



Schedule 2

**MINIMUM TERMS OF THE EULA**

1. Hammer Technologies Inc. sublicensed software (“**Software**”), and Hammer Technologies Inc. hardware (“**Hardware**”), are to be used solely for internal business purposes to test and/or monitor the Customer’s voice and/or web applications and infrastructure. Customer may not use Software or Hardware (Software and Hardware, collectively referred to as a “**Product**”) (a) for the primary benefit of any third party, including without limitation, using the Product to provide voice and/or web application or infrastructure testing or monitoring services for others, whether or not the application or infrastructure being tested or monitored is installed or operated by the Customer, or (b) in a service bureau or time-sharing arrangement. Customer may not sublicense, distribute, rent, lease or transfer the Software to any third party; provided that Customer may authorize third party integrators and consultants to support its installation or implementation of the Product. Customer shall be responsible for the acts and omissions of any consultants retained to assist it with the installation or deployment of the Product.
2. Customer may not alter, adopt, modify, vary, or create derivative works based on the whole or any part of the Software in any way whatsoever, except as permitted by law, nor permit any third party to alter, modify, vary, or create derivative works based on the whole or any part of the Software; and Customer shall not make or permit to be made any translation, alteration, adaptation, enhancement, modification, update or addition to, nor decompile, reverse engineer or disassemble the Software without the prior written consent of Hammer Technologies Inc..
3. When Software is licensed as a part of, in conjunction with, or intended to be used with Hardware, Software may only be used with the Hardware. The Software may include license management components designed to administer usage rights and restrictions. Customers agrees not to permit the circumvention or any attempt to circumvent such technical means to enable usage rights in excess of those purchased. Unless otherwise stated in a quote, Customers may only deploy a single instance of the Software at a single location. Customer shall retain and shall not alter or obscure any notices, markings or other insignia that are affixed to the Software, Hardware or associated documentation or any part thereof at the time of delivery of such Product or associated documentation by Hammer Technologies Inc..
4. Customer acknowledges that certain of Hammer Technologies Inc. products or components thereof may be supplied by third parties. Licensed Software may utilize Open Source Software that may be included as a part of the Software, included in the same medium on which the Software is delivered or as a part of the download of Software received by Reseller, or pre-loaded on Hardware. For the purposes herein, “Open Source Software” means any software for which the source code and certain other rights normally reserved for copyright holders are provided under an Open Source Software License or that is in the public domain, and an “Open Source Software License” is any license to software that meets the Open Source Definition of the Open Source Initiative at <http://www.opensource.org/docs/definition.php>. Because Hammer Technologies Inc. distributes its software in object code form, Hammer Technologies Inc. will provide Customer, on request, with the complete corresponding machine readable source code of Open Source software that is subject to any Open Source License that requires that Hammer Technologies Inc. provide, without charge (other than a charge for the cost of distribution), source code to the software, whether in original form or as modified by Hammer Technologies Inc., for a period of up to three (3) years after delivery of the Software within which the Open Source software is included. Any such Open Source Software



requested and so received by Customer shall be subject to the applicable Open Source License and this license does not modify or abridge any rights or obligations Customer may have under such Open Source License. Any permitted use (or distribution) of Open Source Software separate and apart from use of the Software is governed by the relevant Open Source License and, with respect to which, no indemnification obligations pertain.

5. Hammer Technologies Inc. Products are not fault-tolerant and are not designed, manufactured or intended for use for testing of on-line control equipment in hazardous environments requiring fail-safe performance, such as the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, direct life support machines, or weapons systems, in which the failure of the Software or Hardware could lead directly to death, personnel injury or severe physical or environmental damage (“**High Risk Activities**”). Accordingly, Hammer Technologies Inc. and its suppliers specifically disclaim any express or implied warranty of fitness for High Risk Activities and no license is granted to use the Software or Hardware for such activities.
6. The Software and associated documentation are "commercial computer software" and "commercial computer software documentation," and, as such, the rights of U.S. Government End Users with respect to the Software and documentation, in accordance with FAR 12.212 or DFARS 227.7202-1, as applicable.
7. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, NO WARRANTY, WHETHER EXPRESS OR IMPLIED, IS MADE WITH RESPECT TO THE SOFTWARE, HARDWARE, SOFTWARE DOCUMENTATION OR SERVICES, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS, NEITHER RESELLER NOR CUSTOMER, NOR ANY OF THEIR RESPECTIVE PARENTS, SUBSIDIARIES, SUPPLIERS OR LICENSORS, SHALL BE LIABLE FOR ANY OTHER INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL LOSS, INCLUDING BUT NOT LIMITED TO LOSS OF REVENUE, LOSS OF PROFITS, LOSS OF BUSINESS OR GOODWILL, HOWEVER CAUSED, OR OTHERWISE BE LIABLE IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE AND WHETHER SUCH LOSS ARISES OUT OF OR IN CONNECTION WITH THE USE OF THE SOFTWARE, HARDWARE, SERVICES OR OTHERWISE UNDER THIS AGREEMENT. THE MAXIMUM LIABILITY OF RESELLER, ITS SUPPLIERS AND LICENSORS FOR CLAIMS ARISING FROM OR IN CONNECTION WITH THIS AGREEMENT SHALL BE THE FEES PAID TO RESELLER FOR THE SOFTWARE, HARDWARE OR SERVICES GIVING RISE TO THE CLAIM.
8. Customer may not publish any results of benchmark tests run on the Software.
9. Customer shall comply fully with all relevant export laws and regulations of the United States and other applicable export and import laws to assure that neither the Products, nor any direct product thereof, are exported, directly or indirectly, in violation of applicable laws.
10. Reseller may audit Customer’s use of the Software and report such use to Hammer Technologies Inc. or assign Reseller’s right to audit the Customer’s use of the Software to Hammer Technologies Inc..
11. Hammer Technologies Inc. and its suppliers are third party beneficiaries of the Customer license and may directly enforce the obligations of Customer under the license.



12. The Parties exclude the application of the United Nations Convention on Contracts for the International Sale of Goods.