

Product Information

Terms of Product Sale, License and Warranty

These General Terms and Conditions (“**Terms**”) apply to the sale of Products and Services by Tempered Networks, Inc. (“**Tempered**”) to a customer acquiring Products and Services for its own use (“**Customer**”). By ordering, accepting delivery, keeping, or using Products or otherwise proceeding with any transaction with Tempered, Customer agrees to these Terms, the End User License Agreement attached hereto as Exhibit A (the “**EULA**”), and the Maintenance Plan Agreement attached hereto as Exhibit B. Tempered and Customer may each be referred to as a “**Party**” or collectively, as the “**Parties**.” These Terms, the EULA, the Maintenance Plan and all Purchase Orders executed by Customer and accepted by Tempered in connection herewith shall be collectively referred to as the “**Agreement**.”

1. DEFINITIONS

1.1 Cloud-Based Offering. Software and any Services licensed, offered, distributed, marketed or otherwise sold by Tempered for use through a Cloud Provider.

1.2 Cloud Provider. A third party designated by Tempered which offers cloud-based services such as hosting, computing, networking, or storage.

1.3 Documentation. Documentation shall have that meaning ascribed to it in the EULA.

1.4 Hardware. Tempered-branded hardware, including its components and spare parts, but excluding any firmware and Third Party Branded Products.

1.5 NFR or Not for Resale. Products designated as NFR or Not for Resale in the Order Delivery Email may not be resold, in whole or in part.

1.6 Order Delivery Email. The email sent to Customer by Tempered confirming Products purchased by Customer and shipment thereof, which shall also include details on Product downloads and support.

1.7 Products. Hardware, Software, associated Documentation, and any Third Party Branded Products.

1.8 Purchase Order. Purchase Order shall have that meaning ascribed to it in the EULA.

1.9 Services. Tempered’s generally available technical support and maintenance services programs, which support services shall be delivered pursuant to the terms set forth in the Maintenance Plan Agreement attached hereto as [Exhibit B](#) (the “**Maintenance Plan**”).

1.10 Software. Software shall have that meaning ascribed to it in the EULA.

1.11 Third Party Branded Products. Any hardware or software that is manufactured, developed, licensed or otherwise made available by any entity other than Tempered and is distributed or licensed by Tempered for use in conjunction with Hardware and Software.

2. ORDERS, DELIVERY and ACCEPTANCE

2.1 Orders. All Purchase Orders are subject to acceptance by Tempered.

2.2 Changes, Cancellation, and Rescheduling. Customer may modify or cancel Purchase Orders up to ten (10) days prior to any scheduled shipment date without additional charge. Product returns are subject to Tempered approval and applicable charges.

2.3 Delivery. The Products shall be delivered within a commercially reasonable time after issuance of an accepted Purchase Order, subject to availability. Tempered shall deliver the Products F.O.B. Origin to Tempered’s designated carrier (the “**Delivery Point**”) using Tempered’s standard methods for packaging and shipping such Products. Tempered shall not be liable for any delays, loss or damage in transit.

2.4 Risk of Loss. Title and risk of loss passes to Customer upon delivery of the Products at the Delivery Point.

2.5 Inspection, Acceptance. Customer shall inspect the Products within three (3) business days of receipt (“**Inspection Period**”). Customer shall be deemed to have accepted the Products unless it notifies Tempered in writing of any Nonconforming Products during the Inspection Period and furnishes such written evidence or other documentation as required by Tempered. “**Nonconforming Products**” means only the following: (a) Product shipped is different than identified in Customer’s Purchase Order; or (b) Product’s label or packaging incorrectly identifies its contents. If Customer timely notifies Tempered of any Nonconforming Products, Tempered shall, in its sole discretion, (y) replace such Nonconforming Products with conforming Products, or (z) credit or refund the price for such Nonconforming Products, together with any reasonable shipping and handling expenses incurred by Customer in connection therewith. Customer shall ship according to Tempered’s instructions, at Tempered’s expense and risk of loss, the Nonconforming Products to Tempered’s facility. If Tempered exercises its option to replace Nonconforming Products, Tempered shall, after receiving Customer’s returned shipment of Nonconforming Products, ship to Customer, at Tempered’s expense and risk of loss, the replaced Products to the Delivery Point.

3. PRICING AND PAYMENTS

3.1 Pricing. Customer shall purchase the Products and Services from Tempered at the price(s) set forth in the relevant sales quote delivered to Customer by Tempered. Tempered may in its sole discretion change the prices and/or add or remove Products and Services at any time.

3.2 Payment Terms. Customer shall make full payment in United States dollars on the terms specified in the Order Delivery Email, without set-off and in immediately available funds, not later than thirty (30) days from the date of such Order Delivery Email.

3.3 Remedies for Non-payment. Customer payment of less than the full amount owed to Tempered for the Products set forth in the relevant Order Delivery Email shall not be deemed as acceptance of payment in full, nor shall any endorsement or statement on any check or letter accompanying any payment or check be deemed an accord

and satisfaction. Tempered may accept such payment or check without prejudice to Tempered's right to recover the balance of any amount due or pursue any other remedy provided for in these Terms or by law or in equity. Tempered has the right to apply any payment received from Customer to any account of Customer which is due and/or delinquent. If Customer fails to make timely payment, in addition to all other available remedies, Tempered may decline to make further deliveries of Product and provision of Services to Customer. Customer shall pay interest on all late payments at the lesser of the rate of 1.5% per month or the highest rate permissible by applicable law, calculated daily and compounded monthly. Customer shall reimburse Tempered for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees.

3.4 Taxes and Duties. Customer is solely responsible for the payment of taxes (except taxes based on Tempered's net income), fees, duties and charges, and all related penalties and interest, that arise from its utilization or Tempered's provision of the Products and/or Services. In addition to the stated prices, Customer shall be liable for all applicable duties, license fees and taxes for Products shipped across international borders in accordance with the applicable trade terms set forth in Section 2.3 or as otherwise may apply.

4. SOFTWARE LICENSE

4.1 License Grant. Subject to these Terms and the terms set forth in the EULA, Tempered grants to Customer a license to use the Software and Documentations on the terms and conditions set forth in the EULA.

4.2 Third Party Licenses. Customer represents and warrants that it has obtained and/or shall obtain, all applicable third party licenses necessary to operate any third party software required in connection with the use of the Products and for Tempered to freely and without interruption perform the Services hereunder.

5. SUPPORT SERVICES

5.1 Support Services. Customer may purchase or otherwise receive the Services from Tempered pursuant to the terms set forth in the Maintenance Plan Agreement attached hereto as [Exhibit A](#). Fees applicable to the Services shall be as set forth on the applicable sales quote delivered to Customer by Tempered.

6. DIRECT WARRANTY

6.1 Hardware Warranty. Tempered warrants that the Hardware shall materially conform to the Documentation for a period of one (1) year from the date of delivery, unless otherwise specified in the applicable Documentation ("**Hardware Warranty Period**"). Any material nonconformity in the Hardware during the Hardware Warranty Period that is reproducible and verifiable shall be resolved pursuant to the Return Material Authorization (RMA) procedures set forth in Section 3.2 of the Maintenance Plan. Replacement parts shall be warranted for the remainder of the Hardware Warranty Period in effect for the original Hardware purchased, unless otherwise mandated by applicable law.

6.2 Software Warranty. Tempered warrants that (a) the initially-shipped version of the Software shall materially conform to the Documentation; and (b) the Software media shall be free from physical defects, for a period of ninety (90) days from the date of delivery or such other minimum period required under applicable law ("**Software Warranty Period**"). Tempered does not warrant that Customer's use of the Software shall be error-free or uninterrupted. In the event of any material nonconformity in the Software during the Software Warranty Period that is reproducible and verifiable, Tempered shall, at its sole discretion and expense, repair or replace the Software, or refund the amounts received by Tempered for the non-conforming Software. This warranty does not cover software, other items, or any services provided by persons other than Tempered.

6.3 Limitations. Tempered shall not be liable under this warranty for claims arising from Customer's, Customer's subcontractor's, or any unauthorized third person's mis-

use, neglect, improper installation or testing, attempts to repair, or any other cause beyond the range of the intended use. The Hardware warranty shall become void if the Hardware is opened or otherwise modified without Tempered's prior written approval. The Software warranty shall become void if the Software is modified or otherwise used in violation of these Terms or the EULA, except as authorized in writing by Tempered.

6.4 Exclusive Warranties. TO THE GREATEST EXTENT PERMITTED BY APPLICABLE LAW, THE FOREGOING WARRANTIES ARE CUSTOMER'S SOLE AND EXCLUSIVE WARRANTIES AND REMEDIES. TEMPERED SPECIFICALLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.

7. INTELLECTUAL PROPERTY RIGHTS AND PROTECTION

7.1 Intellectual Property Ownership. Except for the limited license explicitly granted to Customer hereunder, Customer acknowledges that, as between the Customer and Tempered, Tempered owns all right, title and interest, including all intellectual property rights, in and to the Products and Services, including any derivative works created therefrom. The Software and Documentation is licensed, not sold, to Customer. It is protected by intellectual property laws and treaties worldwide, and contains trade secrets, in which Tempered and its licensors reserve and retain all rights not expressly granted to Customer. Customer hereby unconditionally and irrevocably assigns to Tempered its entire, right, title and interest in and to any intellectual property rights that Customer may now or hereafter have in or relating to the Products and Services, whether held or acquired by operation of law, contract, assignment or otherwise. No right, title or interest to any trademark, service mark, logo, or trade name of Tempered or its licensors is granted to Customer.

7.2 IP Claims. Subject to the terms and conditions of this Section, Tempered shall defend or settle any claim brought by a third party against Customer that Hardware, Software, and Documentation sold and delivered by or for Tempered to Customer under these Terms infringe any patent, trademark, or copyright ("**IP Claim**"). Tempered shall pay settlement amounts or, if applicable, damages and costs finally awarded by a court of competent jurisdiction (collectively, "**Damages**") against Customer to the extent such Damages are specifically attributable to the IP Claim, provided that Customer: (a) promptly notifies Tempered in writing of the IP Claim; (b) provides information and assistance to Tempered to defend such IP Claim; and (c) provides Tempered with sole control of the defense or settlement negotiations.

7.3 Remedies. Tempered may, at its option, substitute or modify the Products, or the relevant portion thereof, so that it becomes non-infringing; procure any necessary license; or replace the Product. If Tempered determines that none of these alternatives is reasonably available, then Customer may return the Product and Tempered shall refund Customer's purchase price.

7.4 Exclusions. Notwithstanding anything to the contrary in these Terms, Tempered has no obligation or liability for any claim of infringement that arises from or relates to: (a) Tempered's compliance with or use of designs, specifications, inventions, instructions, or technical information furnished by or on behalf of Customer; (b) Product modifications made by or on behalf of Customer without Tempered's authorization; (c) Customer's failure to make a change or modification requested by Tempered, or to cease using the Product if requested by Tempered; (d) the Product, or any portion thereof, in combination with any other product or service; (e) Third Party Branded Products; (f) services offered by Customer or revenue earned by Customer for such services; or (g) any content or information stored on or used by Customer or a third party in connection with a Product.

7.5 Entire Liability. Notwithstanding anything to the contrary in these Terms, this Section 7 states Tempered's entire liability and Customer's sole and exclusive remedies for IP Claims.

8. CONFIDENTIALITY

8.1 General. “Confidential Information” means any information disclosed by a Party to the other Party in connection with these Terms that (a) is marked “confidential” or “proprietary” at the time of disclosure; (b) if disclosed orally or visually, is designated “confidential” or “proprietary” at the time of disclosure and summarized in a writing delivered to the receiving Party within thirty (30) days of disclosure; or (c) by its nature or the circumstances surrounding disclosure, should reasonably be considered confidential or proprietary. Confidential Information shall include any reproduction of such information, but shall not include information that: (a) is or becomes a part of the public domain through no act or omission of the receiving Party; (b) was in the receiving Party’s lawful possession prior to the disclosure (as supported by written documentation) and had not been obtained by the receiving Party either directly or indirectly from the disclosing Party; (c) is lawfully disclosed to the receiving Party by a third party without restriction on the disclosure; or (d) is independently developed by the receiving Party without use of Confidential Information.

8.2 Treatment of Confidential Information. Confidential Information shall remain the property of the disclosing Party. Each Party shall have the right to use the other’s Confidential Information solely for the purpose of fulfilling its obligations under these Terms. Each Party agrees: (a) to hold the other Party’s Confidential Information in confidence for a period of three (3) years from the date of disclosure; and (b) to disclose the other Party’s Confidential Information only to those employees or agents who have a need to know in furtherance of these Terms and who are required to protect such Confidential Information against unauthorized disclosure under terms no less restrictive than those set forth herein. The receiving Party shall protect the Confidential Information from unauthorized use, access or disclosure in the same manner as it protects its own proprietary information of a similar nature, and in any event with at least a reasonable degree of care. The receiving Party may disclose the disclosing Party’s Confidential Information to the extent such disclosure is required pursuant to a judicial or administrative proceeding, provided that the receiving Party gives the disclosing Party prompt written notice thereof and the opportunity to seek a protective order or other legal remedies.

8.3 Return/Destruction. Upon the disclosing Party’s written request, all Confidential Information (including all copies thereof) of the disclosing Party shall be returned or destroyed, unless the receiving Party is required to retain such information by law, and the receiving Party shall provide written certification of compliance with this Section 8.3.

9. LIMITATION OF LIABILITY

9.1 Liability Exclusions. Regardless of the basis of the claim (e.g., contract, tort, or statute), in no event shall Tempered or its suppliers or subcontractors be liable to Customer for special, incidental, indirect or consequential damages; downtime costs; loss or corruption of data; loss of revenues, profits, goodwill, or anticipated savings; procurement of substitute goods and/or services; interruption of business; Customer’s failure to comply with applicable “non-erasable” and “non-rewriteable” U.S. government regulations; the acts and omissions of any Cloud Provider; and Customer’s failure to obtain any applicable third party licenses necessary to operate any third party software required in connection with the use of the Products and for Tempered to freely and without interruption perform the Services. This exclusion is independent of any remedy set forth in these Terms.

9.2 Cumulative Liability. To the extent that limitation of liability is permitted by applicable law, Tempered’s liability to Customer under the Agreement is limited to the total fees actual paid by Customer to Tempered in the twelve (12) months preceding the event giving rise to the claim. This limitation is cumulative and not per incident.

9.3 Exceptions. The limitations set forth in Sections 9.1 and 9.2 shall not apply to liability for death or personal injury caused by gross negligence, willful misconduct, fraud, any other liability which cannot be excluded under applicable law.

10. COMPLIANCE WITH LAWS

10.1 Compliance. Each Party shall comply with all applicable laws and regulations.

10.2 Export. Customer acknowledges that Products and Services supplied by Tempered under these Terms are subject to export controls under the laws and regulations of the United States, and other countries as applicable, and that Products and Services may include export controlled technologies, including without limitation encryption technology. Customer agrees to comply with such laws and regulations and, in particular, represents and warrants that it: (a) shall not, unless authorized by U.S. export licenses or other government authorizations, directly or indirectly export or re-export Products and Services to (or use Products and Services in) countries subject to U.S. embargoes or trade sanctions programs; (b) is not a party, nor shall it export or re-export to a party, identified on any government export exclusion lists, including but not limited to the U.S. Denied Persons, Entity, and Specially Designated Nationals Lists; and (c) shall not use Products and Services for any purposes prohibited by United States law, including but without limitation, the development, design, manufacture, or production of nuclear, missile, chemical biological weaponry or other weapons of mass destruction. Customer shall obtain all required authorizations, permits, or licenses to export, re-export or import, as required. Customer agrees to obligate, by contract or other similar assurances, the parties to whom it re-exports or otherwise transfers Products and Services to comply with all obligations set forth herein.

10.3 Anti-Bribery. Each Party shall comply with all applicable country laws relating to anti-corruption or anti-bribery, including but not limited to the requirements of the U.S. Foreign Corrupt Practices Act, as amended, the U.K. Bribery Act, and legislation implementing the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

11. MISCELLANEOUS

11.1 Termination. These Terms are effective until terminated. Customer may terminate these Terms at any time upon written notice to Tempered; provided, however, that these Terms shall continue to apply for so long as any Products or Services remain in use by Customer. Tempered may terminate these Terms immediately upon written notice to Customer if Customer commits a material breach of these Terms, including failure to remit payments when due and, in the event that the breach is remediable, Customer fails to remedy it within thirty (30) days of Tempered’s written notice requiring Customer to do so. Upon termination of these Terms, all rights to use the Software and Documentation cease and Customer shall, at Tempered’s request, promptly return or destroy all copies of the Software and Documentation, including any license enablement keys, in Customer’s possession or under Customer’s control, unless the license granted to Customer under Section 4.1 is a perpetual license and Customer remains in full compliance with these Terms. Sections 4, 5, 6, 7, 8, 9, 10, and 11 shall survive expiration or termination of these Terms.

11.2 U.S. Federal Government Customers. This Section 11.2 applies only to U.S. Federal Government Customers. The Software and Documentation is “commercial” computer software and documentation and is licensed in accordance with the rights articulated in applicable U.S. government acquisition regulations (e.g. FAR, DFARS) pertaining to commercial computer software and documentation. Disputes shall be subject to resolution pursuant to the Contract Disputes Act of 1978. Nothing contained in these terms is meant to derogate the rights of the U.S. Department of Justice as identified in 28 U.S.C. §516. All other Terms remain in effect as written.

11.3 Force Majeure. Neither Party shall be liable to the other for any alleged loss or damages resulting from acts of God, acts of civil or military authority, governmental priorities, fire, floods, earthquakes, epidemics, quarantine, energy crises, strikes, labor trouble, terrorism, war, riots, accidents, shortages, delays in transportation, or any other causes beyond the reasonable control of a Party (collectively, “Force Majeure”). Force Majeure shall not relieve the obligation of any payments due hereunder for delivered Products or Services actually performed. If the Force Majeure event continues

for more than thirty (30) days, the Parties shall negotiate in good faith the termination of the affected Purchase Order(s).

11.4 Data Privacy and Recovery. Customer is solely responsible for personal data managed or stored using Products and agrees to comply with all applicable data privacy laws and Tempered's then-current Privacy Policy. Customer shall be solely responsible for management of its data back-up, data recovery, and disaster recovery measures. Customer assumes responsibility for undertaking the supervision, control and management of Hardware and Software including following industry-standard processes, procedures and requirements: (a) for the security of data, accuracy of input and output, and back-up plans, including restart and recovery in the event of a Force Majeure event or a Hardware or Software error or malfunction; and (b) for reconstruction of lost or altered files, data, and programs. Tempered shall not be responsible or held liable for Customer's internal processes and procedures related to the protection, loss, confidentiality, or security of Customer's data or information.

11.5 Modification, Substitution, Discontinued Product. Tempered shall have sole discretion, at any time, to change, substitute, or discontinue Products. Tempered shall use commercially reasonable efforts to provide thirty (30) calendar days' prior notice of any such changes.

11.6 Waiver. Any waiver or failure to enforce any provision of these Terms on any occasion shall not be deemed a waiver of any other provision or of such provision on any other occasion. Either Party's exercise of any right or remedy provided in these Terms shall be without prejudice to its right to exercise any other right or remedy.

11.7 Severability. In the event any provision of these Terms is held by a court of competent jurisdiction to be unenforceable for any reason, such provision shall be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions hereof shall be unaffected and remain in full force and effect.

11.8 Assignment. Customer may not assign any rights or delegate any obligations under these Terms without the prior written consent of Tempered. Any purported assignment by Customer without Tempered's prior written consent shall be null and void.

11.9 Independent Contractors. The relationship of the Parties under these Terms is that of independent contractors. Nothing set forth in these Terms shall be construed to create the relationship of principal and agent, franchisor/ franchisee, joint venture, or employer and employee between the Parties. Neither Party shall act or represent itself, directly or by implication, as an agent of the other Party.

11.10 General. These Terms shall be construed pursuant to the laws of the State of Washington, United States, excluding its conflicts of law provisions. Any legal suit, action or proceeding arising out of or relating to these Terms (including any exhibit or attachment hereto) shall be instituted exclusively in the courts located in Seattle, Washington. The prevailing party in any such suit, action or proceeding shall receive from the losing party its reasonable costs and attorneys' fees incurred in any such suit, action or proceeding or any appeal therefrom. The Parties hereby disclaim the application of the United Nations Convention on Contracts for the International Sale of Goods. If required by Tempered's agreement with a third party licensor, Tempered's licensor shall be a direct and intended beneficiary of these Terms and may enforce them directly against Customer. These Terms may not be changed except by an amendment accepted by an authorized representative of each Party.

11.11 Use Restriction. Products and Services are for Customer's use and are not for resale or redistribution.

EXHIBIT A**END USER LICENSE AGREEMENT**

BY INSTALLING, ACTIVATING, SUBSCRIBING TO, ACCESSING, OR OTHERWISE USING THE SOFTWARE (AS DEFINED BELOW), YOU AGREE AND ARE SUBJECT TO THE LICENSE TERMS SET FORTH BELOW. If You do not agree to the terms of this License (this “**Agreement**”), do not install, activate, subscribe to, access, or otherwise use the Software. You hereby agree that this Agreement is subject to and supplemented by the terms and conditions set forth in that certain General Terms and Conditions by and between You and Tempered (the “**General Terms**”).

1. DEFINITIONS. As used in this Agreement, the following defined terms shall apply:

- 1.1 “**Bandwidth Level**” means the bandwidth at which HIP Services are licensed, as measured in mbps (mega-bits per second).
- 1.2 “**Conductor**” means the orchestration engine which creates and manages distributed policy to all HIP Services. The Conductor is licensed to manage the number of HIP Services as set forth in Your Order Delivery Email.
- 1.3 “**Documentation**” means Tempered supplied then-current technical documentation describing the features and functions of the Software.
- 1.4 “**Evaluation Period**” shall mean a period of a free license to the Software as specified in the Order Delivery Email.
- 1.5 “**Hardware**” means a Tempered hardware device on which a Tempered Software License is installed.
- 1.6 “**High Availability Instance**” means an Instance used in production only if and when the primary production Instance upon which the Software License is associated is offline.
- 1.7 “**HIP Services**” means Tempered’s HIPrelay, HIPclient, HIPserver, HIPswitch and Embedded products designed to implement Identity-Defined Networking protocols, which may be Hosted or On-premises. HIPswitch Services are licensed at varying Bandwidth Levels as set forth in an Order Delivery Email.
- 1.8 “**Hosted**” means that access to the Software is made available to You as a service and is deployed by Tempered or a 3rd party hosting provider.
- 1.9 “**Identity-Defined Networking**” means the process of building a secure network based on provable host identities using the HIP Services and the Conductor.
- 1.10 “**Instance**” means a single copy of the Software loaded into an operating system’s memory on which the Software is running, regardless of whether that operating system is on a single physical computer, device, virtual machine, container, remote server or platform, or other abstraction.
- 1.11 “**Maintenance Plan**” shall mean the agreement, if purchased by You, pursuant to which Tempered is obligated to provide updates and upgrades and access to support services.
- 1.12 “**NFR**” or “**Not for Resale**” has the meaning set forth in the General Terms.
- 1.13 “**On-premises**” means that the Software is deployed on a physical or virtual server running in Your datacenter or on any other computer of Your choosing.
- 1.14 “**Order Delivery Email**” has the meaning set forth in the General Terms.
- 1.15 “**Products**” has the meaning set forth in the General Terms.
- 1.16 “**Perpetual**” means the Software is licensed in perpetuity on a Tempered Hardware appliance, unless otherwise specified in the Order Delivery Email.
- 1.17 “**Software License**” shall mean a license for a single Instance which may be used by You.
- 1.18 “**Software**” means the object code version of the Conductor and the HIP Services, and any related updates, supplemental code or components, provided to You by Tempered with or in connection with the Conductor and/or the HIP Services.
- 1.19 “**Subscription**” means the Software is licensed only for the period of time set forth in the Order Delivery Email.
- 1.20 “**Tempered**” means Tempered Networks, Inc.
- 1.21 “**Term**” shall mean the duration of the license term as set forth in the Order Delivery Email, which may be a subscription for a period of time or perpetual.
- 1.22 “**You**” means the individual accepting this Agreement or the entity for which such individual is accepting this Agreement.

2. GRANT OF LICENSE.

A EVALUATION LICENSES. Tempered may grant You an evaluation license which may be used only for testing, demonstration or evaluation. Such evaluation license is subject to the limitations set forth in Section 4 hereof.

- i For On-premises deployments, You may install and use the Software without charge for the Evaluation Period. Your Evaluation Period begins on the day the Software is accessed or used for the first time by, or on behalf of, You.
- ii For Hosted deployments, a free trial, sample, or evaluation period, if any, will be defined in the Order Delivery Email.
- iii You must pay the license fee and activate the Software to continue using it at the expiration of Your Evaluation Period. If You elect not to pay the license fee and activate the Software, You must uninstall and destroy or discontinue access to the Software and Documentation and certify in writing to Tempered that You have complied with this obligation.

B PROVISIONS APPLICABLE TO SUBSCRIPTION LICENSES

i STANDARD LICENSE.

- a **SOFTWARE LICENSES.** For Tempered deployments where the Software is offered under a Subscription licensing model, You may utilize the Software for only the

number of Instances and at the Bandwidth Levels for which You have purchased a Software License, as set forth in Your Order Delivery Email, and for the Term set forth in Your Order Delivery Email. For Tempered Hosted deployments, Tempered will install the Software for You for the number of Instances indicated in the Order Delivery Email. For Tempered NFR deployments, the Software is only to be used in non-production environments limited to lab/development environments or permitted demonstration by You of the Software to third parties and You may utilize the Software for only the number of Instances and Bandwidth Levels for which you Purchased a Software License, as set forth in Your Order Deliver Email, and for the Term set forth in Your Order Delivery Email. If You run the Software for a number of Instances in excess of the number of Software Licenses You purchased during such Subscription Term, Tempered shall at its sole discretion, at the expiration of a Subscription Term, invoice You for the excess number of Software Licenses used during such Subscription Term calculated pro-rata by month.

b CONDUCTOR. For so long as You have an active Software License, You may only use one (1) instance of the Conductor per computer or server.

ii BANDWIDTH LEVELS. HIPswitch Services are licensed to You at the Bandwidth Levels set forth in the Order Delivery Email. During the Subscription Term You may from time to time burst above the Bandwidth Levels set forth in Your Order Delivery Email without incurring additional charges; provided, however, that if Tempered determines that the daily average throughput per month exceeds the Bandwidth Level for a HIPswitch Service, the Software License for such HIPswitch Service shall be upgraded to the appropriate Bandwidth Level at the start of the next Subscription Term.

iii LICENSE PORTABILITY. Software Licenses are portable across platforms, but only a single instance may be run at a time.

C PROVISIONS APPLICABLE TO PERPETUAL LICENSES

i STANDARD LICENSE

a SOFTWARE LICENSES. For On-premises deployments, You may install and/or use one (1) copy of the Software on Tempered Hardware for which You have purchased a Software License, as set forth in Your Order Delivery Email(s).

b CONDUCTOR. For so long as You have an active license to use the Software, You may use only one (1) instance of the Conductor per computer or server.

ii ACTIVATION. You must activate the standard license for the Software by entering the serial number provided to You by Tempered. Your failure to follow the activation procedures correctly is a material breach of this Agreement.

D TERM. The Term of the license for any Instance of the Software (Subscription or Perpetual) is as indicated in Your Order Delivery Email.

E DOCUMENTATION. You may use the Documentation solely in connection with Your licensed use of the Software.

3. **UPDATES; UPGRADES.** If You maintain an active Maintenance Plan, we will provide updates and upgrades to You concurrently with release of such updates and upgrades. To use Software identified as an upgrade, or new version, You must first be licensed for the Software identified by Tempered as eligible for the upgrade and have an active Maintenance Plan. You shall keep the Software up-to-date by downloading updates and upgrades as they become available. Tempered is under no obligation to support and/or maintain unsupported versions of the Software.
4. **TRANSFER.** You may use the Software and Documentation solely for Your internal business process as contemplated by this Agreement and shall not license, sub-license, sell, re-sell, rent, lease, lend, transfer, assign, distribute, time share or otherwise commercially exploit or make the Software or Documentation available to any third party, other than as contemplated by this Agreement, without the prior written consent of Tempered. You shall not sell, sell access to, or sell use of the Software or Documentation or utilize the Software as the basis for any software as a service or application service provider solution that You offer for sale or license to third parties. You shall not use the Software or Documentation in connection with the provision of a service that is a substitute for some or all the Software's functions without the prior written consent of Tempered. You acknowledge that the Software and/or Documentation is subject to the terms and conditions of the General Terms, including, without limitation, Section 7 thereof, and that Your violation of this Section 4 may result in a violation of Tempered's intellectual property rights.
5. **RESTRICTIONS.** You may not reduce the Software to human readable (or source code) form, reverse engineer, de-compile, disassemble, merge, adapt, or modify the Software. You may not use the Software to perform any unauthorized transfer of information, such as copying or transferring data in violation of a copyright, in violation of any laws related to the transfer of encrypted data or for any illegal purpose.
6. **MAINTENANCE AND TECHNICAL SUPPORT SERVICES.** If You purchased a Maintenance Plan, Tempered shall provide updates, upgrades and support services as further described in the Maintenance Plan. The term of the Maintenance Plan may vary and is specified in Your Order Delivery Email. You may contact Tempered at any time if You would like to extend the term of Your Maintenance Plan. The term for renewal of any existing Maintenance Plan will be as set forth in the Order Delivery Email for such renewal issued by Tempered. Software provided to You on a Subscription basis includes at no additional cost the provision, during the term of Your Subscription license to the Software, of updates, upgrades and support services on the terms set forth in the Maintenance Plan. No updates, upgrades or support services will be provided with respect to Software licensed on a Perpetual basis that is not covered by an active Maintenance Plan.
7. **PAYMENT TERMS.** You shall pay all fees owed to Tempered pursuant to the payment terms set forth in the General Terms.
8. **AUDIT.** You agree that on Tempered's request You shall certify in writing Your compliance with the terms of this Agreement, including that Your use does not exceed the number of Instances for which You have purchased a Software License. Tempered reserves the right to invoice and collect applicable fees at Tempered's standard, undiscounted rates for any unlicensed use in addition to other remedies available under law or in equity, or remedies pursuant to this Agreement. You further agree that upon request from Tempered, but in no event more than once per calendar year, You shall provide information and reports collected by the Conductor reflecting: (a) the number of Instances on which the Software is installed; (b) the platform on which the Software is installed; and (c) bandwidth and throughput usage statistics for each HIP Service used in production by You during the Term.

9. **TERMINATION.** This Agreement terminates if You fail to comply with its terms and conditions or upon expiration of any Hosted deployment installed by Tempered or its authorized providers, or upon the expiration of a license associated therewith. If this Agreement terminates, You must uninstall and destroy or discontinue access to the Software and Documentation and certify in writing to Tempered that You have complied with this obligation. The termination of this Agreement does not limit Tempered's other rights it may have by law. The provisions in Sections 3, 4, 5, 6, 8 and 9 shall survive the termination of this Agreement.

EXHIBIT B

MAINTENANCE PLAN AGREEMENT

This Maintenance Plan Agreement ("**Agreement**") is made effective as of the date of the Order Delivery Email delivered to Customer by Tempered (the "**Effective Date**"). Tempered or Customer are individually referred to herein as a "**Party**," and collectively as the "**Parties**." This Agreement is subject to and supplemented by the terms and conditions set forth in the General Terms and Conditions (the "**General Terms**") and the End User License Agreement (the "**EULA**") between Customer and Tempered. Capitalized terms used but not defined herein shall have the meaning given them in the EULA.

In consideration of the mutual promises and covenants set forth in this Agreement, the Parties agree as follows:

1. DEFINITIONS

- 1.1 "**Covered Products**" means the Software and Hardware licensed by Customer from Tempered as set forth on Customer's Order Delivery Email(s).
- 1.2 "**Customer Support Portal**" means Tempered's online portal which provides (i) online support ticket management, new ticket requests, open ticket monitoring, and past ticket history; (ii) online release notes, product help and support articles; and (iii) software downloads for Maintenance Releases, Updates and Upgrades.
- 1.3 "**Error**" means a material product defect in workmanship, material or design or any failure of a Covered Product to materially conform to the published specifications for such Covered Product.
- 1.4 "**Gold Support Plan**" means a support plan which entitles Customer to telephone support between the hours of 9:00am–5:00pm PST.
- 1.5 "**Hardware**" has the meaning set forth in the EULA.
- 1.6 "**Maintenance Release**" is an interim set of bug fixes or minor revisions that Tempered elects to make generally available to customers who have purchased Support Services.
- 1.7 "**Order Delivery Email**" has the meaning set forth in the General Terms.
- 1.8 "**Platinum Support Plan**" means a support plan which entitles Customer to telephone support twenty-four (24) hours a day, seven (7) days a week.
- 1.9 "**Software**" has the meaning set forth in the EULA.
- 1.10 "**Support Services**" means technical support provided to correct or provide Workarounds for Errors in the Covered Products purchased by Customer.
- 1.11 "**Updates**" shall mean improvements, bug fixes, error corrections, and patches that may include minor new features that Tempered makes generally available to customers, but not architectural changes or major new features.
- 1.12 "**Upgrades**" are new software or hardware product releases or versions include new features, architectural changes, and quality improvements that are considered a new version of Tempered's Covered Products and are typically noted by numerical increases to the next version.
- 1.13 "**Workaround**" is a change in operating process of the Covered Product or the network in which the Covered Product is operating pursuant to which Customer can avoid the detrimental effects of an Error.

2. TEMPERED'S RESPONSIBILITIES

- 2.1 **Technical Support.** Tempered will use commercially reasonable efforts to provide Customer with assistance to diagnose and resolve, or provide a Workaround, for reproducible Errors reported by Customer with the Covered Products (whether hardware or software based) based on Customer's purchase of either the Gold Support Plan or the Platinum Support Plan. Such support shall be provided by Tempered through its Customer Support Portal, by e-mail, telephone or other electronic means, or where applicable, by on-site visits by Tempered technicians as determined by Tempered at its sole discretion.
- 2.2 **Changes in Support Services.** Tempered reserves the right to add, change, or delete available Support Services in its reasonable discretion upon thirty (30) days' prior written notice so long as any such change applies to Tempered's customer base generally. If Tempered eliminates an entire Support Service at any time during the term of this Agreement, Tempered will refund to Customer a pro rata portion of the Annual Fee paid by Customer specifically related to the portion of applicable Support Services not rendered for the remainder of the term.
- 2.3 **Updates and Maintenance Releases.** During the Term, Tempered may make available Updates or Maintenance Releases for the then current version of the Covered Products until the release of the next product Upgrade. Updates and Maintenance Releases will be deemed part of the Covered Products upon release to Customer, and Customer's access and use of such Updates or Maintenance Releases will be subject to the same license terms as applicable for the originally purchased version of the Covered Products.
- 2.4 **Documentation.** Tempered will make available to Customer all published revisions or corrections to the documentation for the Covered Products that Tempered makes generally available to customers who have ordered Support Services for the Covered Products. This documentation will be made available online via the Customer Support Portal, or as otherwise determined at Tempered's discretion.

3. HARDWARE MAINTENANCE

3.1 Repair and Replacement. Tempered will, at its option, and at no cost to Customer, repair or replace, or provide a Workaround for any Covered Product or component that fails or whose performance materially degrades during the term of this Agreement; provided that, the Customer contacts Tempered's technical support center to report the failure and complies with Tempered's return policies set forth herein. Tempered reserves the right to examine promptly any allegedly non-conforming Covered Product and perform an analysis to reasonably determine if the alleged non-conformance: (a) is a result of defective materials or workmanship (in which case the remedies set forth herein shall apply); (b) does not exist; (c) results from issues external to the Covered Products such as problems with Customer's network or systems; or (d) was caused by improper use or installation other than by Tempered or damage in transit hereunder in which case Customer shall have no right to any remedies hereunder for the respective Covered Product.

3.2 RMA. Upon receipt of Customer's written notification of failure, Tempered and Customer shall promptly exchange all relevant data reasonably necessary to determine the root cause of the alleged non-conformance and cooperate in good faith to establish a corrective action plan. If Tempered determines that the non-conformance was due to defective materials or workmanship, or Tempered's improper use or installation, or to damage in transit from Tempered to Customer, Tempered will issue a Return Material Authorization ("RMA") for the non-conforming Covered Products, and Customer will return the non-conforming unit or units to Tempered's designated facility in accordance with the RMA procedures. Covered Products returned to Tempered must be pre-authorized by Tempered with an RMA number marked on the outside of the package, and sent prepaid, insured and packaged appropriately for safe shipment in the packaging provided by Tempered. All other packaging will be rejected. A replacement product or component with substantially the same functionality and specifications as the original Covered Product or component will be shipped to the Customer within one (1) business day following confirmation of the failure of the original Covered Product. Tempered will be responsible for all freight and insurance charges for returned Covered Products or components provided Customer uses Tempered's designated carrier.

4. LIMITATIONS ON SERVICES

4.1 Exclusions. Notwithstanding anything to the contrary in this Agreement, the Support Services do not include the correction of, and Tempered will have no obligation, responsibility, or liability with respect to, any errors, defects, or other problems to the extent caused by or resulting from: (a) Customer's failure to implement any Maintenance Release, Update or Upgrade made available to Customer by Tempered; (b) changes by Customer or third parties to an operating system, network configuration, or environment that adversely affect the Covered Products; (c) any alterations or modifications of, or additions to, the Covered Products made by parties other than Tempered; (d) use of the Covered Products in a manner for which they were not designed or other than as specified in the applicable documentation or specifications; (e) the combination, use, or interconnection of the Covered Products with other software or hardware not supplied or not approved by Tempered; (f) use of the Covered Products on or with an unsupported hardware or software platform; (g) removal or relocation of the Covered Products from the location originally specified by Customer or reinstallation other than by Tempered, unless such removal or relocation is agreed in writing and in advance by Tempered at its discretion.

4.2 Limitations. The Support Services to be provided hereunder are limited to addressing problems that are demonstrable and reproducible. Tempered makes no commitment, representation, or guaranty regarding the amount of time it will take to diagnose or resolve a problem once it is brought to Tempered's attention.

5. CUSTOMER RESPONSIBILITIES. Tempered's obligation to perform the Support Services is conditioned on the following:

5.1 Maintenance. Customer will: (a) maintain the installation site in accordance with the applicable specifications for the Covered Products; (b) maintain the Covered Products and the operating environment for the Covered Products in good working order and in accordance with the specifications in the documentation for the Covered Products; (c) use the Covered Products in a proper manner by competent, trained personnel; and (d) implement all Updates, Maintenance Releases, Upgrades and Workarounds in a timely manner such that the version in operation is a currently supported version.

5.2 Remote Access. Customer will allow Tempered remote access to the Covered Products to the extent necessary to enable Tempered to perform remote diagnosis and service. Customer shall at all times provide Tempered technicians with all necessary remote access to Customer's Covered Products, and systems as is necessary for Tempered to provide the Support Services described herein whether via remote online access, or where applicable by physical access to Customer's premises to provide necessary maintenance.

5.3 Notification of Errors. Customer will notify Tempered promptly regarding Errors with reasonable detail so that Tempered can reproduce the Error. Customer will provide a complete description of the Error, including, if applicable, a description of any physical indicator of injury, such as a LED, alarm, or event on management station on the Covered Products, system log files or any other reasonable information requested by Tempered to diagnose reproducible Errors.

5.4 Data. Customer will be responsible for maintaining back-up copies of all Customer content, data and other information processed by, residing in or relying in any way on the Covered Products ("Data"). Data is Customer's confidential information and property. Tempered will not use, disclose, disseminate or provide access to Customer's confidential information except to its personnel as strictly necessary in the performance of the Support Services. Tempered shall have no liability or responsibility for the loss of any Data during the provision of the Support Services.

5.5 On-Site Access. If Tempered decides, in its sole discretion, that it is appropriate to perform the Support Services at a Customer facility, Customer will provide Tempered services representatives with: (a) safe, reasonable on-site access to the Covered Product at no cost to Tempered, and (b) a secure storage space, designated work area, and access to a backup copy of current software and Data, and reasonable use of necessary equipment and communications facilities, as may be required to troubleshoot and maintain the Covered Products.

6. ANNUAL FEES, PAYMENT.

6.1 Subscription License. The Support Services set forth in this Agreement are offered to Customer at no additional cost for so long as Customer: (a) maintains a current subscription license for Tempered Software; and (b) complies with the terms set forth in this Agreement, the General Terms, and the EULA.

6.2 Perpetual License. For so long as Customer licenses the Tempered Software on a perpetual basis, Customer shall purchase and maintain current Support Services as

a condition to obtaining the Covered Products set forth on Customer's Order Delivery Email(s). Customer will pay Tempered the annual maintenance charges applicable to Customer's maintenance plan ("**Annual Fees**"). Customer will pay the Annual Fees prior to and as a condition to commencement of the Support Services. If any new Covered Products are added during the term of this Agreement, as set forth on an Order Delivery Email, Tempered will prorate the Annual Fees for the added Covered Products from the date of purchase of the new Covered Products. If applicable, and as mutually agreed in writing by the Parties, Customer will pay Tempered any additional fees for services or products that Customer requests to be provided and that are not covered by this Agreement at Tempered's then-current price list. Payment shall be made pursuant to the terms set forth in the General Terms.

7. TERM AND TERMINATION

7.1 Term. This Agreement will be in effect for an initial one (1) year term commencing on the Effective Date ("**Initial Term**"). Thereafter, subject to Customer's payment of all applicable Annual Fees, this Agreement will continue to be in effect for additional one (1) year terms ("**Renewal Terms**"), unless either Party provides the other Party with written notice of non-renewal at least sixty (60) days before the end of the Initial Term or any Renewal Term. Renewal of this Agreement will be based on Tempered's current prices for the Support Services in effect at the time of renewal.

7.2 Termination. Either Party will have the right to terminate this Agreement upon written notice if the other Party (a) breaches any material term or condition of this Agreement, the General Terms, or the EULA, and fails to cure such breach within thirty (30) days of written notice of such breach (which notice will set forth the breach in reasonable detail and will be a precondition to the right to terminate); or (b) files a voluntary or involuntary petition in bankruptcy or is liquidated.

7.3 Effect of Termination. Upon any expiration or termination of this Agreement, the rights and obligations of the Parties under this Agreement will terminate, except that any provisions of this Agreement applicable to the enforcement after expiration or termination of a right of action that either Party has against the other arising prior to expiration or termination shall survive to the extent applicable to such enforcement

7.4 Exclusive Remedy. Termination of this Agreement and the refund described in the foregoing sentence will be Customer's sole and exclusive remedy for any failure to provide Support Services in accordance with the terms of this Agreement. Upon termination by Customer for such a failure by Tempered, Tempered will promptly refund to Customer the pre-paid and unearned Annual Fees received from Customer in advance for Support Services to be performed during the period after the effective date of termination, less any amounts due Tempered for the Support Services provided before the effective date of the termination.

8. GENERAL PROVISIONS

8.1 Assignment. Customer may not transfer or assign this Agreement, in whole or in part, without the written consent of Tempered. Tempered may subcontract certain of its Support Services provided that any such subcontracting arrangement shall not relieve Tempered of any of its obligations hereunder. Any attempt by Customer to transfer or assign this Agreement in contravention of the restriction set forth in this section will be null and void.

8.2 Governing Law; Venue Attorney's Fees. This Agreement will be governed by and construed in accordance with the laws of the state of Washington without regard or giving effect to its principles of conflicts of laws or to the United Nations Convention on Contracts for the International Sale of Goods. Exclusive venue for any legal action arising in connection with this Agreement shall take place in King County, Washington. In any such legal action the substantially prevailing Party shall receive from the losing Party its reasonable costs and expense, including reasonable attorney's fees, incurred in the action and in any appeal.

8.3 Export Law Compliance. Customer will comply with all applicable United States export laws and regulations in its performance hereunder.

8.4 Notices. Any notice, request, demand, or other communication required or permitted in this Agreement will be in writing, will reference this Agreement, and will be effective: (a) when delivered personally; (b) when sent by facsimile, with written confirmation of receipt by the sending facsimile machine; (c) four business days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (d) two business days after deposit with an express courier, with written confirmation of receipt. All notices will be sent to the address set forth above, and in the case of Customer to the attention of General Counsel, or other address for a Party as specified in writing by that Party.

8.5 Severability. If for any reason a court of competent jurisdiction finds any provision of this Agreement invalid or unenforceable, that provision of the Agreement will be enforced to the maximum extent permissible and the other provisions of this Agreement will remain in full force and effect.

8.6 Waiver. No failure of either Party to exercise or enforce any of its rights under this Agreement will act as a waiver of these rights.

8.7 Relationship between the Parties. Tempered is an independent contractor under this Agreement. Nothing in this Agreement creates a partnership, joint, venture, or agency relationship between the Parties or shall be deemed to constitute Tempered or its personnel as employees of Customer, entitle them to any of the benefits or insurance of Customer, or authorize them to obligate Customer in any manner.

8.8 Force Majeure. A Party hereto is not responsible for delays or failures to perform its responsibilities under this Agreement due to causes beyond its reasonable control. If the performance of a Party is interfered with for reasons beyond its reasonable control, such Party, upon prompt written notice to the other Party, will be excused from performance to the extent of the interference. The affected Party will take all reasonable steps to remove the causes of nonperformance and resume performance as soon as the causes are removed.

8.9 Injunctive Relief. Each Party acknowledges and agrees that in the event of a breach or threatened breach of this Agreement by the other Party the non-breaching Party may suffer irreparable harm and money damages alone would not afford an adequate remedy and, therefore, each Party shall be entitled to seek injunctive relief, including, without limitation, a temporary restraining order and a preliminary and permanent injunction, in any court of competent jurisdiction