

TERMS AND CONDITIONS FOR THE SALE OF PRODUCTS AND THE PROVISION OF SERVICES BY GARRISON

1. Definitions

1.1 Capitalised terms in this document shall have the meaning set out below:

Active Estate	all Garrison Products (as defined further below) owned by the Customer or its Affiliates unless agreed in writing by both parties to be out of the scope of these Terms and Conditions;
Affiliate	any entity that controls, is controlled by or is under common control with a Party, where "control" means ownership of more than fifty percent (50%) of the outstanding securities representing the right to vote for the election of directors or other managing authority of a Party;
Agreement	the Order (as defined further below) along with the Order Acknowledgement, the present Terms and Conditions (as defined further below), the EULA (as defined further below) and the AUP (as defined further below);
Acceptable Use Policy or AUP	means Garrison's acceptable use policy made available at www.garrison.com/legal , as amended from time to time;
Authorised User	any contact of the Customer who has been authorized to engage with Garrison for Services purposes, as notified by the Customer to Garrison, subject to the maximum number of contacts set out in Schedule 1;
Business Day	any day from Monday to Friday (inclusive) other than UK Federal holidays;
Business Hours	09:00 - 17:00 US East Coast Time on a Business Day;
Customer	the entity that signs the Order for Products and Services save as otherwise provided under separate written agreement with Garrison;
Documentation	any documentation, in printed, electronic, or other forms (e.g. user manuals, on-line help files, technical manuals, and any other materials) provided by Garrison to the Customer, that describe the installation, operation, use or technical specifications of the Software or Hardware or in any way relating to the Products;
Effective Date	the date on which the Agreement comes into force as set out in Section 2.3;
End User License Agreement or EULA	the end user agreement setting out the terms under which the Software is licensed to the Customer either through: (i) the license agreement provided with the Hardware in respect of the Software incorporated therein; or (ii) the license agreement provided with the Software installed by Customer, in each case as may be amended by Garrison from time to time. Copies of the current EULAs are available at www.garrison.com/legal ;
Excluded Maintenance	takes the meaning as set out in Par. 5.1 of Schedule 1;
Fees	the fees payable by the Customer for the Products and the Services as determined in accordance with Schedule 1 and set out in the Order;
Field Replaceable Unit or FRU	fans, power supplies or other components of the Hardware that are easily replaceable by the Customer with Garrison's instructions;
Good Industry Practice	the exercise of that degree of skill, diligence, prudence, and foresight, which would reasonably and ordinarily be expected from a skilled and experienced technology company, engaged in the same type of undertaking in relation to activities of the same or similar scale and character;
Good Working Order	the Hardware is fully working, and all operational features are available;
Hardware	the hardware appliances specified in the Order that Garrison sells to the Customer under the Agreement;
Level of Support	the level of support as set out in the Order between the two levels of support (Standard or Premium) described in Schedule 1;
Order	the Garrison order form signed by the Customer and sent to Garrison;

Order Acknowledgement	the email sent by Garrison to the Customer confirming that Garrison has received the Order from the Customer and that Garrison accepted the Order, including any conditions Garrison attaches to such acceptance;
Party	each of the Customer and Garrison, and “Parties” shall mean both collectively;
Products	all or any of the Hardware and Software (as appropriate) as specified in the Order;
Professional Services	professional services to be delivered by Garrison engineers either remotely or on-site (as set out in the Order) in accordance with Schedule 1;
Quote	the written quote for Products and Services issued by Garrison to the Customer referencing the present Terms and Conditions associated with an Order;
Repaired Replaced Appliance or RMA	the repaired or replacement Hardware appliance provided by Garrison to the Customer in the case of a return of the Hardware to Garrison for repair/replacement in accordance with the process set out in Schedule 1;
Service(s)	the Support Services (as further defined below), along with any Professional Services (if any), to be provided by Garrison to the Customer under an Order among those described in Schedule 1;
Service levels or SLA	the service levels specified in Schedule 1;
Schedule 1	the schedule attached hereto containing: a) the description of the Support Services (as defined further below); b) the service level agreement provided under the applicable Level of Support as set out in the Order; and c) the terms applicable for the provision of any Professional Services (where any) as set out in the Order;
Software	the software, including any open source and third-party software incorporated in the Hardware or provided by Garrison to be installed by the Customer as specified in the Order and that is licensed to Customer by Garrison under this Agreement in accordance with the terms of the EULA;
Special Terms	the Order specific exceptions to these Terms and Conditions agreed between the Parties and expressly set out in the “Special Terms” section of the Order;
Support Certificate	the certificate of support and maintenance issued by Garrison to the Customer setting out the Support Effective Date for the Hardware delivered to the Customer;
Support Effective Date	the date stated in the Support Certificate from which the Warranty Period and the Support Term start for the Hardware delivered to the Customer;
Support Services	the support and maintenance services described in Schedule 1 to be provided by Garrison to the Customer in relation to the Products in accordance with these Terms and Conditions;
Support Term	the term of duration of the Support Services set out in the Order and commencing on the Support Effective Date;
Terms and Conditions	the present terms and conditions for the sale of Products and provisions of Services by Garrison to the Customer, including Schedule 1 attached hereto, the EULA and the AUP;
Update	a software download provided at no additional charge from Garrison that provides fixes for features that do not work as intended, or adds minor software enhancements or compatibility improvements;
Upgrade	a new version of a Software Product, that offers a significant change or major improvement over the Customer’s current version;
US Federal Holidays	the days as defined in Title V of the United States Code (5 U.S.C. § 6103) as may be amended from time to time; and
Warranty	takes the meaning as described in Section 3.2.

1.2 Unless this context otherwise requires (i) ‘including’ and similar words do not imply any limit; (ii) the terms ‘days’ refer to calendar days unless expressly stated otherwise; (iii) any obligation on any party not to do or to omit to do anything is to include an obligation not to allow that thing to be done or omitted to be done; and (iv) use of section headers in these Terms and Conditions is for convenience only and will not have any impact on the interpretation of any provision.

2 Contract Formation

2.1 These Terms and Conditions apply to any purchase and any use of Products and Services by the Customer.

- 2.2 These Terms and Conditions neither commit the Customer to place, nor require Garrison to accept, an Order.
- 2.3 An Order shall be treated as an offer by the Customer to contract with Garrison and shall become binding on Garrison upon written acceptance of the Order as stated in the Order Acknowledgement (“**Effective Date**”).
- 2.4 Where following the acceptance by the Customer of a Quote for Products and Services from Garrison, the Customer submits its own ordering document (and not an Order) aimed at ordering the latter may at its sole discretion Garrison may decide to accept use by the Customer of an ordering document issued by the Customer itself (instead of an Order) and, subject to Section 2.5, shall become binding on Garrison only if and to the extent Garrison has accepted it in writing via an Order Acknowledgement.
- 2.5 No pre-printed or similar terms and conditions contained in, referred to in, or purported to be incorporated in any Customer ordering document, invoice, or other document delivered or made available by the Customer to Garrison shall be applicable, even if signed by the Parties and in case of conflict these Terms and Conditions shall prevail.
- 2.6 Exception to these Terms and Conditions may be agreed between the Parties in relation to a specific Order, in which case such exceptions shall only be enforceable where expressly captured into the Special Terms section of the Order and provided that express reference is made to the provisions of these Terms and Conditions from which the Parties agree to deviate.
- 2.7 In case of conflict between any of the provisions contained in these Terms and Conditions, and any other provisions contained in the attached Schedule 1, the Order, the EULA or the AUP, the following order of precedence shall apply:
- a) first any Order specific exceptions to the Terms and Conditions as set out in the Special Terms section of the Order in accordance with Section 2.5;
 - b) then the provisions contained in the rest of the Order;
 - c) then the EULA as far as use of the Products is concerned;
 - d) then the provisions contained in the main body of these Terms and Conditions;
 - e) then the provisions contained in Schedule 1 as far as the Service description and Service Levels are concerned; and
 - f) finally, the provisions contained in the AUP.

3 Support Services and Warranty

- 3.1 In exchange for the payment of the Support Fees, Garrison shall provide the Customer with the Support Services for the Support Term as described in Schedule 1. Garrison will use its reasonable endeavors to comply with the Service Levels applicable to the Level of Support purchased by the Customer, though given the unknown nature of the type or recurrence of the fault, compliance by Garrison with the Service Levels cannot be assured.
- 3.2 On the Customer informing Garrison that the Hardware is malfunctioning, has failed, or is otherwise not in Good Working Order, Garrison shall either: (i) deploy FRUs (if applicable) accompanied with instructions on how to replace the faulty component(s); or (ii) seek a return of the Hardware for repair/replacement and ship an RMA to the Customer; in either case, in accordance with the processes and Service Levels set out in Schedule 1 (the “**Warranty**”).
- 3.3 The Warranty shall commence on the Support Effective Date and continue for a period of six (6) month thereafter (the “**Warranty Period**”).
- 3.4 For so long as the Customer maintains the Products under Support and is current with the payment of the Fees for the Support Services Garrison will provide Hardware support above and beyond the Warranty.
- 3.5 The Support Services include replacement parts for all Hardware elements (including FRUs) and is subject to the processes and Service Levels set out in Schedule 1.
- 3.6 Save for exceptional circumstances (such as a global shortage of parts not attributable to Garrison’s own procurement processes) Garrison will provide six (6) months’ notice of end of support, which notice shall not be served earlier than three (3) years from the Effective Date for the relevant Hardware.
- 3.7 Except for the express representations and warranties stated in this Section 3, Garrison makes no additional representation, warranty term or condition of any kind whether express, implied (either in fact or by operation of law), or statutory, as to any matter whatsoever to the fullest extent permitted by law. Garrison expressly disclaims all implied warranties of merchantability, fitness for a particular purpose, quality, accuracy, and non-infringement. Garrison does not warrant against interference with the enjoyment of the Products. Garrison does not warrant that the Products are error-free or that operation of the Products shall be secure or uninterrupted. Garrison does not warrant that any information provided through the Products is accurate or complete or that any information provided through the Products shall always be available. Garrison exercises no control over and expressly disclaims any liability arising out of or based upon the results of the Customer’s use of the Products.

4 Delivery of the Products

- 4.1 Garrison shall use reasonable endeavors to deliver the Products by the delivery date as set out in the Order however, time shall not be of the essence.

4.2 Unless otherwise expressly agreed in writing between the Parties, all deliveries shall be made Delivered Duty Paid (DDP) (INCOTERMS 2020) to the Customer in accordance with this Agreement. Garrison expressly reserves the right to effect delivery of Products ordered in any number of separate shipments, and the modes of transport and carriers shall be decided at Garrison's discretion.

4.3 Title shall pass to the Customer upon receipt by Garrison of full payment of the Fees.

5 Use of the Products

5.1 Customer shall use the Products and Documentation in compliance with all applicable laws and regulations.

5.2 Garrison grants to the Customer a limited right to use the Products and Documentation under this Agreement. The Customer will not have any rights to the Products or Documentation not expressly granted to Customer in accordance with this Agreement.

5.3 Except as otherwise expressly provided in other written agreement between the Parties (e.g. reseller agreement), the Customer shall at all times use the Products solely for its internal business purposes.

5.4 Garrison grants the Customer a limited right to use the Products and Documentation under this Agreement. The Customer shall not have any rights to the Products or Documentation not expressly granted to the Customer in this Agreement.

5.5 Subject to the Terms and Conditions and conditions of this Agreement and the EULA, Garrison grants the Customer and its Authorised Users:

- a) a perpetual, worldwide, non-exclusive, personal (except as permitted in Section 17.1), revocable license without right of sublicense to use the object code versions of the Software.
- b) a limited, worldwide, non-exclusive, personal (except as permitted in Section 17.1), revocable license, without right of sublicense, during the Term to reproduce, without modification, and internally use a reasonable number of copies of the Documentation solely in connection with use of the Services in accordance with this Agreement.

5.6 Except as otherwise explicitly provided in this Agreement or other written agreement between the Parties or as may be expressly permitted by applicable law, the Customer shall not, and shall not permit or authorize third parties to:

- a) rent, lease, or otherwise permit third parties to use the Products or Documentation;
- b) use the Products or Services to provide services to third parties (e.g. as a service bureau);
- c) use the Products or Services for any benchmarking activity or in connection with the development of any competitive product; nor
- d) circumvent or disable any security or technological features or measures of the Products.

5.7 The Customer shall use all reasonable endeavors to prevent any unauthorised use of the Products and Documentation and immediately notify Garrison in writing of any actual or suspected unauthorised use that comes to the Customer's attention. If any unauthorised use occurs as a result of access to the Products directly or indirectly attributable to the Customer, the Customer shall take all steps reasonably necessary to immediately terminate the unauthorised use. The Customer shall cooperate and assist with any actions taken by Garrison to prevent or terminate unauthorised use of the Products or Documentation.

5.8 If the Customer provides any feedback to Garrison concerning the functionality and performance of the Products (including identifying potential errors and improvements), the Customer hereby assigns to Garrison all right, title, and interest in and to the feedback, and Garrison shall be free to use the feedback without any payment or restriction. Any such feedback from the Customer shall be considered as Garrison confidential information and treated accordingly.

6 Garrison's Obligations

6.1 In exchange for the Customer's payment of the Fees, Garrison shall provide the Products and Services to the Customer in accordance with these Terms and Conditions and Good Industry Practice.

6.2 Garrison shall ensure that its staff engaged in the provision of the Services to the Customer are suitably qualified, skilled, experienced, and trained in the work which they are to perform and will at all times carry out the Services in a workmanlike and professional manner.

6.3 Garrison alone shall be responsible for the supervision, direction, control, wages, taxes, national insurance, and benefits of its staff. Garrison assumes full responsibility for their acts and omissions and acknowledges that they are not employees or agents of the Customer.

6.4 Time shall not be of the essence regarding Garrison's obligations under these Terms and Conditions.

6.5 Garrison will use reasonable endeavors to comply with the Service Levels, though given the unknown nature of the type or recurrence of the fault, compliance by Garrison with the Service Levels cannot be assured.

7 The Customer's Obligations

7.1 The Customer shall:

- a) pay the Fees at the time and in the manner set out in the Order;
 - b) comply with these Terms and Conditions, including the requirements set out in Schedule 1;
 - c) provide a suitable installation environment for the Products that meets the standards provided by Garrison;
 - d) provide Garrison with a list of Authorised Users. Garrison will only respond to tickets or contact raised by such Authorised Users;
 - e) co-operate with Garrison in any manner reasonably required by Garrison in order to carry out the Services, including provision of information and data;
 - f) report any suspected bugs or faults in the Hardware or Software to Garrison in a timely manner, and in accordance with the ticketing processes set out in Schedule 1;
 - g) follow Garrison's procedures when requesting the Services;
 - h) provide Garrison with reasonable access to all necessary personnel to answer questions or resolve problems reported by the Customer regarding the Products;
 - i) as soon as reasonably practicable, implement all Upgrades and Updates provided by Garrison under these Terms and Conditions;
 - j) provide sufficiently stable and reliable means of communication via phone, web, or email between the Customer and Garrison to enable Garrison to provide the Services; and
 - k) use reasonable endeavors to resolve internally any support questions prior to requesting the Services pursuant to these Terms and Conditions.
- 7.2 The Customer acknowledges and agrees that failure to have any or all information or access available as needed by Garrison in order to provide the Services may result in delays in Garrison's response; may hinder Garrison's ability to perform the Services; and/or may cause incorrect fulfilment. Garrison will not be responsible for any such delays or inability to perform (unless due to causes attributable to Garrison).
- 7.3 The Customer shall maintain the same level of support (as described in Schedule 1) on the entirety of the Customer's Active Estate throughout the Support Term. Where an Order for Support Services has lapsed and is subsequently renewed, the renewal Order shall be backdated to the expiry date of the Support Services as well as containing a commitment to the upcoming year. The Customer shall be responsible for the payment of an additional one-off fee equal to 20% of the Fees for the Support Services for the lapsed period. Such fee will include any support from Garrison to ensure the Products are in a known supported configuration. Should the Customer fail to do so, Garrison may reject or suspend any new Order for Products or Services. Notwithstanding the foregoing, Garrison shall not be obliged to provide Services on Hardware or Software (i) that has been deployed or redeployed outside of the jurisdiction of the original delivery; or (ii) unless contrary to applicable law, that was purchased second-hand or refurbished other than through a Garrison approved supplier.

8 Fees and Payment Terms

- 8.1 Save as otherwise agreed and expressly set out in the Special Terms section of the Order:
- a) all Fees will be invoiced on the date of delivery of the Hardware and annually thereafter for the Support Term; and
 - b) all invoiced Fees shall be payable within thirty (30) days of issue of the invoice by Garrison.
- 8.2 Garrison reserves the right to review the Fees and may increase the Fees in line with the Consumer Price Index (CPI) published by the U.S. Bureau of Labor Statistics (or if the index no longer exists such other measure of national inflation that Garrison may determine), for the previous twelve (12) months.
- 8.3 Any amount not paid when due shall be subject to finance charges equal to 1.5% of the unpaid balance per month determined and compounded daily from the date due until the date paid for (or, if lower, shall be the highest rate permitted by law). The Customer shall reimburse any costs or expenses (including, but not limited to, reasonable legal fees) incurred by Garrison to collect any amount that is not paid when due.
- 8.4 Amounts due from the Customer under this Agreement may not be withheld or offset by the Customer against amounts due to the Customer for any reason. All amounts payable under this Agreement are denominated in the currency specified in the Quote, and Customer shall pay all such amounts in the currency specified, free of currency exchange costs, bank charges, withholdings or deductions.
- 8.5 If the Customer in good faith disputes any portion of the Fees contained in an invoice, the Customer shall pay the undisputed portion of the invoice on the due date in full and submit a documented claim for the disputed amount prior to the due date. As a minimum such documented claim shall set out the amount in dispute, the reason for the dispute and provide such evidence as shall be reasonably necessary to support the dispute. The Parties shall negotiate in good faith to resolve the dispute, provided that if the dispute cannot be resolved within thirty (30) days of the date of the invoice, either Party may institute legal proceedings. If Customer does not submit a documented claim prior to the due date for payment of the invoice, the Customer waives all rights to dispute the invoice.
- 8.6 All Fees under this Agreement are exclusive of Sales Tax or any similar indirect or sales, use or excise taxes that may be applicable. If any such sales tax is chargeable by Garrison, this shall be added to the agreed price (by way of separate

invoice, if those fees have already been invoiced) and shall be paid in addition by the Customer. Other than net income taxes imposed on Garrison, the Customer shall bear all taxes, duties, and other governmental charges (collectively, "Taxes") resulting from this Agreement. The Customer shall pay any additional Taxes as are necessary to ensure that the net amounts received by Garrison after all such Taxes are paid are equal to the amounts that Garrison would have been entitled to in accordance with this Agreement as if the taxes did not exist.

8.7 Upon the Customer's request, Garrison may agree to invoice an Affiliate of the Customer and such agreement shall be subject to the Customer remaining liable for any non-payment by the Affiliate.

9 Term, Suspension and Termination

9.1 The Agreement shall commence upon the Effective Date and continue for the Support Term, unless terminated earlier in accordance with the provisions of this Agreement.

9.2 In advance of the expiry of the Support Term, Garrison will send the Customer a new Quote for the proposed renewal.

9.3 If the Customer commits a material breach and the breach cannot be remedied or the Customer fails to remedy the breach within thirty (30) days of Garrison's written notification, Garrison may terminate the Agreement with immediate effect upon written notice to the Customer.

9.4 Without limitation to any of its other rights or remedies, Garrison may suspend delivery of any Products or provision of any Services with immediate effect upon written notice to the Customer: a) if the Customer fails to timely pay any Fees and until receipt by Garrison of all amounts due; b) in case of breach of the EULA or the AUP; c) in any other case where Garrison is entitled to terminate the Agreement.

9.5 Either Party may terminate this Agreement by notice in writing with immediate effect where Garrison or the Customer: (i) passes a resolution for winding up or dissolution (otherwise than for the purposes of and followed by an amalgamation or reconstruction) or an application is made for, or any meeting of its directors or members resolves to make an application for an administration order in relation to it or any party gives or files notice of intention to appoint an administrator of it or such an administrator is appointed, or the court makes a winding-up order, or the company makes a composition or arrangement with its creditors, or an administrative receiver, receiver, manager or supervisor is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a fixed or floating charge; or (ii) is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986; or (iii) any similar event occurs under the law of any other jurisdiction.

9.6 If this Agreement is terminated for any reason, (i) the Customer shall pay to Garrison any Fees or other amounts that have accrued prior to the effective date of the termination, (ii) any and all liabilities accrued prior to the effective date of the termination shall survive.

9.7 Any provision of this agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Agreement shall remain in full force and effect, including but not limited to this Section 9.7 and Sections, Section 3.7 (disclaimer of warranties and representations), 5.1 (use in compliance with the law), Section 5.6 (use restrictions), Section 8.5 (disputed invoices), Section 9.5 (termination for insolvency events), Section 10 (Compliance with Laws; Export Control), Section 12 (Limitation of Liability); Section 13 (Customer Indemnification); Section 14 (IP Infringement); Section 15 (Procedure for managing claims); Section 16 (Confidentiality); Section 17 (Publicity); Section 19 (Force Majeure), Section 20 (Entire Agreement), Section 21 (Miscellaneous) and Section 22 (Governing Law and Dispute Resolution).

10 Compliance with Laws; Export Control

10.1 The Customer shall comply with all applicable laws regarding use of the Products. The Customer shall not engage in any illegal activity in any relevant jurisdiction and acknowledges that Garrison reserves the right to notify appropriate law enforcement in the event of such illegal activity.

10.2 The Customer agrees to comply fully with all applicable export laws, restrictions, and regulations to ensure that the Products and any technical data related thereto are not exported or re-exported directly or indirectly in violation of, or used for any purposes prohibited by such laws and regulations:

a) **Termination if contract affected by sanctions**

Garrison shall be entitled to terminate this Agreement with immediate effect if Restrictive Sanctions measures adopted by the United Nations or implemented by the United States, United Kingdom, European Union, a European Union Member State ("Member State"), or directly or indirectly, affects the ability of the Parties to perform their duties; "Restrictive Sanctions" means restrictive sanctions measure adopted by the United Nations or implemented by the United States, United Kingdom, European Union, or a Member;

b) **Warranty for economic sanctions and for end-use controls**

Customer warrants and represents to Garrison that (i) the performance of their duties shall not result in any funds, economic resources, or wider benefits being made available, directly or indirectly, to any individual, entity, or body

designated under Restrictive Sanctions and (ii) it shall not sell, export, transfer, re-export, or re-transfer any Software which may be intended for a “**Relevant End-use**” unless prior authorization by a competent authority has been granted. A “**Relevant End-use**” includes: military use; or, use in connection with chemical, biological or nuclear weapons or other nuclear explosive devices or the development, production, maintenance or storage of missiles capable of delivering such weapons; or, use in connection with Iran’s enrichment-related, reprocessing, or heavy water-related activities;

c) **Cooperation with compliance**

Where Garrison is required by a competent authority to provide records and/or information, Customer upon request by Garrison, shall promptly provide Garrison with all information, pertaining to the particular end users, the particular destinations and particular use of the Products;

d) **Indemnity for actions by counterparty**

Customer shall indemnify and hold harmless Garrison from and against any claim, proceeding, action, fine, loss, cost and damages arising out of or relating to any non-compliance of Customer with (i) Section 8.1b) above or (ii) with Restrictive Sanctions and shall compensate Garrison for all losses and expenses resulting thereof.

10.3 The Parties agree that the Products are classified as dual-use items and are therefore subject to export controls.

11 Data Protection

11.1 In this Section “**Data Protection Legislation**” means any law, rule, regulation, decree, statute, regulation, mandate, codes of practice, guidelines and decisions of any relevant regulator or authority applicable to Garrison or the Customer relating to data security, data protection and/or privacy, including without limitation, the Federal Trade Commission Act, and the California Consumer Privacy Act of 2018 (California Civil Code §§ 1798.100 to 1798.199) and its implementing regulations, as amended or superseded from time to time (“**CCPA**”).

11.2 In this Section “**Personal Data**” has the meaning given to it under the relevant Data Protection Legislation.

11.3 The Parties shall comply with all applicable requirements of the Data Protection Legislation.

11.4 The Customer warrants that it has all necessary legal basis and notices in place to enable the lawful transfer and processing of the Personal Data by Garrison which it has obtained in the course of its business with the Customer (including, without limitation, the provision of Products under this Agreement).

11.5 Each Party warrants that it shall only use Personal Data for the Agreed Purpose and, Garrison shall whenever required in the ordinary course of business, be entitled to pass such Personal Data on to its suppliers.

12 Limitation of Liability

12.1 IN NO EVENT SHALL GARRISON OR ITS SUPPLIERS, AGENTS, OR DISTRIBUTORS BE LIABLE FOR (I) LOSS OF REVENUE; (II) LOSS OF ACTUAL OR ANTICIPATED PROFITS; (III) DOWNTIME COSTS; (IV) LOSS OF CONTRACTS; (V) LOSS OF THE USE OF MONEY; (VI) LOSS OF ANTICIPATED SAVINGS; (VII) LOSS OF BUSINESS; (VIII) LOSS OF OPPORTUNITY; (IX) LOSS OF GOODWILL; (X) LOSS OF REPUTATION; (XI) LOSS OF, DAMAGE TO OR CORRUPTION OF DATA; OR (XII) ANY INDIRECT OR CONSEQUENTIAL LOSS AND SUCH LIABILITY IS EXCLUDED WHETHER IT IS FORESEEABLE, KNOWN, FORESEEN, OR OTHERWISE. FOR THE AVOIDANCE OF DOUBT, SECTION 12.1(I)-12.1(XI) APPLY WHETHER SUCH LOSSES ARE DIRECT, INDIRECT, CONSEQUENTIAL OR OTHERWISE AND REGARDLESS OF THE THEORY OF LIABILITY OR WHETHER OR NOT GARRISON WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGE OR LOSS.

12.2 IN NO EVENT SHALL GARRISON’S TOTAL LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT, FROM ALL CLAIMS OR CAUSES OF ACTION AND UNDER ALL THEORIES OF LIABILITY, EXCEED IN AGGREGATE THE TOTAL PAYMENTS ACTUALLY MADE BY THE CUSTOMER TO GARRISON FOR THE PRODUCTS AND SERVICES DURING THE TWELVE (12) MONTH PERIOD PRIOR TO ANY SUCH CLAIM OR CAUSE OF ACTION OR TWO HUNDRED AND FIFTY THOUSAND UNITED STATES DOLLARS (\$250,000 USD) WHICHEVER IS HIGHER.

12.3 NOTHING IN THIS AGREEMENT SHALL LIMIT OR EXCLUDE LIABILITY FOR: (I) DEATH OR PERSONAL INJURY CAUSED BY THE NEGLIGENCE OF GARRISON OR ANY OF ITS EMPLOYEES OR AGENTS; OR (II) FRAUD OR FRAUDULENT MISREPRESENTATION; OR (III) ANY OTHER MATTER WHICH CANNOT, AS A MATTER OF LAW, BE EXCLUDED OR LIMITED.

12.4 EACH PROVISION OF THIS AGREEMENT THAT PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES, OR EXCLUSION OF DAMAGES IS TO ALLOCATE THE RISKS OF THIS AGREEMENT BETWEEN THE PARTIES. THIS ALLOCATION IS REFLECTED IN THE PRICING OFFERED BY GARRISON TO CUSTOMER AND IS AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES. EACH OF THESE PROVISIONS IS SEVERABLE AND INDEPENDENT OF ALL OTHER PROVISIONS OF THIS AGREEMENT.

13 Customer Indemnification

- 13.1 In this Section “**Associates**” means officers, directors, employees, consultants, affiliates, subsidiaries and agents, and a “**Claim**” is any claim, demand, suit, loss, damage, liability, cost or expense (including reasonable professional fees and costs as incurred). The Customer shall indemnify, defend, and hold harmless, Garrison and its Associates from and against any Claim directly or indirectly attributable to any third party claim or administrative criminal proceeding arising out of or relating to (i) the Customer’s unauthorised use of, or misuse of, the Products; (ii) the Customer’s violation of any portion of these Terms and Conditions, any representation, warranty, or agreement referenced in these Terms and Conditions, or any applicable law or regulation; (iii) the Customer’s violation of any third party right, including any intellectual property right, including any intellectual property right or publicity, confidentiality, other property, or privacy right (including under the Data Protection Regulations); or (iv) any dispute or issue between the Customer and any third party.

14 Intellectual Property Infringement

- 14.1 Garrison shall defend, at its expense, any third-party action or suit brought against the Customer alleging that use of the Products infringes or misappropriates the third party’s patent, copyright, trademark, or trade secret (an “**IPR Claim**”), and Garrison shall pay any costs and damages awarded in final judgment against the Customer or agreed to in settlement by Garrison that are attributable to that IPR Claim.
- 14.2 In the event of an IPR Claim, Garrison shall at its sole option and expense either: (i) secure the right to the continued use of the Documents, Products and/or Services which are the subject of the IPR Claim; or (ii) replace or modify such Documents, Products and/or Services with non-breaching ones that are functionally equivalent; or (iii) if options (i) and (ii) cannot be accomplished despite Garrison’s reasonable efforts, then Garrison may require that the Customer returns them to Garrison, in which case, the sole remedy available to the Customer is to recover the remaining net book value costs of any Products (as depreciated on a straight-line five (5) year basis, commencing on the date of receipt by the Customer of such Product) and the pro-rated value of the pre-paid Services from Garrison.
- 14.3 Garrison’s obligations under this Section shall not apply to the extent any Claim results from or is based on (i) modifications to the Product made by a party other than Garrison or its Affiliates; (ii) the combination, operation, or use of the Product with a hardware or software not supplied by Garrison, if a Claim would not have occurred but for such combination, operation or use; (iii) failure to use the most recent version or release of the Product; (iv) Garrison’s compliance with the Customer’s explicit or written designs, specifications, or instructions; or (v) use of the Product that is not in accordance with Garrison’s published specifications.
- 14.4 The foregoing terms state Customer’s sole and exclusive remedy for any IPR Claims.

15 Procedure for Managing Claims

- 15.1 The party seeking indemnification pursuant to Sections 13 or 14 (the “**Indemnified Party**”) shall (i) give the other party (the “**Indemnifying Party**”) prompt notice of the relevant claim; (ii) cooperate with the Indemnifying Party, at the Indemnifying Party’s expense, in the defense of that claim and (iii) give the Indemnifying Party sole control over the defense and settlement of that claim. The Indemnified Party shall have the right to participate in the defense with counsel of its choice at its own expense.

16 Confidentiality

- 16.1 “**Confidential Information**” means i) the existence and contents of this Agreement; and (ii) any information which is designated as ‘Confidential’, ‘Proprietary’, or some similar designation or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure of the information including product, business, market, strategic or other information or data relating to the subject matter of this Agreement, or the business or affairs of the disclosing party. “**Disclosed**” means disclosed whether in writing, orally, or by any or by inspection of tangible objects (including, but not limited to documents, prototypes, samples, plant, and equipment) or by any other means or medium (including but not limited to information retained on all types of medium including written, diagrammatical, software or other storage medium), and whether such disclosure takes place before or after the date of this Agreement.
- 16.2 Each party to this Agreement is referred to as the “**Recipient**” when it receives or uses the Confidential Information disclosed by the other party.
- 16.3 Recipient shall not use any Confidential Information for any purpose not expressly permitted by this Agreement, and shall disclose the Confidential Information only to the employees or contractors of Recipient who have a need to know the Confidential Information for purposes of this Agreement and who are under a duty of confidentiality no less restrictive than Recipient’s duty under this Section 15. Recipient shall protect the Confidential Information from unauthorised use, access, loss, theft or disclosure in the same manner as Recipient protects its own confidential or proprietary information of a similar nature and with no less than reasonable care.
- 16.4 Confidential Information shall not include any information that: (i) is, or becomes publicly known through no action or inaction of the Recipient in breach of this Agreement; (ii) is already in the possession of the Recipient at the time of disclosure by the disclosing party, as shown by the Recipient’s files and records; (iii) is obtained by the Recipient from a third party without a breach of the third party’s obligations of confidentiality; or (iv) is independently developed by the Recipient

without use of or reference to the disclosing party's Confidential Information, as shown by documents and other competent evidence in the Recipient's possession.

17 Publicity

- 17.1 No press or public announcements, circulars or communications relating to this Agreement or the subject matter of it shall be made or sent by either of the Parties without the prior written approval of the other Party, such approval not to be unreasonably withheld or delayed.
- 17.2 Notwithstanding Section 17.1, Garrison may refer to the Customer in its marketing materials, including, without limitation, on its website and in correspondence with prospective customers.

18 Insurance

- 18.1 The Customer will maintain in effect at all times during the performance of this Agreement such insurance policies with a reputable insurance company as it is required to hold under applicable law and such other policies as a prudent business conducting similar operations in the region would maintain, including but not limited to the following type of cover: public liability; products liability; professional indemnity (or errors and omissions cover); employer's liability cover. Coverage limits will be sufficient to cover the Customer's liabilities under this Agreement.
- 18.2 The Customer will provide Garrison copies of such documentation as it is reasonably required in evidence of the Customer's compliance with this Agreement.

19 Force Majeure

- 19.1 Except for any payment obligations, neither Party will be liable under the Agreement by reason of any failure or delay in the performance of its obligations under the Agreement caused by reason of a Force Majeure Event. "Force Majeure Event" shall mean any cause beyond a Party's reasonable control including, without limitation, acts of God or public enemy, civil war, insurrection or riot, fire, flood, explosion, earthquake, labor dispute causing cessation slowdown or interruption of work, epidemic, pandemic, governmental response to infectious disease, national emergency, act or omission of any governing authority or agency thereof; or inability after reasonable endeavors to procure equipment, data or materials from suppliers. Where a Force Majeure Event prevents delivery by Garrison, Garrison will have the right, at its option, without any penalty or liability, to terminate all or any part of the Agreement or to reschedule a delivery within a reasonable time.

20 Entire Agreement

- 20.1 This Agreement constitutes the entire agreement between the Parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations, and understandings between them, whether written or oral, relating to its subject matter. Each Party acknowledges that in entering into this agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance, or warranty (whether made innocently or negligently) that is not set out in this agreement. Each Party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

21 Miscellaneous

- 21.1 Each Party represents and warrants to the other that: (i) this Agreement has been duly executed and delivered and constitutes a valid and binding agreement enforceable against such party in accordance with its terms; and (ii) no authorization or approval from any third party is required in connection with such party's execution, delivery, or performance of this Agreement.
- 21.2 The Customer may not assign or transfer this Agreement or any of its rights, duties, or obligations hereunder, by operation of law or otherwise, without Garrison's prior written consent not to be unreasonably withheld or delayed.
- 21.3 Garrison shall have the right to assign or transfer this Agreement or any interest herein (including rights and duties of performance) to any entity, at any time, and without notice. Garrison may utilize subcontractors or other third parties to perform its duties under this Agreement so long as Garrison remains liable for all of its obligations under this Agreement.
- 21.4 This Agreement shall bind and inure to the benefit of the parties and their successors and permitted assigns.
- 21.5 If any provision of this Agreement is found to be illegal, unenforceable, or invalid the provision shall, to the extent required, be severed from this Agreement and the remaining portions of this Agreement shall remain in full force and effect.
- 21.6 The waiver by either party of any breach of any provision of this Agreement does not waive any other breach. The failure of any party to insist on strict performance of any covenant or obligation in accordance with this Agreement shall not be a waiver of such party's right to demand strict compliance in the future, nor shall the same be construed as a novation of this Agreement.
- 21.7 Garrison shall be and act as an independent contractor (and not as the agent or representative of the Customer) in the performance of this Agreement.

- 21.8 All notices, consents, and approvals under or in connection with this Agreement (i) shall be in writing; and (ii) shall be in the English language and shall be sent to the address set forth on the signature page of this Agreement. Unless there is evidence that it was received earlier, a notice is deemed given (i) at the time that the message enters the recipient's email server, if sent by electronic mail, or (ii) two (2) business days after posting it, if sent by post.
- 21.9 This Agreement may be amended only by a written document signed by both parties. The standard terms of any purchase order, receipt, or confirmation of acceptance or similar document submitted by the Customer to Garrison shall have no effect.
- 21.10 This Agreement may be executed in two or more counterparts, each of which is deemed to be an original, but all of which constitute the same agreement.

22 Governing Law and Dispute Resolution

- 22.1 The rights and obligations of the Parties under this Agreement will not be governed by the 1090 U.N. Convention of Contracts for the International Sale of Goods; rather such rights and obligations will be governed by and construed under the laws of the United States, without reference to its conflict of laws principles.
- a) If the Parties are unable to reach an agreement on any dispute arising in connection with this Agreement within fourteen (14) days after one party has notified the other of that dispute, then they will refer the matter to the contacts listed in the Quote, in an attempt to resolve the dispute within fourteen (14) days after the referral.
 - b) Any dispute in connection with this Agreement shall be a dispute to be resolved in accordance with the clause FAR 52.233-1, Disputes, which is incorporated here by reference.
- 22.2 Nothing in this Section 22 prevents either Party from seeking or obtaining injunctive relief from a competent court in any jurisdiction in relation to the use and/or disclosure of Confidential Information in that jurisdiction.



SCHEDULE 1 (US SUPPORT SERVICES)

www.garrison.com/legal