



ZPE SYSTEMS MASTER LICENSE AGREEMENT

This Master License Agreement (the “Agreement”) is entered into by and between ZPE Systems, Inc. (“ZPE”) and CUSTOMER (“Licensee”) and is effective when the Licensee or end-user installs ZPE’s software and/or hardware product(s).

Background Statement

ZPE has developed and licenses to third parties certain software and hardware solutions. Licensee wishes to license the software or hardware product on the terms and conditions of this Agreement.

Agreement

In consideration of the mutual promises and covenants set forth in this Agreement, the parties agree for themselves and their successors and assigns as follows:

1. Software License Grant.

(a) Software Product. Subject to the payment of the applicable fees, and subject to the terms and conditions of this Agreement, ZPE hereby grants Licensee a nonexclusive, nontransferable right, with no right to grant sublicenses, to install and use object code versions of the computer software described on the invoice, together with any associated media, printed materials, and online or electronic documentation provided by ZPE (the “Software Product”). The Software Product may be installed solely on servers owned and operated by Licensee and may be used by Licensee to manage no more than the number of MANAGED DEVICES specified on the activation key, and no longer than the duration specified on the activation key installed on the Software Product. Licensee is not entitled to any support, upgrade or maintenance services related to the Software Product under this Agreement.

(b) Third Party Software. The Software Product may contain or be provided with open source software and/or copyrighted software owned by third parties, as identified in associated documentation or other printed or electronic materials provided by ZPE (“Third Party Software”). Licensee shall be licensed to use any such Third Party Software subject to the applicable restrictions and other terms and conditions of use set forth in such documentation or other printed or electronic materials provided by ZPE.

(c) Delivery of Licensed Software. All Software Products, including but not limited to any updates, upgrades or patches that are provided by ZPE, will be delivered by ZPE only by electronic means, from a File Transfer Protocol (FTP) site. If an FTP site is not available, the parties will cooperate to determine an appropriate electronic means for delivery. In no event will ZPE be required to deliver any Software Product, or any updates, upgrades or patches, on tangible media.

(d) Limited Right of Use. Licensee may use the Software Product solely to manage the permitted managed devices owned and operated by Licensee, and may not use or permit the Software Product to be used for the management of any other computer hardware, software or other devices. Without limitation, Licensee may not redistribute, rent, lease, lend, license, sublicense, assign or otherwise transfer the Software

Product or the use of the Software Product to any third party. The rights licensed to Licensee hereunder are personal, and the Software Product may not be used by or for the benefit of any affiliate of Licensee without ZPE's express written consent.

(e) Limited Right to Copy. Licensee may make one (1) copy of the object code version of the computer software licensed under this Agreement for back-up and archival purposes. Licensee may copy the support materials included with such computer software only with ZPE's express written consent. Licensee shall not otherwise copy all or any part of the Software Product.

2. Hardware License Grant.

(a) Hardware Product. Subject to the payment of the applicable fees specified in the invoice, and subject to the terms and conditions of this Agreement, ZPE hereby grants Licensee a nonexclusive, nontransferable right, with no right to grant sublicenses, to install and use the Hardware Product as described on the invoice, together with any associated media, printed materials, and online or electronic documentation provided by ZPE (the "Hardware Product"). The Hardware Product may be installed solely in facilities owned or operated by Licensee and may be used by Licensee to manage no more than the number of MANAGED DEVICES specified on the License key.

(b) Third Party Software. The Hardware Product may contain or be provided with open source software and/or copyrighted software owned by third parties, as identified in associated documentation or other printed or electronic materials provided by ZPE ("Third Party Software"). Licensee shall be licensed to use any such Third Party Software subject to the applicable restrictions and other terms and conditions of use set forth in such documentation or other printed or electronic materials provided by ZPE.

(c) Delivery of Firmware Updates, Upgrades or Patches. All firmware updates, upgrades or patches, to the Firmware running on the Hardware Product that are provided by ZPE, will be delivered by ZPE only by electronic means, from a File Transfer Protocol (FTP) site. If an FTP site is not available, the parties will cooperate to determine an appropriate electronic means for delivery. In no event will ZPE be required to deliver any Firmware updates, upgrades or patches, to the Hardware Product, on any on tangible media.

(d) Limited Right of Use. Licensee may use the Hardware Product solely to manage the permitted managed devices owned and operated by Licensee, and may not use or permit the Hardware Product to be used for the management of any other computer hardware, software or other devices. Without limitation, Licensee may not redistribute, rent, lease, license, sublicense, assign or otherwise transfer the Hardware Product or the use of the Hardware Product to any third party. The rights licensed to Licensee hereunder are personal, and the Hardware Product may not be used by or for the benefit of any affiliate of Licensee without ZPE's express written consent.

3. Other Restrictions.

(a) No Reverse Engineering. Licensee shall not: (i) reverse engineer, decompile, disassemble, decode, or otherwise attempt to access the source code of the Software or Hardware Product nor (ii) copy, modify, translate or create derivative works of the Software or Hardware Product. If Licensee is operating the Software or Hardware Product in the European Union and believes that it requires information related to the interoperability of the Software or Hardware Product with other programs, it may request such information from ZPE at the address listed on the ZPE website at www.zpesystems.com. Upon receiving such a request, ZPE shall determine whether the information is required to ensure compatibility with another

program used for a legitimate purpose and, if so, ZPE shall provide such information to Licensee within a reasonable time and on reasonable conditions.

(b) Critical Care Uses. Licensee shall not use the Software or Hardware Product in connection with any system with respect to which a malfunction could reasonably be expected to result in personal injury, death, or damage to tangible property or the environment including, without limitation, in connection with any life support or patient care system, nuclear facility, aircraft operation, air traffic control, or other application representing a similar degree of hazard.

(c) Upgrades. Any computer software or firmware that is provided to Licensee by ZPE and labeled or otherwise identified by ZPE as a “Software or Firmware Upgrade” to the Software or Hardware Product (whether provided separately or as part of a package of upgrades) may be used by Licensee solely to upgrade the licensed Software or Hardware Product, and may be used solely in accordance with, and subject the limitations of, this Agreement.

(d) Evaluation and Activation Key. If Licensee obtained an Evaluation License without paying the licensee fee specified in the invoice, Licensee shall be permitted to use the Software or Hardware Product solely for evaluation or demonstration purposes, and subject to all of the other limitations in this Agreement, for the lesser of forty-five (45) days or the more limited evaluation period specified in the invoice or in the Evaluation License, prior to paying the license fee in full. The Software or Hardware Product may contain an automatic disabling mechanism or time-out feature after which the Software or Hardware Product will cease operation or operate with limited functionality, and the availability of the full functionality of the Software or Hardware Product may be conditioned on the use by Licensee of an “activation key” provided by ZPE or its authorized reseller. The activation key may be a printable digital key, a non-printable file, or any other mechanism used by ZPE for license activation purposes. Licensee shall not attempt to “hack,” “crack,” or otherwise override or disable the activation key.

4. Termination. Without prejudice to any of ZPE’s other rights, ZPE may terminate this Agreement if Licensee breaches any of the material terms and conditions of this Agreement and fails to cure that breach within ten days after written notice of the breach from ZPE. In such event, Licensee shall have no further right to use the Software Product or Hardware Product for any purpose and shall promptly destroy any and all copies of the Software Product in its possession. Licensee may terminate this Agreement at any time, without cause, by notice to ZPE. Upon termination, Licensee shall no longer have any license to or right to use the Software Product or Hardware Product under Section 1, 2 or 3, and Licensee shall not be entitled to any refund of fees paid under this Agreement. The other terms and conditions of this Agreement shall survive termination and continue in full force and effect.

5. Copyrights, Trademarks and Confidential Information

(a) Ownership of Intellectual Property Rights. As between the parties, ZPE shall own and retain all right, title and interest in and to the Software or Hardware Product and in all of the methods, processes, techniques and other intellectual property used in the Software or Hardware Product, and in all of the patents, copyrights, trade secrets and trademarks embodied in or related to the use of the Software or Hardware Product. Licensee acknowledges and agrees that its possession, installation and use of the Software Product does not transfer to it any title to the Software or Hardware Product nor the intellectual property in the Software or Hardware Product, and that it is acquiring no rights of any nature to the Software or Hardware Product except for the license expressly granted under Section 1(a) or 2(a). Licensee agrees not to take any action that would challenge, jeopardize, limit or interfere in any manner with ZPE’s rights with respect to the Software or Hardware Product.

(b) Proprietary Notices. Licensee shall not remove, modify, cover, obfuscate, or alter any ZPE patent, copyright or trademark notice from any part of the Software or Hardware Product or any copy of the Software or Hardware Product, including but not limited to any such notices contained in the physical and/or electronic media or documentation, in any installation routine or dialogue or ‘about’ boxes, in any of the runtime resources and/or in any web-presence or web-enabled notices, code or other embodiments originally contained in or otherwise created by the Software or Hardware Product.

(c) Confidential Information. During the term of this Agreement and for a period of five years thereafter, Licensee shall hold in strict confidence the Software or Hardware Product, the commercial terms and conditions related to this Agreement (including prices and discounts) and any other proprietary or confidential information of ZPE that is disclosed to Licensee (“ZPE Confidential Information”) and shall not disclose the ZPE Confidential Information to any third party nor use the ZPE Confidential Information for any purpose except for purposes expressly provided for in this Agreement. During the term of this Agreement and for a period of five years thereafter, ZPE shall hold in strict confidence any proprietary or confidential information of Licensee that is disclosed to ZPE (“Licensee Confidential Information”) and shall not disclose the Licensee Confidential Information to any third party nor use the Licensee Confidential Information for any purpose except for purposes expressly provided for in this Agreement. The above restriction shall not be construed to restrict the use or disclosure of information disclosed by one party to the other that (i) is publicly known to the receiving party at the time of its disclosure, (ii) is lawfully received by the receiving party from a third party not in a confidential relationship with the disclosing party, (iii) was already rightfully known by the receiving party prior to receipt thereof from the disclosing party or (iv) after notice and an opportunity to object, is required by law to be disclosed.

6. Software and Hardware Limited Warranty.

(a) Software Limited Warranty. ZPE warrants that, for a period of one (1) year from the date of ZPE Systems invoice (“Warranty Period”) or during the Evaluation License described in Section 3(d), the Software Product will perform substantially in accordance with the documentation for the Software Product accompanying the Software Product, when operated by Licensee in the manner provided in such documentation.

(b) Hardware Limited Warranty. ZPE Systems warrants that for a period of two (2) years from the date of ZPE Systems invoice (“Warranty Period”) the Licensed Hardware will operate in all material respects in accordance with the applicable Specifications.

The foregoing Software and Hardware limited warranty shall not apply to any defect in the Software or Hardware Product that is caused by (i) the use or operation of the Software or Hardware Product with an application or in an environment other than that intended or recommended by ZPE, (ii) modifications to the Software or Hardware Product not made by ZPE, or (iii) Licensee’s failure to implement all patches or other error corrections provided by ZPE. EXCEPT AS EXPRESSLY PROVIDED ABOVE, ZPE DISCLAIMS ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NONINFRINGEMENT. WITHOUT LIMITING THE FOREGOING, ZPE MAKES NO WARRANTY THAT THE SOFTWARE OR HARDWARE PRODUCT WILL BE ERROR-FREE OR FREE FROM INTERRUPTIONS OR OTHER FAILURES OR THAT THE SOFTWARE OR HARDWARE PRODUCT WILL MEET LICENSEE’S REQUIREMENTS. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY ZPE, ITS EMPLOYEES, RESELLERS, OR AGENTS SHALL IN ANY WAY INCREASE THE SCOPE OF THE FOREGOING WARRANTY.

(c) **Exclusive Remedies.** In the event of any breach of the foregoing warranty, ZPE shall use commercially reasonable efforts to attempt to remedy the problem by providing a revision, patch or other fix. If ZPE notifies Licensee that it cannot remedy material defects in the Software Product or Hardware Product, Licensee may elect to terminate this Agreement and destroy the defective Software Product or return the defective Hardware Product to ZPE and would then be entitled to a refund of the license fees actually paid by Licensee for the Software Product (not to exceed the suggested U.S. retail price) or a Replacement Hardware Product during the original warranty period, if the original warranty is still in effect. At no time shall ZPE be obligated to replace any failed or defective Hardware Product if a Hardware Product warranty and any extensions are not current or have expired (Max (2) years) from date of original purchase. The foregoing remedies are Licensee's sole and exclusive remedies for any breach of warranty.

7. Limitation of Liability.

ZPE SHALL NOT BE LIABLE TO LICENSEE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY CHARACTER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS OR GOODWILL, BUSINESS INTERRUPTION OR LOSS OF BUSINESS INFORMATION) ARISING OUT OF THE USE OF OR INABILITY TO USE THE SOFTWARE OR HARDWARE PRODUCT, EVEN IF ZPE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND WHETHER ANY SUCH CLAIM ARISES IN TORT, CONTRACT, STATUTE OR OTHERWISE. IN ANY EVENT, ZPE'S ENTIRE LIABILITY UNDER THIS AGREEMENT SHALL BE LIMITED TO THE AMOUNT LICENSEE HAS ACTUALLY PAID TO ZPE FOR THE SOFTWARE OR HARDWARE PRODUCT THAT DIRECTLY CAUSES THE DAMAGE.

8. Indemnification. ZPE shall defend or settle (at its option and expense) any claim, assertion, lawsuit, or proceeding alleging that the Software Product infringes or misappropriates the intellectual property rights of a third party (the "Claim") and shall pay any damages and costs assessed by final judgment against Licensee with respect to any such Claim. The foregoing indemnification shall not apply to any Claim based upon any use of the Software or Hardware Product in a manner or at a location not permitted hereunder, any modification of the Software or Hardware Product by any party other than ZPE or the combination of the Software or Hardware Product with any other software, hardware or device not provided or approved by ZPE. Licensee must promptly notify ZPE of any Claim and provide reasonable assistance to ZPE in the defense of the Claim, at ZPE's expense. Should ZPE conclude that the third party is likely to prevail in the Claim, ZPE may (a) modify the Software or Hardware Product so that it provides comparable functionality without infringement; (b) obtain a royalty-free license for Licensee to continue using the allegedly infringing version of the Software or Hardware Product; or (c) terminate this Agreement and refund the licensee fees paid by Licensee for the infringing Software or Hardware Product hereunder.

9. Export Restrictions. Licensee acknowledges and agrees that the Software or Hardware Product may be subject to restrictions and controls imposed by the United States Export Administration Act and the regulations thereunder. Licensee shall not export or re-export either the Software or Hardware Product or any directly related materials in violation of such controls or any other laws, rules or regulations of any country, state or jurisdiction.

10. Notice. All notices and other communications required or permitted under this Agreement shall be in writing and shall be deemed given when delivered by hand or by a reputable national over-night courier service or by facsimile transmission or three business days after mailing when mailed by registered or certified mail (return receipt requested), postage prepaid, to the parties at the addresses provided on the

invoice. Any party may change the address to which notice is to be given by notice given in the manner set forth above.

11. Choice of Law and Venue. This Agreement shall be governed by, and interpreted in accordance with, the laws of the State of California, USA, excluding its choice of law rules. Exclusive jurisdiction and venue for any lawsuits brought by either party arising from this Agreement or related to transactions under this Agreement shall be in the courts of Alameda County, State of California, USA. In any event, this Agreement shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods.

12. Attorneys' Fees. Licensee agrees that Licensee shall be obligated to pay to Licensor promptly on demand all costs, charges and expenses, including but not limited to reasonable attorneys' fees and costs, incurred or expended by Licensor arising out of or in any way pertaining to this Agreement in connection with any action or proceeding, whether or not there is a lawsuit. This includes, subject to any limits under applicable law, Licensor's attorneys' fees, costs, and related expenses (such as expert witness fees, investigation fees, inspection fees, and the like) incurred by Licensor in state court actions and/or proceedings under Title 11 of the United State Code (including without limitation efforts to modify or vacate any automatic stay, objections to claims, or injunctions), and appeals. Licensee also will pay all of Licensor's court costs, in addition to all other sums provided by law.

13. Dispute Resolution / Judicial Reference.

(a) Other than the exercise of other provisional remedies (any of which may be initiated pursuant to applicable law), any controversy, dispute or claim (each, a "Claim") between the parties arising out of or relating to this Agreement, will be resolved by a reference proceeding in California in accordance with the provisions of Section 638 et seq. of the California Code of Civil Procedure ("CCP"). Venue for the reference proceeding will be in the Superior Court or Federal District Court in the County of Alameda, California (the "Court").

(b) The referee shall be a retired Judge or Justice selected by mutual written agreement of the parties. If the parties do not agree, the referee shall be selected by the Presiding Judge of the Court (or his or her representative). A request for appointment of a referee may be heard on an ex parte or expedited basis, and the parties agree that irreparable harm would result if ex parte relief is not granted. The referee shall be appointed to sit with all the powers provided by law. Each party shall have one peremptory challenge pursuant to CCP §170.6. Pending appointment of the referee, the Court has power to issue temporary or provisional remedies.

(c) All proceedings and hearings conducted before the referee, except for trial, shall be conducted without a court reporter, except that when any party so requests, a court reporter will be used at any hearing conducted before the referee, and the referee will be provided a courtesy copy of the transcript. The party making such a request shall have the obligation to arrange for and pay the court reporter. Subject to the referee's power to award costs to the prevailing party, the parties will equally share the cost of the referee and the court reporter at trial.

(d) The referee shall be required to determine all issues in accordance with existing case law and the statutory laws of the State of California. The rules of evidence applicable to proceedings at law in the State of California will be applicable to the reference proceeding. The referee shall be empowered to enter equitable as well as legal relief, provide all temporary or provisional remedies, enter equitable orders that will be binding on the parties and rule on any motion which would be authorized in a trial, including without

limitation motions for summary judgment or summary adjudication. The referee shall issue a decision at the close of the reference proceeding which disposes of all claims of the parties that are the subject of the reference. The referee's decision shall be entered by the Court as a judgment or an order in the same manner as if the action had been tried by the Court. The parties reserve the right to appeal from the final judgment or order or from any appealable decision or order entered by the referee. The parties reserve the right to findings of fact, conclusions of laws, a written statement of decision, and the right to move for a new trial or a different judgment, which new trial, if granted, is also to be a reference proceeding under this provision.

(e) If the enabling legislation which provides for appointment of a referee is repealed (and no successor statute is enacted), any dispute between the parties that would otherwise be determined by reference procedure will be resolved and determined by arbitration. The arbitration will be conducted by a retired judge or Justice, in accordance with the California Arbitration Act §1280 through §1294.2 of the CCP as amended from time to time. The limitations with respect to discovery set forth above shall apply to any such arbitration proceeding.

14. Audit. Licensee agrees to allow a mutually acceptable independent certified public accountant to audit and analyze the Licensee's compliance with the terms of this Agreement. Any such audit shall be permitted by Licensee within thirty (30) days of Licensor's written request and shall be performed during normal business hours at times mutually agreed upon by Licensee and Licensor. Audits shall be made no more frequently than once every twelve (12) months, and shall not unreasonably interfere with Licensee's business activities. If an audit should reveal a discrepancy between the Fees owed Licensor and the Fees actually paid by Licensee, Licensee will promptly pay the difference. In the event an audit should establish an underpayment of greater than ten percent (10%) of payments owed Licensor for any particular period, Licensee shall be responsible for reimbursement of all reasonable, verifiable costs related to the performance of the subject audit.

15. Interpretation. The article and section headings contained in this Agreement are solely for the purpose of reference, are not part of the agreement of the parties and shall not in any way affect the meaning or interpretation of this Agreement. No failure or delay by either party in enforcing any of its rights under this Agreement shall be construed as a waiver of the right to subsequently enforce any of its rights, whether relating to the same or a subsequent matter. This Agreement does not grant any rights or remedies to any person or entity that is not a party to this Agreement and no person or entity is a third party beneficiary of this Agreement. If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, such provision shall be deemed modified to the extent necessary to render such provision enforceable, and the rights and obligations of the Parties shall be construed and enforced accordingly, preserving to the fullest extent permissible the intent and the agreements of the parties.

16. Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes any prior agreement concerning the Software or Hardware Product. This Agreement may be amended, modified or supplemented only by a written and signed agreement of the parties. Any provision of this Agreement may be waived only by an instrument in writing signed by the party charged with the waiver. ZPE is not bound by any of the terms and conditions of any purchase order, receipt, acceptance, confirmation or other correspondence provided by Licensee. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. If any provision of this Agreement shall be adjudged to be unenforceable or invalid, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and remain enforceable between the parties.