

## TERMS AND CONDITIONS

THIS AGREEMENT GOVERNS CUSTOMER'S USE, INCLUDING ANY BETA OR FREE TRIAL USE, OF IGNEOUS' CLOUD-BASED ENTERPRISE DATA CENTER MANAGEMENT SOLUTION PROVIDED AS A SERVICE (THE "SERVICES"), INCLUDING ANY IGNEOUS HARDWARE ("HARDWARE"), ANY SOFTWARE THAT IS INCLUDED IN THE HARDWARE AND ANY STANDALONE SOFTWARE THAT IS PROVIDED WITHOUT HARDWARE FOR USE ON CUSTOMER'S HARDWARE INCLUDING VIRTUAL MACHINE SOFTWARE OR ENDPOINT SOLUTIONS (COLLECTIVELY, "SOFTWARE"). THE HARDWARE WITH THE SOFTWARE INSTALLED SHALL BE REFERRED TO HEREIN AS THE "SYSTEM". THE SERVICES, HARDWARE AND SOFTWARE ARE ALL COLLECTIVELY REFERRED TO HEREIN AS "PRODUCTS".

BY ACCEPTING THIS AGREEMENT, EITHER BY CLICKING A BOX INDICATING YOUR ACCEPTANCE OR BY EXECUTING AN ORDER FORM THAT REFERENCES THIS AGREEMENT, YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THIS AGREEMENT, IN WHICH CASE THE TERM "YOU" SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE PRODUCTS.

### **1. LICENSE GRANT AND RESTRICTIONS; PAYMENT TERMS.**

- 1.1 Software License Grant.** Subject to the terms and conditions of this Agreement, Igneous grants to Customer a non-exclusive license to (i) use the Software solely as part of the Hardware with which the Software is delivered, or (ii) in accordance with the published specifications. The Software is solely for Customer's internal business purposes unless otherwise agreed to with Igneous in a separate written agreement. All other rights in the Software are expressly reserved by Igneous. The Products incorporate certain third-party software, which requires notices and/or additional terms and conditions. Such required third party software notices and/or additional terms and conditions are available from Igneous upon written request and are made a part of and incorporated by reference into this license. The protections given to Igneous under this license also apply to the suppliers of this third-party software, who are intended third-party beneficiaries of this Agreement. Customer agrees and acknowledges that its purchases hereunder are not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by Igneous regarding future functionality or features.
- 1.2 Services Limited Right to Use.** Igneous grants to Customer the limited right to use the Services solely in connection with the Hardware and/or Software and solely for Customer's internal business purposes. Customer will (a) be responsible for its users' compliance with this Agreement, (b) be responsible for the accuracy, quality and legality of all Customer Data (as defined in Section 7.2) and the means by Customer acquired its Customer Data, (c) use commercially reasonable efforts to prevent unauthorized access to or use of the Products and Content, and notify Igneous promptly of any such unauthorized access or use, (d) use the Products and Content only in accordance with the documentation and applicable laws and government regulations, and (e) comply with the terms of service of any third-party applications with which You use any Products or Content.
- 1.3 License Restrictions.** Customer shall maintain the Products in strict confidence and shall not: (a) except with Igneous' prior written consent, sell, resell, distribute, transfer, publish, disclose, rent, lend, lease or sublicense the Products, or make the functionality of the Products available to any other party (excluding contractors or other third party providing IT services to Customer) through any means, including, without, limitation, by uploading the Software or Services to a network or file-sharing service or through any hosting, application services provider, service bureau or other type of services; (b) modify, translate or create derivative works based on the Software or Services, in whole or in part, or permit or authorize a third party to do so; (c) disassemble, decompile, reverse compile, reverse engineer or otherwise attempt to derive the source code of the Software, in whole or in part, or permit or authorize a third party to do so, except to the extent such activities are expressly permitted by applicable law in the jurisdiction of use notwithstanding this prohibition; (d) exceed the usage (data storage measurement units (e.g., gigabytes, petabytes, etc.), number of devices, virtual machines, modules or any other measures of licensed functionality) limits listed in the Order Form for which Customer has paid the applicable fees; (e) use or access the Products or Content for competitive purposes; (f) interfere with or disrupt the integrity or performance of the Services or third-party data contained therein; or (g) disclose, publish or otherwise make publicly available any benchmark, performance or comparison tests that Customer runs (or has run on its behalf by a third party) on the Products.
- 1.4 Affiliates.** If Customer purchases the Product for use by any Customer Affiliate (defined below), Customer shall: (a) provide each such Customer Affiliate with a copy of this Agreement; (b) ensure that each such Customer Affiliate

complies with the terms and conditions therein; and (c) be responsible for any breach of these terms and conditions by any such Customer Affiliate. For purposes of this Agreement, “**Affiliate**” means any entity that Controls, is Controlled by, or is under common Control with Customer or Igneous, as applicable, where “Control” means ownership, directly or indirectly, of 50% or more of the voting interest of Customer or Igneous, as applicable.

- 1.5 Fees; Payments.** Customer will pay Igneous the then applicable fees described in the Order Form for the Products in accordance with the terms therein (the “**Fees**”), which are non-refundable once paid. Igneous reserves the right to change the Fees or applicable charges and to institute new charges and Fees at the end of the Initial Subscription Term or then-current renewal term (Fee reductions may be implemented at any time during a term), upon 30 days prior notice to Customer (which may be sent by email). If Customer believes that Igneous has billed Customer incorrectly, Customer must contact Igneous no later than 30 days after the closing date on the first billing statement in which the error or problem appeared, in order to receive an adjustment or credit. Igneous may choose to bill through an invoice, in which case, full payment for invoices issued by Igneous must be received by Igneous 30 days after the transmission date of the invoice. Unpaid amounts are subject to a finance charge of 1.0% per month on any outstanding balance, or the maximum permitted by law, whichever is lower, plus all expenses of collection and may result in the immediate termination of Services. Customer shall be responsible for (a) all taxes associated with Services other than taxes based on Igneous’ net income; and (b) all of Igneous’ costs of collection of overdue fees not disputed in good faith, including reasonable attorneys’ fees.

## **2. OWNERSHIP.**

The Hardware, Software and Services are licensed, not sold. Igneous and its suppliers, as applicable, retain all right, title, interest and ownership of (a) the Hardware, Software and Services, including copyrights, patents, trade secret rights, trademarks and any other intellectual property rights therein; (b) all improvements, enhancements or modifications thereto, (c) any software, applications, inventions or other technology developed in connection with support; (d) all information obtained by Igneous from its content licensors or publicly available sources and provided to Customer pursuant to an Order Form (collectively, “**Content**”); and (e) all intellectual property rights related to any of the foregoing. Customer shall not delete or in any manner alter the copyright, trademark, or other proprietary rights notices or markings that appear on the Hardware, Software and Services or related documentation as delivered to Customer. To the extent Customer provides any suggestions, enhancement requests, recommendations or comments related to the Products (collectively, “**Feedback**”) to Igneous or its authorized third party agent, Igneous shall have the right to retain and use any such Feedback in current or future products or services so long as it does not disclose any Confidential Information (as defined in Section 7) relating to Customer’s products, services or Product use case in doing so, without your approval or further compensation to Customer. Ownership of and title to the Hardware will remain with Igneous at all times. Customer will not represent or assert any ownership interest in the Hardware and will act as Igneous’ bailee for the Hardware. On Igneous’ request, Customer will execute any documents necessary to perfect Igneous’ ownership interest in the Hardware. Customer will keep the Hardware free of liens, attachments, and other encumbrances. Customer may not copy or translate any written materials included with the Hardware without Igneous’ prior written consent. Customer will use a commercially reasonable degree of care to maintain and protect the Hardware. Customer will assume all risk of loss, damage (except reasonable wear and tear), theft, or destruction of the Hardware while it is in its possession or control or that of its agents, including any carrier, and will reimburse Igneous for any costs of repair or replacement thereof.

## **3. TERM; TERMINATION; AND EFFECT OF TERMINATION.**

This Agreement is effective until terminated. Subject to earlier termination as provided below, this Agreement is for the Initial Subscription Term as specified in the Order Form, and shall be automatically renewed for additional periods of the same duration as the Initial Subscription Term (collectively, the “**Term**”), unless either party requests termination at least 30 days prior to the end of the then-current term. In addition to any other remedies it may have, either party may also terminate this Agreement upon 30 days’ notice (or upon 10 days’ notice in the case of nonpayment), if the other party materially breaches any of the terms or conditions of this Agreement. Customer will pay in full for the Services up to and including the last day on which the Services are provided. Upon any termination, (a) Customer shall cease to use any Products and the Services will be shut off except for read/write access of Customer Data to the applications; (b) Igneous will make all Customer Data (as defined in Section 7.2 below) available to Customer for electronic retrieval and migration for a period of 30 days per one petabyte of Customer Data (the “**Migration Period**”), but thereafter Igneous will delete stored Customer Data prior to recovery of any Hardware; (c) visibility of the Product will remain so long as Customer does not cut off communication with the Igneous Cloud Console (in case of such shutoff or restriction of access by the Igneous Cloud Console, Customer acknowledges and accepts that the Product’s time-bound security features may be triggered thereby and render the Product useless); (d) Igneous will provide Customer support (excluding replacement of failed Hardware components) during the Migration Period. If Customer requires more time for retrieval and migration of Customer Data than the Migration Period allotted under subsection (b) above, Igneous will rent the Hardware to Customer for \$5.00 per terabyte of installed capacity per week. All sections of this Agreement which by their nature should survive termination will survive termination, including, without limitation, accrued rights to payment, confidentiality obligations, warranty disclaimers, and limitations of liability.

#### **4. WARRANTY, EXCLUSIONS AND DISCLAIMERS.**

**4.1 Warranty.** So long as Customer is current in paying all applicable Fees for the Products, Igneous warrants that, under normal authorized use (a) the Hardware shall be free from defects in material and workmanship; and (b) the Software will substantially conform to Igneous' published specifications. As Customer's sole and exclusive remedy and Igneous' and its suppliers' sole and exclusive liability for breach of warranty, Igneous shall, at its option and expense, repair or replace the Hardware or correct the Software, as applicable and as set forth in Exhibit A. All warranty claims must be made on or before the expiration of the warranty period specified herein. Replacement Products may consist of new or remanufactured parts that are equivalent to new. All Products that are returned to Igneous and replaced become the property of Igneous. Igneous shall not be responsible for Customer's or any third party's software, firmware, information, or memory data contained in, stored on, or integrated with any Product returned to Igneous for repair or upon termination, whether under warranty or not.

**4.2 Exclusions.** The warranty set forth above shall not apply if the failure of the Product results from or is otherwise attributable to: (i) repair, maintenance or modification of the Product by persons other than an Igneous-authorized third party; (ii) accident, negligence, abuse or misuse of a Product; (iii) use of the Product other than in accordance with Igneous' specifications; (iv) improper installation or site preparation or any failure by Customer to comply with environmental and storage requirements for the Product specified by Igneous, including, without limitation, temperature or humidity ranges; or (v) causes external to the Product such as, but not limited to, failure of electrical systems, fire or water damage.

**4.3 Disclaimers.** EXCEPT FOR THE WARRANTIES EXPRESSLY STATED AND AS OTHERWISE PROHIBITED BY APPLICABLE LAW, THE HARDWARE, SOFTWARE AND SERVICES ARE PROVIDED "AS IS". IGNEOUS AND ITS SUPPLIERS MAKE NO OTHER WARRANTIES AND EXPRESSLY DISCLAIM ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE. IGNEOUS DOES NOT WARRANT THAT (I) THE PRODUCT WILL MEET CUSTOMER'S REQUIREMENTS, (II) USE THEREOF SHALL BE UNINTERRUPTED OR ERROR-FREE, OR (III) THE HARDWARE, SOFTWARE OR SERVICES WILL PROTECT AGAINST ALL POSSIBLE THREATS WHETHER KNOWN OR UNKNOWN. CUSTOMER HEREBY ACKNOWLEDGES THAT CUSTOMER DATA, EXCEPT WHERE CUSTOMER HAS SUBSCRIBED TO RELEVANT ADDITIONAL SERVICES SUCH AS DATA REPLICATION, WILL BE STORED IN ONLY ONE PHYSICAL LOCATION AND SHALL BE SUBJECT TO SECTION 8.3 HEREOF.

#### **5. LIMITATION OF LIABILITY.**

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, (A) IN NO EVENT SHALL IGNEOUS OR ITS SUPPLIERS (INCLUDING BUT NOT LIMITED TO ALL EQUIPMENT AND TECHNOLOGY SUPPLIERS) BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING BUT NOT LIMITED TO LOSS OF USE, DATA, BUSINESS OR PROFITS, OR FOR THE COST OF PROCURING SUBSTITUTE PRODUCTS, SERVICES OR OTHER GOODS), ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE THEORY OF LIABILITY AND WHETHER OR NOT IGNEOUS WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGE OR LOSS; AND (B) IN NO EVENT SHALL IGNEOUS' TOTAL LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT, FROM ALL CLAIMS OR CAUSES OF ACTION AND UNDER ALL THEORIES OF LIABILITY, EXCEED THE TOTAL PAYMENTS ACTUALLY MADE TO IGNEOUS FOR THE PRODUCTS DURING THE TWELVE (12) MONTH PERIOD PRIOR TO ANY SUCH CLAIM OR CAUSE OF ACTION. THE FOREGOING LIMITATIONS SHALL NOT APPLY TO LIABILITY ARISING FROM DEATH OR BODILY INJURY, OR TO CLAIMS UNDER SECTION 1.3 (LICENSE RESTRICTIONS) OR SECTION 6 (INDEMNIFICATION) OR ARISING FROM WILLFUL MISCONDUCT OR GROSS NEGLIGENCE. Customer agrees that the foregoing limitations of liability constitute a material inducement for Igneous to enter into this Agreement and that the purchase price and/or fees charged to Customer would be substantially higher without such limitations.

#### **6. INDEMNIFICATION.**

**6.1 Indemnification and Procedure.** Igneous will defend, at its expense, any third-party action or suit brought against Customer alleging that any Igneous Product provided to Customer hereunder infringes or misappropriates the third party's patent, copyright, trademark, or trade secret (a "**Claim**"), and Igneous will pay any damages awarded in final judgment against Customer or agreed to in settlement by Igneous that are attributable to any such Claim; provided that Customer: (i) promptly notifies Igneous in writing of the Claim; (ii) gives Igneous sole control of the defense and settlement of the Claim; and (iii) gives Igneous, at Igneous' expense, all information and assistance reasonably requested for the defense and settlement of the Claim. Igneous will not be bound by any settlement or compromise that Customer enters into without Igneous' prior written consent.

**6.2 Remedy.** If the Product becomes, or in Igneous' opinion is likely to become, the subject of a Claim, then Igneous may, at its sole option and expense: (i) procure for Customer the right to continue using the Product; (ii) replace or modify the Product to avoid the Claim; or (iii) if options (i) and (ii) cannot be accomplished despite Igneous' reasonable efforts, then Igneous may

accept return of the Product from Customer and grant Customer credit for the price of the Product as depreciated on a straight-line five (5) year basis, commencing on the date of receipt by Customer of such Product.

**6.3 Exceptions.** Igneous' obligations under this section shall not apply to the extent any Claim results from or is based on (a) modifications to the Product made by a party other than Igneous or its designee; (b) the combination, operation, or use of the Product with hardware or software not supplied by Igneous, if a Claim would not have occurred but for such combination, operation or use; (c) failure to use the most recent version or release of the Product; (d) Igneous' compliance with Customer's explicit or written designs, specifications or instructions; or (e) use of the Product that is not in accordance with Igneous' published specifications.

THE FOREGOING TERMS STATE IGNEOUS' SOLE AND EXCLUSIVE LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR ANY CLAIMS OF INTELLECTUAL PROPERTY INFRINGEMENT OR MISAPPROPRIATION.

## **7. CONFIDENTIALITY; CUSTOMER DATA.**

**7.1 Confidentiality.** During the term of this Agreement, each party agrees that (a) Confidential Information (as defined below) will be used only in furtherance of this Agreement; (b) it will use the same degree of care it uses to protect its own confidential information, but in no event less than reasonable care; and (c) Confidential Information may be disclosed only to employees, agents and contractors with a need to know, and to its auditors and legal counsel, in each case, who are under a written obligation to keep such information confidential using standards of confidentiality not less restrictive than those required by this Agreement. "**Confidential Information**" means any information designated as confidential orally or in writing by either party, or any information that the receiving party knows, or has reason to know, is confidential or proprietary based upon its treatment by the disclosing party. This Agreement imposes no obligation with respect to information which: (1) is a part of or enters into the public domain; (2) was already in the receiving party's possession prior to the date of disclosure other than by breach of this Agreement; (3) is rightfully received from a third party without any duty of confidentiality; (4) is independently developed without reference to the Confidential Information of the disclosing party.

**7.2 Customer Data.** Igneous utilizes industry standard practices and policies to maintain administrative, physical and technical safeguards for the protection and security of Customer Data (defined below). Customer is hereby notified and acknowledges that Igneous Products may include interaction and communication with facilities hosted outside of the country where Customer purchased or utilizes the Products. Customer is further notified and acknowledges that some Services may allow Customer, in its sole discretion, to send data to Igneous, where such data may contain personally-identifiable, sensitive, and/or confidential data and information (collectively, "**Customer Data**"). For the avoidance of doubt, Customer Data does not include Content. Customer represents and warrants that Customer's use of the Services and related submission of Customer Data complies with all applicable laws, including those related to data privacy, data security, international communication and the exportation of technical, personal or sensitive data. Igneous is not a data processor or data collector, and the inclusion of such personally identifying or sensitive data in Customer Data is solely incidental to the provision of the Services. Submission of Customer Data to Igneous shall be at Customer's sole discretion and at its own risk, and Igneous assumes no responsibility or liability for Customer's decision to do so. Customer Data sent to Igneous may be stored by Igneous. Customer further acknowledges that Igneous may anonymize such Customer Data to use for statistical purposes and share samples of such anonymized Customer Data with other third party security-related researchers, vendors and customers.

**7.3 Data Exportation.** Customer agrees and acknowledges that (a) subject to Customer's right to inspect any such data and to terminate Igneous' rights hereunder with prior written notice to Igneous, Telemetry Data (as defined below) may be exported from the Hardware to the Igneous cloud in order to ensure proper operation of the on-premise Hardware; (b) it will ensure that such telemetry data is able to be transmitted to Igneous in a timely manner as required to maintain the uptime of the Hardware; (c) it is solely responsible for choosing to export telemetry data from the Hardware and accepts any consequences arising therefrom, including but not limited to any improper use of such data by a third party; and (d) the security and integrity of Customer's exported data is solely the responsibility of Customer once it leaves the Hardware. "**Telemetry Data**" shall mean machine data generated by the System, which is used by Igneous to manage the condition and health of the System, or to debug the System, and specifically excludes any Customer Data and Customer metadata that is written to the System.

## **8. GENERAL.**

**8.1 Governing Law.** This Agreement shall be governed by the laws of the State of Washington without regard to its conflict of laws provisions. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

**8.2 Compliance with Laws; Export Control.** Customer shall be solely responsible for its compliance with, and agrees to comply with, all applicable laws in connection with its use of the Product. Customer further agrees that it will not engage in any illegal

activity in any relevant jurisdiction, and acknowledges that Igneous reserves the right to notify its customers or appropriate law enforcement in the event of such illegal activity. Customer agrees to comply fully with the U.S. Export Administration Regulations, and any other export laws, restrictions, and regulations to ensure that the Product and any technical data related thereto is not exported or re-exported directly or indirectly in violation of, or used for any purposes prohibited by such laws and regulations.

- 8.3 Force Majeure.** Igneous shall not be liable for any losses arising out of the delay or interruption of its performance of obligations under the Agreement due to any act of God, act of governmental authority, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems (other than those involving Igneous employees or agents), Internet service provider failures or delays, or denial of service attacks, unplanned system downtime, or any other cause beyond Igneous' reasonable control.
- 8.4 Cumulative Remedies.** Except as expressly set forth in this Agreement, the exercise by either party of any of its remedies will be without prejudice to any other remedies under this Agreement or otherwise.
- 8.5 Notices.** All notices shall be in writing and delivered by overnight delivery service or by certified mail sent to the address published on the respective parties' websites or the address specified on the applicable Order Form (attention: Legal Department), and in each instance will be deemed given upon receipt.
- 8.6 Waiver and Severability.** The failure by either party to enforce any provision of this Agreement will not constitute a waiver of future enforcement of that or any other provision. Any waiver, modification or amendment of any provision of this Agreement will be effective only if in writing and signed by authorized representatives of both parties. If any provision of this Agreement is held to be unenforceable or invalid, that provision will be enforced to the maximum extent possible and the other provisions will remain in full force and effect.
- 8.7 Modification to Terms; Entire Agreement.** To the maximum extent permitted and enforceable under applicable law, Igneous reserves the right to modify the terms and conditions of this Agreement at any time, effective upon the posting of an updated version of this Agreement. Customer is responsible for regularly reviewing this Agreement. Continued use of the Services after any such changes shall constitute Customer's consent to such changes. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes all prior written or oral agreements, understandings and communications between the parties with respect to the subject matter hereof. Any terms or conditions contained in Customer's purchase order or other ordering document that are inconsistent with or in addition to the terms and conditions of this Agreement are hereby rejected by Igneous and will be deemed null.
- 8.8 U.S. Government Customers.** This section applies to United States Government Customers only and does not apply to any other customers. The Software and its documentation are "commercial computer software" and "commercial computer software documentation," respectively; as such terms are used in FAR 12.212 and DFARS 227.7202. If the Software and its documentation are being acquired by or on behalf of the U.S. Government, then, as provided in FAR 12.212 and DFARS 227.7202-1 through 227.7202-4, as applicable, the U.S. Government's rights in the Software and its documentation shall be as specified in this Agreement.
- 8.9 Open Source Software.** The Products may contain or be provided with components subject to the terms and conditions of open source software licenses ("**Open Source Software**"). A list of Open Source Software can be found at <http://igneous.io/thirdparty-software.html>. Nothing in this Agreement limits Customer's rights under, or grants Customer rights that supersede, the terms and conditions of any applicable end user license for such Open Source Software; however the license to the Software in Section 1.1 includes the right to use the Open Source Software included in the Software in the same manner and to the same extent as the Software.

## EXHIBIT A

### **Support Terms**

1. If the Software does not function substantially in accordance with its published documentation, Igneous must, at its option, either (i) modify the Software to conform to the documentation; or (ii) provide a commercially reasonable workaround solution. If neither of these options is commercially feasible, either party may terminate the relevant Order Form under this Agreement, in which case Igneous shall refund to Customer all fees pre-paid, if any, to Igneous under the relevant Order Form for any unused time remaining on its Term.

2. Igneous will provide maintenance/repair services on any hardware provided with the Services at least annually. If the hardware component of any Hardware fails, Igneous will repair or replace (with a new or reconditioned replacement) the appliance or component at no cost to Customer. Since Igneous is building a zero-touch architecture for the Services, provided that Customer's benefit and enjoyment of the Services are not materially adversely impacted, Customer acknowledges that component failures shall not be treated by Igneous as requiring immediate repair and/or replacement and shall be subject to Igneous' commercially reasonable discretion as to the timing and manner of repair and/or replacement.

3. Notwithstanding the foregoing, Igneous has no obligations under this Exhibit A: (a) to the extent that the Hardware has been modified or serviced by Customer or any third party, unless the modification has been approved in writing by Igneous, or where Customer is not in compliance with Section 2 of the main body of the Agreement; (b) to the extent that the Hardware has been subjected to abnormal physical or electrical stress, misuse, negligence or accident; (c) for a version of the Software that has passed its end-of-life date per Igneous' published end-of-life policy made available to Customer; or (d) for problems with the Hardware caused by any third party software or hardware, by accidental damage or by other matters beyond Igneous' reasonable control.

4. Igneous regularly updates the Software according to a schedule which shall apply to, and be for the benefit of, all Igneous customers. By subscribing to the Service, Customer agrees that all such Software updates will occur according to a schedule to be determined by Igneous in its commercially reasonable discretion, provided that Customer's benefit and enjoyment of the Services are not materially adversely impacted. The changes may also mean that Customer needs to upgrade its software or hardware in order to make efficient use of the Software. Igneous will provide Customer with advance notification in this case.

5. Capacity Forever™ Terms:

Igneous offers its Capacity Forever program free of charge to eligible customers. Eligible customers must have a valid and fully-paid Services subscription since their initial purchase (and for not less than four (4) years from the initial Effective Date). If Customer renews its subscription for the fifth year, Igneous will, at the beginning of the fifth year, upgrade all original components to the then-current components that most closely match, in Igneous' reasonable discretion, the existing system. This benefit is above and beyond Igneous' commitment to maintain Customer's service level.

If the then-current components are of a higher capacity than the original components and this results in a system with greater capacity than before, and therefore a higher Service bill, Customer will be notified and may opt-out of the component upgrade.

As a condition of the upgrade, it must be performed within 120 days from written notice (via electronic means to Customer's designated contact) that the upgrade is available.

Igneous may, at its sole discretion, terminate the Capacity Forever program with respect to future purchases made after it has provided written notice of such termination; however, Igneous will honor any then-outstanding commitments under the program.