

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING EXPENDITURES DETAILED IN CENTER TECHNOLOGIES QUOTE # 041169 VERSION 2 IN AN AMOUNT NOT TO EXCEED \$311,637.63, AND AN END USER LICENSE AGREEMENT BETWEEN THE TOWN OF ADDISON AND DATRIUM, LLC, FOR THE INSTALLATION OF HARDWARE, SOFTWARE, STORAGE OF DATA, AND TECHNICAL SUPPORT SERVICES, AUTHORIZING THE CITY MANAGER TO APPROVE QUOTE # 041169 VERSION 2, AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT, AND PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS:

SECTION 1. The Center Technologies quote # 041169 Version 2, in an amount not to exceed \$311,637.63 and valid thru February 21, 2020, is attached to this Resolution as **Exhibit A**, and is hereby approved. The City Manager is hereby authorized to execute the agreement.

SECTION 2. The End User License Agreement between the Town of Addison and Datrium, LLC, for the evaluation, consultation, implementation, customization and configuration of hardware and the supporting software and technical support, a copy of which is attached to this Resolution as **Exhibit B**, is hereby approved. The City Manager is hereby authorized to execute the Agreement.

SECTION 3. This Resolution shall take effect from and after its date of adoption.

DULY RESOLVED AND ADOPTED by the City Council of the Town of Addison, Texas, on this the **13th** day of **FEBRUARY 2020**.

TOWN OF ADDISON, TEXAS

Joe Chow, Mayor

ATTEST:

APPROVED AS TO FORM:

Irma Parker, City Secretary

Brenda N. McDonald, City Attorney

EXHIBIT A



BUSINESS TECHNOLOGY SOLUTIONS FOR:

Service Center and Police 6 Years with Control Shift (Datrium Intel)

Quote # 041169
Version 2

PREPARED FOR:

Town of Addison

Hamid Khaleghipour
HKhaleghipour@addisontx.gov

16801 Greenspoint Park Drive
 Suite 200
 Houston, TX 77060
 www.centrotechnologies.com
 (281) 506-2480



Service Center and Police 6 Years with Control Shift (Datrium Intel)

Prepared by:

Centre Technologies

Bryan Bender
 on behalf of Rick Essex
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 bbender@centrotechnologies.com

Prepared for:

Town of Addison

Hamid Khaleghipour
Ship To:
 16801 Westgrove Drive
 Addison, TX 75001
 (972) 450-2868
 HKhaleghipour@addisontx.gov

Quote Information:

Quote #: 041169

Version: 2
 Delivery Date: 01/31/2020
 Expiration Date: 02/21/2020

Service Center and Police 6 Years with Control Shift (Datrium Intel)
 DIR-TSO-4352

Primary quote Summary:

6 hosts
 24TB Host Flash Capacity in total before dedupe/compression
 2 Data Nodes
 96TB Persistent Capacity before dedupe/compression
 6YR Warranty
 ControlShift for 25 VMs for prem-to-prem orchestration
 Blanket Encryption
 Erasure Coding Protection
 Global Catalog Single File restore and recovery

Products

Description	Qty	Price	Ext. Price
Intel R1208WFTYSR, 1U, CLX- 6230, 2x20 cores/2.10 GHz, 1x1GbE, 2x10GbE OPT-ICN-SSD-1920GB (2), OPT-ICN-RAM-512GB (1), OPT-ICN-2P-10RJ45-NIC (2), OPT-ICNOS-VSPHERE-67 (1), OPT-ICN-SUPPORT-5YRNBDD (1)	6	\$17,858.75	\$107,152.50
Datrium DVX DR Starter Bundle, 2 D12X4C w/ SFP, 10 Starter Host Licenses, 1 Control Shift License - (2) Data Nodes	1	\$154,891.00	\$154,891.00
Datrium DVX Data Node HW Support, D12X4, Next Business Day, 5YR	2	\$6,182.39	\$12,364.78
6th Year of Support			
Renewal, Datrium DVX, Host Software, Standard Edition, Premium Support, 48 to 60 months, monthly	72	\$129.72	\$9,339.84
Renewal, Datrium DVX, D12X4 SW, Standard Edition, Premium Support, 48 - 60 months, monthly	24	\$444.44	\$10,666.56
Renewal, CN2100 HW Support, Next Business Day, 1 Month	72	\$23.22	\$1,671.84

Service Center and Police 6 Years with Control Shift (Datrium Intel) for Town of Addison
 Quote # 041169 V2

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16801 Greenspoint Park Drive
 Suite 200
 Houston, TX 77060
 www.centrotechnologies.com
 (281) 506-2480



Products

Description	Qty	Price	Ext. Price
Renewal, 6th Year Control Shift	1	\$6,861.11	\$6,861.11
Subtotal:			\$302,947.63

Services

Description	Qty	Price	Ext. Price
Installation, storage vmotion of data, basic knowledge transfer and documentation	1	\$7,940.00	\$7,940.00
Subtotal:			\$7,940.00

Quote Summary

Description	Amount
Products	\$302,947.63
Services	\$7,940.00
Subtotal:	\$310,887.63
Shipping:	\$750.00
Total:	\$311,637.63

E-Signature Confirmation for Town of Addison

Signature: _____
 Name: Hamid Khaleghipour
 Title: _____
 Date: _____

Service Center and Police 6 Years with Control Shift (Datrium Intel) for Town of Addison
 Quote # 041169 V2

EXHIBIT B



DATRIUM END USER LICENSE AGREEMENT

Effective: Jan. 20, 2020

IMPORTANT: READ CAREFULLY BEFORE OPENING ANY SEALED PACKAGE, INSTALLING OR USING ANY SOFTWARE.

THE DATRIUM PRODUCT MAY INCLUDE HARDWARE, SOFTWARE, AND/OR SUPPORT (EACH DEFINED BELOW), EXPRESSLY IDENTIFIED IN A WRITTEN ORDER PLACED BY CUSTOMER THAT HAS BEEN EXPRESSLY ACCEPTED BY DATRIUM OR ITS DESIGNEE IN WRITING (THE "**ORDER**"), AND OTHER PROPRIETARY MATERIAL PROVIDED BY DATRIUM TO CUSTOMER (COLLECTIVELY, THE "**PRODUCT**"). THE USE OF THE PRODUCT IS SUBJECT TO THIS END USER LICENSE AGREEMENT ("**AGREEMENT**"). OPENING THE SEALED PACKAGE CONSTITUTES ASSENT TO AND ACCEPTANCE OF THIS AGREEMENT BY YOU OR THE ENTITY THAT YOU REPRESENT ("**CUSTOMER**"). IF YOU ARE NOT THE CUSTOMER, YOU REPRESENT AND WARRANT THAT YOU HAVE THE AUTHORITY TO BIND THE ENTITY THAT YOU REPRESENT AND AGREE THAT CUSTOMER IS BOUND BY THIS AGREEMENT. IF YOU DO NOT AGREE WITH ALL THE TERMS, YOU MUST RETURN THIS PRODUCT, ALL MANUALS AND DOCUMENTATION, AND PROOF OF PAYMENT (AS APPLICABLE), TO THE PLACE YOU OBTAINED THEM FOR A FULL REFUND WITHIN 30 DAYS OF FIRST ACQUIRING THIS PRODUCT. PURCHASES OF PRODUCTS PHYSICALLY SHIPPED TO YOU ARE ELIGIBLE FOR A FULL REFUND WITHIN 30 DAYS OF FIRST ACQUIRING THIS PRODUCT PROVIDED RETURNS OF THE PHYSICAL PRODUCT ARE PROCESSED AS SPECIFIED ABOVE. WRITTEN APPROVAL BY CUSTOMER IS NOT A PREREQUISITE TO THE VALIDITY OR ENFORCEABILITY OF THIS AGREEMENT, AND NO SOLICITATION OF ANY SUCH WRITTEN APPROVAL BY OR ON BEHALF OF DATRIUM SHALL BE CONSTRUED AS AN INFERENCE TO THE CONTRARY. IF YOU HAVE ORDERED THIS PRODUCT, DATRIUM'S ACCEPTANCE IS EXPRESSLY CONDITIONAL ON YOUR ASSENT TO THESE TERMS TO THE EXCLUSION OF ALL OTHER TERMS; IF THESE TERMS ARE CONSIDERED AN OFFER BY DATRIUM, ACCEPTANCE IS EXPRESSLY LIMITED TO THESE TERMS.

1. DEFINITIONS.

1.1. "**CLOUD PROVIDER**" means Customer's applicable third-party hosting service provider which hosts the Software, and may include Amazon Web Services, Google Cloud Platform, Microsoft Azure, or such other pre-approved platform, as applicable.

1.2. "**CUSTOMER DATA**" means any data inputted into, processed by, and/or stored by the Software by or for Customer or Customer's Users.

1.3. "**CONSULTING SERVICES**" means the consulting, installation, implementation, training, technical service manager, and other services performed by or on behalf of Datrium as described in the Order,

including any statement of work mutually agreed and executed by the Parties, which shall be governed by the terms and conditions of this Agreement.

1.4. "**HARDWARE**" means hardware product(s) offered by Datrium (or its designee) identified on the Order.

1.5. "**ORDER**" means a transactional document executed by Datrium (or its designee) and Customer

incorporating this Agreement which identifies, as applicable, the Product, Subscription Term, and Services to be provided by Datrium (or its designee). A statement of work (“SOW”) entered into by the parties incorporating these terms and conditions shall also constitute an Order hereunder. Any references in the Order to an “Agreement” or “EULA” or other similar terms shall be deemed to refer to this Agreement.

1.6 “**PRODUCT**” means the Hardware, Software, and/or Support Services (or portions thereof) provided by Datrium (or its designee) identified on the Order. Product does not include those third-party products not provided by Datrium (or its designee) or recommended by Datrium to integrate with Datrium’s Product.

1.7 “**SERVICES**” means collectively support services and other services including consulting, training, and onboarding as set forth in an applicable Order.

1.8 “**SOFTWARE**” means either the online and hosted software or on-premise deployed software, as set forth on the applicable Order, including downloadable software applications, APIs, and websites, or preinstalled on Hardware or otherwise provided by Datrium whether underlying the Cloud License, or pre-installed, or otherwise provided by Datrium for use in or with Hardware.

1.9 “**SUBSCRIPTION TERM**” means the term(s) for which Customer licenses the applicable Product, as specified in the Order(s).

1.10 “**SUPPORT**” means all maintenance and technical support services provided for the Product(s) to Customer by Datrium or its designated support partners, as described in the Support Policy.

1.11 “**SUPPORT POLICY**” means Datrium’s standard terms and conditions governing the Support available at <https://www.datrium.com/docs/>, as may be amended from time to time by Datrium.

2. HARDWARE PURCHASE AND SOFTWARE LICENSE.

2.1 **HARDWARE PURCHASE.** Datrium (or its designee) will provide Customer with and Customer will purchase the Hardware in the quantities and with the capacity specified in the Order. If Customer elects to evaluate the Product this may include an

evaluation license to the Hardware component. At the end of the evaluation period, Customer’s license to have and use the hardware will end, and Customer will be required to either return the Hardware or purchase the Hardware through Datrium’s designee.

2.2 **SOFTWARE LICENSE GRANT.** Subject to the terms and conditions of this Agreement, including the payment of applicable fees, Datrium hereby grants to Customer, during the Subscription Term, a non-exclusive, non-transferable, non-sublicensable right and license to use the Software designated in the Order in combination with Hardware for Customer’s internal business purposes only in accordance with the documentation. For the avoidance of doubt, Customer’s Affiliates (and employees thereof) shall not use the Software without Datrium’s prior written consent. Except for the executed Order, this Agreement supersedes any other agreement between Datrium and Customer with respect to the Software.

2.3 **SOFTWARE LICENSE TYPE.** The following license types (“**License Type**”) are available for delivery. The License Types are as follows:

(a) “**CLOUD LICENSE**” means the license for the software as a service offering of the Software which is hosted on Datrium’s servers or in a third-party environment.

(b) “**HYBRID LICENSE**” means the software as a service offering of the Software and which is hosted on Customer’s applicable Cloud Provider’s servers or otherwise on Customer’s servers or in Customer’s hosted environment.

(c) “**ON-PREMISE LICENSE**” means the on-premise offering of the Software under which Datrium has no access to Customer Data and which is hosted solely in Customer’s environment.

2.4 **RESTRICTIONS ON USE.** Except as otherwise expressly provided in this Agreement, Customer shall not (and shall not permit any third party to): (a) sublicense, sell, resell, transfer, assign, distribute, share, lease, rent, make any external commercial use of, outsource, use on a timeshare or service provider, or use in an application service provider or managed service provider environment, or otherwise generate income from the Software; (b) copy the

Software onto any public or distributed network, except for an internal and secure cloud computing environment; (c) cause the decompiling, disassembly, or reverse engineering of any portion of the Software, or attempt to discover any source code or other operational mechanisms of the Software (except where such restriction is expressly prohibited by law without the possibility of waiver, and then only upon prior written notice to Datrium); (d) modify, adapt, translate or create derivative works based on all or any part of the Software; (e) use any Third-Party Software (as defined below) other than with the Software as provided; (f) modify any proprietary rights notices that appear in the Software or components thereof; (g) publish the results of any benchmarking tests run on the Software or on any Third-Party Software; (h) use any Software in violation of any applicable laws and regulations (including any export laws, restrictions, national security controls and regulations) or outside of the license scope set forth in Section 2.2; (i) use the Software in support of any nuclear proliferation, chemical weapon, biological weapon or missile proliferation activity; (j) violate, or encourage others to violate the rights of third parties; (k) use the Software to perform any fraudulent activity; (l) intentionally interfere with or damage the operation of the Software, including by uploading or disseminating viruses or other malicious code; (m) import to the Software any Customer Data or other content that is unlawful, defamatory, libelous, or invasive of individual privacy rights; or (n) configure the Software to collect any protected health information, payment/financial information, or other regulated data types. Customer shall not export or re-export, directly or indirectly, any Software or technical data or any copy, portions or direct product thereof (o) in violation of any applicable laws and regulations, (p) to any country for which the United States or any other government, or any agency thereof, at the time of export requires an export license or other governmental approval, including Cuba, Libya, North Korea, Iran, Iraq, or Rwanda or any other Group D:1 or E:2 country (or to a national or resident thereof) specified in the then-current Supplement No. 1 to part 740 of the U.S. Export Administration Regulations (or any successor supplement or regulations, without first obtaining

such license or approval), or (q) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Commerce Department's Table of Denial Orders. Customer shall, at its own expense, obtain all necessary customs, import, or other governmental authorizations and approvals.

2.5 EVALUATION LICENSE. If Customer is licensing the Product (or part thereof) for evaluation purposes as set forth in an Order, Customer may only access and use the Product (or such part) in a non-production environment and for the period limited by the license key provided by Datrium. Notwithstanding anything else, an evaluation license of the Product (or part thereof) is provided "AS-IS" without indemnification, support or warranty of any kind, expressed or implied.

2.6 SERVICE PROVIDER. If Datrium permits Customer to operate as a Service Provider, as indicated on the applicable Order, Customer may host the Products as part of the Customer's IT infrastructure to support the products and services that Customer provides to its end-user customers, provided that Customer shall be otherwise bound by all the terms, conditions, and restrictions in this Agreement and provided further that Customer shall ensure that its end-user customers are bound by terms that are as protective of Datrium and the Products as those herein.

2.7 ACCOUNT AND UNAUTHORIZED USE. For certain License Types, Customer may be required to register for an account ("**Account**"). Customer shall notify Datrium promptly of any unauthorized use of any password or Account or any other known or suspected breach of security or misuse of the Software. Customer is responsible for use of the Software by any and all employees or other Users that it allows to access the Software, and, except to the extent resulting from a breach of Datrium's obligations hereunder or Datrium's acts, Customer is responsible for all activity under its Account.

2.8 ADDITIONAL CAPACITY LICENSE. If the Product is subject to a specified capacity limit as set forth in the applicable Order, Datrium will invoice Customer, and Customer shall pay for the additional capacity in the Product after Customer's usage exceeds such specified capacity limit in any 30 day period, even if

usage subsequently falls below that limit. Customer shall enable the Product's phone home feature to allow Datrium to monitor capacity usage. Datrium reserves the right to inspect or otherwise verify compliance with this Section.

2.9 SUSPENSION. Datrium may suspend Customer's access to the Cloud License: (a) if Datrium considers it necessary to prevent or terminate any actual or suspected use of the Cloud License in violation of this Agreement; or (b) upon notice to Customer if: (i) Customer violates this Agreement; (ii) Customer is in arrears on its excess capacity license fees and has been notified and failed to promptly remediate such underpayment; (iii) there is a threat to the security and integrity of the Cloud License hosted environment; or (iv) Datrium receives any notice or claim that any Customer Data (defined below), or activities hereunder with respect to any Customer Data, may infringe or violate the rights of a third party. Suspension of the Cloud License will be without prejudice to any rights or liabilities accruing before or during the suspension, including but not limited to Customer's obligation to pay fees.

3. SERVICES.

3.1 SUPPORT SERVICES. Datrium will provide Support Services for the Product (or part thereof) subject to Customer's payment of the fees and as further described in the applicable Order.

3.2 CONSULTING SERVICES. Datrium will perform the Consulting Services described in each SOW in accordance with the schedule and other terms stated therein. Each SOW will include a description of the applicable Services and may also contain the names of the project managers for each Party, the number of days and seniority level of the consultants who will perform the applicable Services, fees, and a delivery schedule. Customer will provide Datrium with such information and access to systems reasonably required to allow Datrium to provide the applicable Services. Subject to the warranty contained in Section 5.4 (Limited Services Warranty), the Services will be deemed accepted upon delivery. Customer will use all consulting days and any onboarding and training Services identified in a SOW within six (6) months

of the effective date of the applicable SOW. Consulting days and any onboarding and training Services not used within such 6-month period will expire, and any payment previously made by Customer in connection therewith will be forfeited. The terms of any SOW will control in the event of a conflict between the terms of such SOW and the terms of this Agreement.

4. PROPRIETARY RIGHTS.

4.1 TITLE. Datrium and its suppliers shall exclusively retain all right, title and interest, including without limitation all patent, trademark, trade name and copyright, whether registered or not registered, in and to the Product (or part thereof) and related documentation, including any enhancements, updates, corrections, or any other modifications thereto. All Software is licensed and not sold. Datrium and its suppliers reserve all rights not expressly granted herein, and no license or other implied rights of any kind are granted or conveyed except for the limited license provided herein.

4.2 THIRD-PARTY MATERIALS. Customer acknowledges and agrees that: (a) the Product may incorporate or contain, or operate in or with, certain hardware, software, cloud environment, application programming interfaces, information, data and materials operated, manufactured, or provided by third parties ("**THIRD-PARTY MATERIALS**"); (b) Datrium may provide certain Third-Party Materials together with the Product as set forth in the applicable Order ("**DATRIUM PROVIDED TPM**"), and such Datrium Provided TPM may only be used in conjunction with the Product; (c) Customer is solely responsible for procuring any and all rights necessary for it to access Third-Party Materials (other than Datrium Provided TPM); and (d) Customer's use of the Third-Party Materials shall be subject to (and Customer agrees it is bound by) any additional third-party terms and conditions, including, but not limited to, the terms and conditions for Datrium Provided

TPM set forth at <https://www.datrium.com/docs/third-party-software-and-services/>, as they may be modified from time to time (collectively, the "**THIRD-PARTY TERMS**"), and which are hereby incorporated into this Agreement by this reference. Customer is responsible for

checking the Third-Party Terms for updates, and any use by Customer of the Product following a change to the Third-Party Terms shall constitute acceptance of such change. Datrium cannot and does not guarantee that the Product shall incorporate (or continue to incorporate) any particular Third-Party Materials. Some Third-Party Materials may carry with them a limited warranty from the original licensors or vendors. To the extent permitted by the original licensors or vendors of such Third-Party Materials, Datrium will pass through to Customer the third-party warranty (if any) provided by such licensors or vendors. Notwithstanding anything else, Datrium does not make any representations or warranties with respect to Third-Party Materials or any third-party providers. Customer will rely on and seek remedies solely from the original licensors or vendors of such Third-Party Materials. Unless otherwise specified in the Support Policy, Datrium is not responsible for fulfillment of any third-party warranty or for problems attributable to the use or operations of Third-Party Materials (including, but not limited to, the availability or operation of the Product to the extent such availability and operation is dependent upon Third-Party Materials).

5. LIMITED WARRANTIES AND DISCLAIMERS.

5.1 LIMITED HARDWARE WARRANTY. Subject to Section 5.2, if Hardware is provided by Datrium, Datrium warrants to Customer that the Hardware will perform in substantial accordance with the corresponding documentation for one (1) year from the date of shipment of such Hardware by Datrium to Customer. Datrium will have no warranty obligations for Hardware purchased through third parties, and Customer shall seek redress from those third-party providers.

5.2 HARDWARE WARRANTY PROCESS. Customer may contact Datrium via email at support@datrium.com or phone at 844-528-9577 for warranty service. Customer must obtain a return material authorization ("RMA") number from Datrium and return the Product in secure packaging, freight prepaid, as instructed by Datrium. Under the Hardware warranty, Datrium, at its sole option, either (a) will repair or replace any defective Hardware with a new or refurbished

Hardware or components of equal or greater functionality as the returned Hardware, or (b) will refund the purchase price paid to Datrium for such Hardware, reduced on a straight-line basis over a three-year life. Replacement Hardware or components will continue to be warranted for the remainder of the applicable warranty term. Repair, replacement, or refund is the sole and exclusive remedy for breach of the Hardware warranty. The warranty is extended to the original Customer only and is not transferable. This warranty does not cover defects or damages resulting from: (i) use of Hardware other than in a normal and customary manner in accordance with Datrium's documentation; (ii) external causes, including physical or electronic abuse or misuse, accident, or neglect, problems with electrical power, acts of God, usage not in accordance with product instructions, or normal wear and tear; (iii) alterations or repairs made to the Hardware that are not authorized by Datrium in writing; (iv) components that are added after the Product is shipped from Datrium or added through Datrium's custom factory integration services at Customer's request; or (v) Third-Party Materials, whose terms are governed by Section 4.2 above. Datrium will use reasonable efforts to destroy (but have no liability for any loss or inadvertent disclosure of) data stored or remaining on the Hardware returned to Datrium. All returned Hardware and components become the property of Datrium. Products and components that are not properly returned to Datrium may be subject to a separate invoice as determined by Datrium.

5.3 LIMITED SOFTWARE WARRANTY. Subject to any statutory warranty requirements which may not be limited or excluded, Datrium represents and warrants that (i) for a period of ninety (90) days after delivery of the Software or Customer's access to the Cloud License (the "SOFTWARE WARRANTY PERIOD"), the Software shall materially conform to Datrium's then-current documentation generally provided by Datrium to its customers; and (ii) it will not knowingly include, in any Datrium Software provided to Customer hereunder, any computer code or other computer instructions, devices or techniques, including without limitation those known as disabling devices, trojans, or time bombs, that

intentionally disrupt, disable, harm, infect, defraud, damage, or otherwise impede in any manner, the operation of a network, computer program or computer system or any component thereof, including its security or user data. If, at any time, Datrium fails to comply with the warranty in this Section, Customer may promptly notify Datrium in writing of any such noncompliance. Datrium will, within thirty (30) days of receipt of such written notification, either correct the noncompliance or provide Customer with a plan for correcting the noncompliance. If the noncompliance is not corrected or if a reasonably acceptable plan for correcting the noncompliance is not established during such period, Customer may terminate this Agreement as its sole and exclusive remedy for such noncompliance.

5.4 LIMITED SERVICES WARRANTY. Datrium will perform the Services in a professional and workmanlike manner in accordance with industry standards. The warranty specified in this Section 5.4 shall apply only to failures or breaches of this warranty which are reported to Datrium by Customer within thirty (30) days after the date the Services are delivered to Customer. Datrium's sole obligation for failure to meet the warranty specified above shall be for Datrium, upon receipt of written notice of such failure from Customer, to undertake commercially reasonable efforts to remediate the failure or re-perform the Services, or if neither of the foregoing are commercially reasonable, then Datrium shall return any fees pre-paid for the defective Services.

5.5 WARRANTY DISCLAIMER. EXCEPT FOR THE EXPRESS WARRANTY MADE BY DATRIUM IN SECTIONS 5.1 and 5.3, AND SUBJECT TO ANY STATUTORY WARRANTY REQUIREMENTS WHICH MAY NOT BE LIMITED OR EXCLUDED, THE PRODUCTS, SUPPORT, AND ANY SERVICES PROVIDED PURSUANT TO THIS AGREEMENT ARE MADE AVAILABLE ON AN AS IS, WHERE IS BASIS, AND DATRIUM AND ITS SUPPLIERS AND LICENSORS DISCLAIM ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, PERFORMANCE, SUITABILITY, AND

NON-INFRINGEMENT. NEITHER DATRIUM NOR ANY OF ITS SUPPLIERS OR LICENSORS MAKE ANY WARRANTY AGAINST LOSS OR INACCURACY OF DATA OR THAT THE OPERATION OF THE PRODUCT WILL BE UNINTERRUPTED OR ERROR FREE; NOR DOES IT MAKE ANY WARRANTY AS TO ANY RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE PRODUCT AND SERVICES.

6. CUSTOMER OBLIGATIONS AND WARRANTIES.

6.1 CUSTOMER DATA. Customer hereby grants Datrium the right to obtain and process Customer Data only to perform its obligations under this Agreement. Provided it does not identify Customer, Datrium will be free to use for development, diagnostic and corrective purposes any data and information it collects relating to diagnosis, problems, systems, performance, use or functionality of its Products. Customer and its licensors shall (and Customer hereby represents and warrants that they do) have and retain all right, title and interest in and to (including, without limitation, sole ownership of) all Customer Data and the intellectual property rights with respect to the Customer Data.

6.2 CUSTOMER OBLIGATIONS. Customer shall use commercially reasonable efforts to cooperate with Datrium in connection with the performance of this Agreement by making available such personnel, information, and assistance as may be reasonably required, and taking such other actions as Datrium may reasonably request.

6.3 LIMITED CUSTOMER WARRANTIES. Customer represents and warrants that (a) it has the full power, authority, and necessary rights to enter into this Agreement and perform its obligations hereunder; (b) it shall comply with all applicable laws, rules and regulations in the course of performing its obligations and exercising its rights under this Agreement (including but not limited to those related to privacy (including, without limitation, in Europe), intellectual property, and export control); and (c) any Customer Data provided to Datrium or otherwise used in connection with the Product will not infringe, misappropriate or otherwise violate any right of any third party.

7. INDEMNIFICATION.

7.1 City of ADDISON INDEMNIFICATION. DARIUM, ITS OFFICERS, DIRECTORS PARTNERS, CONTRACTORS, EMPLOYEES, REPRESENTATIVES, AGENTS, SUCCESSORS, ASSIGNEES, VENDORS, GRANTEEES AND/OR TRUSTEES (COLLECTIVELY REFERRED TO AS "CONTRACTOR" FOR PURPOSES OF THIS SECTION), AGREE TO RELEASE, DEFEND, INDEMNIFY AND HOLD HARMLESS THE CITY OF ADDISON AND ITS OFFICERS, COUNCIL MEMBERS, REPRESENTATIVES, AGENTS AND EMPLOYEES (COLLECTIVELY REFERRED TO AS "CITY" FOR PURPOSES OF THIS SECTION) FROM ANY AND ALL CLAIMS, DEMANDS, DAMAGES, INJURIES (INCLUDING DEATH) LIABILITIES AND EXPENSES (INCLUDING ATTORNEYS' FEES AND COSTS OF DEFENSE) ARISING DIRECTLY OR INDIRECTLY OUT OF THE NEGLIGENCE, MALFEASANCE, ACTION OR OMISSION OF CONTRACTOR'S OPERATION OR PERFORMANCE UNDER THIS AGREEMENT. CONTRACTOR AGREES TO ACCEPT LIABILITY FOR INJURIES TO ITSELF OR OTHERS CAUSED BY ITS OWN NEGLIGENCE, MALFEASANCE, ACTION OR OMISSION. THIS NDEMNIFICATION, HOWEVER, DOES NOT EXTEND TO ANY NEGLIGENCE OR MALFEASANCE OF THE CITY IN PERFORMING ITS OBLIGATIONS UNDER THIS AGREEMENT.

THIS INDEMNIFICATION PROVISION ALSO SPECIFICALLY APPLIES TO ANY AND ALL CLAIMS, WHETHER CIVIL OR CRIMINAL, BROUGHT AGAINST CITY BY ANY GOVERNMENT AUTHORITY OR AGENCY RELATED TO ANY PERSON PROVIDING SERVICES UNDER THIS AGREEMENT THAT ARE BASED ON ANY FEDERAL IMMIGRATION LAW AND ANY AND ALL CLAIMS, DEMANDS, DAMAGES, ACTIONS AND CAUSES OF ACTION OF EVERY KIND AND NATURE, KNOWN AND UNKNOWN, EXISTING OR CLAIMED TO EXIST, RELATING TO OR ARISING OUT OF ANY EMPLOYMENT RELATIONSHIP BETWEEN CONTRACTOR AND ITS EMPLOYEES OR SUBCONTRACTORS AS A RESULT OF THAT SUBCONTRACTOR'S OR EMPLOYEE'S EMPLOYMENT AND/OR SEPARATION FROM EMPLOYMENT WITH THE CONTRACTOR, INCLUDING BUT NOT LIMITED TO ANY DISCRIMINATION CLAIM BASED ON SEX, SEXUAL ORIENTATION OR PREFERENCE, RACE, RELIGION, COLOR, NATIONAL ORIGIN, AGE OR DISABILITY UNDER FEDERAL, STATE OR LOCAL LAW, RULE OR REGULATION, AND/OR ANY CLAIM FOR WRONGFUL TERMINATION, BACK PAY, FUTURE WAGE LOSS, OVERTIME PAY, EMPLOYEE BENEFITS, INJURY SUBJECT TO RELIEF UNDER THE WORKERS' COMPENSATION ACT OR WOULD BE SUBJECT TO RELIEF UNDER ANY POLICY FOR WORKERS COMPENSATION INSURANCE, AND ANY OTHER CLAIM, WHETHER IN TORT, CONTRACT OR OTHERWISE.

IN ITS SOLE DISCRETION, CITY SHALL HAVE THE RIGHT TO APPROVE OR SELECT DEFENSE COUNSEL, AT AN HOURLY RATE NOT TO EXCEED, \$350.00, TO BE RETAINED BY CONTRACTOR IN FULFILLING ITS OBLIGATION HEREUNDER TO DEFEND AND INDEMNIFY CITY, UNLESS SUCH RIGHT IS EXPRESSLY WAIVED BY CITY IN WRITING. CITY RESERVES THE RIGHT TO PROVIDE A PORTION OR ALL OF ITS OWN DEFENSE; HOWEVER, CITY IS UNDER NO OBLIGATION TO DO SO. ANY SUCH ACTION BY CITY IS NOT TO BE CONSTRUED AS A WAIVER OF CITY'S OBLIGATION TO DEFEND CITY OR AS A WAIVER OF CITY'S OBLIGATION TO INDEMNIFY CITY PURSUANT TO THIS AGREEMENT. CONTRACTOR SHALL RETAIN CITY-APPROVED DEFENSE COUNSEL WITHIN SEVEN (7) BUSINESS DAYS OF CITY'S WRITTEN NOTICE THAT CITY IS INVOKING ITS RIGHT TO INDEMNIFICATION UNDER THIS AGREEMENT. IF CONTRACTOR FAILS TO RETAIN COUNSEL WITHIN SUCH TIME PERIOD, CITY SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF, AND OWNER SHALL BE LIABLE FOR ALL COSTS INCURRED BY CITY.

THIS SECTION SHALL SURVIVE TERMINATION OF THIS AGREEMENT.

7.2 Datrium Intellectual Property Indemnification. Datrium will defend at its own expense any action against Customer brought by a third party to the extent that the action is based upon a claim that the Product (or part thereof) directly infringes any copyright or U.S. patent or misappropriates any trade secret, and Datrium will pay those costs and damages finally awarded against Customer in any such action that are specifically attributable to such claim or those costs and damages agreed to in a monetary settlement of such action. If Customer's use of the Product is, or in Datrium's opinion is likely to become, enjoined as a result of an infringement claim, Datrium will, at its option and expense, either (a) procure the right to continue exercising the rights licensed herein; (b) replace or modify the Product so that it becomes non-infringing and remains functionally equivalent; or (c) if, despite its commercially reasonable efforts, Datrium is unable to do either (a) or (b), accept return of the Product, terminate the rights licensed herein, and pay to Customer a prorated refund of money paid to Datrium for the purchase of such Product. Notwithstanding the foregoing, Datrium will have no obligation with respect to any infringement claim based upon: (i) any use of the Product that is not in accordance with this Agreement or the corresponding Product documentation; (ii) any combination, operation, or use of the Product with any other products, services, equipment, software, or data not supplied by Datrium if such infringement would not have arisen but for such combination; (iii) the use of any release of the Software not supported by Datrium in accordance with the Support Policy; (iv) any modification of the Product by any person other than Datrium; or (v) Datrium's compliance with Customer's specifications or directions, including modification of the Product or the incorporation of any software or other materials provided by or requested by Customer. This section states Datrium's entire liability, and Customer's sole and exclusive remedy for infringement claims and actions. The foregoing obligations are conditioned on Customer notifying Datrium of such action within 30 days of first learning of such action, giving Datrium sole control of the defense thereof and

any related settlement negotiations, and cooperating and, at Datrium's reasonable request and expense, assisting in such defense.

7.3 Customer Indemnification. To the extent permitted by law, Customer will indemnify Datrium from all damages, losses, liabilities, settlements, costs, and expenses (including without limitation costs and attorneys' fees) in connection with any third-party claim, demand, allegation, investigation, or other proceeding arising out of or in connection with (a) any infringement, misappropriation, or violation of any third party's right in Customer Data; (b) Customer's violation of any applicable law; or (c) Customer's breach of the export control provision in this Agreement.

8. Payment of Fees.

Customer will pay Datrium (or its designee) all fees set forth in each Order (the "Fees"). All payments will be made in U.S. dollars and within the U.S., and in accordance with the payment schedule and the method of payment set forth on the Order. If not otherwise specified, payments will be due within thirty (30) days of invoice and are nonrefundable. Unpaid Fees are subject to a finance charge of one percent (1.0%) per month, or the maximum permitted by law, whichever is lower, plus all expenses of collection, including reasonable attorneys' fees. Fees under this Agreement are exclusive of all taxes, including national, state or provincial and local use, sales, value-added, property and similar taxes, if any. Customer agrees to pay such taxes (excluding US taxes based on Datrium's (or its designees') net income) unless Customer has provided Datrium (or its designee) with a valid exemption certificate. In the case of any withholding requirements, Customer will pay any required withholding itself and will not reduce the amount paid to Datrium on account thereof.

9. Limitation of Liability.

EXCLUDING LIABILITY ARISING UNDER Datrium's INDEMNIFICATION OBLIGATION UNDER SECTIONS 7.1 and 7.2, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, Datrium AND ITS

SUPPLIERS AND LICENSOR'S AGGREGATE LIABILITY UNDER OR RELATING TO THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY (INCLUDING CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE) SHALL NOT EXCEED, IN THE AGGREGATE, THE TOTAL FEES PAID TO DATRIUM HEREUNDER FOR THE PRODUCT(S) GIVING RISE TO SUCH CLAIM IN THE TWELVE MONTH PERIOD ENDING ON THE DATE THAT A CLAIM OR DEMAND IS FIRST ASSERTED. IN NO EVENT WILL DATRIUM ITS SUPPLIERS OR LICENSORS BE LIABLE FOR (A) ANY SPECIAL, CONSEQUENTIAL, PUNITIVE, EXEMPLARY, INCIDENTAL, OR INDIRECT DAMAGES, INCLUDING ANY LOSS OF INCOME, PROFITS, OR SAVINGS, LOSS OF USE, OR LOSS OR CORRUPTION OF DATA OR SOFTWARE; OR (B) COST OF PROCUREMENT OF SUBSTITUTE GOODS, TECHNOLOGY, OR SERVICES, OR (C) LOSS OR CORRUPTION OF DATA OR INTERRUPTION OF USE, IN CONNECTION WITH THE USE OF THE PRODUCT OR IN CONNECTION WITH ANY OTHER CLAIM ARISING FROM THIS AGREEMENT, EVEN IF DATRIUM HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

10. CONFIDENTIALITY.

10.1 SCOPE AND DEFINITION. "CONFIDENTIAL INFORMATION" means all information of a Party ("DISCLOSING PARTY") disclosed to the other Party ("RECEIVING PARTY"), whether orally or in writing, that is designated in writing or identified as confidential at the time of disclosure or should be reasonably known by the Receiving Party to be confidential due to the nature of the information disclosed and the circumstances surrounding the disclosure. The Software, logins, passwords and other access codes and any and all information regarding Datrium's business, products and services are the Confidential Information of Datrium. Customer Data is the Confidential Information of Customer. The Confidential Information of each Party shall include the terms and conditions of this Agreement and all Order(s), as well as business and marketing plans, technology and technical information, product plans and designs, pricing and business processes disclosed by such Party.

10.2 PROTECTION OF CONFIDENTIAL INFORMATION.

Except as otherwise permitted in writing by the Disclosing Party, the Receiving Party will: (a) not use the Disclosing Party's Confidential Information for any purpose outside of this Agreement; (b) not disclose such Confidential Information to any person or entity, other than its Affiliates, employees, consultants, agents and professional advisers who have a "need to know" for the Receiving Party to exercise its rights or perform its obligations hereunder, provided that such employees, consultants, and agents are bound by agreements or, in the case of professional advisers, ethical duties respecting such Confidential Information in accordance with the terms of this section; and (c) use the same degree of care as it uses to protect the confidentiality of its own Confidential Information, but in no event less than a reasonable degree of care.

10.3 COMPELLED DISCLOSURE.

If the Receiving Party is required by applicable law or court order to make any disclosure of such Confidential Information, it will first give written notice of such requirement to the Disclosing Party (to the extent permitted by applicable law), and, to the extent within its control, permit the Disclosing Party to intervene in any relevant proceeding to protect its interests in its Confidential Information, and provide full cooperation to the Disclosing Party in seeking to obtain such protection. Further, this Section 10.3 will not apply to information that the Receiving Party can document: (a) was rightfully in its possession or known by it prior to receipt; (b) is or has become public knowledge or publicly available through no fault of the Receiving Party; (c) is rightfully obtained by the Receiving Party from a third party without breach of any confidentiality obligation; or (d) is independently developed by the personnel of the Receiving Party who had no access to such Confidential Information of the Disclosing Party.

10.4 EQUITABLE RELIEF.

The Receiving Party acknowledges that unauthorized disclosure of the Disclosing Party's Confidential Information may cause substantial harm to the Disclosing Party for which damages alone might not be a sufficient

remedy and, therefore, that upon any such unauthorized disclosure by the Receiving Party, the Disclosing Party will be entitled to seek appropriate equitable relief in addition to whatever other remedies it might have at law or in equity.

10.5 DATA SECURITY. In accordance with applicable data protection laws, Datrium shall take all commercially reasonable measures, but in no event less than industry standard for a provider of similar products and services as Datrium, to protect the security and confidentiality of Customer personal data against any accidental or illicit destruction, alteration or unauthorized access or disclosure to third parties.

11. TERM AND TERMINATION.

This Agreement remains in effect for the duration of the Subscription Term unless earlier terminated as provided below. All licenses will terminate thirty days (ten in the case of non-payment and immediately in the case of a breach of Sections 2.4, 4, and 10) after notice of any breach by Customer remaining uncured at the end of such notice period. Either party may terminate this Agreement, without notice, (a) upon the institution by or against the other party of insolvency, receivership or bankruptcy proceedings, (b) upon the other party's making an assignment for the benefit of creditors, or (c) upon the other party's dissolution or ceasing to do business. Upon any termination, Customer shall immediately cease all use of all affected Products and return or destroy all copies of all affected Products and all portions thereof and so certify to Datrium. Termination is not an exclusive remedy, and all other remedies will be available whether or not termination occurs. Upon termination, Sections 1, 4, 5, 9, 10 through 13 (inclusive) will survive in accordance with their terms.

12. MISCELLANEOUS.

12.1 SEVERABILITY. If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable.

12.2 ASSIGNMENT. This Agreement is not assignable, transferable or sublicensable by Customer except with Datrium's prior written consent. Datrium may transfer and assign any of its rights and obligations under this Agreement with written notice to Customer.

12.3 ENTIRE AGREEMENT; WAIVER; AMENDMENT. Both parties agree that this Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement, and that all waivers and modifications must be in writing signed by both parties, except as otherwise provided herein. This Agreement shall control over additional or different terms of any purchase order, confirmation, invoice or similar document or click-through terms (other than a Datrium Order form), even if accepted in writing by both Parties. Datrium reserves the right to amend the terms of this Agreement at any time by placing a notice on the website www.datrium.com/docs/, effective after thirty (30) days of such notice. Customer's use of the Products in any way after the notice period shall constitute Customer's acceptance to the new terms.

12.4 RELATIONSHIP. No agency, partnership, joint venture, or employment is created as a result of this Agreement and Customer does not have any authority of any kind to bind Datrium in any respect whatsoever.

12.5 NOTICES. All notices under this Agreement will be in writing and will be deemed to have been duly given when received if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; and upon receipt, if sent by certified or registered mail (return receipt requested), postage prepaid.

12.6 GOVERNING LAW AND DISPUTE RESOLUTION. This Agreement will be governed by the laws of the State of Texas, U.S.A. without regard to its conflict of laws provisions and the United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act will not apply in any respect to the terms of this Agreement. The federal and state

courts sitting in Dallas County, Texas, U.S.A. will have proper and exclusive jurisdiction and venue with respect to any disputes arising from or related to the subject matter of this Agreement, provided that either party may seek injunctive relief in any court of competent jurisdiction. In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover costs and attorneys' fees.

12.7 No Boycott Israel. Pursuant to Texas Government Code Chapter 2270, Datrium's execution of this Agreement shall serve as verification that Datrium does not presently boycott Israel and will not boycott Israel during the term of this Agreement.

12.8 FORCE MAJEURE. Neither party shall be liable hereunder by reason of any failure or delay in the performance of its obligations under this Agreement on account of strikes, shortages, riots, insurrection, fires, flood, storm, explosions, acts of God, war, governmental action, labor conditions, earthquakes, material shortages or any other cause that is beyond the reasonable control of the party (each, an "Force Majeure Event"). Datrium will not be liable for any loss resulting from a cause over which it does not have direct control.

13. U.S. GOVERNMENT END USERS.

13.1 The Product is a "commercial item" as that term is defined at FAR 2.101. If a U.S. Government end user is an Executive Agency (as defined in FAR 2.101) of the U.S. Federal Government ("GOVERNMENT"), Datrium provides the Product, including any related technical data and/or professional services in accordance with the following: If a right to access the Product is procured by or on behalf of any Executive Agency (other than an Executive Agency within the Department of Defense ("DoD")), the Government is

granted, in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Computer Software), only those rights in technical data and software customarily provided to Datrium's customers as such rights are described in this Agreement. If a right to access the Product is procured by or on behalf of any Executive Agency within the DoD, the Government is granted, in accordance with DFARS 227.7202-3 (Rights in commercial computer software or commercial computer software documentation), only those rights in technical data and software that are customarily provided to Datrium's customers as such rights are described in its standard commercial end user terms. In addition, DFARS 252.227-7015 (Technical Data – Commercial Items) applies to technical data provided by Datrium to an Executive Agency within the DoD. Note, however, that Subpart 227.72 does not apply to computer software or computer software documentation acquired under GSA schedule contracts. Except as expressly permitted under this Agreement, no other rights or licenses are granted to the Government. Any rights requested by the Government and not granted under this Agreement must be separately agreed in writing with Datrium. This Section 13 (U.S Government End Users) of this Agreement is in lieu of, and supersedes, any other FAR, DFARS, or other clause, provision, or supplemental regulation that addresses Government rights in the Product.

Agreed to And Accepted

Agreed to And Accepted

Datrium, Inc

Town of Addison

By: 

By:

Name: George Li

Name: _____

Title: SVP Finance and Operations

Title: _____

Date: 23 January 2020

Date: _____

Agreed to And Accepted