This Services Agreement ("Agreement") is entered into between Attachmate Corporation, or its affiliate entity as referenced in the header of the quote document or statement of work ("Attachmate"), and the customer entity ("Customer") that purchases Attachmate services. This Agreement describes the terms that apply to the purchase and use of training, and/or consulting Services.

1. Definitions. The following definitions apply to this Agreement and any related Statement of Work.

1.1 "Deliverable" means materials delivered by Attachmate to Customer to fulfill the Services described in a SOW. Commercially available software products or related software patches or updates are not part of a Deliverable; any license for such software must be obtained through a separate Agreement.
1.2 "Effective Date" means the later of the dates defined in the SOW, as executed by Customer and Attachmate.
1.3 "Services" means the services provided by Attachmate as described in the SOW.
1.4 "Statement of Work" or ("SOW") means (a) a written document executed between the parties that describes the Services and applicable fees and references this Agreement, or (b) for a purchase order submitted by Customer and accepted by Attachmate for the purchase of standard Services offered on the Attachmate Price List such as a service incident pack or training module, the portion of the purchase order identifying the price and part number.

2. Services

2.1 SOW Integration. Services shall be provided pursuant to a SOW. Each SOW shall be governed by these Agreement terms. If a SOW contains provisions inconsistent with this Agreement, the SOW provisions shall prevail with respect to that SOW. This Agreement by itself does not obligate a party to enter into a SOW.
2.2 Change Order. Any changes to the obligations of either party or to any other material aspect of a SOW will require a written change order or SOW amendment signed by both parties that describes the changes and any related cost adjustments.
2.3 Assumptions. Attachmate will perform the Services as described in the SOW. The Services and compensation described in the SOW will be based upon information Customer provides and any assumptions set forth in the SOW. If information provided by Customer is incomplete or inaccurate, if the stated assumptions are incorrect, or if Customer by its act or omission delays Attachmate’s performance or presents Attachmate with new requirements, then the parties will modify the SOW pursuant to the above Change Order section.
2.4 Site Regulations. Attachmate employees performing Services on Customer premises shall observe reasonable safety and security protocols of which Attachmate is notified in writing. If after creation of a SOW Customer introduces new such requirements the parties shall in good faith mutually negotiate implementation of the requirements along with any related fee increase.
2.5 Access. Customer will reasonably cooperate with and assist Attachmate by providing (a) access to applicable personnel, facilities, and equipment, and (b) timely decision-making, notification of relevant issues or information and granting of approvals or permissions.

2.6 Backup. It is Customer’s responsibility to back up and protect its computer systems and data.
2.7 No Support Obligation. Except as the parties may expressly agree otherwise in writing, Attachmate has no obligation to provide support services for Deliverables.

3. Payment Terms

3.1 Compensation. Customer shall pay amounts in accordance with the relevant SOW. Unless otherwise expressly provided in the SOW, this shall include reasonable out-of-pocket expenses incurred in the performance of the Services, and for any non-standard expenses incurred at the written request of Customer.
3.2 Purchase Order. Prior to a SOW start date Customer shall issue a purchase order ("PO") equal to the amount specified in the SOW. If Customer does not issue POs, Customer shall provide in the SOW Customer’s billing contact name, email, phone and address, and agrees to pay based on the signed SOW.
3.3 Invoicing. Unless otherwise agreed in a SOW, Service fees and any applicable expenses shall be calculated by Attachmate on a monthly basis and invoiced to Customer after the end of each month.
3.4 Payment. Payment shall be due 30 days from the invoice date. Unless otherwise expressly provided in the SOW, all payments shall be made in U.S. dollars. Payments made more than 30 days after the due date will accrue interest from the due date at the lesser rate of 1% per month or the maximum allowed by applicable law. If payment is late Attachmate may suspend performance of the Services. Except as expressly stated otherwise in this Agreement or a SOW, all payments are non-refundable and non-cancellable. For purchases of Services days that are identified as having a specific time period for use, any unused days will expire at the end of such time period.
3.5 Taxes. Attachmate’s fees do not include any applicable taxes. Customer will pay any taxes associated with the delivery of Services, including sales, use, excise, and value added taxes (VAT), but excluding (a) taxes on Attachmate’s net income, capital, or gross receipts, or (b) any withholding tax imposed if such tax is allowed as a credit against U.S. income taxes of Attachmate, such as a withholding tax on a royalty payment made by Customer where required by law. If Customer is required to withhold taxes, Customer will furnish Attachmate receipts substantiating such payment. If Attachmate is required to remit any tax or duty on behalf or for the Customer’s account, Customer will reimburse Attachmate within 30 days after Attachmate notifies Customer in writing of such remittance. Customer will provide a valid tax exemption certificate in advance of any remittance otherwise required to be made by Attachmate on behalf or for Customer’s account, where such certificate is applicable.

4. Intellectual Property

4.1 License. Subject to payment of all applicable fees for the Services, Attachmate grants Customer a nonexclusive, nontransferable, worldwide, perpetual, royalty-free license to copy and use Deliverables for Customer’s internal business operations. If Deliverables are described in a SOW as an extension or modification of software for which Customer has obtained a license independent of this Agreement, copying and use of the Deliverables is limited to use with the separately licensed software.
4.2 Ownership. This Agreement does not change ownership of a
party’s pre-existing materials. Except as expressly provided otherwise in this Section 6 or any SOW, Attachmate (and/or its licensors) owns all right, title and interest, in any materials developed, delivered and/or used by Attachmate in the performance of this Agreement.

4.3 Protection of Deliverables. Customer shall take reasonable steps to protect Deliverables from unauthorized copying or use. If a Deliverable consists of software code, except as otherwise specified in a SOW, the software’s source code is not licensed to Customer beyond the license grant described in section 4.1, and Customer may not reverse engineer, decompile or disassemble any source code except as expressly permitted by applicable law. Any proprietary rights notices must be reproduced and included on all copies of Deliverable (including on any modifications that may be authorized by this Agreement or any SOW).

4.4 Reservation of Rights. Attachmate reserves all intellectual property rights not expressly granted to Customer. Except as expressly authorized in this Agreement, Customer shall not sell, rent, lease, sublicense, distribute, transfer, copy, reproduce, display, modify or time share any Deliverable.

4.5 Third Party Materials. Nothing in this Agreement shall restrict or limit or otherwise affect any rights or obligations Customer may have, or conditions to which Customer may be subject, under any applicable open source licenses to any open source code contained in Deliverables or any third-party licenses for third-party Code contained in Deliverables.

4.6 Separate Software License. The Services may be in support of software licensed to Customer under a separate agreement. It is Customer’s responsibility to obtain the appropriate licenses for such software. This Agreement does not modify in any way the licensing, warranty, or other agreement provisions for software products separately licensed by Customer from Attachmate or any other party (including related software patches or updates), except as may be expressly provided for in a SOW. No payment of any software license fee shall be contingent upon performance or completion of Services.

5. Warranty

5.1 Warranty. Attachmate warrants that the Services shall be performed in a professional manner in accordance with generally accepted industry standards. Unless otherwise stated in the SOW, Customer must notify Attachmate of any warranty deficiency within 30 days of Services delivery. Upon receipt of timely written notice of warranty breach, Attachmate’s obligation is to correct the Services so that they comply with this warranty. If Attachmate is unable to correct deficient Services within a reasonable period of time, Customer’s sole remedy is to terminate the relevant SOW and obtain a refund of the amount Customer paid to Attachmate for the portion of the Services Attachmate is unable to correct.

5.2 Exclusions. This warranty excludes non-performance issues that result from third-party hardware or firmware malfunction or defect; software not developed by Attachmate, incorrect data or incorrect procedures used or provided by Customer or a third party, changes to a Deliverable or Customer’s computing environment, or defects outside the reasonable control of Attachmate. Customer will reimburse Attachmate for its reasonable time and expenses for any Services provided at Customer’s request to remedy excluded non-performance issues.

5.3 Disclaimer. EXCEPT AS EXPRESSLY DESCRIBED IN THIS WARRANTY SECTION, ATTACHMATE DISCLAIMS AND EXCLUDES ALL EXPRESS, IMPLIED, AND STATUTORY WARRANTIES, REPRESENTATIONS, AND CONDITIONS WITH RESPECT TO SERVICES AND DELIVERABLES, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, GOOD TITLE, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. Attachmate does not warrant that the Services or any Deliverables will be without defect or error.

6. Confidential Information. The party receiving Confidential Information will exercise reasonable care to protect the Confidential Information from unauthorized disclosure or use. The recipient may disclose Confidential Information only to its employees or agents with a need to know such information to perform Agreement and/or SOW obligations and will inform such employees and agents by way of policy or agreement that they are bound by confidentiality obligations. “Confidential Information” means the terms of this Agreement and of any SOW and any other information that (a) if disclosed in tangible form, is marked in writing as confidential, or (b) if disclosed orally or visually, is designated orally at the time of disclosure as “confidential.” Confidential Information will not include information (a) already in the receiving party’s possession without obligation of confidence; or (b) independently developed by the receiving party; or (c) that becomes available to the general public without breach of this Agreement; or (d) rightfully received by the receiving party from a third party without obligation of confidence; or (e) released for disclosure by the disclosing party with its written consent; or (f) required to be disclosed by law, regulation, or court order. Recipient’s duty to hold Confidential Information in confidence does not expire as to any information that contains personally identifiable information. As to other information the duty expires 5 years after the later of termination of the Agreement or the applicable SOW. Attachmate retains the right to use its knowledge and experience (including processes, ideas, and techniques) learned or developed in the course of providing any services to Customer.

7. Indemnification

7.1 Scope. Attachmate will defend any claim brought against Customer by a third party to the extent it is based on an allegation that Customer’s use of a Deliverable infringes the third-party’s patent, copyright, or trademark, or misappropriates such third party’s trade secrets, under the laws of the country in which Customer takes delivery of the Deliverable. Attachmate will indemnify Customer from any damages, costs, and expenses finally awarded (or agreed to by settlement) for any such claim. Customer must promptly notify Attachmate of the claim, give Attachmate control of the defense and related settlement negotiations, and provide Attachmate with the reasonable assistance (for which Attachmate shall pay Customer’s reasonable out-of-pocket costs) in defending the claim. If Customer desires separate legal representation in any such action Customer will be responsible for the costs and fees of its separate counsel.

7.2 If a Deliverable is held to infringe and its use is prohibited or if, in Attachmate’s reasonable opinion, is likely to become the subject of an infringement claim, Customer will permit Attachmate at Attachmate’s option and expense to (a) procure for Customer the right to continue to use the infringing Deliverable, or (b) replace or modify it so that it becomes non-infringing and has the same or additional functionality and comparable or improved performance characteristics, or (c) upon Customer’s return of the infringing Deliverable, refund the amount paid for the infringing Deliverable.

7.3 Limitations. Attachmate will have no obligation of defense or indemnity to the extent a claim arises from (a) compliance with Customer’s designs or instructions, (b) modification of a Deliverable not authorized in writing by Attachmate, (c) use or combination with non-Attachmate software, equipment, data, or business processes, or (d) a claim, demand, or notice Customer received prior to the Effective Date. This section 7, Indemnification, states the exclusive...
obligation of Attachmate for any claim of infringement or misappropriation of any intellectual property rights. Attachmate’s liability for any infringement or misappropriation claim is limited to twice the amount paid by Customer for the Deliverable giving rise to the claim.

7.4 General Indemnity. Each party will indemnify, defend, and hold the other party, its officers, directors, employees, and/or shareholders, harmless from any final court judgment (or settlement to which the parties have agreed) arising from personal injury or tangible property damage which is determined by a court of competent jurisdiction to be caused by the gross negligence or willful misconduct of the indemnifying party or its authorized employees relating to this Agreement. The indemnifying party’s liability under this Section shall be reduced proportionally to the extent that any act or omission of the other party, or its employees or agents, contributed to such liability. “Tangible property” does not include electronic files, data, or other electronic information.

8. Limitation of Liability

8.1 DIRECT DAMAGES. A PARTY’S LIABILITY FOR ANY CLAIM ARISING UNDER OR RELATING TO THIS AGREEMENT OR ANY SOW SHALL BE LIMITED TO DIRECT DAMAGES AND SHALL NOT EXCEED THE AMOUNT PAID, AND ANY AMOUNTS OWED BUT NOT YET PAID, FOR THE SERVICES GIVING RISE TO THE CLAIM. The limitation in this section 7.1 does not apply to infringement of the other party’s intellectual property rights, violations of the confidentiality provisions of this Agreement, or damages for personal injury or tangible property caused by gross negligence or willful misconduct.

8.2 INDIRECT DAMAGES. NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, (INCLUDING LOSS OF PROFITS OR BUSINESS) ARISING UNDER OR RELATING TO THIS AGREEMENT OR ANY SOW, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

8.3 Limitation of Action. Except for a claim for nonpayment or breach of proprietary rights, no claim arising out of or relating to this Agreement may be brought by a party more than 1 year after the cause of action has accrued.

9. Term and Termination

9.1 Term. This Agreement begins on the Effective Date shown on the applicable SOW and expires on the date that Services are completed.


10.1 Law. All matters arising out of or relating to the Agreement will be governed by the substantive laws of the State of Washington without regard to its choice of law provisions, unless the laws of the state, province, or country of Attachmate’s domicile require otherwise, in which case the laws so required will govern. If a party initiates Agreement-related legal proceedings, the prevailing party will be entitled to recover reasonable attorneys’ fees. Any suit, action, or proceeding arising out of or relating to the Agreement may only be brought before a court of competent jurisdiction in the state whose law governs this Agreement.

10.2 Compliance. Each party will comply with any applicable law or regulation related to its performance under the Agreement, including a party’s obligations under data protection laws.

10.3 Assignment. Neither party may transfer or assign this Agreement without the prior written consent of the other party; consent may not be unreasonably withheld. Either party may with written notice assign the Agreement to the surviving entity in the case of a merger or acquisition. Attachmate may assign all or a portion of the Agreement (including the receipt of payments) to its parent Attachmate or to an entity under common control with Attachmate.

10.4 Publicity. With Customer’s written permission Attachmate may use and publish Customer’s name in Attachmate’s customer lists, referrals lists, and in promotional information including press releases, brochures, reports, letters, white papers, and electronic media such as e-mail or Web pages.

10.5 Entire Agreement. This Agreement (including any SOW) is the entire agreement between the parties with respect to its subject matter and supersedes any prior or contemporaneous agreements, proposals, or other communications on this subject matter. This Agreement may be modified only by a written addendum or change order signed by authorized signatories of both parties. The terms of any invoice, purchase order or similar document will not modify this Agreement.

10.6 Severability/Waiver. If a provision is invalid or unenforceable, the remaining provisions will remain in effect and the parties will amend the Agreement to reflect the original agreement to the maximum extent possible. No waiver of any contractual right will be effective unless in writing by an authorized representative of the waiving party. No waiver of a right arising from any breach or failure to perform will be deemed a waiver of any future right.

10.7 Notice. Notices to a party must be in writing and sent to the party’s address specified in the Agreement or such other updated address as a party may provide in writing. Notices may be delivered in a format reasonably chosen by the notifying party. An original of a notice regarding a SOW must also be sent to the applicable project manager.

10.8 Force Majeure. Neither party will be liable for delay or failure to perform arising out of causes beyond the reasonable control and without the fault or negligence of such party, including labor disputes, government regulation, and extreme weather events. A party will give prompt notice of any condition likely to cause any delay or default.

10.9 Survival. Provisions of this Agreement which by their nature extend beyond Agreement termination, including sections 4; (Intellectual Property), 5; (Warranty), 6; (Confidential Information), 7; (Limitation of Liability), and 9; (General Provisions), will survive termination of the Agreement.

10.10 Export. Deliverables may be subject to U.S. export controls and the trade laws of other countries. The parties agree to comply with all export control regulations and to obtain any required licenses or item classification to export, re-export or import deliverables. The parties agree not to export or re-export to entities on the current U.S. export exclusion lists or to any embargoed or terrorist supporting countries as specified in the EAR. The parties will not use deliverables for prohibited nuclear, missile, or chemical biological weaponry end uses as specified in the EAR. Please consult the Bureau of Industry and Security web page www.bis.doc.gov before exporting or re-exporting items subject to the EAR.

10.11 Insurance. Attachmate will maintain reasonable amounts of insurance, which shall at least meet any limits required by law, for public liability, property damage, employer’s liability and workers compensation.

10.12 U.S. Government. This clause is not applicable if Deliverables are not provided to the U.S. government. Use, duplication, or disclosure of any Deliverables by the U.S. Government is subject to the restrictions in FAR 52.227-14 (Dec 2007) Alternate II (Dec 2007), FAR 52.227-19 (Dec 2007), or
DFARS 252.227-7013(b)(3) (Nov 1995), or applicable successor clauses.

10.13 **Subcontracting.** Attachmate may subcontract a portion of the Services to a third party contractor without prior consent provided that Attachmate remains responsible to Customer for delivery of the Services and full compliance by the subcontractor with the Agreement’s obligations.

10.14 **Background Checks.** Attachmate represents that all employees that perform the Services have passed, at a minimum, the following verifications or screening processes: (a) employment history, (b) educational background, and (c) criminal background. Attachmate agrees to provide Customer upon written request certification that such background checks have been performed and documentation of the processes followed for such Background Checks. Customer may at its expense perform additional background checks subject to the consent of the relevant employee.

10.15 **Non-solicitation.** Customer will not without prior written consent of the other solicit for hire, hire, or cause a third party to solicit for hire or hire any personnel or contractor who has been involved in performing or supervising the Services. This section does not prohibit general solicitations used in the ordinary course of business. In addition, Customer agrees not to hire or engage any Attachmate personnel or subcontractor designated to provide on-site support services or consulting services to Customer. These obligations shall terminate 12 months after Services completion. Customer acknowledges that Attachmate resources represent a significant investment in recruitment and training, the loss of which would be detrimental to Attachmate’s current and future business. If Customer hires a person in violation of this provision Customer shall pay liquidated damages equal to 50% of the hired person’s gross annual cash compensation based upon the rate of pay as of the last day of the person’s work with Attachmate.

10.16 **Independent Contractor.** Nothing in this Agreement and no course of dealing between the parties creates an employment or agency relationship or partnership between a party and the other party or its employees or agents. Each party shall be solely responsible for all employment benefits for its employees.