



## ZPE SYSTEMS MASTER LICENSE AGREEMENT

This Master License Agreement (the “Agreement”) is entered into by and between ZPE Systems, Inc. (“ZPE”) and you (“Licensee”) (collectively “Parties”).

### Background Statement

ZPE has developed and licenses to third parties certain software and hardware solutions. Licensee wishes to license the software or hardware solutions 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 for their successors and assigns as follows:

1. **Definitions.** Capitalized terms used herein and not otherwise defined herein shall have the meanings set forth in Schedule 1 hereto.

2. **Stand-Alone Software Product License Grant.**

(a) **Stand-Alone 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 the Stand-Alone Software Product for use by Licensee or Licensee’s Authorized Users.

The Stand Alone Software Product may be installed solely on virtual machines and servers identified by Licensee and approved by ZPE pursuant to an Invoice. Licensee shall not permit the installation of any Stand-Alone Software Product on or in any device that is not specified on the activation key issued by ZPE in connection with the Stand-Alone Software Product. This license shall expire at the end of the period specified on the activation key issued in connection with the Stand-Alone Software Product. Licensee shall receive Corrections, Upgrades, and Updates for a period of one (1) year after activation of the Stand-Alone Software Product. Thereafter, Licensee is not entitled to any support, Upgrade or Maintenance Services related to the Stand-Alone Software Product under this Agreement. Licensee may, however, purchase an extended warranty from ZPE.

(b) **Third Party Software.** The Stand-Alone Software Product may contain or include 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. All Third Party Software is Open-Source Software.

(c) **Delivery of Software.** All Stand-Alone 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 or a secure portal. If an FTP site or a secure portal 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 Stand-Alone Software Product, or any Updates, Upgrades or patches, on tangible media. ZPE Cloud is software as a service, hosted and maintained by ZPE. All updates, upgrades or patches

will be automatically installed by ZPE, as part of the cost of subscription and without interaction needed by partner or end customer. Mobile device software and updates are made available for download on respective mobile application store such as Google Play or Apple App Store.

(d) Limited Right of Use. Licensee and of the Licensee's Authorized Users may use the Stand-Alone Software Product solely to manage the permitted Managed Devices owned and operated by Licensee or any Licensee's Authorized Users, but may not use or permit the Stand-Alone Software Product to be used for the management of any other computer servers, hardware, software or other devices. Without limitation, Licensee may not redistribute, rent, lease, lend, license, sublicense, assign or otherwise transfer the Stand-Alone Software Product or the use of the Stand-Alone Software Product to any third party. The rights licensed to Licensee hereunder are personal, provided that and the Stand-Alone Software Product may be used by or for the benefit of any of Licensee's Authorized Users upon ZPE's express written consent. Notwithstanding the forgoing, in the event a group or division of Licensee forms a separate legal entity ("New Group"), the New Group may continue to use the Stand-Alone Software Product for a period of three (3) months; provided, however, that the warranty period associated with such Stand-alone Software Product shall expire at the end of such 3-month period. Upon such expiration, ZPE shall have no obligation to provide Updates, Corrections, or Upgrades unless and until the New Group purchases a new license from ZPE.

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

### **3. Hardware License Grant.**

(a) Hardware Product. Subject to the payment of Invoices and 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 the Hardware Product provided by ZPE to Licensee.. Licensee shall receive Corrections, Upgrades, and Updates for a period of two (2) years after installation of the Hardware Product. Thereafter, Licensee is not entitled to any support, Upgrade or Maintenance Services related to the Hardware Product under this Agreement. Licensee may, however, purchase an extended warranty from ZPE.

(b) Third Party Software. The Hardware Product may contain or be provided with 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. All Third Party Software is Open-Source Software.

(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 or a secure portal. If an FTP site or a secure portal 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 and the Licensee's Authorized Users may use the Hardware Product solely to manage the permitted Managed Devices owned and operated by Licensee or any of Licensee's Authorized Users, but 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.

#### **4. Other Restrictions.**

(a) No Reverse Engineering. Licensee shall not: (i) reverse engineer, decompile, disassemble, decode, or otherwise attempt to access the source code of any Software Product or Hardware Product nor (ii) copy, modify, translate or create derivative works of any Software Product or Hardware Product. If Licensee is operating the Stand-Alone Software Product or Hardware Product in the European Union and believes that it requires information related to the interoperability of the Stand-Alone Software or the Hardware Product with other programs, it may request such information from ZPE at the address listed on the ZPE website at [www.zpesystems.com](http://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 Stand-Alone Software Product 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 Stand-Alone Software Product or Hardware Product (whether provided separately or as part of a package of upgrades) may be used by Licensee solely to upgrade the licensed Stand-Alone Software Product 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 uses the Stand-Alone Software Product or the Hardware Product without paying the license fee specified in the invoice, Licensee shall be permitted to use the Stand-Alone Software Product or the Hardware Product solely for evaluation or demonstration purposes ("Evaluation License"). The Evaluation License shall be subject to all of the other limitations contained in this Agreement, the Hardware Maintenance Agreement, and the Software Maintenance Agreement. The Evaluation License term is the lesser of forty-five (45) days from first use of the Stand-Alone Software Product or the Hardware Product; or the more limited evaluation period specified in the invoice, prior to paying the license fee in full. The Stand-Alone Software Product or Hardware Product may contain an automatic disabling mechanism or time-out feature after which the Stand-Alone Software Product or Hardware Product will cease operation or operate with limited functionality, and the availability of the full functionality of the Stand Alone Software Product 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.

#### **5. Termination.**

(a) For Cause. Without prejudice to any other rights herein, either party may terminate this Agreement if the other party breaches any material obligation set forth herein, which breach is incapable of cure or which, being capable of cure, has not been cured within fifteen (15) days after receipt of written notice of such breach from the non-breaching party, or within such additional cure period as the non-

breaching party may authorize in writing, such authorization not be to withheld unreasonably. If ZPE terminates for cause, Licensee shall have no further right to use the Products for any purpose and shall promptly destroy any and all copies of the Products in its possession. If Licensee terminates for cause, Licensee shall be entitled to refund of fees paid under this Agreement and ZPE shall remit that refund within ten (1) business days.

(b) For Convenience. Licensee may terminate this Agreement at any time, without cause, by providing thirty (30) days written notice to ZPE. Upon termination, Licensee shall no longer have any license to or right to use the Stand-Alone Software Product or the Hardware Product under Section 1, 2 or 3, and Licensee shall not be entitled to any refund of fees paid under this Agreement.

## **6. 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 all ZPE IP. Licensee acknowledges and agrees that its possession, installation and use of the Stand-Alone Software Product does not transfer to it any title to the Software Product or Hardware Product or any other ZPE IP, and that it is acquiring no rights of any nature to the Stand-alone Software Product or Hardware Product or any other ZPE IP except for the license expressly granted under Section 1(a) and 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 any ZPE IP.

(b) Proprietary Notices. Licensee shall not remove, modify, cover, obfuscate, or alter any ZPE patent, copyright or trademark notice from any part of the Stand-alone Software Product or Hardware Product or any copy of the Stand-alone Software Product 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 Stand-alone Software Product or Hardware Product.

(c) Confidential Information. "Confidential Information" shall mean, without limitation, (i) any and all data, trade secrets, business information, proprietary and other similar information and material that is related to either party's product plans, research and development, or know-how; (ii) any other information that the disclosing party identifies as being proprietary and/or confidential; and (iii) the terms and conditions of this Agreement. Confidential Information shall include all ZPE Confidential Information and all other nonpublic information that a party designates as being confidential or which, under the circumstances surrounding disclosure, whether written or verbal, ought to be treated as confidential. Confidential Information shall not include information that: (i) is or becomes generally known or available by publication, commercial use or otherwise through no fault of the receiving party; (ii) is known and has been reduced to tangible form by the receiving party at the time of disclosure and is not subject to restriction; (iii) is independently developed or learned by the receiving party; (iv) is lawfully obtained from a third party that has the right to make such disclosure; or (v) is made generally available by the disclosing party without restriction or disclosure.

Each party shall protect the other's Confidential Information from unauthorized dissemination and use with the same degree of care that such party uses to protect its own like information, but in no event shall either party use less than reasonable care in protecting the other's Confidential Information. Neither party will use the other's Confidential Information for the purposes other than those contemplated by this Agreement, or disclose such information to any third parties, except in furtherance of the purposes of this Agreement, or as otherwise required or permitted by law, rule, or regulation. Each party shall limit access by its officers, partners, principals, directors, representatives, agents, contractors, and employees to the

other party's Confidential Information to only those who require such access in performing their duties hereunder, and shall further restrict such access to only such of the Confidential Information as may be required by such persons to perform such duties. Except as expressly provided in this Agreement, no ownership or license rights is granted in any Confidential Information. Upon termination or expiration of this Agreement, Confidential Information shall be returned or destroyed.

## 7. **Limited Warranties.**

(a) Stand-Alone Software Product 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 4(d), the Stand-alone Software Product will perform substantially in accordance with the documentation for the Stand-alone Software Product accompanying the Stand-alone Software Product, when operated by Licensee in the manner provided in such documentation.

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

(c) Additional Warranties as to all Products: ZPE warrants that during the warranty periods described in (a) and (b) above, the Products will:

i. Conform to the specifications set forth in the Documentation, which, at a minimum, includes the standards of quality for performance generally observed in the industry for similar services;

ii. Accurately process date/time data;

iii. Interface in a materially error-free manner and be compatible in all material respects with Licensee's current communications network, data processing systems, and/or related systems (including those third party software products and services utilized by Licensee);

iv. Utilizes state-of-the-art security procedures in keeping with the current industry standards including, without limitation, at a minimum 256-bit encryption and prompt certification and installation of all security updates and patches from third party vendors;

v. Not materially adversely affect Licensee's computer, network, data, and/or related systems;

vi. Not contain any viruses, "worms," or "backdoors" features that in any way may materially adversely affect Licensee's use thereof; if defects are detected, such defects will be promptly corrected, at no cost to Licensee; and

vii. Be in compliance with all federal and state laws as well as local laws and regulations, ordinances, codes, interpretive rules, and regulatory opinions ("Legal Requirements") as amended from time to time.

The foregoing limited warranties shall not apply to any defect in the Stand-alone Software Product or Hardware Product that is caused by (i) the use or operation of the Stand-alone Software Product or Hardware Product with an application or in an environment other than that intended or recommended by ZPE, (ii) modifications to the Stand-alone Software Product 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 Stand-alone 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 Stand-alone 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.

**8. Limitation of Liability**. EXCEPT FOR ANY DAMAGES ARISING OUT OF (I) A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, (II) INTELLECTUAL PROPERTY INFRINGEMENT, OR (III) A PARTY'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS HEREUNDER, IN NO EVENT WILL EITHER PARTY'S LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT PAYABLE BY LICENSEE UNDER THIS AGREEMENT DURING THE 12-MONTH PERIOD PRECEDING THE DATE OF THE CLAIM.

TO THE EXTENT PERMITTED BY APPLICABLE LAW, NEITHER PARTY WILL HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS OR REVENUES OR LOSS OF DATA OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT, HOWEVER CAUSED EXCEPT FOR GROSS NEGLIGENCE OR INTENTIONAL MALFEASANCE, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**9. Indemnification**. ZPE shall indemnify, hold harmless, and defend Licensee from and against any and all damages, liabilities, costs, and expenses, including attorneys' fees and expenses, and including costs of investigation, based on a claim (including pre-litigation demands) that any of the Products or any technology, deliverable, and/or related software related to the Products and provided to Licensee by ZPE under this Agreement, including any service, product, technology, deliverable developed by ZPE in conjunction with a third party, licensed from any third party, and/or otherwise integrated into or utilized in conjunction with the Products, services or technology furnished under this Agreement or the normal use thereof infringes and/or violates (based upon statute and/or common law) any patent, trademark, service mark, copyright, trade secret and/or any other intellectual property right (collectively, "Claims"). The foregoing indemnification shall not apply to any Claim based upon any use of any Product in a manner or at a location not permitted hereunder, any modification of the Products by any party other than ZPE or the combination of any 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 prosecution of a Claim and that use of a Product is likely to be enjoined, then, in addition to undertaking its indemnification obligations set forth above, ZPE may (a) modify the infringing Product so that it provides without infringement comparable functionality to the reasonable satisfaction of Licensee; (b) obtain a royalty-free license for Licensee to continue using the allegedly infringing version of the Stand-alone Software Product or Hardware Product; or (c) terminate this Agreement and refund the licensee fees paid by Licensee for the infringing Product hereunder.

**10. Export Restrictions.** Licensee acknowledges and agrees that the Software Product, Stand-Alone Software Product, 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 Stand-alone Software Product 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.

**11. 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.

**12. 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.

**13. Attorneys' Fees.** The Parties agree that, in the event of any dispute, the prevailing Party shall be entitled to receive from the other Party promptly on demand all costs, charges and expenses, including but not limited to reasonable attorneys' fees and costs, incurred or expended the prevailing Party 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, attorneys' fees, costs, court costs and related expenses (such as expert witness fees, investigation fees, inspection fees, and the like) incurred in state or federal 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.

**14. 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.

**15. 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 ZPE's written request and shall be performed during normal business hours at times mutually agreed upon by the Parties. 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 ZPE 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 ZPE for any particular period, Licensee shall be responsible for reimbursement of all reasonable, verifiable costs related to the performance of the subject audit.

**16. 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.

**17. Representations and Warranties.** The Parties each represent and warrant that: (a) each has the full power and authority to enter into this Agreement; (b) this Agreement are and will be duly authorized by all necessary corporate or organizational action and have and will be duly executed and delivered; (c) neither party has entered into or will enter into any agreement with any other entity that contains restrictive provisions regarding confidentiality and/or other restrictive covenants that may impair their ability to perform their specific obligations under the terms of this Agreement; and (d) each will comply in all material respects with all applicable state and federal laws, regulations, rules, governmental approvals and any court orders and has obtained and complied with all required permits and licenses necessary to perform the services, if any, or provide any Software Products or Hardware Products as contemplated hereunder. ZPE further warrants and represents that it or its personnel will perform the services, if any, and provide any Software Products or Hardware Products: (x) in a good, timely, efficient, professional and workmanlike manner; (y) with at least the same degree of accuracy, quality, efficiency, completeness, timeliness and responsiveness as are equal to the prevailing industry standards applicable to the performance of the same or similar Software Products or Hardware Products or services, if any; and (z) using qualified personnel who are fully familiar with the technology processes, programming, procedures and equipment.

**18. Publicity.** Absent the prior written consent of the other party, neither party shall use the name, trademarks, or logo of the other in promotional materials, publicity releases advertising, or any other similar publications or communications.

**19. Assignment.** Neither party may assign its duties or rights under this Agreement, whether by operation of law or otherwise, except with the other party's prior written consent; provided that ZPE will have the right to assign this Agreement to its affiliates. This Agreement shall be binding upon and inure to the benefit of respective affiliates, subsidiaries, successors and assigns.

**20. Force Majeure.** If the performance by either party of any obligation under this Agreement (other than any payment obligation) is delayed or prevented in whole or in part by any cause not reasonably within its control (including, without limitation, acts of God, war, civil disturbances, damage to its facilities, labor disputes, acts of any governmental body, or failure or delay of third parties), it will be relieved of performance of such obligation to the extent such performance is so limited or prevented, without liability of any kind. Nothing contained in this Agreement will be construed as requiring either party to accede to any demands of labor or labor unions, suppliers or other entities which it considers unreasonable.

**21. Independent Contractor.** The Parties hereto expressly understand and agree that each party is an independent contractor in the performance of each and every part of this Agreement, and is solely responsible for all of its employees and agents and its labor costs and expenses arising in connection therewith. The Parties agree to hold the other harmless against any and all liability imposed or claimed, including reasonable attorney's fees and other legal expenses, arising directly or indirectly from any act or omission of the party's employees or agents, including all claims relating to the injury or death of any person or damage to any property.

**22. Privacy.** You agree to allow ZPE to collect, use, disclose, and transfer your information, as set forth in the our privacy policy published on our web site (<https://www.zpesystems.com/privacy-policy>) for the purpose of (a) using Customer information to send information regarding ZPE products and services; (b) disclosing your information to provide assistance to law enforcement, governmental agencies and other authorities; and (c) to allow ZPE to protect its Customers' and/or end users' rights.

**23. Entire Agreement.** This Agreement constitutes the entire agreement between the Parties and supersedes any prior agreement concerning the Stand-alone Software Product 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.

## Schedule 1.

### Definitions

The following definitions shall apply to the terms of the Agreement:

*“Agreement”* means this Master License Agreement.

*“CCP”* means the California Code of Civil Procedure.

*“Claim”* has the meaning set forth in Section 9 hereof.

*“Correction”* means a modification to the Stand-Alone Software Product or the Hardware Product to resolve one or more Errors.

*“Documentation”* means any and all manuals, specifications and other materials, electronic or otherwise, created by or on behalf of ZPE related to the Stand-Alone Software Product and the Hardware Product, and all Updates, Upgrades, changes and Corrections thereto. The Documentation shall fully describe the proper procedure for installing and using the Stand-Alone Software Product and the Hardware Product.

*“Error”* means an instance of failure of the Stand-Alone Software Product or the Hardware Product to perform at the level and with the functionality specifications described in the Documentation and in this Agreement.

*“Evaluation License”* has the meaning set forth in Section 4(d) of the Master License Agreement.

*“Hardware Product”* means equipment and devices with imbedded Software Product licensed by ZPE to Licensee pursuant to this Agreement, together with any associated media, printed materials, and online or electronic documentation provided by ZPE to Licensee.

*“Confidential Information”* has the meaning set forth in Section 6 of the Master License Agreement and includes ZPE Confidential Information as defined herein.

*“Licensee’s Authorized Users”* means Licensee’s employees, affiliates, contractors, assignees and agents using a Managed Device which Stand-Alone Software Product and/or Hardware Product was purchased pursuant to this Agreement.

*“Maintenance Services”* means all support, assistance, and maintenance serviced provided by ZPE for the purposes of correcting and improving the Stand-Alone Software Product and the Hardware Product for the benefit of Licensee and Licensee’s Authorized Users.

*“Managed Devices”* means the device or devices for which the Stand-Alone Software and/or Hardware Product was purchased to manage a System.

*“Master Agreement”* means the ZPE Systems Master License Agreement entered into between Licensee and ZPE.

*“New Group”* has the meaning set forth in Section 2(d) of the Master License Agreement.

*“Open-Source Software”* means software whose source code is publicly available under an open-source license.

*“Product”* or *“Products”* means collectively, the Stand-alone Software Product and Hardware Product purchased by Licensee pursuant to the Master Agreement and invoices related thereto.

*“Software Product”* means object code versions of the computer software described on an invoice, together with any associated media, printed materials, and online or electronic documentation provided by ZPE pursuant to this Agreement, together with upgrades, corrections, modifications, extensions, and updates provided by ZPE.

*“Stand-Alone Software Product”* means stand-alone “Software Product” that Licensee purchases to be installed in Managed Devices pursuant to invoices under this Agreement for use by Licensee or Licensee’s Authorized Users.

*“System”* means an information technology system utilizing Managed Devices for which the Stand-Alone Software Product and/or Hardware Product is purchased by Licensee.

*“Third Party Software”* means 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 to Licensee.

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*“Warranty Period”* means (a) one -year from the date of purchase for Stand-Alone Software Product, and (b) two (2) years from the date of purchase for Hardware Product.

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