



## Acalvio Reseller Agreement

These terms and conditions govern the sale by Acalvio Technologies, Inc. ("Acalvio") of a subscription to its ShadowPlex Cloud Service and/ or a license of its ShadowPlex On-Premises software and/or the performance of Professional Services to the reseller identified in an Acalvio Order or in a valid Acalvio price quotation ("Reseller") for purposes of resale to Reseller's Customer. These terms and conditions, together with any special terms provided on valid Acalvio price quotation, constitute the exclusive and entire agreement between Acalvio and Reseller and may not be changed except by an amendment signed by Acalvio's and the Reseller's authorized representatives. Except to the extent Reseller has a written, signed, separate agreement with Acalvio governing the purchase, sale, license, or resale of Acalvio products or services, (a "Reseller Agreement"), these terms and conditions supersede any previous communications, representations or agreements between the parties, regarding such purchase, sale, or license or resale. Acalvio's acceptance of Reseller's Order is conditioned upon Reseller's acceptance of these terms and conditions regardless of the form and timing of Reseller's acceptance. Reseller's purchase of the products or services described in an Order or valid Acalvio price quotation constitutes Reseller's acceptance of these terms and conditions.

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

### I. DEFINITIONS

For the purposes of this Agreement, in addition to the capitalized terms defined elsewhere in this Agreement, the following terms shall have the meanings ascribed to them as follows:

- I.1. "**Affiliate**" of a party means any corporation or other entity that such party directly or indirectly controls, is controlled by, or is under common control with. In this context, a party "controls" a corporation or other entity if it or any combination of it and/or its Affiliates owns more than fifty percent (50%) of the voting rights for (i) the board of directors, or (ii) other mechanism of control for such corporation or other entity.
- I.2. "**Customer(s)**" means individuals or entities to which Reseller has re-sold Services.
- I.3. "**Customer Data**" means all electronic data or information submitted by Customers to the Services.
- I.4. "**Deliverable**" means any software, equipment consultations, documentation and/or other materials prepared by Acalvio for Reseller as described in an SOW.
- I.5. "**Fees**" means the fees (as specified in each Order Form) payable by Reseller to Acalvio for the re-sale of the Services to Customers.
- I.6. "**Initial Term**" has the meaning ascribed to that term in Section 8.1.
- I.7. "**Malicious Code**" means viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs.
- I.8. "**Non-Acalvio Applications**" means online applications and offline software products provided by entities or individuals other than Acalvio and are clearly identified as such, and that interoperate with the Services.
- I.9. "**Order Form**" means the documents for placing orders pursuant to this Agreement that are entered into between Acalvio and Reseller (or Affiliates of Acalvio and Reseller) from time to time, including addenda and supplements thereto. By entering into an Order Form pursuant to this Agreement, an Affiliate agrees to be bound by the terms of this Agreement as if it were an original party to this Agreement. Order Forms shall be deemed incorporated into this Agreement by reference.
- I.10. "**Professional Services**" means the services to be provided by Acalvio to Reseller as described in an SOW, which may include, without limitation, engineering, maintenance, installation, design consulting, business planning, network planning and analysis.
- I.11. "**Renewal Term**" has the meaning ascribed to that term in Section 8.1.

- 1.12. **“Reseller Agent”** means a person or entity that Reseller appoints to market, promote or re-sell Services on behalf of Reseller.
- 1.13. **“Reseller Data”** means all electronic data or information submitted by Reseller to the Services.
- 1.14. **“Services”** means the products and services that are ordered by Reseller pursuant to an Order Form and made available by Acalvio online via the login link at <http://www.ascnet.com> and/or other web pages designated by Acalvio, including associated offline components, as described in the User Guide. “Services” exclude Non-Acalvio Applications.
- 1.15. **“Term”** has the meaning ascribed to that term in Section 8.1.
- 1.16. **“Territory”** means the geographic area specified under the heading “Territory” on an Order Form or valid Acalvio price quotation only to the extent such Territory is identified in writing.
- 1.17. **“User Guide”** means the online user guide for the Services, accessible on login, as updated from time to time by Acalvio.

## 2. SERVICES

- 2.1. **Provision of Services.** Conditioned on the provisions in this Section 2 and the other terms and conditions of this Agreement and payment of the applicable Fees, Acalvio hereby appoints Reseller, and Reseller hereby accepts, for the Term (unless terminated as provided in this Agreement), a non-exclusive, non-transferable, appointment for the Territory to act as a Acalvio approved reseller of the Services for the Territory. Reseller shall market, promote and re-sell the Services to Customers and potential Customers in the Territory, at its own expense and using its own efforts with its own sales force (including Reseller Agents). Reseller shall pay Acalvio the Fees set forth in each Order Form..
- 2.2. **Acalvio Responsibilities for the Services.** Reseller may initiate orders for Services under this Agreement only by submitting written Order Forms to Acalvio. No Order Form will be binding upon Acalvio until accepted by Acalvio in writing.
- 2.3. **Reseller Responsibilities.** Reseller shall maintain marketing and customer service standards that are appropriate in order to reflect favorably on Acalvio’s reputation. Reseller shall provide Customers with prompt, courteous, and efficient service, shall take every reasonable precaution not to disclose any Customer information, and shall deal with Customers honestly and fairly. Reseller shall be responsible for all activities of its Customers and Reseller shall (i) use commercially reasonable efforts to prevent unauthorized access to or use of the Services and shall notify Acalvio promptly of any such unauthorized access or use; and (ii) comply with all applicable local, state, provincial, federal and foreign laws in respect to the promotion and re-sale of the Services.
- 2.4. **Mutual Obligations.** Neither party shall by way of statement, act or omission, discredit or reflect adversely upon the reputation of or the quality of the other party or the products or services provided by the other party.
- 2.5. **Customer Contracts.** Reseller shall not make any representations or warranties on behalf of Acalvio or in any way bind or attempt to bind Acalvio contractually or otherwise with any Customer(s).
- 2.6. **Restrictions.** Reseller shall not (and shall not authorize any third party to): (a) modify, translate, reverse engineer, decompile, disassemble, or create derivative works based on the Services; (b) circumvent any user limits or other timing, use or functionality restrictions built into the Services or otherwise attempt to gain unauthorized access to the Services or their related systems or networks; (c) remove any proprietary notices, labels, or marks from the Services; (d) copy, host, frame or mirror any content forming part of the Services or otherwise make the Services available to anyone other than Customers; (e) access the software or any other third party product embedded in the Services with applications other than the Services; sell, resell, rent or lease the Services outside the Territory; (f) use the Services to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights; (g) use the Services to store or transmit Malicious Code; (h) interfere with or disrupt the integrity or performance of the Services or third- party data contained therein; or (i) access the Services in order to (i) build a competitive product or service, or (ii) copy any ideas, features, functions or graphics of the Services. Reseller shall be responsible for the accuracy, quality and legality of the Customer Data and of the means by which it was acquired.
- 2.7. **Ownership and Proprietary Rights.** Acalvio and its suppliers and/or licensors own and shall retain all right, title and interest (including without limitation all patent rights, copyrights, trademark rights, trade secret rights and other intellectual property rights), in and to the Services and the User Guide. Reseller agrees that only Acalvio shall have the right to maintain, enhance or otherwise modify the Services. If Reseller provides Acalvio with reports of defects in the Services or proposes or suggests

any changes or modifications (collectively “Feedback”), Acalvio shall have the right to use and exploit such Feedback including, without limitation, the incorporation of such Feedback into Acalvio’s software products and/or services, including, without limitation, the Services, without any obligation to Reseller. Except as expressly set forth in this Section 2, Acalvio reserves all rights and grants Reseller no licenses of any kind, whether by implication, estoppel, or otherwise.

- 2.8. **Non-Competition.** During the Term, Reseller shall not: (a) directly or indirectly market, promote, or solicit customers or subscriptions for, supply, sell or re-sell any product or service in competition with the Services; (b) have any controlling interest in any entity that markets, promotes, sells or provides any product or service in competition with the Services; (c) enter into any agreements with any provider to resell, redistribute, sub-license or otherwise commercialize any product or service that competes with the Services; or (d) display on its website or elsewhere any advertising or marketing materials of any provider of any product or service that compete with the Services. Acalvio shall have the continuing right to market and sell the Services and any other products or services to any third parties, including but not limited to current, future and potential Customers.
- 2.9. **Reseller’s Use of Agents and Subcontractors.** Reseller may, without the prior written consent of Acalvio, appoint Reseller Agents to market, promote and/or re-sell the Services within the Territory, provided that Reseller shall continue to be responsible for all of its duties and obligations under this Agreement and for any acts or omissions of any of its Reseller Agents, and any acts or omissions of any of its Reseller Agents shall be attributed to Reseller, and Reseller shall: (a) be liable to Acalvio for all losses, costs, damages and expenses of whatsoever nature, that Acalvio may sustain or incur as a result or in connection with any act or omission of any Reseller Agent, provided that Reseller shall be entitled to the benefit of any limitations in this Agreement to the same extent as if such acts or omissions had been those of Reseller and (b) indemnify Acalvio, its officers, directors, employees, agents and Affiliates (including their officers, directors, employees, agents) from and against any and all actions, causes of action, claims and demands of whatsoever nature caused by, arising directly or indirectly out of, or in connection with any acts or omissions of any Reseller Agent, provided that Reseller shall be entitled to the benefit of any limitations in this Agreement to the same extent as if such acts or omissions had been those of Reseller.
- 2.10. **Acalvio Software Subscriptions.** Unless otherwise specified in the applicable Order Form, (i) access to the Services is purchased as subscriptions protecting a designated number of Internet Protocol addresses (“IPs”), (ii) additional protected IPs may be added during the applicable subscription term at the same pricing as that for the pre-existing subscriptions thereunder, prorated for the remainder of the subscription term in effect at the time the additional protected IPs are added, and (iii) protection for the added IPs shall terminate on the same date as the pre-existing subscriptions.
- 2.11. **Professional Services.** Upon execution of a Statement of Work (SOW), Reseller may retain Acalvio to provide Professional Services (including the development of Deliverables) for Reseller, all as described in such SOW. If Reseller submits a purchase order for Professional Services, such order shall not be binding upon Acalvio until accepted by Acalvio. Acalvio shall respond to each such order submitted by Reseller within five (5) business days following receipt thereof. Once an order has been accepted, it shall be subject to the terms and conditions of this Agreement (such terms superseding any and all pre-printed terms and/or conditions within such order).
- 2.12. **Customer and Reseller Data.** Acalvio shall have the limited right to use the Customer Data and Reseller Data to provide the Services in accordance with this Agreement and Reseller shall obtain such rights from its Customers for Acalvio.

### 3. SERVICES SETUP AND OPERATION

- 3.1. **Support.** Reseller may order support for the Services, subject to a separate written agreement.
- 3.2. **Non-Acalvio Applications and Customer and Reseller Data.** If Reseller or any of its Customers installs or enables Non-Acalvio Applications for use with the Services, Reseller acknowledges that Acalvio may allow providers of those Non-Acalvio Applications to access Customer Data and Reseller Data as required for the interoperation of such Non-Acalvio Applications with the Services. Acalvio shall not be responsible for any disclosure, modification or deletion of any Customer Data and Reseller Data resulting from any such access by Non-Acalvio Application providers.
- 3.3. **Integration with Non-Acalvio Services.** The Services may contain features designed to interoperate with Non-Acalvio Applications. To use such features, Reseller and Customers may be required to obtain access to such Non-Acalvio Applications from their providers. If the provider of any such Non-Acalvio Application ceases to make the Non-Acalvio Application available for interoperation

with the corresponding Service features on reasonable terms, Acalvio may cease providing such Service features without entitling Reseller or any Customers to any refund, credit, or other compensation.

3.4. **Reseller Responsibilities.** Reseller shall, solely at its own cost, employ at least one (1) experienced sales person who is knowledgeable concerning the functions and advantages of the Services and at least one (1) experienced technical person who is knowledgeable concerning the functions, specifications and advantages of the Services.

3.5. **Usage Limitations.** If Acalvio opts to impose Services limitations on all customers, such as but not limited to disk storage space, application programming interface calls, Acalvio will use commercially reasonable efforts to provide at least three (3) months written notice of such limitations to Reseller.

#### 4. PAYMENT TERMS AND TAXES

4.1. **Customer Pricing and Responsibility.** All fees, rates or charges charged by Reseller to Customers for the Services shall be determined solely by Reseller. Acalvio shall have no authority or responsibility to determine such fees or other amounts, and Acalvio shall have no responsibility for billing or collecting such fees or any other amounts from Customers. Reseller is solely responsible for payment to Acalvio for all Fees for the Services re-sold to Customers. In connection with such activities, Reseller will act in all respects for its own account and will be responsible for such matters as credit verification, deposits, billing, collection, bad debts and any unauthorized use of the Services by or on behalf of Customers. Acalvio is obligated only to Reseller, with which it is in privity of contract, and not to Customers, with whom Acalvio is not in privity of contract. Customers are not to be deemed third-party beneficiaries of this Agreement.

4.2. **Fees.** Reseller shall pay all Fees specified in all Order Forms pursuant to this Agreement. Except as otherwise specified in this Agreement or in an Order Form, (i) Fees are based on User licenses purchased for the Services and not actual usage, (ii) payment obligations are non-cancelable and Fees paid are non-refundable, and (iii) the number of User subscriptions purchased cannot be decreased during the relevant subscription term stated on the applicable Order Form. User subscription Fees are based on monthly periods that begin on the subscription start date and each monthly anniversary thereof; therefore, Fees for User subscriptions added in the middle of a monthly period will be charged for that full monthly period and the monthly periods remaining in the subscription term.

4.3. **Payment Terms.** All payments under this Agreement shall be made within thirty (30) days after the receipt of the applicable invoice. All amounts are payable in United States dollars unless specified otherwise on the Order Form or SOW. Any amounts not paid when due shall accrue interest at the lesser of one and one half percent (1.5%) per month (19.57% annually) or the maximum rate allowed by law. If Reseller has been delinquent in its payments, Acalvio may condition future subscription renewals and Order Forms on prepayment or payment terms shorter than those specified in this Section 4.3.

4.4. **Suspension of Services and Acceleration.** If any amount owing by Reseller under this or any other agreement for the Services is thirty (30) or more days overdue, Acalvio may, without limiting Acalvio's other rights and remedies, accelerate Reseller's unpaid Fee obligations under such agreements so that all such obligations become immediately due and payable, and suspend provision of the Services to Reseller and the Customers until such amounts are paid in full. Acalvio will give Reseller at least seven (7) days prior notice that its account is overdue, before suspending the Services.

4.5. **Taxes.** Unless otherwise stated, the Fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including but not limited to value-added, goods and services, harmonized, sales, use or withholding taxes, assessable by any local, state, provincial, federal or foreign jurisdiction (collectively, "Taxes"). Reseller is responsible for paying all Taxes associated with its purchases pursuant to this Agreement. If Acalvio has the legal obligation to pay or collect Taxes for which Reseller is responsible under this paragraph, the appropriate amount shall be invoiced to and paid by Reseller, unless Reseller provides Acalvio with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, Acalvio is solely responsible for taxes assessable against Acalvio based on its income, property and employees.

#### 5. CONFIDENTIALITY

5.1. **Definition of Confidential Information.** "Confidential Information" means any and all information disclosed by either party to the other which is marked "confidential" or "proprietary", or which the recipient knows or has reason to know is regarded by the disclosing party as such, including oral information. "Confidential Information" does not include any information that the receiving party can demonstrate by its written records: (a) was known to it prior to its disclosure hereunder by the disclosing party; (b) is or becomes known through no wrongful act of the receiving party; (c) has been

rightfully received from a third party authorized to make such a disclosure; (d) is independently developed by the receiving party; (e) has been approved for release with the disclosing party's prior written authorization; or (f) has been disclosed by court order or as otherwise required by law, provided that the party required to disclose the information provides prompt advance notice to enable the other party to seek a protective order or otherwise prevent such disclosure.

- 5.2. **Obligation.** Neither party will use any Confidential Information of the disclosing party except as necessary to exercise its rights or perform its obligations pursuant to this Agreement or as expressly authorized in writing by the other party. Each party shall use the same degree of care to protect the disclosing party's Confidential Information as it uses to protect its own confidential information of like nature, but in no circumstances less than reasonable care. Neither party shall disclose the other party's Confidential Information to any person or entity other than its officers, employees, consultants and legal advisors who need access to such Confidential Information in order to effect the intent of the Agreement and who have entered into written confidentiality agreements with it as least as restrictive as those this Section 5. Upon any termination of this Agreement, the receiving party will promptly return to the disclosing party or destroy, at the disclosing party's option, all of the disclosing party's Confidential Information.
- 5.3. **Injunctive Relief.** Each party acknowledges that due to the unique nature of the other party's Confidential Information, the disclosing party may not have an adequate remedy in money or damages in the event of any unauthorized use or disclosure of its Confidential Information. In addition to any other remedies that may be available in law, in equity or otherwise, the disclosing party shall be entitled to seek injunctive relief to prevent such unauthorized use or disclosure.
- 5.4. **Other Exemptions.** Notwithstanding the foregoing provisions in this Section 5, the parties may disclose this Agreement: (i) as otherwise required by law or the rules of any stock exchange or over-the-counter trading system provided that reasonable measures are used to preserve the confidentiality of the Agreement, (ii) in confidence to legal counsel, (iii) in connection with the requirements of a public offering or securities filing provided reasonable measures are used to obtain confidential treatment for the proposed disclosure, to the extent such treatment is available, (iv) in connection with the enforcement of this Agreement or any rights under this Agreement, provided that reasonable measures are used to preserve the confidentiality of this Agreement, (v) in confidence, to auditors, accountants, legal counsel and their advisors, (vi) in confidence, in connection with a change of control or potential change of control of a party or an Affiliate of a party, provided that reasonable measures are used to preserve the confidentiality of the Agreement. For any legally compelled disclosure or disclosure pursuant to a court, regulatory, or securities filing, the parties shall reasonably cooperate to limit disclosure.
- 5.5. **Compelled Disclosure.** If a receiving party is compelled by law to disclose Confidential Information of a disclosing party, it shall provide the disclosing party with prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the disclosing party's cost, if the disclosing party wishes to contest the disclosure.

## 6. WARRANTIES AND DISCLAIMERS

- 6.1. **Warranties.** Each party warrants to the other party that: (i) such party is a business duly incorporated, validly existing, and in good standing under the laws of its jurisdiction of incorporation; (ii) such party has all requisite corporate power, financial capacity, and authority to execute, deliver, and perform its obligations under this Agreement; (iii) the execution, delivery, and performance of this Agreement constitutes the legal, valid, and binding agreement of such party; (iv) as of the Effective Date, there is no outstanding litigation, arbitrated matter or other dispute to which such party is a party, which, if decided unfavorably to it, would reasonably be expected to have a potential or actual material adverse effect on such party's ability to fulfill its obligations under this Agreement; and (v) no consent, approval or withholding of objection is required from any entity, including any governmental authority, with respect to such party's entering into this Agreement.
- 6.2. **Disclaimer.** EXCEPT AS SPECIFICALLY SET FORTH IN THIS SECTION 6, THE SERVICES AND THE USER GUIDE ARE PROVIDED "AS IS" AND WITHOUT ANY REPRESENTATIONS, WARRANTIES AND/OR CONDITIONS OF ANY KIND. ACALVIO AND ITS LICENSORS AND/OR SUPPLIERS MAKE NO OTHER REPRESENTATIONS AND GIVE NO OTHER WARRANTIES OR CONDITIONS, EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE REGARDING THE SERVICES AND/OR THE USER GUIDE PROVIDED UNDER THIS AGREEMENT AND ACALVIO SPECIFICALLY DISCLAIMS ANY AND ALL IMPLIED REPRESENTATIONS, WARRANTIES AND/OR CONDITIONS OF

MERCHANTABILITY, MERCHANTABILITY, NON-INFRINGEMENT, DURABILITY, TITLE AND FITNESS FOR A PARTICULAR PURPOSE. ADDITIONALLY, RESELLER ACKNOWLEDGES THAT ACALVIO DOES NOT REPRESENT OR WARRANT OR PROVIDE ANY CONDITIONS THAT THE SERVICES AND/OR THE USER GUIDE WILL BE ERROR-FREE OR WORK WITHOUT INTERRUPTIONS.

## **7. INDEMNITY**

- 7.1. **Acalvio IP Indemnity.** Acalvio shall defend and/or settle at its expense, any claims, actions or proceedings against Reseller to the extent arising out of or relating to any misappropriation or infringement by the Services or the User Guide of any third party's proprietary or intellectual property right ("Reseller Claims"), and Acalvio shall pay all damages finally awarded by a court of competent jurisdiction to such third party against Reseller, or any settlement amounts agreed by Acalvio in writing; subject to the conditions that, Reseller shall notify Acalvio promptly of any Reseller Claims, permit Acalvio to control the defense and settlement of such Reseller Claims (provided that Reseller may participate with counsel of its own choosing, at its own expense), and assist Acalvio, at Acalvio's expense, in defending or settling such Reseller Claims. Acalvio shall not be liable for any settlement amounts entered into by Reseller without Acalvio's prior written approval. If Acalvio has reason to believe that it would be subject to an injunction or continuing damages based on the Services, then Acalvio shall be entitled to either modify the Services to make it non-infringing and/or remove the misappropriated material, replace the Services or portion thereof with a service or materials that provide substantially the same functionality or information, or, if neither of the foregoing is commercially practicable, require Reseller and the Customers to cease reselling, receiving and/or using the Services, as the case may be, and refund to Reseller (a) a pro-rata portion of any one (1) time Fees (based on a three (3) year, straight-line schedule from the date of payment), and (b) any Fees that have been pre-paid by Reseller but are unused. The foregoing notwithstanding, Acalvio shall have no liability for a claim of infringement or misappropriation to the extent caused by (i) the combination of Services with any other service, software, data or products not provided by Acalvio, which claim would have been avoided if the Services had not been so combined; or (ii) the use of any material provided by Reseller or any Customers; (iii) any use or re-sale of the Services outside the Territory; or (iv) any breach by Reseller of this Agreement or by any Customers of any Services policies and/or procedures. THE FOREGOING IS ACALVIO'S SOLE AND EXCLUSIVE LIABILITY, AND RESELLER'S SOLE AND EXCLUSIVE REMEDY FOR ANY INFRINGEMENT OR MISAPPROPRIATION OF ANY THIRD-PARTY INTELLECTUAL PROPERTY RIGHTS.
- 7.2. **Reseller Indemnity.** Reseller shall defend and/or settle at its expense, any claims, actions or proceedings against Acalvio and its Affiliates and its and their officers, directors, employees and contractors (the "Acalvio Indemnified Parties") to the extent arising out of or relating to (a) bodily injury or damage to tangible or real property, including death, caused by or arising out of any negligent act or omission of Reseller or those for whom Reseller is responsible for at law; (b) the provision, use or failure of any product or service provided by Reseller; (c) any representations or warranties made by Reseller in respect to the Services or any portions thereof beyond those authorized in this Agreement; (d) any infringement or misappropriation of any intellectual property or other rights by any Customer Data; (e) any violation of any law or regulation by Reseller or any of its Affiliates or any of its or their officers, directors, employees, contractors or agents; or (f) real or tangible property damage or bodily injury or death caused by the negligent or wilful acts or omissions of the Reseller or any of its Affiliates or any of its or their officers, directors, employees, contractors or agents in connection with this Agreement ("Acalvio Claims"), and Reseller shall pay all damages finally awarded by a court of competent jurisdiction to such third party against any of the Acalvio Indemnified Parties, or any settlement amounts agreed by Reseller in writing; subject to the conditions that, Acalvio shall notify Reseller promptly of any Acalvio Claims, permit Reseller to control the defense and settlement of such Acalvio Claims (provided that Acalvio may participate with counsel of its own choosing, at its own expense), and assist Reseller, at Reseller's expense, in defending or settling such Acalvio Claims. Reseller shall not be liable for any settlement amounts entered into by Acalvio without Reseller's prior written approval.

## **8. TERM AND TERMINATION**

- 8.1. **Term.** This Agreement shall commence as of the Effective Date and shall continue in effect for an initial term of three (3) years (such initial term referred to in this Agreement as the "Initial Term"). Thereafter, the term of the Agreement shall be automatically renewed annually on the anniversary of the Effective Date for additional one (1) year renewal terms (any such subsequent renewal terms referred to in this

Agreement as a “Renewal Term”), unless either party gives written notice of non-renewal to the other party at least sixty (60) days prior to the end of the Initial Term or any Renewal Term hereof. Collectively, the Initial Term and any subsequent Renewal Terms shall constitute the “Term”.

- 8.2. **Termination.** This Agreement may be terminated as follows: (a) if Reseller fails to make any payment due hereunder within thirty (30) days after receiving written notice from Acalvio that such payment is delinquent, Acalvio may terminate this Agreement on written notice to Reseller at any time following the end of such period; (b) if either party breaches any material term or condition of this Agreement and fails to cure such breach within thirty (30) days after receiving written notice of the breach, the non-breaching party may terminate this Agreement on written notice at any time following the end of such thirty (30) day period; (c) if either party becomes insolvent (i.e., becomes unable to pay its debts in the ordinary course of business as they come due) or makes an assignment for the benefit of creditors, then the other party may terminate this Agreement immediately upon notice; or (d) without cause, with a ninety (90) day written notice.
- 8.3. **Term of Purchased User Subscriptions.** User subscriptions purchased by Reseller commence on the start date specified in the applicable Order Form and continue for the subscription term specified therein. Except as otherwise specified in the applicable Order Form, all User subscriptions shall automatically renew for additional periods equal to the expiring subscription term or one year (whichever is shorter), unless either party gives the other notice of non-renewal at least 30 days before the end of the relevant subscription term. The per-unit pricing during any such renewal term shall be the same as that during the prior term unless Acalvio has given Reseller written notice of a pricing increase at least sixty (60) days before the end of such prior term, in which case the pricing increase shall be effective upon renewal and thereafter.
- 8.4. **Survival.** The following sections shall survive the termination or expiration of this Agreement for any reason: 1, 2.7, 2.12 (for sixty (60) days after expiration or termination of the Agreement), 5, 6, 7, 8.4, 8.5, 8.6, 8.7, 9, 10, and any payment obligations incurred prior to the expiration or termination of this Agreement.
- 8.5. **Effect of Termination.** Upon expiration or termination of this Agreement, Reseller shall cease all use of the Services, and shall promptly return all copies of the User Guide to Acalvio or else destroy those copies and provide assurances (signed by an officer of Reseller) to Acalvio that it has done so.
- 8.6. **Rights upon Termination.** Termination is not an exclusive remedy and is in addition to other rights or remedies that may be available. Upon any termination for cause by Reseller, Acalvio shall refund Reseller any prepaid Fees covering the remainder of the term of all subscriptions after the effective date of termination. Upon any termination for cause by Acalvio, Reseller shall pay any unpaid Fees covering the remainder of the term of all Order Forms after the effective date of termination. In no event shall any expiration or termination relieve Reseller of the obligation to pay any Fees payable to Acalvio for the period prior to the effective date of termination. If this Agreement is not terminated for a breach by Reseller and if each of the parties is amenable to such an arrangement, then for any Customers to whom Reseller has sold subscriptions for the Services during the Term, Acalvio will continue to provide Services for such Customers for the remainder of their then-current subscription period (as of the effective date of termination or expiration of this Agreement) subject to payment of the applicable fees for such Customers and subject to Reseller’s continued compliance with the terms and conditions of this Agreement, which shall continue in respect to such Customers. In the interest of absolute clarity on this, it is agreed between both the parties that if the Agreement is not terminated for a breach by Reseller and if each of the parties is amenable to such an arrangement, then once the Reseller has sold a subscription for the Services to a Customer during the Term, ongoing revenue for the remaining term of such Customer’s subscription (as of the effective date of termination or expiration of this Agreement) will continue to be shared as per the clauses in this Agreement and both parties shall continue to provide services to such Customer in the manner prescribed in this Agreement for the remainder of such subscription term.

## 9. LIMITATION OF LIABILITY

WITH THE EXCEPTION OF A PARTY’S CONFIDENTIALITY OBLIGATIONS, IN NO EVENT SHALL EITHER PARTY, OR ITS LICENSORS OR SUPPLIERS BY VIRTUE OF THIS AGREEMENT, HAVE ANY LIABILITY TO ANY OTHER PARTY FOR ANY LOST PROFITS OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR FOR ANY INCIDENTAL, PUNITIVE, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY (INCLUDING NEGLIGENCE)

AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. IN NO EVENT SHALL ACALVIO, ITS AFFILIATES OR ITS OR THEIR OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, LICENSORS OR SUPPLIERS BE LIABLE TO RESELLER FOR MORE THAN THE AMOUNT OF ANY ACTUAL DIRECT DAMAGES UP TO THE GREATER OF U.S. \$100,000.00 (OR EQUIVALENT IN LOCAL CURRENCY) OR THE CHARGES FOR THE SERVICES THAT ARE THE SUBJECT OF THE CLAIM, WHICHEVER IS LESSER, REGARDLESS OF THE CAUSE AND WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE. THE PARTIES AGREE THAT THIS SECTION 9 REPRESENTS A REASONABLE ALLOCATION OF RISK. THE LIMITATIONS SET FORTH IN THIS SECTION 9 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).

## 10. GENERAL

- 10.1. **Invoices.** The terms, provisions or conditions of any purchase order or other business form or written authorization used by either party will have no effect on the rights, duties or obligations of the parties under, or otherwise modify, this Agreement, regardless of any failure of the receiving party to object to those terms, provisions or conditions.
- 10.2. **Marketing Activities.** Following the execution of this Agreement, the parties may issue a joint press release highlighting the relationship contemplated by this Agreement. Notwithstanding the foregoing, neither party will publish a press announcement related to this Agreement without prior written consent of the other party.
- 10.3. **Assignment.** Neither party may assign any of its rights or delegate any of its obligations under this Agreement, whether by operation of law or otherwise, without the prior express written consent of the other party, which shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, Acalvio may assign this Agreement (including all Order Forms) with notice to Reseller in connection with any merger or acquisition or sale of all or substantially all of Acalvio's or any of its Affiliate's assets or stock (such notice to be delivered within thirty (30) days of such assignment). Such assignment will not in any event relieve the assignor of any obligations that accrue under this Agreement prior to any such assignment. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns. Any attempted assignment in violation of this Section 10.3 shall be null and void.
- 10.4. **Waiver and Amendment.** No modification, amendment or waiver of any provision of this Agreement shall be effective unless in writing and signed by the party to be charged. No failure or delay by either party in exercising any right, power, or remedy under this Agreement, except as specifically provided herein, shall operate as a waiver of any such right, power or remedy.
- 10.5. **Choice of Law; Jurisdiction; Venue.** 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. The parties 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. The parties confirm that it is their wish that this Agreement as well as all other documents relating to this Agreement, including notices, be drawn up in English only.
- 10.6. **Compliance with Laws.** Each party shall comply with all applicable laws and regulations regarding the general conduct of business including without limitation all relevant anti-corruption and anti-bribery laws, including the United States Foreign Corrupt Practices Act. Reseller agrees to fully comply with all export, re-export and import restrictions and regulations of all agencies and/or authorities of any applicable countries.
- 10.7. **Notices.** All notices, demands or consents required or permitted under this Agreement shall be in writing and delivered to the addresses set forth above. Notice shall be considered delivered and effective on the earlier of actual receipt or when (a) personally delivered; (b) the day following transmission if sent by telex, telegram or facsimile when followed by written confirmation by registered overnight carrier or certified mail; or (c) one (1) day after posting when sent by registered private overnight carrier (e.g., DHL, Federal Express, etc.); or (d) five (5) days after posting when sent by certified mail. Notice shall be



sent to the parties at the addresses set forth on the first page of this Agreement or at such other address as shall be specified by either party to the other in a notice in accordance with this Section 10.7.

- 10.8. **Independent Contractors.** The parties are independent contractors. This Agreement does not create a legal partnership (notwithstanding any use of the term “partner” by the parties, which if used is meant only to convey a spirit of cooperation between the parties), joint venture, agency, employee/employer, relationship, or franchisee/franchisor relationship between the parties. Neither party shall have any right, power or authority to create any obligation or responsibility on behalf of the other.
- 10.9. **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, such provision shall be changed and interpreted so as to best accomplish the objectives of the original provision to the fullest extent allowed by law and the remaining provisions of this Agreement shall remain in full force and effect.
- 10.10. **Force Majeure.** Except for each party’s obligations to pay money, neither party shall be deemed to be in breach of this Agreement for any failure or delay in performance caused by reasons beyond its reasonable control, including but not limited to acts of God, earthquakes, wars, terrorism, communication failures, strikes or shortages of materials.
- 10.11. **Counterparts.** This Agreement may be executed in counterparts, both of which, when taken together, shall constitute a signed agreement binding upon the parties. Delivery of a signed counterpart of this Agreement by facsimile transmission, in paper copy by courier or regular mail or as an email attachment in PDF format shall constitute valid and sufficient delivery thereof.
- 10.12. **Third-Party Beneficiaries.** Reseller hereby acknowledges that there may be third-party beneficiaries to this Agreement.
- 10.13. **Federal Government End Use Provisions.** Acalvio provides the Services, including related software and technology, for ultimate federal government end use solely in accordance with the following: Government technical data and software rights related to the Services consist only of those rights customarily provided to the public as defined in this Agreement. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data – Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If a government agency has a need for rights not conveyed under these terms, it must negotiate with Acalvio to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written addendum specifically conveying such rights must be included in any applicable contract or agreement.
- 10.14. **Acalvio Affiliates.** Acalvio may use one or more Affiliates to perform its obligations under this Agreement, provided that such use will not affect Acalvio’s obligations hereunder.
- 10.15. **Complete Understanding.** This Agreement, including all Order Forms, Statements of Work and Schedules, constitutes the final, complete and exclusive agreement between the parties with respect to the subject matter hereof, and supersedes any prior or contemporaneous agreement.