



**TO:** SOUTHERN NEVADA DISTRICT BOARD OF HEALTH      **DATE:** July 25, 2024

**RE:** *Approval of contract for Data Security Posture Management Software as a Service (SaaS) between Escape Velocity Holdings Inc. dba Trace3 LLC and the Southern Nevada Health District.*

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**PETITION #40-24**

**That the Southern Nevada District Board of Health** *approve the contract between the Southern Nevada Health District and Escape Velocity Holdings Inc. dba Trace3 LLC.*

**PETITIONERS:**

**Fermin Leguen, MD, MPH, District Health Officer** *FL*  
**Kim Saner, Deputy District Health Officer – Administration** *KS*  
**Jason Frame, Chief Information Officer** *JF*

**DISCUSSION:**

This is a new three-year contract for this type of SaaS solution and will be replacing another application. We are doing this for significant cost savings from the previous application.

**FUNDING:**

Total three-year cost for this SaaS solution is \$229,698.00, which will be payable upon contract approval. The first 1/3<sup>rd</sup> of the total amount is budgeted in the FY25 Information Technology budget with the remaining expenses to be equally expensed in the next two fiscal year IT budgets.



**SOFTWARE AS A SERVICE PURCHASE AGREEMENT  
BETWEEN  
SOUTHERN NEVADA HEALTH DISTRICT  
AND  
TRACE3, LLC  
C2400152**

This Software as a Service Purchase Agreement (“Agreement”) is made and entered into by and between the Southern Nevada Health District (“Health District”) and Trace3, LLC (“Trace3”) (individually “Party” and collectively “Parties”).

RECITALS

WHEREAS, Health District is the public health entity organized pursuant to Nevada Revised Statutes (“NRS”), Chapter 439, with jurisdiction over all public health matters within Clark County, Nevada; and

WHEREAS, Trace3 is a consulting firm providing IT strategy, solutions, and services to its clientele, and is an authorized reseller of Concentric software-as-a-service (“SaaS”);

WHEREAS, Health District will purchase data classification SaaS produced by Concentric from Trace3 pursuant to the terms and conditions of this Agreement.

NOW THEREFORE, the Parties mutually agree as follows:

- 1) **TERM, TERMINATION, AND AMENDMENT.** This Agreement shall be effective from the date of the last signature through July 31, 2027, unless sooner terminated by either Party as set forth in this Agreement.
  - 1.01 This Agreement may be terminated by either Party prior to the date set forth in paragraph 1, provided that a termination shall not be effective until thirty (30) days after a Party has served written notice upon the other Party.
  - 1.02 This Agreement may be terminated by mutual consent of both Parties or unilaterally by either Party with or without cause. Termination for cause will eliminate the thirty (30) day waiting period described in the above Subsection 1.01.
  - 1.03 Upon termination, Contractor will be entitled to payment for services provided prior to date of termination and for which Contractor has submitted an invoice, but has not been paid. Except for amounts refunded pursuant to the end user terms between the Health District and Concentric, all amounts paid under this Agreement are nonrefundable and Contractor shall have no obligation to refund

the Health District in the event of the termination of this Agreement.

1.04 This Agreement is subject to the availability of funding and shall be terminated immediately if, for any reason, state and/or federal funding ability, or grant funding budgeted to satisfy this Agreement is withdrawn, limited, or impaired.

1.05 This Agreement may only be amended, modified, or supplemented by a writing signed by a duly authorized agent/officer of each Party and effective as of the date stipulated therein.

2) INCORPORATED DOCUMENTS. The Services to be performed, the SaaS to be provided and the consideration therefore are specifically described in the below referenced documents which are attached hereto and expressly incorporated by reference herein:

ATTACHMENT A:	SCOPE OF WORK AND PAYMENT
ATTACHMENT B:	Trace3 Budgetary 3YR Quote #110006 v3 Markup, signed April 30, 2024
ATTACHMENT C:	Trace3 Product Sale Terms
ATTACHMENT D:	Concentric End User Terms and Conditions

3) COMPENSATION. Trace3 shall provide the SaaS in a professional and timely manner consistent with the Scope of Work outlined in Attachment A. Trace3 will be compensated as provided in Attachment A. The total not-to-exceed amount of this Agreement is \$229,698.

4) NOTICES. All notices permitted or required under this Agreement shall be made via hand delivery, overnight courier, or U.S. certified mail, return receipt requested, to the other Party at its address as set forth below:

Southern Nevada Health District	Trace3
Contract Administrator	7505 Irvine Center Drive, Ste. 100
Legal Department	Irvine, CA 92618
280 S. Decatur Blvd	Attn: Legal Notices
Las Vegas, NV 89107	

5) CONFIDENTIALITY.

5.01 Each Party will use the same degree of care that it uses to protect the confidentiality of its own information of like kind (but in no event less than reasonable care) not to disclose or use any information deemed confidential for any purpose outside the scope of this Agreement, unless compelled by law to do so and having given prior notice of such compelled disclosure to the other Party.

6) MUTUAL COOPERATION. Each Party shall fully cooperate with the other in the furtherance of this Agreement, and will provide assistance to one another in the investigation and resolution of any complaints, claims, actions or proceedings that may arise out of the provision of Services hereunder.

6.01 The Parties shall take additional actions or sign any additional documents as is

reasonably necessary, appropriate, or convenient to achieve the purposes of this Agreement.

- 7) BREACH; REMEDIES. Failure of either Party to perform any obligation of this Agreement shall be deemed a breach. Except as otherwise provided for by law or this Agreement, the rights and remedies of the Parties shall not be exclusive and are in addition to any other rights and remedies provided by law or equity, including but not limited to actual damages, and to a prevailing Party, the right to seek reasonable attorneys' fees and costs.
- 8) WAIVER OF BREACH. Failure to declare a breach or the actual waiver of any particular breach of the Agreement or its material or nonmaterial terms by either Party shall not operate as a waiver by such Party of any of its rights or remedies as to any other breach.
- 9) A party is in "Default" under the Terms and Conditions if the party does not perform any of its obligations under the Agreement and this failure continues for 30 days after written notification of that failure, with the exception that Health District is in Default if Health District fails to fulfill any payment obligation within 15 days of the invoice due date. Health District is in Default if it offers Equipment for resale, directly or through an affiliate.
- 10) GENERAL PROVISIONS.
  - 10.01 SEVERABILITY. If any provision contained in this Agreement is held to be unenforceable by a court of law or equity, this Agreement shall be construed as if such provision did not exist and the non-enforceability of such provision shall not be held to render any other provision or provisions of this Agreement unenforceable.
  - 10.02 ASSIGNMENT. Trace3 shall not assign, transfer, or delegate any rights, obligations or duties under this Agreement without the Health District's prior written consent.
  - 10.03 USE OF NAME AND LOGO. Trace3 may not use the Health District's name, mark, logo, design or other Health District symbol for any purpose without the Health District's prior written consent.
  - 10.04 NON-DISCRIMINATION. As Equal Opportunity Employers, the Parties have an ongoing commitment to hire, develop, recruit and assign the best and most qualified individuals possible. The Parties employ employees without regard to race, sex, color, religion, age, ancestry, national origin, marital status, status as a disabled veteran, or veteran of the Vietnam era, disability, sexual orientation or gender identity or expression. The Parties likewise agree that each will comply with all state and federal employment discrimination statutes, including but not limited to Title VII, and the American with Disabilities Act.
  - 10.05 STATEMENT OF ELIGIBILITY. The Parties acknowledge to the best of their knowledge, information, and belief, and to the extent required by law, neither Party nor any of its respective employees/Trace3s is/are : i) currently excluded, debarred, suspended, or otherwise ineligible to participate in federal health care programs or in federal procurement or non-procurement programs; and ii)

has/have not been convicted of a federal or state offense that falls within the ambit of 42 USC 1320a-7(a). If Trace3 status changes at any time pursuant to this Subsection 13.05, Trace3 agrees to immediately notify Health District in writing, and Health District may terminate this Agreement for cause as described in the above Section 1.

- 10.06 INTEGRATION CLAUSE. This Agreement, including all Attachments hereto, as it may be amended from time to time, contains the entire agreement among the Parties relative to the subject matters hereof.
- a) If a sales acknowledgement, proposal, quote, purchase order, or other document submitted by either Party to the other contains terms or conditions conflicting with or additional to the terms and conditions of this Agreement, the Parties hereby reject such terms and conditions, and the terms and conditions of this Agreement will prevail.
- 10.07 COMPLIANCE WITH LEGAL OBLIGATIONS. Trace3 shall provide the SaaS in compliance with all applicable federal, state, and local laws, statutes, regulations, appropriations legislation, orders, and industry standards
- 10.08 PROPER AUTHORITY. The Parties hereto represent and warrant that the person executing this Agreement on behalf of each Party has full power and authority to enter into this Agreement and that the Parties are authorized by law to perform the services set forth in the documents incorporated herein.
- 10.09 NON-EXCLUSIVITY. This Agreement is non-exclusive and both Parties remain free to enter into similar agreements with third parties. Trace3 may perform services for any other clients, persons, or companies as Trace3 sees fit, so long as the performance of such services does not interfere with Trace3's performance of obligations under this Agreement, and does not, in the opinion of Health District, create a conflict of interest.
- 10.10 LIMITED LIABILITY. Health District will not waive and intends to assert available NRS Chapter 41 liability limitations in all cases. To the extent applicable, actual agreement damages for any breach shall be limited by NRS 353.260 and NRS 354.626. Neither Party will be subject to Agreement-related punitive damages.
- 10.11 GOVERNING LAW. This Agreement and the rights and obligations of the Parties hereto shall be governed by and construed according to the laws of the State of Nevada, without regard to any conflicts of laws principles, with Clark County, Nevada as the exclusive venue of any action or proceeding related to or arising out of this Agreement.
- 10.12 INDEMNIFICATION. The Parties do not waive any right or defense to indemnification that may exist in law or equity.
- 10.13 PUBLIC RECORDS. Health District is a public entity subject to Nevada's Public Records Act pursuant to NRS Chapter 239. Accordingly, information or

documents, including this Agreement and any other documents generated incidental thereto may be opened to public inspection and copying unless a particular record is made confidential by law or a common law balancing of interests.

10.14 NO PRIVATE RIGHT CREATED. The Parties do not intend to create in any other individual or entity the status of a third-party beneficiary, and this Agreement shall not be construed to create such status. The rights, duties, and obligations contained in the Agreement shall operate only between the Parties to this Agreement and shall inure solely to the benefit of the Parties determining and performing their obligations under this Agreement.

10.15 COUNTERPARTS. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but which together shall constitute one instrument. Facsimile or electronic transmissions of documents and signatures shall have the same force and effect as originals.

IN WITNESS THEREOF, the Parties hereto have caused this Agreement to be executed by their undersigned officials as duly authorized.

**SOUTHERN NEVADA HEALTH DISTRICT**

**TRACE3, LLC**

By: \_\_\_\_\_  
Fermin Leguen, MD, MPH  
District Health Officer

By: \_\_\_\_\_  
Dustin Johnson  
Senior Vice President

Date: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVED AS TO FORM:

This document is approved as to form.  
Signatures to be affixed after approval by  
Southern Nevada District Board of Health

By: \_\_\_\_\_  
Heather Anderson-Fintak, Esq.  
General Counsel  
Southern Nevada Health District

**ATTACHMENT A**  
**Scope of Work and Payment**

A. Performance/Budget Period August 1, 2024 through July 31, 2027: Total Amount Not-to-Exceed: \$229,698.

A.1 This is a three (3) year service to be paid upfront to Trace3 within Net 30 payment terms upon Health District's receipt of Trace3's invoice. Trace3 will reference contract #C2400152 in lieu of a purchase order number when invoicing Health District. Additionally, Contractor is responsible for ensuring Health District's timely receipt of invoices, and will send any and all invoices to be paid by Health District to [ap@snhd.org](mailto:ap@snhd.org).

Line #	Qty	Part Number	Product Description	Unit Price	Ext Price
1	1	CS-PLT	Concentric AI Semantic Intelligence Software for cloud, on-premises drives-up to 70TB-3YR	\$220,248.00	\$220,248.00
1	1	CS-PLT-S	Concentric AI Semantic Intelligence Software for structured data up to 4DB servers-3YR	\$0.00	\$0.00
3	1	CS-PROF-COMP	Customer Success-Complete-3YR	\$9,450.00	\$9,450.00
SUBTOTAL					\$229,698.00

A.2 Trace3 acknowledges Health District is a governmental entity, and is exempt from paying state, local, and/or federal excise taxes, as provided by NRS. Health District's State Tax Exempt Number is RCE-004-676.

B. Payments shall be based on approved Trace3 invoices submitted in accordance with this Agreement. No payments will be made in excess of the not-to-exceed amount of this Agreement.

- (a) Trace3 invoices shall be signed by Trace3's official representative, and shall include a statement certifying that the invoice is a true and accurate billing.
- (b) Invoices are subject to approval by Health District project and fiscal staff.
- (c) Cost principles contained in Uniform Guidance 2 CFR Part 200, Subpart E, shall be used as criteria in the determination of allowable costs.

- B.2 Health District will not be liable for interest charges on late payments.
- B.3 In the event items on an invoice are disputed, payment on those items will be held until the dispute is resolved. Undisputed items will not be held with disputed items.



**ATTACHMENT B**  
**TRACE3 BUDGETARY 3YR QUOTE #110006 V3 MARKUP, SIGNED APRIL 30, 2024**

**TRACE3**

**Southern Nevada Health District Concentric.AI  
Budgetary 3YR Quote**  
Quote # Trace3.110006.v2

**Prepared for:**

**Southern Nevada Health District**  
Jason Aguda  
Aguda@SNHD.ORG

# TRACE3

## 3YR Quote

Line #	Qty	Part Number	Product Description	Unit Price	Ext. Price
1	1	CS-PLT	Concentric AI Semantic Intelligence Software for cloud, on-premises drives-up to 70TB - 3YR	\$220,248.00	\$220,248.00
2	1	CS-PLT-S	Concentric AI Semantic Intelligence Software for cloud, on-premises drives-up to 400 users - 3YR	\$0.00	\$0.00
3	1	CS-PROF-COMP	Customer Success - Complete - 3YR	\$9,450.00	\$9,450.00
<b>Subtotal:</b>					<b>\$229,698.00</b>

## Quote Notes

~~Please see Concentric AI Terms and Conditions (<https://concentric.ai/terms-and-conditions/>) that cover the products and services on this quote.~~

~~This is a 3 Year Service to be paid upfront to Trace3 within the Net Payment terms upon invoicing.~~

## Southern Nevada Health District Concentric.AI Budgetary 3YR Quote

**Prepared by:**

Trace3 - Irvine  
Natalie Truong  
NTruong@trace3.com

**Prepared for:**

Southern Nevada Health District  
Jason Aguda  
Aguda@SNHD.ORG

**Quote Information:**

Trace3.110006.v2  
Quote Date: 04/24/2024  
Expiration Date: 04/30/2024


### Quote Summary

Description	Amount
3YR Quote	\$229,698.00
<b>Total:</b>	<b>\$229,698.00</b>

Upon client signatory's execution of this Quote, he/she affirms that:

1. Client will purchase and pay Trace3 for the equipment and/or services referenced above; <sup>\*\*with contingencies as listed below</sup>
2. ~~Without a separate written agreement signed by Trace3 and client, equipment and/or services referenced above are provided solely subject to the terms of this Quote and the applicable terms and conditions located at <http://www.trace3.com/legal>~~
3. He/she is authorized to accept this Quote on behalf of client ~~and has complied with all of client's business practices in making this purchase;~~
4. Quoted amounts exclude sales taxes, which will be charged on all U.S. shipments; and
5. Client is responsible for submitting exemption certificates for sales tax-exempt purchases.
6. ~~Use of the equipment and/or services referenced above is subject to the applicable end-user license agreement of the manufacturer.~~

### Southern Nevada Health District

Signature By:   
Name: Fermin Leguen, MD, MPH  
Title: District Health Officer  
Date: 04/30/2024

- \*\*Contingencies include:**
- 1) SNHD Procurement Approval
  - 2) Allocation of funding
  - 3) Negotiation and finalization of contractual terms and conditions
  - 4) Approval of contract document by Southern Nevada District Board of Health

## ATTACHMENT C TRACE3 PRODUCT SALE TERMS

1. Scope. Pursuant to the written offer (the "**Quote**") to sell certain hardware and/or software products (the "**Products**") which references these Product Sale Terms (these "**Sale Terms**"), Trace3, LLC, a California limited liability company ("**Trace3**"), hereby offers to sell to the client named in the Quote ("**Client**") such Products referenced therein.
2. Acknowledgment. CLIENT ACKNOWLEDGES AND AGREES THAT: (A) THE SIGNED QUOTE AND ANY WRITTEN ORDER TO PURCHASE THE PRODUCTS (A "PURCHASE ORDER") PROVIDED BY CLIENT TO TRACE3 IN RESPONSE TO SUCH QUOTE IS MADE SUBJECT TO THESE SALE TERMS; (B) THESE SALE TERMS WILL GOVERN THE RELATIONSHIP BETWEEN TRACE3 AND CLIENT AND PREVAIL NOTWITHSTANDING ANY VARIANCE OR CONFLICT WITH ANY TERMS CONTAINED IN ANY PURCHASE ORDER, STATEMENT OF WORK OR OTHER AGREEMENT OR INSTRUMENT SUBMITTED BY CLIENT TO TRACE3; (C) ANY PRE- PRINTED OR OTHER TERMS OR CONDITIONS INCLUDED WITH OR IN ANY OF THE DOCUMENTS REFERENCED IN ITEM (B) WILL HAVE NO EFFECT WHATSOEVER; (D) TRACE3 RESERVES THE RIGHT TO REJECT OR ACCEPT ANY PURCHASE ORDER SUBMITTED BY CLIENT, IN ITS SOLE DISCRETION; AND (E) TRACE3'S ACCEPTANCE OF ANY PURCHASE ORDER IS MADE SUBJECT TO CLIENT'S ACCEPTANCE OF THESE SALE TERMS.
3. Delivery. Trace3 will accept Client's Purchase Orders under these Sale Terms for requested delivery of Products up to two months after the date of a Purchase Order.
4. Prices. Prices for Products will be as stated in the Quote and will be billed to Client in one or more invoices submitted by Trace3 to Client (the "**Invoices**") for payment. Quoted Prices for Products may be changed by Trace3 upon 30 days prior written notice to Client (the "**Notice Period**"). Purchase Orders received by Trace3 (a) before commencement of the Notice Period and which are not shipped prior to the expiration of the Notice Period, and (b) during the Notice Period which specify a delivery date within 30 days following the expiration of the Notice Period, will be invoiced at the previously existing lower price for such Products.
5. Payment Terms. . Trace3 reserves the right to refuse shipment of Products to Client if any delinquent Invoices are outstanding. Trace3 reserves the right to invoice Client upon the shipment of purchased Products to Client, including whole or partial orders and regardless of whether such Products is shipped to Client by Trace3 or a Products distributor ("**Distributor**") or manufacturer ("**OEM**"), and payment will be due 30 days after the date of issuance of such Invoice. Trace3 may refuse to ship Products on credit for any reason or for no reason whatsoever. Trace3 further reserves the right to refuse payment terms if, in Trace3's sole discretion, such terms would create an unreasonable credit risk for Trace3. In such event, deliveries of Products to Client will be available only on a C.O.D. or cash-in- advance basis. No payment by Client or receipt by Trace3 of an amount lesser than the entire amount of an Invoice will be deemed to be other than on account of the earliest due amount, nor will any endorsement or statement on any check or letter accompanying any check or payment be deemed an accord and satisfaction, and Trace3 may accept such check or payment without prejudice to Trace3's right to recover the balance of any amount due or pursue any other remedy provided for in these Sale Terms. In connection with the foregoing, Trace3 will have the absolute right in its sole discretion to apply any payment received from Client to any account of Client then not current and due and delinquent. Payment via Visa, Mastercard, American Express, other credit card, virtual card (e.g., American Express BIP), or any card or program similar to any of the foregoing will be accepted only if preapproved by Trace3 in writing. Any such payments will be subject to a processing fee of at least 3% of the total fees paid via such payment method.
6. Standard Order Procedure. Products may only be ordered by Client by mailed, e-mailed or faxed Purchase Orders referencing these Sale Terms and stating the quantity, specific Products, applicable price, shipping instructions and requested delivery date. Client acknowledges and agrees that in the event any Purchase Order fails to reference these Sale Terms, these Sale Terms will nevertheless govern the relationship between Trace3 and Client. Purchase Orders will be subject to written acceptance by Trace3 and delivery schedules will be established in accordance with Products availability and Client's credit status.
7. Change Requests, Cancellation and Rescheduling. Any and all changes to previously submitted Purchase Orders sought to be made by Client must be provided in writing by Client via mail, e-mail or fax notice and are subject to approval by Trace3. All requests to cancel Purchase Orders and return Products must be pre-authorized by Trace3 in writing. Trace3 may accept returns for Products then- currently held in Trace3 inventory within 30 days of purchase. Purchase Orders for Products not held in Trace3 inventory (including, but not limited, Products shipped directly from third party OEMs or Distributors) and software may not be cancelled or returned except under special circumstances and only upon pre-authorization by Trace3. If Client is permitted by Trace3 to cancel all or any portion of a Purchase Order and/or return Products, it will pay a restocking charge equal to (a) the amount of any restocking charge imposed by the applicable OEM or Distributor, if any, or (b) 30% of the purchase price for any Products shipped from Trace3's inventory. If Trace3 is unable to meet the requested delivery schedule, it will provide notice to Client as soon as it is reasonably aware of such situation. No Products may be returned except in the event Client and Trace3 have mutually agreed in writing.
8. Delivery; Title & Risk of Loss. Delivery of Products is "F.O.B. Origin, freight and insurance prepaid and added." Risk of loss or damage for Products will pass to Client on delivery of such Products by Trace3 or a Products Distributor or OEM, as applicable, to Client's common carrier. Products are deemed accepted by Client for risk

of loss purposes upon delivery to Client's common carrier. Client is responsible for all costs relating to the shipment and insurance of any Products. Trace3 will make reasonable efforts, but will not be obligated, to deliver the Products in accordance with Client's shipping instructions and choice of carrier. Trace3 will make commercially reasonable efforts to deliver all Products on or before the due date as specified in any Purchase Order for such Products. Trace3 will make reasonable efforts to expedite delivery of any "ASAP orders." Title to Products will pass to Client only once payment is received in full for such Products.

1. Taxes and Duties. All fees for Products will be exclusive of all national, federal, state, local, international (with respect to Products provided outside of the United States), property or any other governmental use, sales, excise, occupational, ad valorem, VAT or import (with respect to Products provided outside of the United States) taxes and duties, and any other similar taxes or duties. If any such tax, fee or charge is imposed on a transaction subject to these Sale Terms, such tax will be paid by Client in addition to the invoiced fees. If Trace3 is required to pay any such tax, fee or charge Client will reimburse Trace3 for such payment. All taxes, fees and charges with respect to Trace3's income or gross receipts derived from its provision of Products hereunder (including franchise, employment and income taxes of Trace3), will be the obligation of and paid by Trace3. Notwithstanding the foregoing, the Parties acknowledge Client is a governmental entity, and is exempt from paying state, local, and/or federal excise taxes, as provided by Nevada Revised Statutes ("NRS"). Client's State Tax Exempt Number is RCE-004-676.
2. Exports. The Parties acknowledge that Products and/or related confidential information provided under this Agreement may be subject to U.S. and applicable foreign export laws and regulations. Each party will comply with all applicable U.S. and foreign export laws and regulations and anti-boycott laws.
3. Warranties. Client acknowledges and understands that Products provided under these Sale Terms may be manufactured by one or more third parties (and not Trace3). Accordingly, Trace3's sole responsibility to Client with respect to such Products or components and parts thereof provided under these Sale Terms will be to pass through to Client such original Product OEM's available product warranty, if any. The Inventory Product Warranty Policy attached hereto as Annex A will apply to any Products provided out of Trace3 inventory ("**Inventory Products**"). EXCEPT WITH RESPECT TO INVENTORY PRODUCTS AND AS SET FORTH ON ANNEX A, CLIENT ACKNOWLEDGES AND AGREES THAT TRACE3 DOES NOT PROVIDE ANY WARRANTY, WHETHER EXPRESS, IMPLIED OR STATUTORY, WITH RESPECT TO THE PRODUCTS, INCLUDING, WITHOUT LIMITATION, THE WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
4. LIMITATION OF LIABILITY. IN NO EVENT, WHETHER BASED IN CONTRACT OR TORT (INCLUDING, WITHOUT LIMITATION, FOR BREACH OF WARRANTY, NEGLIGENCE AND STRICT LIABILITY IN TORT) WILL EITHER PARTY BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, INDIRECT, SPECIAL OR PUNITIVE DAMAGES OF ANY KIND, OR FOR LOSS OF REVENUE OR PROFIT, LOSS OF BUSINESS OR OTHER FINANCIAL LOSS ARISING OUT OF OR IN CONNECTION WITH THESE SALE TERMS, AND/OR THE SALE,

PURCHASE, INSTALLATION, MAINTENANCE, USE, PERFORMANCE, FAILURE OR INTERRUPTION OF PRODUCTS SOLD UNDER THESE SALE TERMS. NOTWITHSTANDING ANY OTHER PROVISION OF THESE SALE TERMS, NEITHER PARTY'S MAXIMUM LIABILITY FOR DAMAGES HEREUNDER WILL EXCEED THE PURCHASE PRICE OF THE PRODUCTS PURCHASED WHICH IS THE SUBJECT OF THE CLAIM FOR SUCH DAMAGES. THIS DISCLAIMER OF LIABILITY FOR DAMAGES WILL NOT BE AFFECTED IF ANY REMEDY PROVIDED HEREUNDER FAILS. THE PARTIES ACCEPT THIS DISCLAIMER OF LIABILITY FOR DAMAGES AS PART OF A BARGAIN TO LOWER THE PRICE OF THE PRODUCTS AND UNDERSTAND THAT THE PRICE OF THE PRODUCTS WOULD BE HIGHER IF TRACE3 WERE REQUIRED TO BEAR ADDITIONAL LIABILITY FOR DAMAGES.

5. Products Changes. Trace3 reserves the right to change, improve or add any new Products or discontinue offering any Products at any time.
6. Indemnity. To the extent permitted by law, each Party agrees to indemnify and hold the other Party harmless from any claims or damages (inclusive of reasonable attorney's fees), including claims of infringement, made against the other Party as a result of alleged negligence, misrepresentation, error or omission on the part of the indemnifying Party or its affiliates, directors, officers, employees, agents or representatives.
7. Entire Agreement. These Sale Terms are the complete, final and exclusive statement of the terms and conditions of sale for the Products between Trace3 and Client and supersedes any and all other agreements between them relating to the subject matter hereof. These Sale Terms may not be modified except in a writing executed by both parties. These Sale Terms will prevail notwithstanding any variance or conflict with any terms contained in any Purchase Order statement of work or other agreement or instrument submitted by Client to Trace3.
8. Force Majeure. Trace3 will not be liable to Client for any alleged loss or damages resulting from the delivery of the Products being delayed by acts of Client, acts of civil or military authority, governmental priorities, fire, floods, epidemics, quarantine, energy crises, strikes, labor trouble, war, riots, accidents, shortages, delays in transportation, or any other causes beyond the reasonable control of Trace3.
9. Waiver. A waiver of any default, or of any of these Sale Terms, will not be deemed to be a waiver of any other default or of any other term or condition, but will apply solely to the instance to which such waiver is directed. The exercise of any right or remedy provided in these Sale Terms will be without prejudice to the right to exercise any other right or remedy provided by law or equity.
10. Severability. In the event any provision of these Sale Terms is found to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired thereby.
11. Assignment. Assignment of these Sale Terms by either party will be prohibited without the express written consent of the other party; provided, that (a) Trace3 reserves the right to subcontract any support or maintenance obligation in

connection with the sale of such Products, (b) Trace3 may assign these Sale Terms and any of its rights hereunder in connection with its financing activities in the ordinary course of business, and (c) either party may assign these Sale Terms and its rights and obligations hereunder upon written notice to the other party in connection with a merger or sale of substantially all of its assets or capital stock. Any other attempted assignment in violation of this provision will be null and void.

12. Governing Law; Venue. These Sale Terms will be construed in accordance with, and all disputes hereunder will be governed by, the laws of the State of Nevada, without regard to principles of conflict of laws. Both parties agree that any action, suit or proceeding arising out of or relating to the Products or these Sale Terms will be initiated and prosecuted in the state and federal courts located in Clark County, Nevada, and the parties irrevocably submit to the jurisdiction of any such court.
13. Attorney's Fees. In any action to enforce these Sale Terms, the prevailing party will be entitled to seek reimbursement of awarded court costs and attorney's fees incurred from the non-prevailing party.
14. Public Records. Pursuant to NRS Chapter 239, information or documents, including this Agreement and any other documents generated incidental thereto may be opened to public inspection and copying unless a particular record is made confidential by law or a common law balancing of interests.
15. Code of Conduct. By executing the Agreement, the Parties acknowledge they have each read and respectively agree to comply as applicable with Client's Code of Conduct, which is available online at: <https://media.southernnevadahealthdistrict.org/download/FQ-HC-2020/20200129/20200129-VII-1-Code-of-Conduct-Booklet-Leguen-Signature.pdf>
16. Statement of Eligibility. Each Party acknowledges to the best of its knowledge, information, and belief, and to the extent required by law, neither it nor any of its respective employees/contractors is/are: i) currently excluded, debarred, suspended, or otherwise ineligible to participate in federal health care programs or in federal procurement or non-procurement programs; and ii) has/have not been convicted of a federal or state offense that falls within the ambit of 42 USC 1320a-7(a). If Trace3's status changes at any time pursuant to this Section 24, Trace3 agrees to immediately notify Client in writing, and Client may terminate this Agreement.

## **Annex A – Inventory Product Warranty Policy**

**FOR THE AVOIDANCE OF DOUBT, THIS WARRANTY POLICY ONLY APPLIES TO INVENTORY PRODUCTS (E.G., PRODUCTS PROVIDED OUT OF TRACE3 INVENTORY) AND EXPLICITLY EXCLUDES PRODUCTS SOLD BY TRACE3 AND PROVIDED DIRECTLY FROM AN OEM OR DISTRIBUTOR.**

1. **Warranty.** Trace3 warrants that Inventory Products purchased by Client from Trace3 will be free from defects in materials and/or workmanship when utilized in normal use for the Warranty Period (as defined below). This warranty is not transferable and applies to purchases directly by Client from Trace3 within the United States and Canada. Trace3 reserves the right to exclude specific products from this warranty.

For the Warranty Period, Trace3's sole warranty obligation will be to provide replacement parts and materials necessary to maintain the Inventory Products in good operating condition. Inventory Products serial numbers must match Trace3 records for a warranty to be honored. If Trace3 provides replacement parts and the defective Inventory Product returned does not match Trace3's serial number records, Client hereby agrees to pay Trace3 for the replacement parts based on the original purchase price.

2. **Warranty Period.** The warranties provided under this Warranty Policy will extend for the following periods (the "**Warranty Period**") from the shipment date from Trace3 (the "**Purchase Date**"):
  - a. Three years for all Dell EMC PowerEdge and HPE ProLiant branded Inventory Products;
  - b. 90 days for Inventory Products comprised of (i) complete systems or integrated technologies, and (ii) tape drives, cache/controller batteries and consumable media; and
  - c. 30 days for individual or loose (e.g., non-complete systems or unintegrated parts) purchased by entities that resell or transfer ownership of Trace3 Inventory Products, or for such Inventory Products purchased by and delivered to Clients outside of the United States and Canada.
3. **Warranty Process.** To obtain warranty service under the Trace3 warranty, Client must, within the Warranty Period, contact Trace3 with the part number and serial number of the Inventory Products. Trace3 will determine what items are covered under (x) the OEM warranty, and/or (y) the Trace3 warranty provided herein.
  - a. **Inventory Product with OEM Warranty** – For Inventory Products purchased from Trace3 with an OEM warranty, the OEM's warranty will supersede, control and take precedence over any Trace3 warranty. At the Clients' request, Trace3 will help facilitate the OEM warranty process. Trace3's remaining warranty, if any, will take

effect after the OEM's warranty period has expired. For example, if the OEM's warranty period is two years and Trace3's applicable Warranty Period is three years, then Trace3's warranty will apply for the one-year following expiration of the OEM's warranty period. Should Trace3, at its sole discretion, replace OEM's warranted Inventory Product on Client's behalf during the OEM's warranty period, Client will return the OEM provided replacement products to Trace3.

- b. **Inventory Product without OEM Warranty** – For Inventory Products purchased from Trace3 without an OEM's warranty (or which are outside of an OEM's warranty but still under Trace3's Warranty Period), Trace3 will attempt parts service using remote diagnosis or other service delivery methods at Trace3's sole discretion. If such parts service is unable to resolve the issue, Trace3 will provide advance parts replacement (e.g., providing replacement product to Client in advance of receiving back the defective Inventory Product). This warranty does not cover hardware or software installation or maintenance costs for the replacement products. At Trace3's sole discretion, Trace3 may repair or replace defective Inventory Products (a) with new, refurbished or previously used Products or parts equivalent to new Products or parts in performance and reliability, or (b) with equivalent Products to an original Inventory Product that has been discontinued. Trace3 reserves the right to replace with equal or better technology without any incremental charges to Client. Replacement Products or parts are warranted to be free from defects for the remainder of the applicable Warranty Period. All component parts or hardware Products returned by Client to Trace3 under this warranty will become the property of Trace3. Trace3 will pay for ground shipping related to return of the repaired or replaced Product to Client.
- c. **Defective Inventory Product** – All defective Inventory Products must be returned to Trace3 within the specified timeframe after the replacement Product has been provided. Client is responsible for returning defective Inventory Products using the original or comparable packaging and for the safe transit of such Inventory Products. If such defective Inventory Product is not returned to Trace3 within the specified timeframe, Client will be invoiced for the replacement Product.
- d. **General**
  - i. Client agrees to provide reasonable cooperation to Trace3 to facilitate and/or receive warranty services and replacement Product or parts. The Warranty Period is not extended as a result of (x) purchasing any additional Products from Trace3, (y) upgrading any purchased Products, or (z) Trace3 providing any
  - ii. replacement Product or parts. Client is responsible for backing up data and operating system software before returning any Inventory Products that may have proprietary information. Trace3 assumes no responsibility for lost data.

- iii. For warranty claims not protected under the Advance Replacement Warranty, the defective Inventory Product will be treated as a depot repair which requires time for Trace3 to perform proper diagnostics and/or provide replacement of Products or parts.
  - iv. Trace3 assumes no responsibility for defective Inventory Product or replacement Product or parts during shipment from Client to Trace3 or from Trace3 to Client, whether within or outside of the Warranty Period.
  - v. For depot repairs not covered by this warranty, Client is responsible for all labor, materials and shipping costs.
4. Exclusions. The warranty provided hereunder does not cover:
- a. any Products not provided out of Trace3's inventory, including, without limitation, OEM or third-party software, software licensing & support, ownership transfer fees, revision level or software compatibility issues; or
  - b. any damages or defects to Inventory Products purchased from Trace3 caused under the following conditions: acts of God, terrorism, abuse, neglect, accident, misuse, power fluctuations, usage of parts or components not supplied by Trace3, unsupported components, shipping damage, failure to perform preventative maintenance, or damage caused by peripherals, software, viruses or from other external causes.
5. Extended Warranty Options.
- a. At Trace3's sole discretion, extended warranty options may be made available to Client. Trace3 offers Clients a multi-year "Advance Replacement Warranty" for parts that extend the advance replacement warranty beyond the original 90-day Warranty Period. Such extended warranty options will be noted on Trace3's Quote, to the extent applicable. The Advance Replacement Warranty option is currently available for the following brands: Cisco, Dell EMC, Hewlett Packard Enterprise and Nimble. Other brands may be covered at Trace3's sole discretion.
  - b. No extended warranty options are available for tape drives, cache/controller batteries and consumable media purchased from Trace3.
6. GENERAL THE WARRANTIES SET FORTH HEREIN ARE CLIENT'S SOLE AND EXCLUSIVE REMEDY FOR DEFECTIVE INVENTORY PRODUCT. TRACE3 DISCLAIMS ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR USE. IN NO EVENT, WHETHER BASED IN CONTRACT OR TORT (INCLUDING, WITHOUT LIMITATION, FOR BREACH OF WARRANTY, NEGLIGENCE AND STRICT LIABILITY IN TORT) WILL TRACE3 BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, INDIRECT, SPECIAL OR PUNITIVE DAMAGES OF ANY KIND, OR FOR LOSS OF REVENUE OR PROFIT, LOSS OF BUSINESS OR OTHER FINANCIAL LOSS ARISING OUT OF OR IN CONNECTION WITH THIS WARRANTY, AND/OR THE SALE, INSTALLATION, MAINTENANCE, USE, PERFORMANCE, FAILURE OR INTERRUPTION OF INVENTORY PRODUCTS SOLD BY TRACE3. TRACE3'S MAXIMUM LIABILITY FOR DAMAGES RELATED TO THIS WARRANTY WILL NOT EXCEED THE PURCHASE PRICE OF THE INVENTORY PRODUCTS PURCHASED WHICH IS THE SUBJECT OF THE CLAIM FOR SUCH DAMAGES. THIS DISCLAIMER OF LIABILITY FOR DAMAGES WILL NOT BE AFFECTED IF ANY REMEDY PROVIDED HEREUNDER FAILS. CLIENT HAS ACCEPTED THIS DISCLAIMER OF LIABILITY FOR DAMAGES AS PART OF A BARGAIN TO LOWER THE PRICE OF THE INVENTORY PRODUCTS AND UNDERSTANDS THAT THE PRICE OF THE INVENTORY PRODUCTS WOULD BE HIGHER IF TRACE3 WERE REQUIRED TO BEAR ADDITIONAL LIABILITY FOR DAMAGES.



## ATTACHMENT D CONCENTRIC END USER TERMS AND CONDITIONS

PLEASE READ THESE CONCENTRIC END USER TERMS AND CONDITIONS (“CEUTC(s)”) CAREFULLY BEFORE USING THE SERVICES OFFERED BY CONCENTRIC SOFTWARE, INC. (“CONCENTRIC”). THESE CEUTCs CONTAIN THE EXCLUSIVE TERMS AND CONDITIONS BETWEEN CONCENTRIC, AND SOUTHERN NEVADA HEALTH DISTRICT AND THE END USER (“CUSTOMER”), REGARDING ACCESS AND USE OF CONCENTRIC’S ONLINE, WEB-BASED AND MOBILE-BASED APPLICATIONS SERVICES AS FURTHER DESCRIBED IN THE APPLICABLE ORDER FORM (“SERVICES”). YOU REPRESENT AND WARRANT THAT YOU HAVE FULL LEGAL AUTHORITY TO ENTER INTO THESE CEUTCs, UNDER ALL APPLICABLE LAWS AND ON BEHALF OF CUSTOMER. BY ACCESSING OR USING THE SERVICES (“ACCEPTANCE”), YOU WILL CREATE A LEGALLY ENFORCEABLE CONTRACT WHERE CUSTOMER AGREES TO BE BOUND BY ALL TERMS AND CONDITIONS OF THESE CEUTCs WITHOUT MODIFICATION. FOR THE PURPOSES OF THE TERMS AND CONDITIONS IN THIS THESE CEUTCs, THE “ORDER FORM” SHALL MEAN ANY ORDER FORM MUTUALLY AGREED TO BETWEEN THE PARTIES TO WHICH THE SERVICES RELATE.

THESE CEUTCs SHALL SUPERSEDE AND REPLACE ANY ONLINE CONCENTRIC END USER TERMS AND CONDITIONS ENCOUNTERED BY CUSTOMER’S END USERS.

### TERMS AND CONDITIONS

#### 1. SERVICES AND SUPPORT

1.1 Subject to the terms and conditions of these CEUTCs, Concentric will use commercially reasonable efforts to provide Customer with access to the Services through the internet. The Services are subject to modification from time to time at Concentric’s sole discretion, for any purpose deemed appropriate by Concentric. Concentric will use reasonable efforts to give Customer prior written notice of any such modification.

1.2 Concentric will undertake commercially reasonable efforts to make the Services available twenty-four (24) hours a day, seven (7) days a week, in accordance with Concentric’s Service Level Agreement which can be found at [www.concentricai.com/support](http://www.concentricai.com/support). Notwithstanding the foregoing, Concentric reserves the right to suspend Customer’s access to the Services: (i) for scheduled or emergency maintenance, or (ii) in the event Customer is in breach of these CEUTCs, including failure to pay any amounts due to Concentric.

1.3 Subject to the terms hereof, Concentric will provide reasonable support to Customer for the Services from Monday through Friday during Concentric’s normal business hours.

#### 2. RESTRICTIONS AND RESPONSIBILITIES

2.1 Except as expressly set forth in these CEUTCs, Customer shall not (and shall not permit any third party to), directly or indirectly: (i) reverse engineer, decompile, disassemble, or otherwise attempt to discover the source code, object code, or underlying structure, ideas, or algorithms of the Services or any software, documentation or data related to the Services (“Software”) (except to the extent applicable laws specifically prohibit such restriction); (ii) modify, translate, or create derivative works based on the Services; (iii) copy, rent, lease, distribute, pledge, assign, or otherwise transfer or encumber rights to the Services; (iv) use the Services for the benefit of a third party; (v) remove or otherwise alter any proprietary notices or labels from the Services or any portion thereof; (vi) use the Services to build an application or product that is competitive with any Concentric product or service; (vii) interfere or attempt to interfere with the proper working of the Services or any activities conducted on the Services; or (viii) bypass any measures Concentric may use to prevent or restrict access to the Services (or other accounts, computer systems or networks connected to the Services). Customer is responsible for all of Customer’s activity in connection with the Services, including but not limited to uploading Customer Data (as defined below) onto the Services. Customer (i) shall use the Services in compliance with all applicable local, state, national and foreign laws, treaties and regulations in connection with Customer’s use of the Services (including those related to data privacy, international communications, export laws and the transmission of technical or personal data laws), and (ii) shall not use the Services in a

manner that violates any third party intellectual property, contractual or other proprietary rights.

2.2 Customer will cooperate with Concentric in connection with the performance of these CEUTCs by making available such personnel and information as may be reasonably required, and taking such other actions as Concentric may reasonably request. Customer will also cooperate with Concentric in establishing a password or other procedures for verifying that only designated employees of Customer have access to any administrative functions of the Services or prohibit any use of the Services at any time, for any or no reason, including if Concentric receives any notice or claim that any such Customer Data or activities hereunder with respect to any such Customer Data, may infringe or violate rights of a third party.

2.3 Customer will designate an employee who will be responsible for all matters relating to these CEUTCs (“Primary Contact”). Customer may change the individual designated as Primary Contact at any time by providing written notice to Concentric.

2.4 To the extent permitted by law, Customer hereby agrees to indemnify and hold harmless Concentric against any damages, losses, liabilities, settlements and expenses (including without limitation costs and attorneys’ fees) in connection with any claim or action that arises from an alleged violation of the foregoing or otherwise from Customer’s use of Services. Customer will be responsible for maintaining the security of Customer account, passwords (including but not limited to administrative and user passwords) and files, and for all uses of Customer account with or without Customer’s knowledge or consent. Although Concentric has no obligation to monitor the Customer Data (as defined below) provided by Customer or Customer’s use of the Services, or prohibit any use of the Services at any time, for any or no reason, including if Concentric receives any notice or claim that any such Customer Data or activities hereunder with respect to any such Customer Data, may infringe or violate rights of a third party

2.5 Customer will be responsible for maintaining the security of Customer account, passwords (including but not limited to administrative and user passwords) and files, and for all uses of Customer account with or without Customer’s knowledge or consent.

2.6 Customer further acknowledges, agrees to and is bound by the Privacy Policy on Concentric’s website (as it may be updated from time to time), except to the extent expressly and directly in conflict with the terms hereof.

2.7 Customer acknowledges and agrees that the Services operate on or with or using application programming interfaces (APIs) and/or other services operated or provided by third parties (“Third Party Services”). Concentric is not responsible for the operation of any Third Party Services nor the availability or operation of the Services to the extent such

availability and operation is dependent upon Third Party Services. Concentric does not make any representations or warranties with respect to Third Party Services or any third party providers. Any exchange of data or other interaction between Customer and a third party provider is solely between Customer and such third party provider and is governed by such third party's terms and conditions.

### 3. CONFIDENTIALITY

3.1 Each party (the "Receiving Party") understands that the other party (the "Disclosing Party") has disclosed or may disclose information relating to the Disclosing Party's technology or business (hereinafter referred to as "Proprietary Information" of the Disclosing Party).

3.2 The Receiving Party agrees: (i) not to divulge to any third person any such Proprietary Information, (ii) to give access to such Proprietary Information solely to those employees and agents with a need to have access thereto for purposes of these CEUTCs, and (iii) to take the same security precautions to protect against disclosure or unauthorized use of such Proprietary Information that the party takes with its own proprietary information, but in no event will a party apply less than reasonable precautions to protect such Proprietary Information. The Disclosing Party agrees that the foregoing will not apply with respect to any information that the Receiving Party can document (a) is or becomes generally available to the public without any action by, or involvement of, the Receiving Party, or (b) was in its possession or known by it without restriction prior to receipt from the Disclosing Party, or (c) was rightfully disclosed to it without restriction by a third party, or (d) was independently developed without use of any Proprietary Information of the Disclosing Party. Nothing in these CEUTCs will prevent the Receiving Party from disclosing the Proprietary Information pursuant to any judicial or governmental order, provided that the Receiving Party gives the Disclosing Party reasonable prior notice of such disclosure to contest such order. Notwithstanding the foregoing, the Parties acknowledge that Customer is a governmental entity subject to Nevada's Public Records Act under NRS Chapter 239. As such, information or documents, including these CEUTCs and any other documents generated incidental thereto may be opened to public inspection and copying unless a particular record is made confidential by law or a common law balancing of interests.

Notwithstanding anything to the contrary, Customer acknowledges and agrees that Concentric may (i) internally use and modify (but not disclose) Customer Proprietary Information, including Customer Data, for the purposes of providing the Services and any support or consultation services to Customer. Upon termination of these CEUTCs, Concentric will delete or destroy Customer's Proprietary Information within sixty (60) days of such termination.

3.3 Concentric may use one or more third party services to provide services to Customer, including login authentication ("Third Party Services"). Such Third Party Services may automatically collect and use information about Customer's visits to, and interactions with, the Services and Third Party Services, and may use cookies, web beacons, pixel tags, SDKs, and other technologies to identify Customer and/or Customer's device, including Customer's IP address, web browser, pages viewed, time spent on pages, links clicked and conversion information. Notwithstanding anything to the contrary, Concentric has no control over, and assumes no responsibility for, the policies or practices of any third party that Customer interacts with through the Services (including, without limitation, such third party's data retention policies or practices), and Concentric's obligations with respect to Customer's Proprietary Information do not apply to any such information collected or held by such third party.

3.4 Customer acknowledges that Concentric does not wish to receive any Proprietary Information from Customer that is not necessary for Concentric to perform its obligations under these CEUTCs, and, unless the parties specifically agree otherwise, Concentric may reasonably presume that any unrelated information received from Customer is not confidential or Proprietary Information.

3.5 Subject to the provisions of Subsection 3.2, the Parties acknowledge they will each have the right to disclose the existence but not the terms and conditions of these CEUTCs, unless such disclosure is approved in writing by both parties prior to such disclosure, or is included in a filing required to be made by a party with a governmental authority (provided such party will use reasonable efforts to obtain confidential treatment or a protective order) or is made on a confidential basis as reasonably necessary to potential investors or acquirors.

### 4. INTELLECTUAL PROPERTY RIGHTS

4.1 As between the parties, Concentric retains all right, title, and interest in and to the Services, and all Software, including products, works, and other intellectual property and moral rights related thereto or created, used, or provided by Concentric for the purposes of these CEUTCs, including any copies and derivative works of the foregoing. These CEUTCs are not a sale, and no rights or licenses are granted except as expressly and unambiguously set forth in these CEUTCs. Customer may from time to time provide suggestions, ideas, comments or other feedback to Concentric with respect to the Services ("Feedback"). Nothing in these CEUTCs will impair Concentric's right to develop, acquire, license, market, promote or distribute products, software or technologies that perform the same or similar functions as, or otherwise compete with any products, software or technologies that Customer may develop, produce, market, or distribute.

4.2 Concentric will obtain and process certain content, data, information or other material provided, uploaded or submitted by or on behalf of Customer ("Customer Data") only to perform its obligations and exercise its rights under these CEUTCs. Customer and its licensors shall (and Customer hereby represents and warrants that they do) have and retain all right, title and interest (including, without limitation, sole ownership of) all Customer Data distributed through the Services and the intellectual property rights with respect to that Customer Data. Customer, not Concentric, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of all Customer Data.

### 5. INDEMNIFICATION

5.1 Except as provided below, Concentric shall hold Customer harmless from liability to unaffiliated third parties resulting from infringement by the Service of any United States patent or any copyright or misappropriation of any trade secret, provided Concentric is promptly notified of any and all threats, claims and proceedings related thereto and given reasonable assistance and the opportunity to assume sole control over defense and settlement; Concentric will not be responsible for any settlement it does not approve. The foregoing obligations do not apply with respect to portions or components of the Services (i) not created by Concentric, (ii) resulting in whole or in part in accordance from Customer specifications, (iii) that are modified after delivery by Concentric, (iv) combined with other products, processes or materials where the alleged infringement relates to such combination, (v) where Customer continues allegedly infringing activity after being notified thereof or after being informed of modifications that would have avoided the alleged infringement, or (vi) where Customer's use of is not strictly in accordance with these CEUTCs and all related documentation. To the extent permitted by law, Customer will indemnify Concentric from all damages, costs, settlements, attorneys' fees and expenses related to any claim of infringement or misappropriation excluded from Concentric's indemnity obligation by the preceding sentence.

### 6. TERMINATION

7.1 Subject to earlier termination as provided below, these CEUTCs are effective for the Service Term as specified in the Order Form.

7.2 In the event of any material breach of these CEUTCs, the non-breaching party may terminate these CEUTCs prior to the end of the Service Term by giving thirty (30) days prior written notice to the breaching party; provided, however, that these CEUTCs will not terminate if the breaching party has cured the breach prior to the expiration of such thirty-day period. Either party may terminate this Agreement, without notice, (i) upon the institution by or against the other party of insolvency, receivership or bankruptcy proceedings and such proceedings are not dismissed within one hundred twenty (120) days, (ii) upon the other party's making an assignment for the benefit of creditors, or (iii) upon the other party's dissolution or ceasing to do business.

7.3 All sections of these CEUTCs which by their nature should survive termination will survive termination, including, without limitation, restrictions, accrued rights to payment, confidentiality obligations, intellectual property rights, warranty disclaimers, and limitations of liability.

### 7. CLIENT SOFTWARE SECURITY

Concentric represents and warrants that it will not knowingly include, in any Concentric software released to the public and provided to Customer

hereunder, any computer code or other computer instructions, devices or techniques, including without limitation those known as disabling devices, trojans, or time bombs, that intentionally disrupt, disable, harm, infect, defraud, damage, or otherwise impede in any manner, the operation of a network, computer program or computer system or any component thereof, including its security or user data. If, at any time, Concentric fails to comply with the warranty in this Section, Customer may promptly notify Concentric in writing of any such noncompliance. Concentric will, within thirty (30) days of receipt of such written notification, either correct the noncompliance or provide Customer with a plan for correcting the noncompliance. If the noncompliance is not corrected or if a reasonably acceptable plan for correcting them is not established during such period, Customer may terminate these CEUTCs as its sole and exclusive remedy for such noncompliance.

#### **8. WARRANTY DISCLAIMER**

THE SERVICES AND CONCENTRIC PROPRIETARY INFORMATION AND ANYTHING PROVIDED IN CONNECTION WITH THESE CEUTCs ARE PROVIDED "AS-IS," WITHOUT ANY WARRANTIES OF ANY KIND. CONCENTRIC (AND ITS AGENTS, AFFILIATES, LICENSORS AND SUPPLIERS) HEREBY DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON- INFRINGEMENT.

#### **9. LIMITATION OF LIABILITY**

EXCEPT FOR THE PARTIES' INDEMNIFICATION OBLIGATIONS (SECTIONS 2.4 AND 5) OR CONFIDENTIALITY OBLIGATIONS (SECTION 3) HEREUNDER, IN NO EVENT WILL EITHER PARTY (OR ANY OF ITS AGENTS, AFFILIATES, LICENSORS OR SUPPLIERS) BE LIABLE FOR ANY INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY, ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE USE OF THE SERVICES OR ANYTHING PROVIDED IN CONNECTION WITH THESE CEUTCs, THE DELAY OR INABILITY TO USE THE SERVICES OR ANYTHING PROVIDED IN CONNECTION WITH THESE CEUTCs OR OTHERWISE ARISING FROM THESE CEUTCs, INCLUDING WITHOUT LIMITATION, LOSS OF REVENUE OR ANTICIPATED PROFITS OR LOST BUSINESS OR LOST SALES, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF DAMAGES. THE TOTAL LIABILITY OF EITHER PARTY, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), OR OTHERWISE, WILL NOT EXCEED, IN THE AGGREGATE, THE LESSER OF (i) TEN THOUSAND DOLLARS, OR (ii) THE FEES PAID AND/OR PAYABLE TO CONCENTRIC HEREUNDER IN THE TWELVE MONTH PERIOD ENDING ON THE DATE THAT A CLAIM OR DEMAND IS FIRST ASSERTED. THE FOREGOING LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

#### **10. U.S. GOVERNMENT MATTERS**

Notwithstanding anything else, Customer may not provide to any person or export or re-export or allow the export or re-export of the Services or any software or anything related thereto or any direct product thereof (collectively "Controlled Subject Matter"), in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign agency or authority. Without limiting the foregoing Customer acknowledges and agrees that the Controlled Subject Matter will not be used or transferred or otherwise exported or re-exported to countries as to which the United States maintains an embargo (collectively, "Embargoed Countries"), or to or by a national or resident thereof, or any person or entity on the U.S. Department of Treasury's List of Specially Designated Nationals or the U.S. Department of Commerce's Table of Denial Orders (collectively, "Designated Nationals"). The lists of Embargoed Countries and Designated Nationals are subject to change without notice. Use of the Services is representation and warranty that the user is not located in, under the control of, or a national or resident of an Embargoed Country or Designated National. The Controlled Subject Matter may use or include encryption technology that is subject to licensing requirements under the U.S. Export Administration

Regulations. As defined in FAR section 2.101, any software and documentation provided by Concentric are "commercial items" and according to DFAR section 252.227-7014(a)(1) and (5) are deemed to be "commercial computer software" and "commercial computer software documentation." Consistent with DFAR section 227.7202 and FAR section 12.212, any use modification, reproduction, release, performance, display, or disclosure of such commercial software or commercial software documentation by the U.S. Government will be governed solely by the terms of this Service Agreement and will be prohibited except to the extent expressly permitted by the terms of this Agreement.

#### **11. MISCELLANEOUS**

If any provision of these CEUTCs is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that these CEUTCs will otherwise remain in full force and effect and enforceable. These CEUTCs are not assignable, transferable or sublicensable by Customer except with Concentric's prior written consent. Concentric may transfer and assign any of its rights and obligations under these CEUTCs with written notice to Customer. Both parties agree that these CEUTCs are the complete and exclusive statement of the mutual understanding of the parties and supersede and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of these CEUTCs, and that all waivers and modifications must be in a writing signed by both parties, except as otherwise provided herein. No agency, partnership, joint venture, or employment is created as a result of these CEUTCs and Customer does not have any authority of any kind to bind Concentric in any respect whatsoever. In any action or proceeding to enforce rights under these CEUTCs, the prevailing party will be entitled to recover costs and attorneys' fees. All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; and upon receipt, if sent by certified or registered mail (return receipt requested), postage prepaid. Concentric will not be liable for any loss resulting from a cause over which it does not have direct control. These CEUTCs will be governed by the laws of the State of Nevada U.S.A. without regard to its conflict of laws provisions. The federal and state courts sitting in Clark County, Nevada, U.S.A. will have proper and exclusive jurisdiction and venue with respect to any disputes arising from or related to the subject matter of this Agreement, provided that either party may seek injunctive relief in any court of competent jurisdiction.

11) Exhibit A

12) Service Level Agreement

This Service Level Agreement (the “SLA”) forms a part of Concentric’s Service Terms and Conditions (the “Service Terms”). Capitalized terms not defined in this SLA shall have the meaning set forth in the Service Terms.

13)

14) Service Levels

Concentric shall provide Customer with telephone and email support for the Service to Customer (“Service Support”). Service Support shall only include assistance with issues which are exclusively due to an error with the Service (i.e., a failure of the Service to conform to the written specifications provided by Concentric). Any support outside the scope of Service Support shall be provided by Concentric on a time and materials basis. The Service Availability will be measured on a monthly basis, with all hours weighted equally, but the Service Availability measurement will exclude reasonable scheduled downtime for system maintenance as well as any downtime resulting from outages of third party connections or utilities or other reason beyond Concentric’s control (including without limitation, acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems, computer, telecommunications, Internet service provider or hosting facility failures or delays or supply interruptions involving hardware, software or power systems not within Concentric’s possession or reasonable control, and denial of service attacks).

15) Error Response Times

An “Error” means an error in the Services which significantly degrades the Services as compared to Concentric’s published performance specifications. For each Error reported by Customer, Concentric shall (i) assign a priority level to such Error in its discretion in accordance with the table below, and (ii) respond to Customer and provide status updates in accordance with the time periods set forth in the table below.

<b>Classification</b>	<b>Description</b>	<b>Response Time</b>	<b>Status Updates</b>	<b>Target Resolution</b>
Priority 1	The Services are completely unavailable or performance is so poor as to render the Services unusable; or data security breach or hack (whether actual or suspected) or attempted data security breach.	30 minutes	Every 30 minutes	Within 4 hours
Priority 2	A major functionality of the Services is unusable and results in limited functionality that affects a large number of users.	2 hours	Every 4 hours	Within 12 hours
Priority 3	A loss of a function or resource of the Services that does not seriously affect Services functionality.	Next business day	Daily	Next bug fix or production release, if applicable
Priority 4	All other problems with the Services other than those that fall within the categories listed above.	2 business days	TBD on a case-by-case basis	TBD on a case-by-case basis

16) Service Credits

If (i) the Service is unavailable to Customer due to errors with the Service beyond the Service Availability metric, or (ii) Concentric fails to respond to a Customer Error report within the allotted time frame, then, as Customer's sole and exclusive remedy (and Concentric's sole liability), (a) for each full hour in a month that the Service is unavailable beyond the Service Availability metric and

(b) for each such response failure, Concentric will credit Customer with one (1) day of free access to the Service. Such credits may not be redeemed for cash and shall not be cumulative beyond a total of one (1) free month of access to the Services. Further, Concentric will not grant a credit for any period in which Customer received any Services free of charge. Concentric's blocking, suspending or throttling of data communications in accordance with its policies shall not be deemed to be a failure of Concentric to provide adequate service levels under this Agreement.

In order to receive service credits, Customer must notify Concentric in writing within seventy-two (72) hours from the time of downtime or response failure (as applicable), and failure to provide such notice will forfeit the right to receive service credits.