



## **Acalvio Subscription License and Professional Services Agreement**

This Acalvio Subscription License and Professional Services Agreement (this "Agreement") effective as of this \_\_\_\_\_ day of \_\_\_\_\_ ("Effective Date") is entered into by and between Acalvio Technologies, Inc., a Delaware corporation with an address of 2520 Mission College Boulevard, Suite 110, Santa Clara, CA 95054 ("Acalvio") and \_\_\_\_\_ ("Customer"). The parties agree as follows:

### **Recitals**

**Whereas**, Acalvio is in the business of delivering the ShadowPlex, Deception 2.0 software solution, as further described in an Order (the "ShadowPlex"); and

**Whereas**, Customer wishes to receive a license to use ShadowPlex for its internal business purposes either for operation on Customer's computer equipment ("ShadowPlex On-Premises Software") or to access ShadowPlex for use via the cloud ("ShadowPlex Cloud Service") and Acalvio wishes to grant Customer such a license to Customer, subject to the terms set forth herein.

**Now, therefore**, in consideration of the mutual promises and covenants contained here, the parties agree as follows:

Capitalized terms not otherwise defined herein shall have the meanings set forth in Section 15.

**Section I ShadowPlex Cloud Service.** The provisions of this Section I will apply only to ShadowPlex Cloud Service.

**I.1 Access.** Subject to Sections 1.4 and 1.5, and any scope limitations set forth in Section 1.2, Acalvio shall make the ShadowPlex Cloud Service available to Customer pursuant to the terms of this Agreement and the relevant Order during the Subscription Term.

**I.2 Use of the ShadowPlex Cloud Service.** Any limitations on Customer's scope of use of the ShadowPlex Cloud Service will be as set forth in the Order. The use of the ShadowPlex Cloud Service is priced as described in the Order. Acalvio will provide Customer access to the ShadowPlex Cloud Service solely by Users authorized by Customer and solely for the Client Asset Counts and Server Asset Counts set forth in an Order. User accounts and passwords are specific to individual Users, and may not be shared among or by other users. Customer administrators may reassign a User account during the Subscription Term, if a former User no longer requires access to or use of the ShadowPlex Cloud Service. All Users must be (a) employees of Customer, or (b) agree to abide by the terms of this Agreement, in which event Customer will be responsible for such Users' adherence to the terms of this Agreement.

**I.3 Support.** Acalvio will use commercially reasonable efforts to make the ShadowPlex Cloud Service (as defined herein) at least 99.9% of the time as measured over the course of each year during the Subscription Term (each such year, a "Service Period"), excluding unavailability as a result of any of the Exceptions described below ("Availability Requirement").

(a) "Available" means the ShadowPlex Cloud Service is available for access and use by Customer over the Internet and operating in material accordance with the Software's written documentation.

(b) For purposes of calculating the Availability Requirement, the following are "Exceptions" to the Availability Requirement, and the ShadowPlex Cloud Service will not be considered un-Available in connection with any failure to meet the Availability Requirement or impaired ability of Customer to access or use the ShadowPlex Cloud Service that is due, in whole or in part, to any: (a) act or omission by Customer that does not strictly comply with this Agreement and any applicable documentation; (b) Customer's delay or failure to perform any of its obligations set forth in the Agreement; (c) Customer's Internet connectivity; (d) event of force majeure; (e) failure, interruption, outage or other problem with any software, hardware, system, network, facility



or other matter not supplied by Acalvio pursuant to this Agreement; (f) scheduled outages of the ShadowPlex Cloud Service; or (g) disabling, suspension or termination of the ShadowPlex Cloud Service in accordance with Section 9.

**1.4 Customer Responsibilities.** Customer will be: (a) responsible for Users' compliance with this Agreement and shall use the ShadowPlex Cloud Service only in accordance with the ShadowPlex Cloud Service documentation, (b) responsible for the accuracy, integrity, and legality of Customer Data and the means by which it acquires and uses such Customer Data, and (c) solely responsible for determining the suitability of the ShadowPlex Cloud Service for Customer's business and complying with any regulations and laws, (including, without limitation, export, data protection and privacy laws) applicable to Customer Data and Customer's use of the ShadowPlex Cloud Service.

**1.5 Restrictions.** Customer shall not, directly or indirectly: (a) sublicense, resell, rent, lease, distribute, market, commercialize or otherwise transfer rights or usage to all or any portion of the ShadowPlex Cloud Service, or provide the ShadowPlex Cloud Service on a timesharing, service bureau or other similar basis; (b) attempt to gain unauthorized access to, or disrupt the integrity or performance of, the ShadowPlex Cloud Service or the data contained therein, or (c) use the ShadowPlex Cloud Service, or permit it to be used, for purposes of ShadowPlex Cloud Service evaluation, benchmarking or other comparative analysis without Acalvio's prior written consent.

**1.6 Client Software.** Acalvio may provide Customer with certain client software (such as local web applications or mobile device apps) to facilitate use of the ShadowPlex Cloud Service. Acalvio hereby grants to customer a non-exclusive, non-transferable, non-sublicensable right, during the term of this Agreement, to use such software solely in connection with the use of the ShadowPlex Cloud Service.

**Section 2 On-Premises Software.** The provisions of this Section 2 will apply only to ShadowPlex On-Premises Software.

**2.1 License Grant.** Subject to Section 2.3 and 2.4 and any scope limitations referenced in Section 2.2, Acalvio hereby grants to Customer a limited, non-exclusive, non-sublicensable and non-transferable (subject to Section 14.4) license to use and copy ShadowPlex (a) in object code only, (b) solely for its internal business purposes and (c) solely in accordance with the Client Asset Counts and Server Asset Counts.

**2.2 Use of the ShadowPlex On-Premises Software.** Any limitations on Customer's scope of use of the ShadowPlex On-Premises Software, including the number of Users authorized to access the ShadowPlex On-Premises Software and the number of copies of the ShadowPlex On-Premises Software that may be installed, used and run on Customer's network, will be as set forth in the Order. The use of the ShadowPlex On-Premises Software is priced as described in the Order. Acalvio will provide Customer access to the ShadowPlex On-Premises Software solely by Users authorized by Customer. All Users must be (a) employees of Customer, or (b) agree to abide by the terms of this Agreement, in which event Customer will be responsible for such Users' adherence to the terms of this Agreement.

**2.3 Customer Responsibilities.** Customer will be: (a) responsible for Users' compliance with this Agreement and shall use the ShadowPlex On-Premises Software only in accordance with the ShadowPlex On-Premises Software documentation, (b) responsible for the accuracy, integrity, and legality of Customer Data and the means by which it acquires and uses such Customer Data, and (c) solely responsible for determining the suitability of the ShadowPlex On-Premises Software for Customer's business and complying with any regulations and laws, (including, without limitation, export, data protection and privacy laws) applicable to Customer Data and Customer's use of the ShadowPlex On-Premises Software.

**2.4 Restrictions.** Customer shall not, directly or indirectly: (a) sublicense, resell, rent, lease, distribute, market, commercialize or otherwise transfer rights or usage to all or any portion of the ShadowPlex On-Premises Software, or provide the ShadowPlex On-Premises Software on a timesharing, service bureau or other similar basis; (b) attempt to gain unauthorized access to, or disrupt the integrity or performance of, the ShadowPlex On-Premises Software or the data contained therein, (c) modify, incorporate or use the



ShadowPlex On-Premises Software in any other works, (d) reverse engineer, disassemble, decompile, decode or adapt the ShadowPlex On-Premises Software, or otherwise attempt to derive or gain access to the source code of the ShadowPlex On-Premises Software, in whole or in part (e) use the ShadowPlex On-Premises Software, or permit it to be used, for purposes of ShadowPlex On-Premises Software evaluation, benchmarking or other comparative analysis without Acalvio's prior written consent, (f) make unauthorized copies of the ShadowPlex On-Premises Software, (g) remove or modify any proprietary notices, labels or marks on or in any copy of the ShadowPlex On-Premises Software, (h) use the ShadowPlex On-Premises Software or reports generated by the ShadowPlex On-Premises Software in Customer's products or services or in its marketing of products or services to third parties, (i) access the database or any other third party product that is embedded in the ShadowPlex On-Premises Software with applications other than the ShadowPlex On-Premises Software, or (j) use the ShadowPlex On-Premises Software other than as permitted herein.

**2.5 Delivery.** Acalvio shall deliver copies of the ShadowPlex On-Premises Software to Customer in the manner set forth in the Order.

**Section 3 Professional Services.** If the Order indicates that Acalvio will provide any adoption, training, or similar services, Acalvio shall provide such services as described in the Order for the fees described therein. Acalvio's current fees for such services are set forth in Attachment B, attached hereto. Any additional services to be performed by Acalvio will be described in and subject to a separate written agreement.

**Section 4 Third-Party Software.** ShadowPlex may provide access to certain Third Party Software, as indicated in the Order. In such case, Customer may be required to enter into additional terms and conditions of the applicable third party. Any such terms will be referenced in the Order.

**Section 5 Support.** During the Subscription Term, Acalvio will use its best efforts to provide Customer with the support services set forth on **Attachment A** that correspond to the support level purchased by Customer in an Order. All support services are subject to Customer's payment of support fees, as set forth in the Order.

**Section 6 Customer Data, Usage Data.**

(a) **Processing of Customer Data.** Customer is solely responsible for entering its Customer Data into ShadowPlex . Acalvio will have the right to use and exploit the Customer Data for the sole purpose of providing ShadowPlex to Customer and to perform its obligations under this Agreement, including to prevent or address support, service or technical problems. Without limiting the foregoing, Customer, and not Acalvio, will be responsible to enter into any licenses from third parties who may have intellectual property rights in the Customer Data that may be necessary to use the Customer Data in connection with ShadowPlex, and Customer shall ensure that its use of the Customer Data complies with any non-disclosure obligations of Customer, and any applicable privacy policies or laws.

(b) **Security.** Acalvio will use reasonable and customary technical measures to protect against accidental or unauthorized destruction, loss, alteration or disclosure of Customer Data, and reasonable and customary security programs and procedures to ensure that unauthorized persons will not have access to any equipment used by Acalvio to process Customer Data. Acalvio does not recommend storing personally identifiable information of third parties in ShadowPlex, and accordingly, Acalvio will not be responsible for any liability or loss arising from Customer storing such data in ShadowPlex.

(c) **Usage Data.** In the course of providing Customer with the ShadowPlex Platform, Acalvio may also collect, use, process and store Usage Data in order to create and compile anonymized and aggregated statistics about ShadowPlex. Acalvio will have the right to use such data in any manner, including, without limitation, for diagnostic or system monitoring purposes, subject only to the confidentiality obligations of Section 10.

**Section 7 Proprietary Rights.**



**7.1 Ownership of ShadowPlex Platform and Modifications.** Acalvio retains all right, title and interest, including all intellectual property rights, in and to ShadowPlex . In the event Acalvio prepares any modification of ShadowPlex at Customer's request, the parties may enter into a separate written professional services agreement. Unless the parties do so in advance in writing, Acalvio will retain all right, title and interest in and to any such modifications.

**7.2 Suggestions.** Customer or its Users may provide suggestions, enhancement or feature requests or other feedback to Acalvio with respect to ShadowPlex (collectively, "Feedback"). All Feedback will be given by Customer entirely voluntarily. Customer grants and agrees to grant to Acalvio a royalty-free, transferable, irrevocable, worldwide, fully paid-up license under Customer's intellectual property rights to use, disclose, reproduce, license (with rights to sublicense through multiple tiers of sublicensees), sell, offer for sale, distribute, import and otherwise exploit the Feedback without restriction or obligation of any kind or nature.

## **Section 8 Payment.**

**8.1 Fees and Payment.** Customer shall pay all fees specified in the relevant Order and such fees are payable in United States dollars (unless expressly agreed otherwise in an Order), are exclusive of taxes and are non-refundable. Fees are due no later than 30 days after the invoice date, unless otherwise noted in the Order. Acalvio will invoice Customer based on the billing information in the Order. Acalvio's current fees for ShadowPlex is set forth in Attachment B.

**8.2 Additional Capacity.** Additional subscription capacity may be added during a Subscription Term at Acalvio's then-current fees. All such additional capacity must be purchased in advance. If Customer elects to increase its capacity during a given month of the Subscription Term, unless otherwise set forth in the Order, Acalvio shall pro-rate fees for such additional capacity for any partial month of the Subscription Term.

**8.3 Renewal.** All fees required for renewal of a Subscription Term will be reflected in a quotation issued by Acalvio in advance of the expiration of the current Subscription Term. Fees for any subsequent renewals shall be set at the then-current Acalvio list price, unless otherwise stated on the Order.

**8.4 Overdue Charges.** If any undisputed charge owing by Customer to Acalvio remain unpaid 30 days after its due date, Acalvio may, without limiting its rights and remedies, suspend Customer's use of ShadowPlex until such amounts are paid in full. Unless otherwise provided in an Order, fees specified in quotes or Orders, do not include any Taxes, and Customer is responsible for payment and reimbursement of all Taxes associated with its purchases hereunder, excluding any Taxes based on Acalvio's net income.

## **Section 9 Term and Termination.**

**9.1 Term.** This Agreement commences on the Effective Date and continues through the Subscription Term until all Orders hereunder have expired or have been terminated. The Subscription Term shall be as specified in the applicable accepted Order.

**9.2 Auto-renewal.** This Agreement shall automatically renew for successive one (1) year periods unless either party provides the other party with written notice of non-renewal at least 30 days prior to the end of the then-current term.

**9.3 Termination by Customer or Acalvio.** Either party may terminate this Agreement and any then-current Order prior to the end of a Subscription Term if the other party: (i) materially breaches its obligations hereunder and, where such breach is curable, such breach remains uncured for 30 days following written notice of the breach or (ii) becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation, or assignment for the benefit of creditors.



**9.4 Effect of Termination.** Upon expiration or termination of this Agreement, the rights granted under this Agreement and any then-current Orders will be immediately revoked and Acalvio may immediately deactivate Customer's account. Acalvio may keep copies of Customer Data solely to the extent necessary for the performance of its obligations under this Agreement; however, Acalvio will not be obligated to keep Customer Data after the date of termination except as may be specifically set forth in an Order. In no event shall any termination relieve Customer of the obligation to pay any fees payable to Acalvio for any period prior to the effective date of termination, unless otherwise stated in this Agreement.

**9.5 Transition.** Upon expiration or termination of this Agreement, for any reason other than termination by Acalvio for breach by Customer under Section 9.2, Customer may elect to continue access to ShadowPlex with a limited-access subscription that allows Customer to copy the Customer Data from ShadowPlex to its own computer servers, but not to add Customer Data or engage in additional processing of Customer Data. Unless otherwise set forth in the Order, such limited access subscription will be, for each month, 25% of the prorated amount payable for the last month of the subscription.

**9.6 Surviving Provisions.** Sections 6, 7, 8, 9.3, and 10 – 12 shall survive termination or expiration of this Agreement.

## **Section 10 Confidentiality.**

**10.1 Confidentiality.** The receiving party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care) (i) not to use any Confidential Information of the disclosing party for any purpose outside the scope of this Agreement and (ii) limit access to any Confidential Information of the disclosing party, except (a) for those employees, representatives, or contractors of the receiving party who require access to the Confidential Information to enable receiving party to exercise its rights and obligations under this Agreement and who are bound by written agreement, with terms at least as restrictive as these, not to disclose third-party confidential or proprietary information disclosed to such party; or (b) as disclosure may be required by law or governmental regulation, subject to the receiving party providing to the disclosing party written notice to allow the disclosing party to seek a protective order or otherwise prevent the disclosure. Nothing in this Agreement will prohibit or limit the receiving party's use of information: (i) previously known to it without obligation of confidence, (ii) independently developed by or for it without use of or access to the disclosing party's Confidential Information, (iii) acquired by it from a third party that is not under an obligation of confidence with respect to such information, or (iv) that is or becomes publicly available through no breach of this Agreement. The receiving party acknowledges the irreparable harm that improper disclosure of Confidential Information may cause; therefore, the injured party is entitled to seek equitable relief, including temporary restraining order(s) or preliminary or permanent injunction, in addition to all other remedies, for any violation or threatened violation of this Section. The terms of this Agreement and source code of ShadowPlex are Confidential Information of Acalvio or its licensors.

**10.2 Destruction.** Within 5 days after a disclosing party's request, the receiving party shall return or destroy the disclosing party's Confidential Information; provided, however, that the receiving party shall be entitled to retain archival copies of the Confidential Information of the disclosing party solely for legal, regulatory or compliance purposes unless otherwise prohibited by law.

## **Section 11 Warranties.**

**11.1 Acalvio Warranties.** Acalvio warrants that (a) ShadowPlex shall perform materially in accordance with the written specifications for ShadowPlex; and (b) Acalvio will use commercially reasonable measures to detect whether ShadowPlex contains any Malicious Code. If ShadowPlex does not conform to the warranty specified above and before Customer pursues any other remedies, Customer must notify Acalvio in writing no later than 30 days after the breach of warranty, and Acalvio agrees to use commercially reasonable efforts to cure the non-conforming portions of ShadowPlex. Acalvio is not responsible for any non-compliance resulting from or caused by any (i) Malicious Code present in Customer Data, (ii) modifications made by anyone other than Acalvio or its agents or (iii) software not supplied by Acalvio. Customer's sole and exclusive remedy for a breach of any of warranties contained in this Section shall be to terminate the Agreement for cause and,



notwithstanding anything to the contrary in this Agreement, have Acalvio refund to Customer the pro rata unused portion of any prepaid fees.

**11.2 Reciprocal Warranty.** Each party warrants to the other party that it has the legal power and authority to enter into this Agreement.

**11.3 Disclaimer of Warranties.** EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, SHADOWPLEX IS PROVIDED TO CUSTOMER STRICTLY ON AN "AS IS" BASIS. ALL CONDITIONS, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS, ARE HEREBY DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

## **Section 12 Third Party Claims.**

**12.1 Acalvio.** Acalvio shall at its expense (a) defend or settle any third party claims, actions and demands brought against Customer and its officers, directors, employees or agents, where the third party claimant expressly asserts that (i) ShadowPlex infringes such third party's trademarks, copyrights or US patents, or (ii) Acalvio misappropriated such third party's trade secrets in the development of ShadowPlex ; and (b) pay damages, if any, finally awarded by a court of competent jurisdiction against Customer indemnified parties or agreed upon in settlement by Acalvio (including other reasonable out-of-pocket costs incurred by Customer, including reasonable attorneys' fees, in connection with enforcing this Section 12.1), subject to the exclusions (1)-(4) set forth below. Acalvio has no obligation to Customer under this Section for any claim, action or demand to the extent that such claim, demand or action is based on: (1) Third Party Software or Customer Data, (2) modifications where ShadowPlex would not infringe (including by way of example, Modifications made by Customer, but excluding Modifications made by Acalvio or its agents), (3) combination of ShadowPlex with other software, processes or materials where ShadowPlex would not infringe except for such combination, or (4) Customer's use of ShadowPlex not in accordance with this Agreement. In the event that Acalvio believes ShadowPlex , or any part thereof, may be the subject of an infringement or a misappropriation claim as to which this Section applies, then Acalvio may, in its discretion and at its sole expense: (V) procure for Customer the right to continue using ShadowPlex or any applicable part thereof, (X) replace ShadowPlex , or infringing part thereof, with a non-infringing version (or part thereof), (Y) modify ShadowPlex , or infringing part thereof, so as to make it noninfringing, or (Z) in the event that (W), (X) or (Y) are not commercially feasible, then Customer shall have the right to terminate this Agreement solely with respect to the infringing portion of ShadowPlex , and, notwithstanding anything to the contrary in this Agreement, have Acalvio refund to Customer the pro rata unused portion of any pre-paid service fees. This Section states Acalvio's sole liability to, and Customer's exclusive remedy for, infringement claims of any kind in connection with ShadowPlex or services delivered under or in connection with this agreement.

**12.2 Customer.** Customer shall at its expense (a) defend or settle any third party claims, actions and demands brought against Acalvio and its officers, directors, employees and agents; and (b) pay all damages, if any, finally awarded against the Acalvio indemnified parties or agreed upon in settlement by Customer (including other reasonable out-of-pocket costs incurred by Acalvio, including reasonable attorneys' fees, in connection with enforcing this Section) arising from: (i) Customer's breach or violation of Customer's responsibilities under Sections 1.2, 1.4, 1.5, 2.2, 2.3 or 2.4, (ii) claims that Customer Data or use thereof in ShadowPlex infringes or violates the rights of a third party, or (iii) claims that Customer's or its Users' use of ShadowPlex or services in violation of this Agreement infringes or violates the rights of such third party.

**12.3 Indemnification Procedures.** The party entitled to seek coverage pursuant to this Section (the "Indemnified Party") shall: (a) promptly notify the other party obligated to provide such indemnification (the "Indemnifying Party") in writing of any such claim;(b) give sole control of the defense and settlement of any such claim to the Indemnifying Party (provided that Indemnifying Party may not settle any claim in a manner that adversely affects Indemnified Party's rights, imposes any obligation or liability on the Indemnified Party or admits liability or wrongdoing on the part of Indemnified Party, in each case, without Indemnified Party's prior written consent); and (c) provide all information and assistance reasonably requested by the Indemnifying



Party, at the Indemnifying Party's expense, in defending or settling such claim. The Indemnified Party may join in defense with counsel of its choice at the Indemnified Party's own expense.

**Section 13 Limitation of Liability.**

**13.1 Limitation on All Damages.** EXCEPT FOR A BREACH BY CUSTOMER OF SECTION 1.5 AND 2.4, AND CUSTOMER'S OBLIGATIONS TO PAY FEES UNDER ANY ORDER ISSUED UNDER THIS AGREEMENT, IN NO EVENT SHALL EITHER PARTY'S LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED IN THE AGGREGATE THE TOTAL AMOUNT PAYABLE BY CUSTOMER TO ACALVIO UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE ACT OR OMISSION GIVING RISE TO THE LIABILITY.

**13.2 Disclaimer of Consequential Damages.** IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY LOST PROFITS OR REVENUE OR FOR ANY INDIRECT, SPECIAL, COVER, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES, ARISING UNDER THIS AGREEMENT AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING DISCLAIMER SHALL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW. THE LIMITATIONS SET FORTH IN THIS SECTION 13 SHALL APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY AND REGARDLESS OF THE LEGAL OR EQUITABLE THEORY ON WHICH CLAIMS ARE BROUGHT (CONTRACT, TORT, INCLUDING NEGLIGENCE OR OTHERWISE).

**Section 14 General.**

**14.1 Publicity.** Acalvio may include Customer name on a customer list and in its portfolio for sales purposes, provided that Acalvio will not take any action implying sponsorship by Customer.

**14.2 United States Government Users.** ShadowPlex is commercial computer software as defined in FAR 2.101. Any related documentation, technical data, or services are also commercial. In accordance with FAR 12.212 and DFARS 227.7202, all rights conferred in ShadowPlex , related documentation, technical data, services, or any deliverable to the United States Government are specified in this Agreement. All other uses are prohibited and no ownership rights are conferred.

**14.3 Export Compliance.** ShadowPlex is subject to all applicable export control laws and regulations, including, without limitation, those of the United States government.

**14.4 Assignment.** Neither party may assign any of its rights or obligations under this Agreement, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld). Notwithstanding the foregoing, either party may assign this Agreement in its entirety (including all Orders), without the consent of the other party, in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns. Any attempted assignment in breach of this Section shall be void.

**14.5 Relationship of the Parties.** Acalvio and Customer are independent contractors, and nothing in this Agreement or any attachment hereto will create any partnership, joint venture, agency, franchise, sales representative, or employment relationship between the parties.

**14.6 No Third-Party Beneficiaries.** There are no third party beneficiaries to this Agreement.

**14.7 Choice of Law and Jurisdiction.** This Agreement is governed by and construed in accordance with the laws of the State of California and the federal U.S. laws applicable therein, excluding its conflicts of law provisions. Customer and Acalvio agree to submit to the personal and non-exclusive jurisdiction of



the courts located in Santa Clara County, California. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply to this Agreement.

**14.8 Manner of Giving Notice.** Notices regarding this Agreement shall be in writing and addressed to Customer at the address Customer provides, or, in the case of Acalvio, to the address for Acalvio set forth above. Notices regarding ShadowPlex in general may be given by electronic mail to Customer's e-mail address on record with Acalvio.

**14.9 Force Majeure.** Neither party shall be liable to the other for any delay or failure to perform hereunder (excluding payment obligations) due to circumstances beyond such party's reasonable control, including acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems (excluding those involving such party's employees), service disruptions involving hardware, software or power systems not within such party's reasonable control, and denial of service attacks.

**14.10 Entire Agreement.** This Agreement and any Orders represent the entire agreement of the parties concerning its subject matter and is intended to be the final expression of their Agreement, and supersede all prior and contemporaneous agreements, proposals, or representations, whether written or oral. No failure or delay in exercising any right hereunder shall constitute a waiver of such right. No amendment or waiver of any provision of this Agreement or an Order shall be effective unless in writing and signed (either manually or electronically) by an authorized representative of Customer and Acalvio.

**14.11 Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, such provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions shall remain in effect.

## **Section 15 Definitions.**

**15.1 "Client Asset Count"** means the number of client, end-point IPs for which a Customer may use ShadowPlex .

**15.2 "Customer Data"** means any data, information or material processed or stored by Customer in ShadowPlex .

**15.3 "Confidential Information"** means information that one party provides to the other party during the term of this Agreement that is identified at the time of disclosure as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure.

**15.4 "Malicious Code"** means viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents, or programs.

**15.5 "Modifications"** means any work based on or incorporating all or any portion of the ShadowPlex , including, without limitation, modifications, enhancements and customizations to the ShadowPlex developed by Acalvio.

**15.6 "Order"** means a document for purchases of copies of ShadowPlex On-Premises Software or access to the ShadowPlex Cloud Service hereunder, prepared by Acalvio, signed by Customer, and accepted by Acalvio. An initial Order is attached hereto as **Attachment C**.

**15.7 "Server Asset Count"** means the number of server IPs for which Customer may use the ShadowPlex .





**15.8 “Subscription Term”** means the period of time which Customer may access the applicable ShadowPlex as set forth in an Order.

**15.9 “Taxes”** means any direct or indirect local, state, federal or foreign taxes, levies, duties or similar governmental assessments of any nature, including VAT (subject to reverse charge), GST (subject to reverse charge), excise, sales, use or withholding taxes.

**15.10 “Third-Party Software”** means applications or software that are developed by third parties, and that may interoperate with the ShadowPlex Platform, the use of which software is governed by the applicable terms and conditions specified by such third party.

**15.11 “Usage Data”** means diagnostic and usage related content from the operation of the ShadowPlex and may include, but is not limited to, type of browser and systems that are used and/or accessed, licensing, system and service performance data. Usage Data does not, however, include Customer Data, except in aggregated and de-identified form.

**15.12 “User”** means an individual employee, contractor or agent of Customer authorized to use ShadowPlex for which Service has been purchased and who has been given a user identification and password.



IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed in their names by their properly and duly authorized officers or representatives as of the date set forth above.

**Acalvio Technologies, Inc.**

**[CUSTOMER]**

By: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

## Attachment A Service Levels

Customer will appoint a single support liaison (and one backup) to communicate with Acalvio support. Acalvio will not be obligated to answer support inquiries from any other contact.

Any support request must be submitted cases through the customer support portal (currently available via email at ). Each incident will be issued a ticket number by Acalvio. Any follow up calls by Customer must include the applicable ticket number.

Acalvio will not be obligated to provide support to the extent arising from: (i) Customer's failure to implement any update or enhancement made available to Customer by Acalvio at no charge for addressing such error; (ii) changes by Customer or third parties to the operating system, network configuration or environment; (iii) any customization of the ShadowPlex for Customer that is performed by Acalvio or Customer; (iv) use of the ShadowPlex in a manner for which it is not designed or other than as specified in the applicable documentation or specifications; (v) the combination, use or interconnection of ShadowPlex with other software or hardware not supplied and not approved by Acalvio; or (vi) use of the ShadowPlex on an unsupported hardware or software .

Acalvio is not responsible or liable for any delay or failure of performance caused in whole or in part by any delay or failure to perform any of Customer's obligations under the Agreement or this Attachment A in accordance with the respective terms and conditions of the Agreement or this Attachment A.

In connection with the performance of support services, Customer shall provide Acalvio personnel with all such cooperation and assistance as they may reasonably request, or otherwise may reasonably be required, to enable Acalvio to perform its obligations (including the provision of the support services), and exercise its rights, under and in accordance with the terms and conditions of the Agreement and this Attachment A.

All support requests will be categorized by Acalvio according to the following table and Acalvio will use its best efforts to respond to support requests during the support hours identified below and in accordance with the response times set forth below that correspond to the support package purchased by Customer in an Order.

Severity Level	Definition	Examples
P1	A service failure or severe degradation. Customer is unable to access any business resources or users are unable to access a critical business application	<ul style="list-style-type: none"> <li>▪ ShadowPlex is down and not accessible by users.</li> <li>▪ ShadowPlex is slowed to such a degree that multiple users cannot log in, resulting in consistent "page not found errors" or similar.</li> <li>▪ Users cannot access an important business critical application</li> </ul>
P2	A partial service failure or mild degradation. Customer is able to access some, but not all business resources. Non-production instance of the service is unavailable. Bug creating significant impact to existing service or application integration.	<ul style="list-style-type: none"> <li>▪ Customer lacks write-access to the administrative console.</li> <li>▪ Users can access ShadowPlex, but access is slow, sometimes resulting in "page not found" messages or similar, with access functioning as expected upon page refresh.</li> <li>▪ Issue with preview environment.</li> </ul>
P3	Minor service impact. Non-critical bug. Difficulty integrating new business or personal application with ShadowPlex. Customer is able to access almost all business resources.	<p>Non-critical individual third party applications are not accessible by users.</p> <ul style="list-style-type: none"> <li>▪ One user is not able access a business application.</li> <li>▪ Customer is unable to successfully integrate a new business application with ShadowPlex .</li> </ul>

P4	Minor service impact or feature enhancement request. Customer is able to access almost all business resources.	How-to or feature enhancement request.
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**Basic Success Package**

Severity Level	First Response	Subsequent Updates
P1	4 Hours	1 Business Day
P2	1 Business Day	2 Business Days
P3	2 Business Days	3 Business Days
P4	2 Business Days	3 Business Days

Basic Success Support Hours: 12 hours/day x 5 days/week, excluding US holidays (6:00am - 6:00pm Pacific Time)

**Premier and Premier Plus Success Packages**

Severity Level	First Response	Subsequent Updates
P1	1 Hour	2 Hours
P2	2 Hours	8 Hours
P3	2 Hours	48 Hours
P4	8 Hours	48 Hours

Premier & Premier Plus Success Support Hours: 24 Hours/Day x 7 Days/Week x 365 Days/Year

Support Packages			
	Basic Success Package	Premium Success Package	PremiumPlus Success Package
Training	Standard Training <ul style="list-style-type: none"> <li>▪ Live admin webinar series</li> <li>▪ Getting started guides</li> <li>▪ </li> </ul>	Standard Training plus 2 student enrollment in premium training class	Standard Training plus 5 student enrollments
Support	12X5 phone support Comprehensive online support	24X7 phone support Comprehensive online support	24X7 phone support Comprehensive online support
Adoption Services	None	None	Named Customer Success Manager

**Attachment B  
ShadowPlex Pricing**

**List Price**

ShadowPlex Pricing		
IP Blocks		
# of IPs (upto)	Per /IP/ month	Price / month
100	\$ 10.00	\$ 1,000
500	\$ 7.00	\$ 3,500
1,000	\$ 5.00	\$ 5,000
2,500	\$ 4.00	\$ 10,000
5,000	\$ 3.00	\$ 15,000
10,000	\$ 2.50	\$ 25,000
25,000	\$ 2.00	\$ 50,000
50,000	\$ 1.50	\$ 75,000
100,000	\$ 1.00	\$ 100,000
100,000+ IPs - Enterprise Pricing		

**Pricing for 10,000 IPs - \$25,000/month**

**Pricing Notes**

1. Assumes 3 year contract and pre-payment of 1-year subscription fees
2. Customer Success Fee priced at 25% of 1st year subscription fees
3. Basic Success included in the subscription price. Premium Success is priced at 10%, PremiumPlus Success Package is priced at 20% of subscription price.
4. Does not include any 3rd party licenses
5. Public Cloud Hosting costs are included
6. Example: Pricing for quantities in between tiers for 12,000 will be \$2.50/unit
7. Professional Services is priced at \$2,400/day on-site and \$1,600/day off-site (+ T&E expenses billed as actuals)

**Attachment C  
Order Form**

**Distributor Name**

**Customer Name**

**Administrative  
Contact**

**Name**

**Address**

**Tel#**

**Email**

**Technical Contact**

**Name**

**Address**

**Tel#**

**Email**

**Order Details**

**Acalvio Product**

**# Client Assets**

**# Server Assets**

**Subscription  
Duration**

Years

**Support Level**

[Basic, Premium, PremiumPlus]