONS**

1.1 “*Authorized Users*” means Licensee’s employees or contractors that are individually named and authorized by Licensee to use the Software from time to time pursuant to this Agreement. Unless otherwise specified in an Order, the total Authorized Users at any time shall not exceed twenty five. Additional blocks of Authorized Users may be licensed from RedSeal.

1.2 “*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 but not limited to the terms and conditions of this Agreement (including pricing and other terms), the Software and the Documentation.

1.3 “*Documentation*” means RedSeal’s standard published documentation accompanying the Products (as applicable) identified in an Order and any Updates thereto, in any form or media provided.

1.4 “*Hardware*” means the equipment specified in the Order, if any, onto which the Software is pre-installed.

1.5 “*Maintenance*” means the services provided pursuant to Section 3.1.

1.6 “*Open Source Software*” means those third party software components identified in the Documentation which are delivered with the Software or any Updates thereto, for which Licensee may have greater rights to use than those specified in this Agreement. Such additional rights, if any, are specified in the applicable license agreement accompanying the Open Source Software or in the Documentation (“**Open Source License**”).

1.7 “*Order*” means an Order which includes a description of specific Products and Professional Services to be licensed or purchased, the number of Permitted Configurations and Authorized Users, and the term of each license. All Orders shall be governed by this Agreement unless Licensee has entered into a separate signed license agreement with RedSeal. No terms and conditions on any Order which conflict with, are in addition to, or which modify this Agreement



will be deemed part of this Agreement and such terms and conditions shall not be binding on RedSeal. Orders may be submitted directly to RedSeal or via an approved RedSeal reseller.

1.8 "Permitted Configurations" means either (i) for Enterprise Licensees, the number of network device configurations on Licensee's network which are permitted to be analyzed using the Software as specified in the Order(s). Each Permitted Configuration is tied to a specific network device and may not be changed to or used with another network device except as expressly permitted in Section 2.1, or (ii) for Service Providers ("SP") who purchase a Reusable Device Subscription, the total number of network device configurations on the networks of the clients of such SP for which the SP is providing RedSeal services to which are permitted to be analyzed using the Software as specified in the Order(s). Such device licenses can be transferred to other SP clients upon completion of the delivery of the RedSeal services to another client, so long as the total number of devices in use at clients does not exceed the number licensed from RedSeal.

1.9 "Products" means the Software, Hardware and Maintenance licensed or purchased by Licensee as specified in an Order.

1.10 "Professional Services" means the services provided pursuant to Section 3.2 and as specified in an Order.

1.11 "Software" means RedSeal's proprietary software program(s) described in the applicable Order, in object code form, and any Updates thereto.

1.12 "Plugin" means RedSeal software modules that facilitate the Product's ability to work with specific network devices from various third party vendors.

1.13 "STIG" means Security Technical Implementation Guides Module that Licensee may purchase and that are periodically updated for Licensees with a current STIG Maintenance contract.

1.14 "TRL" means Threat Reference Library that Licensee may purchase and that is periodically updated for Licensees with a current Maintenance contract.

1.15 "Updates" means maintenance releases and error corrections to the Software and/or Documentation which are generally provided by RedSeal to customers receiving Maintenance at no additional charge. Updates do not include releases, improvements, and enhancements for which RedSeal charges separately or extra as determined by RedSeal in its sole discretion.

## 2. LICENSES

2.1 License Grant. Subject to the terms and conditions of this Agreement, RedSeal hereby grants Licensee during the term specified for such license in the Order, a personal, non-exclusive, non-transferable (except as specified herein) license, without the right of sublicense, to (i) install and have its Authorized Users use the Software for the Permitted Configurations and (ii) to reproduce and use the Documentation, for Licensee's internal business purposes only. The Software may be used on the Hardware or on hardware which complies with the specifications for hardware set forth in the Documentation.

For Enterprise Licensees, in the event that the network device on which a Permitted Configuration has been used is retired from production use on an ongoing basis, Licensee may transfer its use of the Software to a new network device for ongoing use. Otherwise, no other changes may be made to the network devices allocated for use of the Software unless otherwise agreed upon in writing by RedSeal.

For SPs who purchase a Reusable Device Subscription, network device licenses can be transferred to other SP clients upon completion of the delivery of the RedSeal services to another client, so long as the total number of devices in use at clients does not exceed the number licensed from RedSeal.

Licensee may have greater rights to the Open Source Software as described in the applicable Open Source License. To obtain a copy of the source code for the Open Source Software, please contact RedSeal. If more than the licensed number of Authorized Users require use of the Software, additional blocks of Authorized Users may be licensed from RedSeal.



2.2. Restrictions. Except for the limited license rights expressly granted in Section 2.1, RedSeal reserves all rights in and to the Software and Documentation. Except as expressly permitted herein, Licensee shall not (i) reproduce, modify, translate or create any derivative work of all or any portion of the Software or Documentation, (ii) sell, rent, lease, loan, provide, distribute or otherwise transfer all or any portion of the Software or Documentation to a third party, (iii) reverse engineer, reverse assemble or otherwise attempt to gain access to the source code of all or any portion of the Software (other than the Open Source Software) except to the extent expressly permitted by law, (iv) remove, alter, cover or obfuscate any copyright notices, trademark notices or other proprietary rights notices placed or embedded on or in the Products; (v) unbundle any components of the Software; (vi) exceed the number of Authorized Users having use of the Software; or (vii) cause or permit any third party to do any of the foregoing. In addition, Licensee shall not use the Products for the benefit of any third party, including but not limited to as an application service provider, for third-party training, or time-sharing or service bureau use. Notwithstanding the foregoing, Licensee may make a reasonable number of copies of the Software for backup purposes provided that such copies shall include all copyright and other intellectual property rights notices that appear on the original. If Licensee is a European Union (“EU”) resident, information necessary to achieve interoperability of the Software with other programs within the meaning of the EU Directive on the Legal Protection of Computer Programs is available from RedSeal upon written request.

2.3 Subscription Licenses. In lieu of a perpetual license, Licensee may purchase an annual subscription license as specified in the Order (“Subscription License”). All Subscription Licenses include Maintenance at no additional charge. Licensee’s Subscription License will begin on the date the license key is issued for the Subscription License and will automatically renew for an additional annual term (or such other period as specified in the Order) unless and until Licensee terminates the Subscription License by providing RedSeal at least thirty (30) days written notice of Licensee’s intent to terminate such Subscription License.

2.4 Audit. RedSeal reserves the right, upon reasonable prior notice to Licensee and during Licensee’s normal business hours, to audit Licensee’s use of the Products to verify compliance with this Agreement. In the event that any audit reveals noncompliance with this Agreement, including but not limited to use of the Products on other than the Permitted Configurations or in excess of the number of Authorized Users, Licensee shall promptly pay RedSeal any shortfall plus accrued interest and shall reimburse RedSeal the reasonable costs of such audit. This does not limit any other remedies that RedSeal may have under this Agreement or otherwise.

### 3. MAINTENANCE AND PROFESSIONAL SERVICES

3.1. Maintenance. Maintenance for perpetual licenses may be purchased for one year terms (each a “**Maintenance Term**”). Provided Licensee has purchased Maintenance or has a Subscription License, RedSeal will provide the Maintenance specified in Exhibit A during the Maintenance Term or term of the Subscription License. If Licensee has not renewed its Maintenance contract, then the License will still be valid but RedSeal will not provide Maintenance as specified in Exhibit A. Hardware maintenance is available for annual periods not to exceed three years following date of the Hardware purchase. RedSeal agrees to make Maintenance for Software available for at least three years following the first delivery date of the particular Software to Licensee at RedSeal’s then current rates. If Licensee has purchased Maintenance for an individual Product deployment under more than one service level (e.g. Basic for some network devices and Premium for others), the lowest class of Maintenance purchased will govern support for such Product deployment. If Licensee has staggered Maintenance renewal dates for network device licenses, then all licensed network devices must be covered by a current Maintenance contract to obtain Maintenance from RedSeal.

3.2. Professional Services. Licensee may order training, configuration and other Professional Services from RedSeal from time to time. All materials created by RedSeal and all intellectual property rights created in connection with such Professional Services shall be the sole property of RedSeal. The fees for all Professional Services shall be specified in the applicable Order. Professional Services must be used within one year following the date of purchase or remaining days will be forfeited.

### 4. WARRANTY AND DISCLAIMER OF WARRANTY

4.1. Limited Warranty. RedSeal warrants that (a) the Hardware and Software, as delivered, will perform substantially in accordance with the applicable Documentation for a period of ninety days from the date of initial delivery to Licensee and that any Maintenance and Professional Services shall be performed in a professional manner. RedSeal makes no warranty that the operation of the Products will be uninterrupted or error-free, that the Products will meet



Licensee's requirements or that the Products will operate in combination with hardware or software not provided by RedSeal. In the event that the Products or Professional Services do not conform with the above warranties, RedSeal's entire liability and Licensee's sole remedy shall be for RedSeal to (i) with respect to Software, use its reasonable efforts to correct any reproducible error confirmed by RedSeal; provided, however, that Licensee acknowledges that RedSeal may not be able, and shall have no obligation, to correct all errors or (ii) with respect to Maintenance or and Professional Services, re-perform such Maintenance or and Professional Services at no additional charge to Licensee. In the event the Hardware does not conform to the above warranties, RedSeal's entire liability and Licensee's sole remedy shall be for RedSeal to provide repaired or replacement Hardware to Licensee pursuant to RedSeal's then current RMA process. RedSeal's warranty shall not extend to errors that result from: (i) Licensee's failure to implement any Updates which are provided by RedSeal; (ii) use of the Products other than in accordance with the Documentation; (iii) any alterations of or additions to the Products performed by parties other than RedSeal; (iv) use of the Products in a manner for which they were not designed or outside the scope of this Agreement; (v) accident, negligence, or misuse of the Products by any party other than RedSeal; or (vi) combination of the Products with other products not supplied by RedSeal.

4.2. ***Disclaimer of Warranties.*** EXCEPT AS EXPRESSLY SPECIFIED IN THIS SECTION 4, REDSEAL AND ITS LICENSORS PROVIDE THE PRODUCTS AND PROFESSIONAL SERVICES "AS IS" AND EXPRESSLY DISCLAIM ANY WARRANTIES, TERMS OR CONDITIONS, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, WITH RESPECT TO THE PRODUCTS, OR ANY PART THEREOF OR ANY PROFESSIONAL SERVICES PROVIDED HEREUNDER, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES, TERMS OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, OR THOSE ARISING FROM COURSE OF PERFORMANCE, DEALING, USAGE OR TRADE.

4.3. ***Preproduction Releases.*** With Licensee's consent, RedSeal may provide Licensee with a preproduction release of Products (often labeled "beta release") for evaluation purposes only. These releases are not suitable for production use. Such releases are provided on an "AS IS" basis and are not warranted.

4.4 ***Licensee Warranties.*** Licensee warrants that (i) it has the authority to enter into this Agreement and to comply with its obligations hereunder and (ii) it shall at all times fully comply with all laws and regulations applicable with respect to any use of the Products and Professional Services.

## **5. LIMITATION OF LIABILITY**

REDSEAL AND ITS SUPPLIERS SHALL NOT BE LIABLE TO LICENSEE OR ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF USE, LOSS OF REVENUE OR ANTICIPATED PROFITS, BUSINESS DISRUPTION, LOST BUSINESS, OR DAMAGE TO SYSTEMS, DATA, OR PROGRAMS ARISING OUT OF THIS AGREEMENT EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE LIABILITY OF REDSEAL AND ITS SUPPLIERS HEREUNDER SHALL IN NO EVENT EXCEED THE FEES PAID BY LICENSEE FOR THE PRODUCTS. THIS LIMITATION APPLIES TO ALL CAUSES OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE. THIS DISCLAIMER OF LIABILITY WILL NOT BE AFFECTED IF ANY REMEDY PROVIDED HEREIN FAILS OF ITS ESSENTIAL PURPOSE AND SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED BY LAW. BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE FOREGOING LIMITATION MAY NOT APPLY TO LICENSEE.

## **6. PROPRIETARY RIGHTS**

The Software and Documentation are licensed, not sold. All right, title, and interest in and to the Software and Documentation and in any ideas, know-how, and programs which may be developed by RedSeal in the course of providing Maintenance or Professional Services, including any enhancements or modifications and all intellectual property rights embodied therein, (other than Licensee's Confidential Information) will at all times remain the property of RedSeal or its licensors. Licensee hereby acknowledges that the Products are protected by the copyright laws and other laws pertaining to intellectual property and proprietary rights in the United States and other countries. Licensee is aware that this Agreement confers only the right to use the Products while this Agreement and the specified licenses are in effect. It does not convey any rights of ownership in or to the Software or Documentation.



## 7. CONFIDENTIALITY

7.1. *Treatment of Confidential Information.* Receiving Party will protect the Confidential Information of Disclosing Party with the same degree of care as it uses to protect its own Confidential Information of like kind, but in no event with less than a reasonable degree of care. Receiving Party will not use or disclose Disclosing Party's Confidential Information except as permitted in this Section or for the purpose of performing obligations under the Agreement. The Confidential Information may be disclosed only to employees or contractors of Receiving Party with a "need to know" and who are instructed and agree not to disclose the Confidential Information and not to use the Confidential Information for any purpose, except as set forth herein. Receiving Party shall have appropriate written agreements with any such employees or contractors sufficient to permit compliance with the provisions of this Agreement. Receiving Party may disclose the Disclosing Party's Confidential Information to the extent such disclosure is required by order or requirement of a court, administrative agency, or other governmental body, provided that the Receiving Party provides prompt written notice thereof to the Disclosing Party (to the extent legally permitted) and assistance to enable the Disclosing Party to seek a protective order or otherwise prevent or restrict such disclosure. The confidentiality obligations of each party will survive expiration or termination of the Agreement for a period of three (3) years.

7.2. *Exclusions.* Confidential Information does not include information that (a) is or becomes publicly available through no act or omission of the Receiving Party; (b) the Disclosing Party discloses to third parties without restriction on disclosure; (c) is disclosed to the Receiving Party by a third party without restriction on disclosure and without breach of a nondisclosure obligation; (d) is independently developed by the Receiving Party without use of the Confidential Information of the Disclosing Party; or (e) is previously known to the Receiving Party without nondisclosure obligations as evidenced by written records.

7.3. *Injunctive Relief.* It is understood and agreed that notwithstanding any other provision of this Agreement, a breach by either party of Section 7 of this Agreement may cause the other party irreparable damage for which recovery of money damages might be inadequate, and that the other party shall therefore be entitled to seek timely injunctive relief, without posting bond, to protect such party's rights under this Agreement in addition to any and all remedies available at law.

7.4. *Return of Confidential Information.* On Disclosing Party's written request or upon expiration or termination of this Agreement for any reason, the Receiving Party will promptly return or destroy, at Disclosing Party's option, all Confidential Information of Disclosing Party in any form or media and provide a written statement to Disclosing Party certifying the return or destruction of such Confidential Information.

## 8. INTELLECTUAL PROPERTY RIGHT INDEMNITY

RedSeal shall defend or settle, at its option, any action brought against Licensee and its officers, directors and employees, to the extent it is based on a claim that the Software as delivered to Licensee infringes any (a) copyright, trademark or trade secret of a third party or (b) patent enforceable within the United States or Canada. RedSeal will pay resulting costs and damages (including reasonable legal fees) finally awarded against Licensee in such action which are attributable to such claim. Licensee agrees that RedSeal shall be released from the foregoing obligation unless Licensee provides RedSeal with (i) prompt written notice of any such claim or action, (ii) sole control and authority over the defense or settlement of such claim or action, and (iii) proper and full information and assistance to settle and/or defend any such claim or action at RedSeal's expense. Should any Software become, or in RedSeal's opinion be likely to become, the subject of such a claim, or in the event RedSeal wishes to minimize its potential liability hereunder, RedSeal shall, at its option and expense: (i) procure for Licensee the right to use the Software as provided herein, (ii) replace the Software with non-infringing, functionally equivalent software; (iii) suitably modify the Software so that it is not infringing; or (iv) accept return of the Software and refund the fees paid for such Software to Licensee, as amortized over a three (3) year period on a straight line basis. RedSeal shall have no obligation with respect to any claim, action or proceeding arising in whole or in part from (a) modification of the Products by anyone other than RedSeal, (b) use of the Software in combination or conjunction with any equipment, data, devices or software not provided by RedSeal where in the absence of such combination the Software would not have been infringing, (c) use of the Software in a manner other than for which it was intended or outside the scope of this Agreement, or (d) use of other than the then-most current release of the Software or if such infringement or claim would have been prevented by the use of such current release.





THE PROVISIONS OF THIS SECTION 8 SET FORTH REDSEAL'S SOLE AND EXCLUSIVE OBLIGATIONS, AND LICENSEE'S SOLE AND EXCLUSIVE REMEDIES, WITH RESPECT TO INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS OF ANY KIND.

## **9. TERM AND TERMINATION.**

9.1. *Term.* This Agreement shall continue in effect until terminated. Subscription Licenses will expire on the date specified for expiration in the Order. Perpetual licenses will remain in effect unless terminated pursuant to this Section 9.

9.2. *Termination by RedSeal.* RedSeal will have the right to terminate this Agreement or a particular license granted hereunder if Licensee fails to perform any material obligation under this Agreement and fails to cure such breach within thirty days after notice of breach is given. In addition, RedSeal may terminate this Agreement or any license upon written notice to Licensee in the event Licensee: (i) ceases to function as a going concern or to conduct operations in the normal course of business, or (ii), has a petition filed by or against it under any state, federal or national bankruptcy or insolvency law, which petition has not been dismissed or set aside within sixty days of its filing.

9.3. *Termination by Licensee.* Licensee may terminate this Agreement or any license at any time. In no event shall Licensee be entitled to a refund of any fees paid in connection with such termination for convenience.

9.4. *Effect of Termination or Expiration.* Except as otherwise provided herein, upon termination or expiration of any license or this Agreement, Licensee shall immediately cease using the Confidential Information and Products provided under such license, and within five (5) days thereafter, return to RedSeal at Licensee's expense or at RedSeal's request, destroy all copies of the Confidential Information and Products (including copies in any storage media), and provide written confirmation thereof. This requirement applies to all copies in any form, partial or complete, and whether or not merged into other materials.

9.5. *Survival.* The following obligations will survive termination of this Agreement for any reason: Sections 2.2, 2.4, 4.2, 5, 6, 7, 8, 9, 11 and 12

## **10. PUBLICITY.**

Licensee agrees that RedSeal may identify Licensee as a customer of RedSeal in all marketing materials and on the RedSeal website.

**11. PRICE AND PAYMENT.** The provisions of this Section 11 apply only to the extent that Licensee is placing an Order directly with RedSeal and does not apply to Orders placed via a RedSeal reseller.

11.1 *Fees.* Licensee agrees to pay RedSeal the fees set forth in the applicable Order. All prices are in U.S. Dollars (except Japanese orders which are in Yen) and are exclusive of any applicable taxes, levy, tariff and customs duty and are nonrefundable except as specified herein. All payments are due within thirty days of issuance of the invoice. Late payments will bear interest at the rate of 1.5% per month, or at the highest rate allowed by law, whichever is less.

11.2 *Taxes.* The fees specified in the Order do not include and Licensee shall be responsible for payment of all applicable national, state, provincial and local taxes, value added or sales taxes, levies and assessments, except for taxes based upon RedSeal's income and any penalties, interest and collection or withholding costs associated with any of the foregoing items. If RedSeal has the legal obligation to pay or collect taxes for which Licensee is responsible under this section, the appropriate amount shall be invoiced to and paid by Licensee unless Licensee provides RedSeal with a valid tax exemption certificate authorized by the appropriate taxing authority. If applicable law requires Licensee to withhold any income taxes levied by any country on payments to be made pursuant to this Agreement, Licensee shall (i) effect such withholding, remit such amounts to the appropriate taxing authorities and promptly furnish RedSeal with tax receipts evidencing the payments of such amounts, and (ii) ensure that the sum payable by Licensee upon which the deduction or withholding is based is increased to the extent necessary to ensure that, after such deduction or withholding, RedSeal receives and retains, free from liability for such deduction or withholding, a net amount equal to the amount RedSeal would have received and retained in the absence of such required deduction or withholding.

11.3 *Expenses.* Actual and reasonable travel and living expenses incurred by RedSeal for any Professional Services ordered by Licensee will be billed to Licensee.



11.4 Shipment. When physically shipped to Licensee, shipments will be made Ex Works (Incoterms 2000), RedSeal's shipping dock. Licensee will pay all costs relating to transportation, delivery and insurance and will bear the risk of loss while materials are in transit. Normal delivery of the Software and Documentation will be through electronic download.

## 12. GENERAL

12.1. Assignment. This Agreement may not be assigned by Licensee, by operation of law or otherwise, without the prior written consent of RedSeal.

12.2. Governing Law. This Agreement is governed, construed, and enforced in accordance with the laws of the State of California, without reference to conflict of laws principles. The United Nations Convention on Contracts for the International Sales of Goods and the Uniform Computer Information Transactions Act (UCITA) are specifically excluded.

12.3. Jurisdiction. The courts within the Northern District of California shall have jurisdiction to adjudicate any dispute arising out of this Agreement. Each party hereto expressly consents to the personal jurisdiction of, and venue in, such courts.

12.4. Legal Expenses. In any action to enforce this Agreement, the prevailing party shall be entitled to seek recovery of all court costs and reasonable attorneys' fees incurred, including such costs and attorneys' fees incurred in enforcing and collecting any judgment.

12.5. Severability. If any provision of this Agreement is held to be invalid by a court of competent jurisdiction, then the remaining provisions shall nevertheless remain in full force and effect. The parties further agree to negotiate in good faith a valid and enforceable provision that most nearly affects the parties' intent and to be bound by the mutually agreed substitute provision.

12.6. Amendment and Waiver. Except as otherwise expressly provided herein, any provision of this Agreement may be amended or modified and the observance of any provision of this Agreement may be waived (either generally or any particular instance either retroactively or prospectively) only with the written consent of both parties. The failure of either party to enforce at any time any of the provisions of this Agreement shall not be deemed to be a waiver of the right of such party thereafter to enforce any such provisions.

12.7. Force Majeure. Except for the obligation to make payments, neither party shall be responsible for any delay in its performance due to causes beyond its reasonable control.

12.8. Relationship of the Parties. The parties agree and acknowledge that the relationship of the parties is in the nature of an independent contractor. This Agreement shall not be deemed to create a partnership or joint venture and neither party is the other's agent, partner, employee, or representative. Neither party shall have the right to obligate or bind the other party in any manner whatsoever, and nothing herein shall give or is intended to give any rights of any kind to third persons.

12.9. Export and Government Rights. Licensee acknowledges and agrees that the Products and related technology subject to this Agreement are subject to the export control laws and regulations of the United States, Japan, the European Union and other countries including U.S. embargo and sanctions regulations and prohibitions on export for certain end uses or to certain users. Licensee agrees to comply with all such laws and regulations. Licensee shall ensure that the Products and related technology are not (1) sold, transferred or diverted to any U.S. or E.U. sanctioned or embargoed country (including, but not limited to, Cuba, Iran, Sudan and Syria), unless authorized by U.S. export license or regulation; (2) sold, transferred, or diverted to any person, firm, or other entity listed in the U.S. Department of Commerce Denied Persons List or Entity List, the U.S. Department of Treasury's Specially Designated Nationals List, the U.S. Department of State's Debarred Parties listing, or any E.U. or local country listing of sanctioned persons; (3) sold, transferred, or diverted to any nuclear weapons, nuclear power, nuclear research, chemical/biological weapons, or missile/rocket technology end-user or end-use; or (4) sold, transferred, or diverted in violation of any other applicable import/export laws, regulations, licenses, or government orders. Licensee is responsible for obtaining any licenses to export, re-export, transfer or import the Products. Licensee shall promptly advise RedSeal in writing of any known or suspected sale, transfer, or diversion in violation of the foregoing. The obligations of this Section as to these laws shall survive any termination of this Agreement.



12.10. Government Rights. The Software and Documentation are deemed to be “commercial computer software” and “commercial computer software documentation,” respectively, pursuant to DFAR Section 227.7202 and FAR Section 12.212(b), as applicable. Any use, modification, reproduction, release, performing, displaying, or disclosing of the Software or Documentation by the U.S. Government or other government entity shall be governed solely by the terms of this Agreement.

12.11. Language. The original of this Agreement is in English and Licensee waives any right to have it written in any other language. Section headings are for convenience only.

12.12. Notices. Any notice required or permitted to be given under this Agreement shall be in writing via first class mail, postage prepaid, certified or registered mail or overnight courier, address to RedSeal as follows: RedSeal, Inc., 940 Stewart Drive, Suite 101, Sunnyvale, CA 94085, Attn: Chief Financial Officer, 408-641-2200.

12.13. Entire Agreement. This Agreement and any exhibits attached hereto, as well as applicable Orders, constitute the entire, final, exclusive agreement between the parties and supersede all previous agreements or representations, oral or written, relating to this Agreement except to the extent that Licensee has executed a separate End User Software License Agreement with RedSeal for the Products. Licensee acknowledges having read the terms and conditions set forth in this Agreement, understands all its terms and conditions, and agrees to be bound thereby.





**Exhibit A –RedSeal Maintenance**

In consideration of Licensee’s purchase of Maintenance, RedSeal shall perform the following Maintenance during the applicable Maintenance Term. The Maintenance Term is the term for which Licensee has ordered Maintenance as specified in the Order.

**1. MAINTENANCE.**

**1.1 Error Correction.** For purposes of this Exhibit A, “**Error**” means a nonconformity in the Software which causes the Software to not substantially conform to the applicable Documentation and “**Error Correction**” means additional or replacement code of the Software or a workaround solution provided by RedSeal to remedy an Error. RedSeal will use commercially reasonable efforts to correct any Errors in the Software in accordance with the priority assigned by RedSeal in its discretion. RedSeal will provide services directly to the Licensee’s Technical Contact(s).

**1.2 Licensee Assistance.** Licensee will provide RedSeal with information in Licensee’s possession as reasonably necessary to allow RedSeal to duplicate the Error.

**1.3 Licensee Technical Contact.** Licensee will designate on the applicable Order technical contact persons (“**Licensee Technical Contacts**”) who will receive all Error Corrections, Updates, correspondence and other communications concerning the Software. The Licensee Technical Contacts may be changed from time to time upon written notice to RedSeal.

**1.4 Supported Versions.** RedSeal will provide Maintenance only for Software released during the prior 12 months.

**1.5 Technical Support.** RedSeal will provide Technical Support service in English, via telephone, web based Support Portal, and email to the Licensee Technical Contacts. Assistance will be available during published Support Hours consistent with the Maintenance level purchased. RedSeal will use commercially reasonable efforts to meet the initial response times set forth below from the time an inquiry is received by the appropriate RedSeal contacts during the Support Hours.

MAINTENANCE LEVEL	SUPPORT HOURS	INITIAL SUPPORT RESPONSE TIME	HARDWARE REPLACEMENT
Basic Maintenance	Mon–Fri 6am - 6pm Pacific Time	4 hours	5 Business Days
Premium Maintenance	Mon–Sun 24 hours	1 hour	2 Business Days

Licensee must have a current Maintenance contract on all licensed Products in order to receive Technical Support services for any of the licensed Products. RedSeal reserves the right to change support hours and response times at the time of Maintenance renewal.

**1.6 Limitations.** RedSeal will have no obligation for the correction of Errors that result from: (i) Licensee’s failure to implement any Updates which are provided by RedSeal; (ii) use of the Products other than in accordance with the Documentation; (iii) any alterations of or additions to the Products performed by parties other than RedSeal; (iv) use of the Products in a manner for which they were not designed or outside the scope of this Agreement; (v) accident, negligence, or misuse of the Products by any party other than RedSeal; or (vi) combination of the Products with other products not supplied by RedSeal. In addition, RedSeal is not obligated to correct Errors that cannot be remedied due to the hardware on which the Software is operated if such hardware does not meet the minimum systems requirements specified in the Documentation. If RedSeal agrees to remedy any errors or problems not covered by the terms of this Agreement, RedSeal will invoice Licensee, and Licensee will pay RedSeal, for all such work performed at RedSeal’s



then-current time and materials charges. Licensee acknowledges that RedSeal is under no obligation to provide Maintenance with respect to any Hardware or any Software for which Licensee does not have a valid license.

**2. Software Releases.** So long as the customer has a current Maintenance contract for all licensed network devices, RedSeal will make available via electronic delivery to Licensee Updates and Documentation relating thereto, when ready for commercial release. Unless otherwise agreed, such materials will be made available to the Licensee Technical Contacts via the RedSeal Support Portal

**3. Hardware.** If Licensee has purchased separate Hardware Maintenance, Licensee may contact RedSeal to report a malfunction in the Hardware, and to obtain a Return Material Authorization (“RMA”). Replacement units will be shipped in accordance with the Maintenance level purchased by Licensee (Basic / Premium). After receiving an approved RMA from RedSeal, Licensee must ship the defective Hardware, which must be clearly identified with its RMA and with any requested documentation, to the address provided by RedSeal. Any Hardware damaged during return shipment due to improper packing will not be covered by Maintenance. Defective Hardware must be returned to RedSeal within fifteen days following issuance of the RMA or Licensee will be billed for the replacement Hardware at RedSeal’s then current list price. If the Hardware defect is found by RedSeal to be caused by one of the events specified in Section 1.6, then repairs and/or replacement will be billed to Licensee’s account at RedSeal’s then-current rates.

**4. Plugins.** Updated Plugins will be published to the RedSeal Support Portal upon commercial release. Plugin updates may only be downloaded and applied to licensed Software so long as the Licensee has a current Maintenance contract.

**5. STIGs.** Updated STIGs will be published to the RedSeal Support Portal on a regularly scheduled basis. STIG updates may only be downloaded and applied to licensed Software so long as the Licensee has a current STIG Maintenance contract.

**6. TRLs.** Updated TRLs will be published to the RedSeal Support Portal on a regularly scheduled basis. TRL updates may only be downloaded and applied to licensed Software so long as the Licensee has a current Maintenance contract.