Uplogix, Inc.

EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)

1. **Scope**. This Rider and the attached Uplogix, Inc. ("Manufacturer") product specific license terms establish the terms and conditions enabling EC America ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under EC America's GSA MAS contract number GS-35F-0511T (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.

2. **Applicability**. Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law, including but not limited to GSAR 552.212-4 Contract Terms and Conditions-Commercial Items. To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:

a) **Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.2I, as may be revised from time to time.

b) **Changes to Work and Delays.** Subject to GSAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.

c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

d) **Termination**. Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.

e) **Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by Federal law, they will not apply to this Rider or the underlying Schedule Contract.

f) **Equitable remedies**. Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.

g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.

h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

i) **Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.

j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under Federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.

l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.

m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.

n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).

o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any.

q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.

t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract**.**

u) **Alternate Dispute Resolution**. The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a Federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

3. **Order of Precedence/Conflict**. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

UPLOGIX™

Uplogix Limited Warranty, Disclaimer of Warranty and End User License Agreement

LIMITED WARRANTY

The following terms of this Limited Warranty govern, except to the extent there is a separate signed agreement between Customer and Uplogix with a different limited warranty. To the extent of a conflict, the order of precedence will be: (a) the signed agreement, and (b) this Agreement.

Hardware. Uplogix, Inc. ("Uplogix") warrants that commencing from the date of shipment to Customer (and in the case of resale by an Uplogix reseller, commencing not more than 90 days after original shipment by Uplogix to the reseller), and continuing for a period of (a) one year, or (b) if there is a Warranty Card accompanying the Product, the warranty period specified in the Warranty Card (which may be a shorter or longer period than one year), the Hardware will be free from defects in material and workmanship under normal use. The date of shipment of a Product by Uplogix is set forth on the packaging material in which the Product is shipped. This limited warranty extends only to the original user of the Product. Customer's sole and exclusive remedy and the entire liability of Uplogix and its suppliers under this limited warranty will be, at Uplogix's option, shipment of a replacement within the warranty period and according to the replacement process described in the Warranty Card (if any), or if no Warranty Card, according to Uplogix's then-current Return Material Authorization (RMA) process (available through Uplogix's support desk), or a refund of the purchase price of the Hardware if the Hardware is returned to the party supplying it to Customer, freight and insurance prepaid. Uplogix replacement parts used in Hardware replacement may be new or equivalent to new. Uplogix's obligations hereunder are conditioned upon the return of the affected Hardware in accordance with Uplogix's then-current RMA process.

Software. Uplogix warrants that commencing from the date of shipment to Customer (but in case of resale by an authorized Uplogix reseller, commencing not more than 90 days after original shipment by Uplogix to reseller), and continuing for a period of 90 days, or (b) if there is a Warranty Card accompanying the Product, the warranty period specified in the Warranty Card (which may be a shorter or longer period than one year): (i) the media on which the Software is furnished will be free from defects in materials and workmanship under normal use, and (ii) the Software substantially conforms to its documentation. The date of shipment of the Software by Uplogix is set forth on the packaging material in which the Product is shipped. Except for the foregoing, the Software is provided "AS IS". This limited warranty extends only to the Customer who is the original licensee. Customer's sole and exclusive remedy and the entire liability of Uplogix and its suppliers and licensors under this limited warranty will be, at Uplogix's option, repair, replacement, or a refund of the Software fee paid by Customer if reported (or, upon request, returned) to Uplogix or the party supplying the Software to Customer. In no event does Uplogix warrant that the Software is error-free or that Customer will be able to operate the Software without problems or interruptions. In addition, due to the continual development of new techniques for intruding upon and attacking networks, Uplogix does not warrant that the Software or any equipment, system or network on which the Software is used will be free of vulnerability to intrusion or attack.

Restrictions: This warranty does not apply if the Hardware or Software or any other equipment on which the Software is authorized to be used: (a) has been altered, except by Uplogix or its authorized representative, (b) has not been installed, operated, repaired, or maintained in accordance with instructions supplied by Uplogix or its authorized representative, (c) has been subjected to abnormal physical or electrical stress, misuse, negligence, or accident, (d) has not been updated with provided or available modifications or corrections, or (e) is licensed for beta, evaluation, testing or demonstration purposes for which Uplogix does not charge a purchase price or license fee. In addition, Uplogix makes no warranty with respect to any of the following: (i) Products whose external housing or cover has been opened, (ii) Products which have had their serial numbers or date of manufacture removed or altered, (iii) unsupported network devices, accessories or expendable items, or (iv) with respect to defects related to Customer's database errors.

Third Party Products. Certain third party products provided by Uplogix ("Third Party Products") may have a separate warranty statement from the third party vendor; such warranty statements may or may not be included in the Third Party Product packaging for Hardware, but will be included in the packaging for Third Party Products for Software. Warranty support for such Third Party Products will be provided pursuant to such third party vendors' warranty terms and conditions, and Uplogix will pass on such third party warranty coverage to Customer. Uplogix will notify Customer at the time of any warranty support inquiries of any such separate third party warranty statements and provide Customer with contact information for warranty support from the applicable third party vendor. ALL THIRD PARTY PRODUCTS ARE PROVIDED BY UPLOGIX ON AN "AS IS" BASIS.

DISCLAIMER OF WARRANTY

EXCEPT AS SPECIFIED IN THIS WARRANTY, ALL EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS, AND WARRANTIES INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, NON-INFRINGEMENT, FITNESS FOR PARTICULAR PURPOSE, SATISFACTORY QUALITY, NON-INTERFERENCE, ACCURACY OF INFORMATIONAL CONTENT, OR ARISING FROM A COURSE OF DEALING, LAW, USAGE OR TRADE PRACTICE ARE HEREBY EXCLUDED TO THE EXTENT ALLOWED BY APPLICABLE LAW AND ARE EXPRESSLY DISCLAIMED BY UPLOGIX, ITS SUPPLIERS AND LICENSORS. TO THE EXTENT AN IMPLIED WARRANTY CANNOT BE EXCLUDED, SUCH WARRANTY IS LIMITED IN DURATION TO THE EXPRESS WARRANTY PERIOD. BECAUSE SOME STATES OR JURISDICTIONS DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, THE ABOVE LIMITATION MAY NOT APPLY. THIS WARRANTY GIVES CUSTOMER SPECIFIC LEGAL RIGHTS, AND CUSTOMER MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM JURISDICTION TO JURISDICTION. This disclaimer and exclusion will apply even if the express warranty above fails of its essential purpose.

****

END USER LICENSE AGREEMENT

IMPORTANT – PLEASE READ THIS END USER LICENSE AGREEMENT CAREFULLY. DOWNLOADING, INSTALLING OR USING UPLOGIX OR UPLOGIX-SUPPLIED SOFTWARE CONSTITUTES ACCEPTANCE OF THIS AGREEMENT.

UPLOGIX, INC. ("UPLOGIX") IS WILLING TO LICENSE THE SOFTWARE TO ORDERING ACTIVITY UNDER GSA SCHEDULE CONTRACTS IDENTIFIED IN THE PURCHASE ORDER, STATEMENT OF WORK, OR SIMILAR DOCUMENT ("YOU") ONLY UPON THE CONDITION THAT YOU ACCEPT ALL OF THE TERMS CONTAINED IN THIS END USER LICENSE AGREEMENT ("AGREEMENT"). BY BOTH PARTIES EXECUTING THIS AGREEMENT IN WRITING, YOU ARE BINDING THE BUSINESS ENTITY THAT YOU REPRESENT ("CUSTOMER") TO THIS AGREEMENT. IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THIS AGREEMENT, THEN UPLOGIX IS UNWILLING TO LICENSE THE SOFTWARE TO YOU AND (a) DO NOT DOWNLOAD, INSTALL OR USE THE SOFTWARE, AND (b) YOU MAY RETURN THE SOFTWARE FOR A FULL REFUND, OR, IF THE SOFTWARE IS SUPPLIED AS PART OF ANOTHER PRODUCT, THEN YOU MAY RETURN THE ENTIRE PRODUCT FOR A FULL REFUND.

The following terms of this Agreement govern Customer's access and use of the Software, except to the extent: there is a separate signed agreement between Customer and Uplogix governing Customer's use of the Software, or. To the extent of a conflict between the provisions of the foregoing documents, the order of precedence will be: (i) the signed agreement, and (ii) this Agreement.

License. Subject to compliance with the terms and conditions of this Agreement including but not limited to payment of the required license fees, Uplogix grants to Customer a non-exclusive and non-transferable license to use the Software (including the accompanying Documentation) for Customer's internal business purposes and in accordance with the Documentation. Customer may allow its agents and contractors to use the Software on Customer's behalf for the purposes set forth, and subject to the terms and conditions in this Agreement, provided that Customer will remain responsible for such agents' and contractors' compliance with this Agreement. Uplogix reserves all rights and licenses in and to the Software not expressly granted herein. Documentation means written information (whether contained in user or technical manuals, training materials, specifications or otherwise) specifically pertaining to the Software and made available by Uplogix with the Software in any manner (including via CD or on-line).

Customer's license to use the Software is limited to, and Customer will not use the Software in excess of, a single hardware chassis or card or that number of agents, concurrent users, sessions, IP addresses, ports, seats, servers or sites specified in the applicable purchase order which has been accepted by Uplogix or its authorized representative and for which Customer has paid the required license fee. Customer will not transfer the Software to another hardware device except in the event of a hardware malfunction.

Unless otherwise expressly provided in the Documentation, Customer will use the Software solely as embedded in, for execution on, or (where the applicable Documentation permits installation on non-Uplogix equipment) for communication with Uplogix equipment owned or leased by Customer and used for Customer's internal business purposes.

Certain third party software products provided by Uplogix ("Third Party Software Products") may have a separate license directly from the third party vendor, which license is included in the Third Party Software Product packaging. Such Third Party Software Product license will apply instead of the license set forth in this Agreement. Further, the Software may include open source software ("OSS"). The license terms associated with OSS require that Uplogix provide copyright and license information to Customer. A list of the OSS included in the Software and applicable license terms are available at Uplogix's website (www.uplogix.com) or in Uplogix's on-line user documentation for the Software. ALL THIRD PARTY SOFTWARE PRODUCTS AND OSS ARE PROVIDED BY UPLOGIX ON AN "AS IS" BASIS.

Evaluation copies of the Software are provided only for the term set forth in Customer's applicable purchase order accepted by Uplogix or its authorized representative or as set forth in the applicable quote provided by Uplogix or its authorized representative. For evaluation or beta Software copies for which Uplogix does not charge a license fee, and for any OSS, the above requirement to pay license fees does not apply.

General Limitations. This is a license, not a transfer of title, to the Software and Documentation, and Uplogix retains ownership of all copies of the Software and Documentation. The Software and Documentation contain trade secrets of Uplogix, its suppliers and licensors, including, without limitation, the specific internal design and structure of individual programs and associated interface information. Accordingly, except as otherwise expressly provided under this Agreement, Customer will have no right, and Customer will not:

> (a) transfer, assign or sublicense its license rights, or provide an interest, to any other person or entity, or use the Software on unauthorized or secondhand Uplogix equipment; any attempted transfer, assignment, sublicense or use will be void and any security interest granted will not allow the secured party to use or transfer the Software;

> (b) make error corrections to or otherwise modify or adapt the Software or create derivative works based upon the Software, or permit third parties to do the same;

> (c) reverse engineer or decompile, disassemble or otherwise reduce the Software to human-readable form, except to the extent such a prohibition would violate applicable law;

> (d) use or permit the Software to be used to perform services for third parties, whether on a service bureau, time sharing, subscription or rental basis or otherwise, without the express written authorization of Uplogix;

> (e) disclose results of any Software benchmark tests without Uplogix's prior written consent;

> (f) install any portion of the Software except solely for the purpose of integration with the Uplogix components as specified in the Documentation;

(g) make copies of the Software, except to the extent for a sufficient number of copies for Customer's licensed use and backup purposes; or

(h) disclose, provide, or otherwise make available trade secrets contained within the Software and Documentation in any form to any third party without the prior written consent of Uplogix. Customer will implement reasonable security measures to protect such trade secrets.

To the extent required by law, and at Customer's written request, Uplogix will provide Customer with interface information needed to achieve interoperability between the Software and another independently created program, on payment of Uplogix's applicable fee, if any. Customer will observe strict obligations of confidentiality with respect to such information and will use such information in compliance with applicable terms and conditions upon which Uplogix makes such information available.

Software, Upgrade and Additional Copies. For purposes of this Agreement, "Software" includes (and the terms and conditions of this Agreement will apply to) computer programs including, without limitation, firmware, as provided to Customer by Uplogix or an authorized Uplogix reseller, and any upgrades, updates, bug fixes or modified versions thereto (collectively, "Upgrades") or backup copies of the Software licensed or provided to Customer by Uplogix or an authorized Uplogix reseller. The term "Software" does not include Third Party Products. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT: (a) CUSTOMER HAS NO LICENSE OR RIGHT TO USE ANY ADDITIONAL COPIES OR UPGRADES UNLESS CUSTOMER, AT THE TIME OF ACQUIRING SUCH COPY OR UPGRADE, ALREADY HOLDS A VALID LICENSE TO THE ORIGINAL SOFTWARE AND HAS PAID THE APPLICABLE FEE FOR THE UPGRADE OR ADDITIONAL COPIES, (b) USE OF UPGRADES IS LIMITED TO UPLOGIX EQUIPMENT FOR WHICH CUSTOMER IS THE ORIGINAL END USER PURCHASER OR LESSEE OR WHO OTHERWISE HOLDS A VALID LICENSE TO USE THE SOFTWARE WHICH IS BEING UPGRADED, AND (c) THE MAKING AND USING OF ADDITIONAL COPIES IS LIMITED TO NECESSARY BACKUP PURPOSES ONLY.

Proprietary Notices. Customer will maintain and reproduce all copyright and other proprietary notices on all copies, in any form, of the Software in the same form and manner that such copyright and other proprietary notices are included on the Software. Except as expressly authorized in this Agreement, Customer will not make any copies or duplicates of any Software without the express prior written permission of Uplogix.

Term and Termination. This Agreement and the license granted herein will remain effective until terminated. Customer may terminate this Agreement and the license at any time by destroying all copies of the Software and Documentation. When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Uplogix shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer. All confidentiality obligations of Customer and all limitations of liability and disclaimers and restrictions of warranty will survive termination of this Agreement. In addition, the provisions of the sections titled "U.S. Government End User Purchasers" and "General Terms Applicable to the Limited Warranty Statement and End User License" will survive termination of this Agreement.

Customer Records. Customer grants Uplogix and its independent accountants the right to examine Customer's books, records and accounts during Customer's normal business hours and subject to Government security requirements to verify compliance with this Agreement. In the event such audit discloses non-compliance with this Agreement, Customer will promptly pay to Uplogix or its authorized reseller the appropriate license fees, plus the reasonable cost of conducting the audit.

Export. Software and Documentation, including technical data, may be subject to U.S. export control laws, including the U.S. Export Administration Act and its associated regulations, and may be subject to export or import regulations in other countries. Customer will comply with all such regulations and acknowledges that it has the responsibility to obtain licenses to export, re-export, or import Software and Documentation.

U.S. Government End User Purchasers. If Customer is an agency, department, or other entity of the United States Government ("Government"), the use, duplication, reproduction, release, modification, disclosure or transfer of the Software, Documentation, Specifications or other related materials of any kind, including technical data ("Software and Documentation"), is restricted in accordance with Federal Acquisition Regulation ("FAR") 12.212. The Software and Documentation is commercial computer software and commercial computer software documentation. The use of the Software and Documentation is further restricted in accordance with the terms of this Agreement, or any modification thereto.

Third Party .. The programs provided by Oracle included in the Software are subject to a restricted license and may only be used in conjunction with the Software. Oracle is not required to perform any obligations for Customer. The results of the audit performed by Uplogix with respect to the Oracle programs may be reported to Oracle. Some Oracle programs provided with the Software may contain source code and such source code is subject to the terms and conditions of this Agreement.

General Terms Applicable to the Limited Warranty Statement and End User License Agreement.

Disclaimer of Liabilities. REGARDLESS OF WHETHER ANY REMEDY SET FORTH HEREIN FAILS OF ITS ESSENTIAL PURPOSE OR OTHERWISE, IN NO EVENT WILL UPLOGIX OR ITS SUPPLIERS OR LICENSORS BE LIABLE FOR ANY LOST REVENUE, PROFIT, OR LOST OR DAMAGED DATA, BUSINESS INTERRUPTION, LOSS OF CAPITAL, OR FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL, OR PUNITIVE DAMAGES, HOWEVER CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY OR WHETHER ARISING OUT OF THE USE OF OR INABILITY TO USE SOFTWARE OR OTHERWISE AND EVEN IF UPLOGIX OR ITS SUPPLIERS OR LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. In no event will Uplogix's or its suppliers' or licensors' liability to Customer, whether in contract, tort breach of warranty, or otherwise, exceed the price paid by Customer for the Software that gave rise to the claim or if the Software is part of another Product, the price paid for such other Product. BECAUSE SOME STATES OR JURISDICTIONS DO NOT ALLOW LIMITATION OR EXCLUSION OF CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE ABOVE LIMITATION MAY NOT APPLY TO YOU. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO (1) PERSONAL INJURY OR DEATH RESULTING FROM LICENSOR'S NEGLIGENCE; (2) FOR FRAUD; OR (3) FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW.

Customer agrees that the limitations of liability and disclaimers set forth herein will apply regardless of whether Customer has accepted the Software or any other product or services delivered by Uplogix. Customer acknowledges and agrees that Uplogix has set its prices and entered into this Agreement in reliance upon the disclaimers of warranty and the limitations of liability set forth herein, that the same reflect an allocation of risk between the parties (including the risk that a contract remedy may fail of its essential purpose and cause consequential loss), and that the same form an essential basis of the bargain between the parties.

The Limited Warranty and the End User License Agreement will be governed by and construed in accordance with the Federal laws of the United States. The United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act as it may be enacted in the applicable jurisdiction will not apply to this Agreement. If any portion hereof is found to be void or unenforceable, the remaining provisions of the Agreement will remain in full force and effect. Except as expressly provided herein, this Agreement constitutes the entire agreement between the parties with respect to the license of the Software and Documentation and supersedes (except as set forth in the order of precedence paragraph set forth at the beginning of this Agreement) any conflicting or additional terms contained in any purchase order or elsewhere, all of which terms are excluded. This Agreement has been written in the English language, and the English version will govern.