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Leostream Software Subscription Agreement

Effective date: February 1, 2019

Software Subscription Agreement

This Software Subscription Agreement, including the Purchase Order Form which is incorporated by reference herein (this "**Agreement**"), is a binding agreement between Leostream Corporation and the person or entity identified on the Purchase Order Form as the subscriber to the Software ("**Customer**").

PLEASE READ THE TERMS AND CONDITIONS OF THIS AGREEMENT CAREFULLY BEFORE DOWNLOADING OR INSTALLING THE SOFTWARE. BY EXECUTING AND RETURNING THE PURCHASE ORDER YOU ARE ACCEPTING AND AGREEING ON BEHALF OF CUSTOMER TO BE BOUND BY ALL THE TERMS AND CONDITIONS SET FORTH IN THIS AGREEMENT. THIS AGREEMENT AND THE PURCHASE ORDER FORM TOGETHER REPRESENT THE ENTIRE AGREEMENT BETWEEN THE PARTIES CONCERNING CUSTOMER'S SUBSCRIPTION TO AND USE OF THE SOFTWARE AND IT SUPERSEDES ANY PRIOR PROPOSAL, REPRESENTATION, OR UNDERSTANDING BETWEEN THE PARTIES.

PROVIDER PROVIDES THE SOFTWARE SOLELY ON THE TERMS AND CONDITIONS SET FORTH IN THIS AGREEMENT AND ON THE CONDITION THAT CUSTOMER ACCEPTS AND COMPLIES WITH THEM. BY EXECUTING AND RETURNING THE PURCHASE ORDER FORM YOU (A) ACCEPT THIS AGREEMENT AND AGREE THAT CUSTOMER IS LEGALLY BOUND BY ITS TERMS; AND (B) REPRESENT AND WARRANT THAT: (I) YOU ARE OF LEGAL AGE TO ENTER INTO A BINDING AGREEMENT; AND (II), YOU HAVE THE RIGHT, POWER, AND AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF CUSTOMER AND BIND CUSTOMER TO ITS TERMS. IF CUSTOMER DOES NOT AGREE TO THE TERMS OF THIS AGREEMENT, PROVIDER WILL NOT AND DOES NOT GRANT A SUBSCRIPTION TO THE SOFTWARE TO CUSTOMER AND YOU MUST NOT DOWNLOAD OR INSTALL THE SOFTWARE OR DOCUMENTATION.

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT OR YOUR OR CUSTOMER'S ACCEPTANCE OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, NO SUBSCRIPTION TO THE SOFTWARE IS GRANTED (WHETHER EXPRESSLY, BY IMPLICATION, OR OTHERWISE) UNDER THIS AGREEMENT, AND THIS AGREEMENT EXPRESSLY EXCLUDES ANY RIGHT, CONCERNING ANY SOFTWARE THAT CUSTOMER DID NOT ACQUIRE LAWFULLY OR THAT IS NOT A LEGITIMATE, AUTHORIZED COPY OF PROVIDER'S SOFTWARE.

1. Definitions. For purposes of this Agreement, the following terms have the following meanings:

“Authorized Users” means that number of individuals who are authorized to use the Software pursuant to the subscription license granted under this Agreement, as set forth on the Purchase Order Form.

“Authorized Desktops” means each unique Desktop which is licensed to use the Software pursuant to the subscription license granted under this Agreement, as set forth on the Purchase Order Form.

“Customer” has the meaning set forth in the preamble.

“Desktop” means a virtual machine, physical machine, blade, workstation, Terminal Services/Remote Desktop Services session or other host resources available for allocation in the Software.

“Documentation” means the user manuals, porting guides, reference manuals, programmer’s manuals, and installation manuals included with the Software Package, or other documentation provided by the Provider to you relating to the Software Package.

“Initial Term” has the meaning set forth in Section 11.

“Intellectual Property Rights” means any and all registered and unregistered rights granted, applied for, or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection, or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.

“Subscription Fees” means the subscription fees, including all taxes thereon, specified on the Purchase Order Form and paid by Customer for the subscription granted under this Agreement.

“Open Source Software” means any software or other material that contains, or is derived (in whole or in part) from, any software, documentation or other material that is distributed as free software, open source software or similar permissive or copyleft licensing or distribution models, including software, documentation or other material licensed or distributed, or those generally understood to be an open source license or distribution model.

“Person” means an individual, corporation, partnership, joint venture, limited liability company, governmental authority, unincorporated organization, trust, association, or other entity.

“Provider” means Leostream Corporation and its licensors, if any.

“Renewal Term” has the meaning set forth in Section 11.

“Purchase Order Form” means the Purchase order form filled out and submitted by or on behalf of Customer, and accepted by Provider, for Customer’s subscription to the Software granted under this Agreement.

“Software” means only Provider’s Leostream software package, which includes the Leostream Connection Broker, Leostream Gateway, Leostream Agent and Leostream Connect client, and associated media, printed materials, and online or electronic documentation, for which Customer is purchasing a license, as expressly set forth in the Purchase Order Form.

“Software Package” means the Software and any Open Source Software components distributed with the version of the Software for the operating system (Linux or Windows) downloaded by Licensee.

“Subscription Fees” means the subscription fees paid by Customer for the subscription granted under this Agreement, including all taxes thereon, as specified on the Purchase Order Form for the Initial Term and in connection with any Renewal Term.

“Subscription Term” has the meaning set forth in Section 11.

“Third Party” means any Person other than Customer (including Customer’s Authorized Users) or Provider.

“Third Party Software” means software products owned and licensed directly by third parties to you.

“Users” means end users whose hosted resource connections are managed by the Software.

“Update” has the meaning set forth in Section 7(d).

2. Subscription Grant and Scope. Subject to and conditioned upon Customer’s payment of the Subscription Fees and Customer’s strict compliance with all terms and conditions set forth in this Agreement, Provider hereby grants to Customer a non-exclusive, non-transferable, non-sublicensable, limited license during the Subscription Term to use, solely by and through its Authorized Users and/or on its Authorized Desktops, as applicable, the Software and Documentation, solely as set forth in this Section 2 and subject to all conditions and limitations set forth in Section 4 or elsewhere in this Agreement. This subscription license grants Customer the right, exercisable solely by and through Customer’s Authorized Users, during the Subscription Term to:
- (a) Install in accordance with the Documentation the Software as follows:

(i) Leostream Connection Broker. Customer may install a single stand-alone instance of the Leostream Connection Broker on its server. Customer may install multiple instances of the Leostream Connection Broker on its server(s) only where all instances are attached to a common database to create a single Leostream cluster.

(ii) Leostream Gateway. Customer may install any number of instances of the Leostream Gateway to support the number of Authorized Users or Authorized Desktops as is specified on the Purchase Order Form.

(iii) Leostream Agent and/or Leostream Connect. Customer may install that number of instances of the Leostream Agent and/or Leostream Connect as is required to support the number of Authorized Users or Authorized Desktops, as applicable, specified on the Purchase Order Form. If the Purchase Order Form specifies that the Software is licensed on an “Authorized User” basis, this refers to the number of “active” Authorized Users allowed under this Agreement. Each Authorized User who has a “Signed In” time in the immediately prior thirty (30) day period is counted as an active Authorized User for purposes of determining the number of Authorized Users. If the Purchase Order Form specifies that the Software is licensed on an “Authorized Desktop” basis, this refers to the number of “active” Authorized Desktops allowed under this Agreement. Each Authorized Desktop that has a “Last Connect Time” in the immediately prior thirty (30) day period is counted as an active Authorized Desktop for the purpose of determining the number of Authorized Desktops. Additional Authorized Users or Authorized Desktops, as applicable, may be added upon payment of additional Subscription Fees for such additional Authorized Users or Authorized Desktops. The terms “Signed In” time and “Last Connect Time” mean, as applicable, the most recent time that the Authorized User or Authorized Desktop, as applicable, has accessed the Software.

(b) Use and run the Software as properly installed in accordance with this Agreement and the Documentation, solely as set forth in the Documentation and solely for Customer’s internal business purposes.

3. Open Source Software. The Software Package includes Open Source Software components which will differ depending on which operating system you install the Software on (Windows or Linux) as some Open Source Software components are distributed only with the version of the Software Package that runs on Linux, some Open Source Software components are distributed only with the version of the Software Package that runs on Windows and some Open Source Software components are distributed with both such versions of the Software. Open Source Software components are licensed under the terms of applicable open source license agreements included in the materials relating to such Open Source Software. You must review the licenses within the individual components to understand your rights under them. The licenses can be found at http://www.Leostream.com/Leostream_os_licenses.zip (http://www.Leostream.com/Leostream_os_licenses.zip). These open source libraries are not modified and are not subject to GNU.
4. Use Restrictions. Customer shall not, and shall require its Authorized Users not to, directly or indirectly:
- (a) use (including make any copies of) the Software or Documentation beyond the scope of the subscription granted under Section 2;
- (b) provide any other Person, including any subcontractor, independent contractor, affiliate, or service provider of Customer, with access to or use of the Software or Documentation;
- (c) modify, translate, adapt, or otherwise create derivative works or improvements, whether or not patentable, of the Software or Documentation or any part thereof;

(d) combine the Software or any part thereof with, or incorporate the Software or any part thereof in, any other programs;

(e) reverse engineer, disassemble, decompile, decode, or otherwise attempt to derive or gain access to the source code of the Software or any part thereof or otherwise reduce the Software to a human-perceivable form;

(f) remove, delete, alter, or obscure any trademarks or any copyright, trademark, patent, or other intellectual property or proprietary rights notices provided on or with the Software or Documentation, including any copy thereof;

(g) copy the Software or Documentation, in whole or in part;

(h) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available the Software, or any features or functionality of the Software, to any Third Party for any reason, whether or not over a network or on a hosted basis, including in connection with the internet or any web hosting, wide area network (WAN), virtual private network (VPN), virtualization, time-sharing, service bureau, software as a service, cloud, or other technology or service;

(i) use the Software or Documentation in violation of any law, regulation, or rule; or

(j) use the Software or Documentation for purposes of competitive analysis of the Software, the development of a competing software product or service, or any other purpose that is to the Provider's commercial disadvantage.

5. Responsibility for Use of Software. Customer is responsible and liable for all uses of the Software and Documentation through access thereto provided by Customer, directly or indirectly. Specifically, and without limiting the generality of the foregoing, Customer is responsible and liable for all actions and failures to take required actions with respect to the Software and Documentation by its Authorized Users or by any other Person to whom Customer or an Authorized User may provide access to or use of the Software and/or Documentation, whether such access or use is permitted by or in violation of this Agreement.

6. Compliance Measures.

(a) During the Term, Provider may, in Provider's sole discretion, audit Customer's use of the Software to ensure Customer's compliance with this Agreement. Provider also may, in its sole discretion, audit Customer's systems within twelve months after any termination of this Agreement to ensure Customer has ceased use of the Software and removed all copies of the Software from such systems as required hereunder. The Customer shall fully cooperate with Provider's personnel conducting such audits and provide all access requested by the Provider to records, systems, equipment, information, and personnel, including machine IDs, serial numbers, and related information.

(b) If the audit determines that the Customer's use of the Software exceeds or exceeded the use permitted by this Agreement then:

(i) Customer shall, within ten (10) days following the date of Provider's written notification to Customer thereof, pay to Provider the retroactive Subscription Fees for such excess use and, unless Provider terminates this Agreement pursuant to Section 6.1(d)(iii), obtain and pay for a valid subscription to bring Customer's use into compliance with this Agreement. In determining the Customer Fee payable pursuant to the foregoing, (x) unless Customer can demonstrate otherwise by documentary evidence, all excess use of the Software shall be deemed to have commenced on the commencement date of this Agreement or, if later, the completion date of any audit previously conducted by Provider hereunder, and continued uninterrupted thereafter, and (y) the rates for such licenses shall be determined without regard to any discount to which Customer may have been entitled had such use been properly licensed prior to its commencement (or deemed commencement).

(ii) If the use exceeds or exceeded the use permitted by this Agreement by more than five percent (5%), Customer shall also pay to Provider, within ten (10) days following the date of Provider's written request therefor, Provider's reasonable costs incurred in conducting the audit.

(iii) If the use exceeds or exceeded the use permitted by this Agreement by more than ten percent (10%), Provider shall also have the right to terminate this Agreement and the subscription granted hereunder, effective immediately upon written notice to Customer.

Provider's remedies set forth in this Section 6(b) are cumulative and are in addition to, and not in lieu of, all other remedies the Provider may have at law or in equity, whether under this Agreement or otherwise.

7. Maintenance and Support.

(a) Subject to Section 7(e), the subscription granted hereunder entitles Customer during the Subscription Term to the basic software maintenance and support services described from time to time on Provider's website located at <https://www.leostream.com/support-policy> (<https://www.leostream.com/support-policy>):

Such support services shall be provided on the terms and conditions herein and as set forth at the above URL.

(b) [Intentionally Omitted]

(c) If Customer does not pay an applicable Subscription Fee, Provider's obligation to provide support and maintenance hereunder shall terminate.

(d) Maintenance and support services will include provision of such updates, bug fixes, patches, and other error corrections (collectively, "**Updates**") as Provider makes generally available free of charge to all licensees of the Software then entitled to maintenance and support services. Provider may develop and provide Updates in its sole discretion, and Customer agrees that Provider has no obligation to develop any Updates at all or for particular issues. Customer further agrees that all Updates will be deemed Software, and related documentation will be deemed Documentation, all subject to all terms and conditions of this Agreement. Customer acknowledges that Provider may provide all Updates via download from a website designated by Provider and that Customer's receipt thereof will require an internet connection, which connection is Customer's sole responsibility. Provider has no obligation to provide Updates via any other media. Maintenance and support services do not include any new version or new release of the Software that Provider may issue as a separate or new product, and Provider may determine whether any issuance qualifies as a new version, new release, or Update in its sole discretion.

(e) Provider has no obligation to provide maintenance and support services, including Updates:

(i) for any but the most current version or release of the Software;

(ii) for any copy of Software for which all previously issued Updates have not been installed;

(iii) any Open Source Software, beta software, software that Provider makes available for testing or demonstration purposes, temporary software modules, or software for which Provider does not receive a license fee;

(iv) if Customer is in breach under this Agreement;

(v) if Customer has not paid the Subscription Fee for the then current Subscription Term;
or

(vi) for any Software that has been modified other than by Provider, or that is being used with any hardware, software, configuration, or operating system not specified in the Documentation.

8. Collection and Use of Information.

(a) Customer acknowledges that Provider may, directly or indirectly through the services of Third Parties, collect and store information regarding use of the Software and about equipment on which the Software is installed or through which it otherwise is accessed and used, through the provision of maintenance and support services.

(b) Customer agrees that the Provider may use such information for any purpose related to any use of the Software by Customer or on Customer's equipment, including but not limited to:

(i) improving the performance of the Software or developing Updates; and

(ii) verifying Customer's compliance with the terms of this Agreement and enforcing the Provider's rights, including all Intellectual Property Rights in and to the Software.

9. Intellectual Property Rights. Customer acknowledges and agrees that the Software and Documentation are provided under a subscription license, and not sold, to Customer. Customer does not acquire any ownership interest in the Software or Documentation under this Agreement, or any other rights thereto, other than to use the same in accordance with the subscription license granted and subject to all terms, conditions, and restrictions under this Agreement. Provider and its licensors and service providers, if any, reserve and shall retain its entire right, title, and interest in and to the Software and all Intellectual Property Rights arising out of or relating to the Software, except as expressly granted to the Customer in this Agreement. Customer shall safeguard all Software (including all copies thereof) from infringement, misappropriation, theft, misuse, or unauthorized access. Customer shall promptly notify Provider if Customer becomes aware of any infringement of the Provider's Intellectual Property Rights in the Software and fully cooperate with Provider in any legal action taken by Provider to enforce its Intellectual Property Rights.
10. Payment. All Subscription Fees are payable in advance in the manner specified in the Purchase Order Form and are non-refundable.
11. Subscription Term and Termination.
- (a) This Agreement and the subscription license granted hereunder shall remain in effect for the initial subscription period set forth in the Purchase Order Form (the "**Initial Term**"). This Agreement will automatically renew for additional successive one year terms unless earlier terminated pursuant to this Agreement's express provisions or either party gives the other party written notice of non-renewal at least ninety (90) days prior to the expiration of the then-current term (each a "**Renewal Term**" and, collectively, together with the Initial Term, the "**Subscription Term**") and payment for such Renewal Term shall be invoiced promptly by Provider and due from Customer prior to the then-current expiration date of the Subscription Term. Customer's access to the Software during the Subscription Term is enabled by the use of license keys provided by the Provider to Customer, which license key has a hard expiration date that is keyed to the then applicable expiration date of the Subscription Term. Provider shall provide a license key for the Initial Term upon Customer's payment of the Subscription Fee for the Initial Term and for each Renewal Term upon Customer's payment of the Subscription Key for such Renewal Term. If either party sends the other party a written notice of non-renewal or if Customer fails to make payment of the applicable Subscription Fee for a Renewal Term, the license key will expire as of the end of the then-current term and Customer and its Authorized Users will no longer be able to access the Software.
- (b) Customer may terminate this Agreement by ceasing to use and destroying all copies of the Software and Documentation.
- (c) Provider may terminate this Agreement, effective upon written notice to Customer, if Customer, breaches this Agreement and such breach: (i) is incapable of cure; or (ii) being capable of cure, remains uncured thirty (30) days after Provider provides written notice thereof.
- (d) Provider may terminate this Agreement, effective immediately, if Customer files, or has filed against it, a petition for voluntary or involuntary bankruptcy or pursuant to any other insolvency law, makes or seeks to make a general assignment for the benefit of its creditors or applies for, or consents to, the appointment of a trustee, receiver, or custodian for a substantial part of its property.
- (e) Upon termination of this Agreement, the subscription license granted hereunder shall also terminate, and Customer shall cease using and destroy all copies of the Software and Documentation. No termination shall affect Customer's obligation to pay all Subscription Fees that may have become due before such expiration or termination, or entitle Customer to any refund, in each case except as set forth in Section 12.1(c)(ii).
12. Limited Warranties, Exclusive Remedy, and Disclaimer/Warranty Disclaimer
- (a) Solely with respect to Software for which Provider receives a Subscription Fee, Provider warrants that during the Subscription Term the Software will substantially contain the functionality described in the Documentation, and when properly installed on a computer meeting the specifications set forth in, and operated in accordance with, the Documentation, will substantially perform in accordance therewith.

THE FOREGOING WARRANTY DOES NOT APPLY, AND PROVIDER STRICTLY DISCLAIMS ALL WARRANTIES, WITH RESPECT TO ANY THIRD-PARTY MATERIALS.

(b) The warranties set forth in Section 12(a) will not apply and will become null and void if Customer breaches any material provision of this Agreement, or, whether or not in violation of this Agreement, the Software:

(i) has been altered or modified by anyone except Provider;

(ii) has not been installed, operated, repaired, or maintained in accordance with the Documentation or other written instructions of Provider;

(iii) has been damaged, or been subjected to abnormal physical or electrical stress, misuse, negligence, or accident; or

(iv) is licensed, at no charge, to Customer for beta, evaluation, testing or demonstration purposes.

(c) If, during the period specified in Section 12(a), any Software covered by the warranty set forth in such Section fails to perform substantially in accordance with the Documentation, and such failure is not excluded from warranty pursuant to the Section 12(b), Provider will, subject to Customer's promptly notifying Provider in writing of such failure, at its sole option, either:

(i) repair or replace the Software, provided that Customer provides Provider with all information Provider requests to resolve the reported failure, including sufficient information to enable the Provider to recreate such failure; or

(ii) refund a pro-rated portion of the Subscription Fees paid for such Software for the current Subscription Term, pro-rated for the remainder of such Subscription Term, subject to Customer's ceasing all use of and, if requested by Provider, returning to Provider all copies of the Software.

The remedies set forth in this Section 12(c) are Customer's sole remedies and Provider's sole liability under the limited warranty set forth in Section 12(a).

(d) EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN SECTION 12(a), THE SOFTWARE AND DOCUMENTATION ARE PROVIDED TO CUSTOMER "AS IS" AND WITH ALL FAULTS AND DEFECTS WITHOUT WARRANTY OF ANY KIND. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, PROVIDER, ON ITS OWN BEHALF AND ON BEHALF OF ITS AFFILIATES AND ITS AND THEIR RESPECTIVE PROVIDERS AND SERVICE PROVIDERS, EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, WITH RESPECT TO THE SOFTWARE AND DOCUMENTATION, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUIET ENJOYMENT, TITLE, AND NON-INFRINGEMENT, AND WARRANTIES THAT MAY ARISE OUT OF COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE, OR TRADE PRACTICE. WITHOUT LIMITATION TO THE FOREGOING, THE PROVIDER PROVIDES NO WARRANTY OR UNDERTAKING, AND MAKES NO REPRESENTATION OF ANY KIND THAT THE SOFTWARE WILL MEET THE CUSTOMER'S REQUIREMENTS, ACHIEVE ANY INTENDED RESULTS, BE COMPATIBLE, OR WORK WITH ANY OTHER SOFTWARE, APPLICATIONS, SYSTEMS, OR SERVICES, OPERATE WITHOUT INTERRUPTION, MEET ANY PERFORMANCE OR RELIABILITY STANDARDS OR BE ERROR FREE, OR THAT ANY ERRORS OR DEFECTS CAN OR WILL BE CORRECTED. PROVIDER DOES NOT WARRANT THAT THE SOFTWARE IS ERROR-FREE OR WILL OPERATE WITHOUT INTERRUPTION. NO RIGHTS OR REMEDIES REFERRED TO IN ARTICLE 2A OF THE UCC WILL BE CONFERRED ON CUSTOMER UNLESS EXPRESSLY GRANTED HEREIN. THE SOFTWARE IS NOT DESIGNED, INTENDED OR LICENSED FOR USE IN HAZARDOUS ENVIRONMENTS REQUIRING FAIL-SAFE CONTROLS, INCLUDING WITHOUT LIMITATION, THE DESIGN, CONSTRUCTION, MAINTENANCE OR OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL, AND LIFE SUPPORT OR WEAPONS SYSTEMS AND PROVIDER SPECIFICALLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS FOR SUCH PURPOSES.

(e) IF APPLICABLE LAW REQUIRES ANY WARRANTIES WITH RESPECT TO THE SOFTWARE, ALL SUCH WARRANTIES ARE LIMITED IN DURATION TO NINETY (90) DAYS FROM THE DATE OF DELIVERY.

(f) NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY PROVIDER, ITS DEALERS, DISTRIBUTORS, AGENTS OR EMPLOYEES SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF ANY WARRANTY PROVIDED HEREIN.

(g) (USA only) SOME STATES DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO CUSTOMER. THIS WARRANTY GIVES CUSTOMER SPECIFIC LEGAL RIGHTS AND CUSTOMER MAY ALSO HAVE OTHER LEGAL RIGHTS THAT VARY FROM STATE TO STATE.

13. Limitation of Liability. TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW:

(a) IN NO EVENT WILL PROVIDER OR ITS AFFILIATES, OR ANY OF ITS OR THEIR RESPECTIVE LICENSORS OR SERVICE PROVIDERS, BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY USE, INTERRUPTION, DELAY, OR INABILITY TO USE THE SOFTWARE; LOST REVENUES OR PROFITS; DELAYS, INTERRUPTION, OR LOSS OF SERVICES, BUSINESS, OR GOODWILL; LOSS OR CORRUPTION OF DATA; LOSS RESULTING FROM SYSTEM OR SYSTEM SERVICE FAILURE, MALFUNCTION, OR SHUTDOWN; FAILURE TO ACCURATELY TRANSFER, READ, OR TRANSMIT INFORMATION; FAILURE TO UPDATE OR PROVIDE CORRECT INFORMATION; SYSTEM INCOMPATIBILITY OR PROVISION OF INCORRECT COMPATIBILITY INFORMATION; OR BREACHES IN SYSTEM SECURITY; OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES, WHETHER ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, BREACH OF CONTRACT, BREACH OF WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY, OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT THE PROVIDER WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF A REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

(b) IN NO EVENT WILL PROVIDER'S AND ITS AFFILIATES', INCLUDING ANY OF ITS OR THEIR RESPECTIVE LICENSORS' AND SERVICE PROVIDERS', COLLECTIVE AGGREGATE LIABILITY UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER, UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, EXCEED THE TOTAL AMOUNT PAID TO THE PROVIDER PURSUANT TO THIS AGREEMENT FOR THE THEN CURRENT SUBSCRIPTION TERM.

(c) (USA only) SOME STATES DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OF CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO CUSTOMER AND CUSTOMER MAY ALSO HAVE OTHER LEGAL RIGHTS THAT VARY FROM STATE TO STATE.

(d) THE LIMITATIONS SET FORTH IN SECTION 13(a) AND SECTION 13(b) SHALL APPLY EVEN IF THE CUSTOMER'S REMEDIES UNDER THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE.

14. Export Regulation. The Software and Documentation may be subject to US export control laws, including the US Export Administration Act and its associated regulations. The Customer shall not, directly or indirectly, export, re-export, or release the Software or Documentation to, or make the Software or Documentation accessible from, any jurisdiction or country to which export, re-export, or release is prohibited by law, rule, or regulation. The Customer shall comply with all applicable federal laws, regulations, and rules, and complete all required undertakings (including obtaining any necessary export license or other governmental approval), prior to exporting, re-exporting, releasing, or otherwise making the Software or Documentation available outside the US.

15. US Government Rights. Each of the Documentation and the Software is a "commercial item" as that term is defined in Section 2.101 of the Federal Acquisition Regulation ("FAR"), 48 C.F.R. § 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in FAR § 12.212, 48 C.F.R. § 12.212. Accordingly, if Customer is an agency of the US Government or any contractor therefor, Customer only receives those rights with respect to the Software and Documentation as are granted to all other end users under license, in accordance with (a) Sections 227.7202-1, 227.7202-3 and 227.7202-4 of the Defense Federal Acquisition Regulation Supplement ("DFARS"), 48 C.F.R. § 227.7201 through 48 C.F.R. § 227.7204, with respect to the Department of Defense and their contractors, or (b) FAR § 12.212, with respect to all other US Government licensees and their contractors. If, for any reason, FAR § 12.212 or DFARS §§ 227.7202-1 or 227.7202-3 or these license terms are deemed not applicable, Customer hereby acknowledges that the Government's right to use, duplicate, or disclose the software

and related Documentation are "Restricted Rights" as defined in 48 C.F.R. § 52.227-14(a) (May 2014) or DFARS § 252.227-7014(a)(15) (Feb 2014), as applicable. Manufacturer is Leostream Corporation, 271 Waverley Oaks Road Suite 206, Waltham, Massachusetts, 02452.

16. Miscellaneous.

(a) All matters arising out of or relating to this Agreement shall be governed by and construed in accordance with the internal laws of the Commonwealth of Massachusetts without giving effect to any choice or conflict of law provision or rule. Any legal suit, action, or proceeding arising out of or relating to this Agreement or the transactions contemplated hereby shall be instituted in the federal courts of the United States of America located in Boston, Massachusetts or the courts of the Commonwealth of Massachusetts located in Middlesex County, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such legal suit, action, or proceeding. Service of process, summons, notice, or other document by mail to such party's address set forth herein shall be effective service of process for any suit, action, or other proceeding brought in any such court.

(b) Provider will not be responsible or liable to Customer, or deemed in default or breach hereunder by reason of any failure or delay in the performance of its obligations hereunder where such failure or delay is due to strikes, labor disputes, civil disturbances, riot, rebellion, invasion, epidemic, hostilities, war, terrorist attack, embargo, natural disaster, acts of God, flood, fire, sabotage, fluctuations or non-availability of electrical power, heat, light, air conditioning, or Customer equipment, loss and destruction of property, or any other circumstances or causes beyond Provider's reasonable control.

(c) All notices, requests, consents, claims, demands, waivers, and other communications hereunder shall be in writing and shall be deemed to have been given: (i) when delivered by hand (with written confirmation of receipt); (ii) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (iii) on the date sent by facsimile or email (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient; or (iv) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the addresses set forth on the Purchase Order Form (or to such other address as may be designated by a party from time to time in accordance with this Section 16(c)).

(d) This Agreement, together with the Purchase Order Form, all annexes, schedules, and exhibits attached hereto, constitutes the sole and entire agreement between Customer and Provider with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter.

(e) Customer shall not assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance, under this Agreement, in each case whether voluntarily, involuntarily, by operation of law, or otherwise, without Provider's prior written consent, which consent Provider may give or withhold in its sole discretion. For purposes of the preceding sentence, and without limiting its generality, any merger, consolidation, or reorganization involving Customer (regardless of whether Customer is a surviving or disappearing entity) will be deemed to be a transfer of rights, obligations, or performance under this Agreement for which Provider's prior written consent is required. No delegation or other transfer will relieve Customer of any of its obligations or performance under this Agreement. Any purported assignment, delegation, or transfer in violation of this Section 16(e) is void. Provider may freely assign or otherwise transfer all or any of its rights, or delegate or otherwise transfer all or any of its obligations or performance, under this Agreement without Customer's consent. This Agreement is binding upon and inures to the benefit of the parties hereto and their respective permitted successors and assigns.

(f) This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer on any other Person any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

(g) This Agreement may only be amended, modified, or supplemented by an agreement in writing signed by each party hereto. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement shall operate or be

construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

(h) If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

(i) For purposes of this Agreement, (a) the words “include,” “includes,” and “including” shall be deemed to be followed by the words “without limitation”; (b) the word “or” is not exclusive; and (c) the words “herein,” “hereof,” “hereby,” “hereto,” and “hereunder” refer to this Agreement as a whole. Unless the context otherwise requires, references herein: (x) to Sections, Annexes, Schedules, and Exhibits refer to the Sections of, and Annexes, Schedules, and Exhibits attached to, this Agreement; (y) to an agreement, instrument, or other document means such agreement, instrument, or other document as amended, supplemented, and modified from time to time to the extent permitted by the provisions thereof and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The Purchase Order Form and all Annexes, Schedules, and Exhibits referred to herein shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein.

(j) The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement.

ANNEX 1

AUTHORIZED USER TERMS OF USE

These Software Terms of Use (“**Terms of Use**”) govern your use of the Leostream Corporation software, which includes, as applicable, the Leostream Connection Broker, Leostream Gateway, Leostream Agent and Leostream Connect client (collectively, the “**Software**”), including all user manuals, technical manuals, and any other materials provided by Provider, in printed, electronic, or other form, that describe the Software or its use or specifications (the “**Documentation**”) provided to you (“**you**” or “**your**”) for use pursuant to and subject to a software subscription agreement (the “**Software Subscription Agreement**”) between Leostream Corporation (“**Provider**”) and your employer or other person or entity who owns or otherwise lawfully controls the computer on which the Software is installed (“**Customer**”).

BY ACCESSING AND OR USING THE SOFTWARE YOU: (i) REPRESENT THAT YOU ARE DULY AUTHORIZED BY CUSTOMER TO ACCESS AND USE THE SOFTWARE; AND (ii) ACCEPT THESE AUTHORIZED USER TERMS AND AGREE THAT YOU ARE LEGALLY BOUND BY THEM. IF YOU DO NOT AGREE TO THESE TERMS OF USE, DO NOT USE OR ACCESS THE SOFTWARE AND YOU WILL HAVE NO LICENSE TO, AND MUST NOT ACCESS OR USE, THE SOFTWARE.

1. Subscription. Subject to your strict compliance with these Terms of Use, Provider hereby grants you a non-exclusive, non-transferable, non-sublicensable, limited license to use the Software solely in accordance with the Documentation, as installed on the equipment provided by Customer and for Customer’s internal business purposes. The foregoing license will terminate immediately on the earlier to occur of: (a) the expiration or earlier termination of the Software Subscription Agreement between Provider and Customer; or (b) your ceasing to be authorized by Customer to use the Software for any or no reason.
2. Use Restrictions. You shall not, directly or indirectly:
 - (a) use the Software or Documentation except as set forth in Section 1;
 - (b) copy the Software or Documentation, in whole or in part;
 - (c) modify, translate, adapt, or otherwise create derivative works or improvements, whether or not patentable, of the Software or any part thereof;
 - (d) combine the Software or any part thereof with, or incorporate the Software or any part thereof in, any other programs;

(e) reverse engineer, disassemble, decompile, decode, or otherwise attempt to derive or gain access to the source code of the Software or any part thereof;

(f) remove, delete, alter, or obscure any trademarks or any copyright, trademark, patent, or other intellectual property or proprietary rights notices included on or in the Software or Documentation, including any copy thereof;

(g) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise provide any access to or use of the Software or any features or functionality of the Software, for any reason, to any other person or entity, including any subcontractor, independent contractor, affiliate, or service provider of Customer, whether or not over a network and whether or not on a hosted basis, including in connection with the internet, web hosting, wide area network (WAN), virtual private network (VPN), virtualization, time-sharing, service bureau, software as a service, cloud, or other technology or service;

(h) use the Software or Documentation in violation of any law, regulation, or rule; or

(i) use the Software or Documentation for purposes of competitive analysis of the Software, the development of a competing software product or service, or any other purpose that is to the Provider's commercial disadvantage.

3. Collection and Use of Information.

(a) Provider may, directly or indirectly through the services of others, collect and store information regarding your use of the Software and about equipment on which the Software is installed or through which it otherwise is accessed and used, in connection with and by means of providing maintenance and support services.

(b) You agree that the Provider may use such information for any purpose related to any use of the Software by you, including but not limited to: (i) improving the performance of the Software or developing updates; and verifying compliance with the terms of this Agreement and enforcing Provider's rights, including all intellectual property rights in and to the Software.

4. Intellectual Property Rights. You acknowledge that the Software is provided under license, and not sold, to you. You do not acquire any ownership interest in the Software under this Agreement, or any other rights to the Software other than to use the Software in accordance with the license granted under this Agreement, subject to all terms, conditions, and restrictions. Provider reserves and shall retain its entire right, title, and interest in and to the Software and all intellectual property rights arising out of or relating to the Software, subject to the license expressly granted to the Customer in this Agreement. You shall safeguard all Software (including all copies thereof) from infringement, misappropriation, theft, misuse, or unauthorized access.

5. Disclaimer of Liability. IN NO EVENT WILL PROVIDER OR ITS AFFILIATES, OR ANY OF ITS OR THEIR RESPECTIVE PROVIDERS OR SERVICE PROVIDERS, BE LIABLE TO YOU FOR ANY USE, INTERRUPTION, DELAY, OR INABILITY TO USE THE SOFTWARE. YOU ARE PROVIDED THE SOFTWARE PURSUANT TO THE SOFTWARE LICENSE AGREEMENT BETWEEN PROVIDER AND CUSTOMER, SOLELY FOR THE BENEFIT OF CUSTOMER AND AT CUSTOMER'S DISCRETION. YOU ACKNOWLEDGE THAT YOU HAVE NO RIGHTS UNDER THAT AGREEMENT INCLUDING ANY RIGHTS TO ENFORCE ANY OF ITS TERMS. ANY OBLIGATION OR LIABILITY PROVIDER OR ITS AFFILIATES, OR ANY OF ITS OR THEIR PROVIDERS OR SERVICE PROVIDERS, MAY HAVE WITH RESPECT TO YOUR USE OR INABILITY TO USE THE SOFTWARE SHALL BE SOLELY TO CUSTOMER PURSUANT TO THAT AGREEMENT AND SUBJECT TO ALL LIMITATIONS OF LIABILITY SET FORTH THEREIN.

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7. Governing Law. These Terms of Use are governed by and construed in accordance with the internal laws of the Commonwealth of Massachusetts without giving effect to any choice or conflict of law provision or rule (whether of the Commonwealth of Massachusetts or any other jurisdiction) that would cause the application of Laws of any jurisdiction other than those of the Commonwealth of Massachusetts.

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