

SUBSCRIPTION SERVICES EXHIBIT

The terms in Sections 1 and 2 of this Exhibit apply if Subscription Services are included on an SOW. The terms in Section 3 below apply to specific Subscription Services as noted and as reflected on an SOW. These terms become part of the applicable SOW, and in the event of a conflict between the SOW and the Subscription Services Exhibit, the SOW controls to the extent of the conflict.

1. Definitions:

1.1 “Co-Location” or “Co-Lo” means the NetXpress Subscription Service offering entitled “Co-Location” or “Co-Lo” as described in an applicable SOW.

1.2 “Connectivity” means the NetXpress Subscription Service offering entitled “Connectivity” (as described in an applicable SOW).

1.3 “Data Center” means a data center managed by a Third Party vendor or its affiliates where equipment and applications are hosted for Client use and from which Subscription Services may be provided.

1.4 “Managed Services” means the NetXpress managed Subscription Service selected by Client on an applicable SOW.

1.5 “Monthly Recurring Charge” or “MRC” is a nonrefundable monthly payment due for the full term of the selected Services.

1.6 “Non Recurring Charge” or “NRC” is a nonrefundable one-time payment as set forth on the SOW.

1.7 “Subscription Services” means any NetXpress Subscription Service offering listed on a SOW. Unless included by product name in a SOW for Subscription Services, software subscriptions are not included in Subscription Services.

2. Terms Applicable to all Subscription Services:

2.1. Contract Term and Termination: The Initial term for each of the Subscription Services selected by Client is set forth in the applicable SOW and unless otherwise set forth in a SOW, begins upon activation of the applicable Service. The “term” of any Subscription Service shall be the initial term and all renewal terms, if any. This Agreement shall automatically renew for successive one (1) year renewal terms unless notice of non-renewal is delivered to the non-terminating Party at least ninety (90) days prior to the end of the then-current term. NetXpress may increase pricing at the start of any renewal term. Client acknowledges that it received discounted pricing in exchange for a Term commitment, and such discount is not earned if Client cancels prior to the end of the committed Term. Upon receipt of a request for early termination, Client shall pay the amount due for the entire



committed Term (the remaining amount due is the "Early Termination Fee" or "ETF") plus any other amounts due. Such termination shall not be effective until the final invoice is paid. Upon termination or suspension of a SOW, all applicable Services shall cease and Client shall, no later than the termination date, pay NetXpress all amounts due up to the effective date of such termination, including for ETFs, any non-cancelable items and any decommissioning expenses.

2.2. Suspension of Services: The suspension of Subscription Services in the event of a payment default by Client shall not be a NetXpress breach and shall not apply toward any remedies due under an applicable service level agreement.

2.3. Taxes and Fees: Charges for Subscription Services may be subject to: (a) a property tax surcharges; (b) monthly cost recovery fees to reimburse NetXpress for various governmental taxes and surcharges; (c) State sales tax; (d) Federal universal services and 911 prevailing fees; and (e) any other fees or taxes charged to NetXpress by service providers (each a "Fee"). Such fees will be listed in invoices and are subject to change, and all but sales tax must be applied regardless of whether Client has delivered a valid sales tax exemption certificate. The Fees are not set by NetXpress and can be adjusted at any time by the applicable utility provider, government entity or regulator.

2.4. Compliance: Client is solely responsible for (i) complying with Client's software licenses; (ii) for specifying to NetXpress all requirements necessary for Client to maintain its hosted data in compliance with data privacy/security laws and regulations; and (iii) compliance with any industry-specific regulations applicable to the Services hereunder including data privacy and security laws and regulations.

2.5. Locations: Subscription Services shall be performed at Data Centers if hosted by NetXpress, and remotely if managed items are at a non-NetXpress location, during the time periods indicated in the applicable SOW. Client shall provide remote access to Client's computer systems for Managed Services at locations other than a Data Center.

2.6 Conflicts. In the event of a conflict between these Subscription Terms and those of the Agreement, these Subscription Terms shall control to the extent of the conflict.

3. Terms Applicable to Certain Subscription Services

3.1 Managed Subscription Services

3.1.1 Manufacturer Maintenance; Licensing: Manufacturer maintenance is required for Client's third party products managed by NetXpress. Without manufacturer maintenance provided by the Client, service level agreements shall not apply and NetXpress may not be able to resolve issues or timely perform Services. Work arounds, if any, are not included in Managed Services and if provided shall be at additional charge. Client is solely responsible for being in



compliance with manufacturer software licensing requirements.

3.1.2 **Compatibility:** NetXpress is not responsible for resolving compatibility issues with unmanaged software or hardware, and in such cases service levels and warranties shall not apply and Client shall hold NetXpress harmless with respect to compatibility issues. Resolution of compatibility issues are not included in Managed Services and if provided shall be at additional charge.

3.1.3 **Remotely Provided.** Where possible Managed Services are remotely provided and require access to the systems to be managed. Managed Services may require installation of an agent or virtual server on Client systems and Client consents to such installation if required. Tickets may be submitted via a third party administrative interface, and Client consents to use of such interface if applicable.

3.1.4 **Quality of Service (QOS):** NetXpress makes no warranty as to the quality or availability of “public” internet connections such as VPN and any such Services are sold “as-is.”

3.1.5 **Limitation:** IN NO EVENT SHALL NETXPRESS, ITS AGENTS, EMPLOYEES, MANAGERS AND MEMBERS BE LIABLE FOR ANY LOST OR MISAPPROPRIATED DATA OR CONTENT, IDENTITY THEFT, GOVERNMENTAL FINES OR PENALTIES, LOST PROFITS, BUSINESS INTERRUPTION OR FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES ARISING OUT OF OR RELATING TO THE SERVICES AND DELIVERABLES PROVIDED UNDER THIS AGREEMENT, EVEN IF NETXPRESS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. CLIENT ACKNOWLEDGES THAT WITHOUT THESE DISCLAIMERS AND LIMITATIONS SET FORTH IN THIS SECTION THE COST OF THE SERVICES AND DELIVERABLES WOULD BE GREATER. The total liability of NetXpress for all damages hereunder in any form of action, is limited to the amount paid by Client for the item causing the damage, for the duration of the damage.

3.2 **Hosting Subscription Services:** Client grants to NetXpress the right to use all hardware and software provided by Client for hosting by NetXpress, for the sole purpose of providing Subscription Services to Client under an SOW including Subscription Services. Client warrants to NetXpress that this license and the Subscription Services selected by Client shall not violate any agreement or right of any third party, including software licensors, and Client shall indemnify and hold NetXpress harmless from and against such third parties.

3.3 **ServiceNow Subscription Services**

3.3.1. **ServiceNow Products and NetXpress Services:** NetXpress utilizes ServiceNow as both a stand-alone third party product and as support ticketing



Service provided by NetXpress. Use of ServiceNow requires transfer of limited Client data by Client to ServiceNow (such as emails, employee names, contents of trouble tickets, etc.).

3.3.2 Restrictions: Client shall not (and shall not permit others to) do the following with respect to the ServiceNow ticketing Services (including the underlying software): (i) use the ticketing Service with external programs in a manner that intentionally circumvents these contractual usage restrictions; (ii) license, sub-license, sell, re-sell, rent, lease, transfer, distribute or time share or otherwise make any of it available for access by third parties except as otherwise expressly provided in a SOW; (iii) knowingly access it for the purpose of developing or operating products or services intended to be offered to third parties in competition with the Subscription Service; (iv) disassemble, reverse engineer or decompile it; (v) copy, create derivative works based on or otherwise modify it except as permitted herein and in Client's SOW for the Services; (vi) remove or modify a copyright or other proprietary rights notice in it; (vii) use it to reproduce, distribute, display, transmit or use material protected by copyright or other intellectual property right (including the rights of publicity or privacy) without first obtaining the permission of the owner; (viii) use it to knowingly create, use, send, store or run viruses or other harmful computer code, files, scripts, agents or other programs or otherwise engage in a malicious act or disrupt its security, integrity or operation; or (ix) access or disable any Service Now or third party data, software or network (other than Client's instance of the Subscription Service in accordance with this Agreement). Before Participant exercises any of the foregoing actions that Participant believes it is entitled to based on mandatory law, Participant shall provide ServiceNow with thirty (30) days prior written notice at legalnotices@servicenow.com, and provide reasonably requested information to allow ServiceNow to assess Client's claim and, at ServiceNow's sole discretion, provide alternatives that reduce adverse impacts on ServiceNow's intellectual property and other rights.

3.3.3. High Risk Activities. Client shall use the ServiceNow ticketing Services within the intended business purposes and not for any purpose that requires fail-safe performance including, but not limited to, stock trading, financial transaction processing, management of hazardous facilities or applications for which failure could result in death, personal injury, or severe physical or environmental damage ("*High Risk Activity*"). NetXpress and ServiceNow, their licensors and suppliers expressly disclaim all warranties of fitness for any such use and Client shall release and hold ServiceNow and NetXpress and their licensors and suppliers harmless from liability arising out of the use of the ServiceNow ticketing services for High Risk Activity.



3.3.4. Client Responsibilities. Client will perform or provide the following in a timely manner for any ServiceNow ticketing Services:

- a. An authorized Client project manager with authority to answer questions and make decisions on behalf of Client.
- b. All the necessary expertise and information to cover the statutory and regulatory requirements applicable to Client and its data.
- c. Escalation tree, access to environments, export of knowledge base(s), on-site visit to Client location if requested, and phones and call volumes as applicable.