BIGFIX MASTER LICENSE AGREEMENT
(cover page)

This BigFix Master License Agreement ("Agreement") is effective as of the last date executed by either of the parties as indicated in the signature blocks below ("the **Effective Date**") and is made between BigFix, Inc., a Delaware corporation with its corporate headquarters located at 1480 64th Street, Suite 200, Emeryville, California 94608 (Phone: (510) 652-6700; Fax: (510) 652-6742; E-mail: legal@bigfix.com) ("**BigFix**") and the "**Licensee**" designated below.

This Agreement shall include this cover page, the terms and conditions attached hereto, all exhibits attached hereto, and any future mutually executed exhibits, or product and fee schedules that reference this Agreement. Each (i) mutually executed product and fee schedule or (ii) purchase order, confirmation or similar form delivered by Licensee after the Effective Date and countersigned by BigFix, which outlines the products, services, pricing, quantities ordered, etc., shall be referred to herein as an "**Additions Schedule**." Notwithstanding anything else, except with respect to the identification of the products, services, license term, maintenance term and/or quantities ordered, any terms and conditions printed on or otherwise included in any purchase order, confirmation, or similar form (even if executed after the Effective Date) shall be considered null and void and the terms of this Agreement shall prevail over any different or additional term, notwithstanding any language contained therein indicating acceptance of the language or that BigFix's acceptance of payment under such form or the delivery of goods or services identified therein indicates acceptance of such terms and conditions.

Licensee Information

Licensee: Jackson County	Contact: Mike Lear
Address: 415 E 12th St Room G8, Kansas City, MO US 64106	Phone: (816) 881-3151
E-mail: mlear@jacksongov.org	Fax:

Contact Information for License Key Delivery

Contact Name: Mike Lear	Phone: (816) 881-3153
Address: 415 E 12th St Room G8, Kansas City, MO US 64106	Email: mlear@jacksongov.org

Contact Information for Invoices/Billing Questions

Contact Name: Mike Lear	Phone: (816) 881-3153
Address: 415 E 12th St Room G8, Kansas City, MO US 64106	Fax:
E-mail: mlear@jacksongov.org	

BY SIGNING THIS AGREEMENT, THE PARTIES REPRESENT THAT THEY HAVE READ AND UNDERSTAND ITS TERMS AND ACCEPT AND AGREE TO THEM IN THEIR ENTIRETY. IN WITNESS WHEREOF, the Parties have caused a duly authorized representative to execute this Agreement on the date(s) set forth below.

LICENSEE:	BIGFIX:
By:	By:
Name: Michael D. Sanders	Name: Tom Kennedy
Title: JACKSON COUNTY EXECUTIVE	Title: SVP, General Counsel
Date: June 29, 2010	Date: June 29, 2010

APPROVED AS TO FORM

COUNTY COUNSELOR

ATTEST:

CLERK OF COUNTY LEGISLATURE

FILED

JUL 07 2010

MARY JO SPINO
COUNTY CLERK

BIGFIX
VTB
INITIALS
06/29/2010
DATE
LEGAL

BIGFIX MASTER LICENSE AGREEMENT
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This Agreement shall include this cover page, the terms and conditions attached hereto, all exhibits attached hereto, and any future mutually executed exhibits, or product and fee schedules that reference this Agreement. Each (i) mutually executed product and fee schedule or (ii) purchase order, confirmation or similar form delivered by Licensee after the Effective Date and countersigned by BigFix, which outlines the products, services, pricing, quantities ordered, etc., shall be referred to herein as an "**Additions Schedule**." Notwithstanding anything else, except with respect to the identification of the products, services, license term, maintenance term and/or quantities ordered, any terms and conditions printed on or otherwise included in any purchase order, confirmation, or similar form (even if executed after the Effective Date) shall be considered null and void and the terms of this Agreement shall prevail over any different or additional term, notwithstanding any language contained therein indicating acceptance of the language or that BigFix's acceptance of payment under such form or the delivery of goods or services identified therein indicates acceptance of such terms and conditions.

Licensee Information

Licensee: Jackson County	Contact: Mike Lear
Address: 415 E 12th St Room G8, Kansas City, MO US 64106	Phone: (816) 881-3151
E-mail: mlear@jacksongov.org	Fax:

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LICENSEE:

By: _____

Name: **Michael D. Sanders**

Title: **JACKSON COUNTY EXECUTIVE**

Date: June 29, 2010

BIGFIX:

By: _____

Name: _____

Title: _____

Date: _____

APPROVED AS TO FORM

COUNTY COUNSELOR

ATTEST:

CLERK OF COUNTY LEGISLATURE

TERMS AND CONDITIONS

1.   Definitions.

•   "**Content Site**" means the site maintained by BigFix (or its authorized contractors) which provides Fixlet Messages (defined below) and certain Licensed Software for use in connection with the Licensed Products.

•   "**Fixlet Messages**" shall mean digital files (properly developed by Licensee under the terms of this Agreement or properly obtained from BigFix) containing some or all of the following elements: (A) a relevance clause written in the BigFix's proprietary relevance language which describes attributes of a computer system, its content or environment, or such other factors as may be supported by BigFix from time to time; (B) text that is displayed to the BigFix Console operator component of the BigFix Platform which describes a particular condition or failure; and/or (C) computer system intelligible components which contain some form of action to remediate the discovered issue, all of which shall be in a format consistent with BigFix standards.

•   "**Licensed Products**" shall mean the products identified on Exhibit A or any Additions Schedule and licensed under the terms of this Agreement, together with any associated user documentation provided by BigFix to Licensee ("**Documentation**") and any bug fixes or error corrections made generally available by BigFix and provided by BigFix to Licensee. For purposes of clarity, Licensed Products includes Licensed Software.

•   "**Licensed Software**" shall mean the object code copy of any Licensed Products identified on Exhibit A or any Additions Schedule and licensed under the terms of this Agreement, together with the related Documentation and any bug fixes or error corrections made generally available by BigFix and provided by BigFix to Licensee.

•   "**Licensed Machines**" shall mean the total number of machines/devices on which Licensee may use the applicable Licensed Products as specified in the Agreement (or any applicable Additions Schedule) and for which Licensee has paid BigFix the applicable license fees. The initial Licensed Machines for a Licensed Product shall be specified on Exhibit A. The number of Licensed Machines for a Licensed Product may be increased with an Additions Schedule.

2.   Licenses; Restrictions.

a. Licensed Software. Subject to all of the terms and conditions of and timely payment of all fees under this Agreement, during the Term (as defined in Section 9), BigFix grants Licensee a non-exclusive, non-sublicensable, non-transferable right to: (i) distribute copies of the Licensed Software only to and for use on the applicable number and type of Licensed Machines; and (ii) use the Licensed Software in object form only on the number of machines/computers equal to the relevant number of Licensed Machines specified herein, solely for Licensee's internal business purposes, and solely in accordance with the relevant Documentation. Each copy of the Licensed Software must retain the applicable copyright and other notices.

b. Other Products; Content Site; Fixlet Messages. Subject to all of the terms and conditions of and timely payment of all fees under this Agreement, for so long as Licensee is entitled to receive Support and Maintenance and is current with its payments of the applicable license fees and Support and Maintenance Fees for the applicable Licensed Products, BigFix grants Licensee a non-exclusive, non-sublicensable, non-transferrable right to: (i) access the Content Site relevant to the applicable Licensed Product being licensed by Licensee in accordance with BigFix' then-current access procedures and policies to access, use, copy, create, adapt, and modify Fixlet Messages and (ii) distribute Fixlet Messages applicable to such Licensed Products to the number and type of machines/computers equal to the relevant Licensed Machines specified herein, solely for Licensee's internal business purposes and solely in accordance with the relevant Documentation and solely in compliance with any limitations and conditions under which the Fixlet Messages were obtained.

c. BigFix Platform Restricted Use License. In the event that Licensee does not separately pay for a license to use the BigFix Platform product but requires a license to use the BigFix Platform product in order to enable the use of another Licensed Product, then the license grant set forth in Section 2(a)(Licensed Software) shall extend to the BigFix Platform only to the extent necessary to use the other Licensed Products set forth in Exhibit A or the applicable Additions Schedule ("**BigFix**

Platform Restricted Use License") and any use beyond this BigFix Platform Restricted Use License (including without limitation the use or creation of any custom Fixlet Messages) will be deemed a material breach of the terms of this Agreement unless Licensee elects to purchase a full use license to the BigFix Platform from BigFix at BigFix's then existing list price unless otherwise mutually agreed upon in writing by the parties.

d. <u>Perpetual Licenses</u>. For purposes of clarity, notwithstanding any indication on <u>Exhibit A</u> or any Additions Schedule that the "License Term" for Licensed Product is perpetual, BigFix's obligation to provide ongoing access to any Content Sites, Fixlet Messages, or Support and Maintenance applicable to such perpetually-licensed Licensed Products shall be limited to the Maintenance Term (as defined on <u>Exhibit A</u>) for which BigFix has received full payment for Support and Maintenance. Licensee agrees and acknowledges that in the event that it ceases to purchase Support and Maintenance for such perpetually-licensed Licensed Products, it will no longer be entitled to (and agrees not to) access any Content Sites or Fixlet Messages applicable to such perpetually-licensed Licensed Products after the end of the Maintenance Term, although Licensee may continue to use the perpetually-licensed Licensed Products and Fixlet Messages it obtained prior to termination or expiration of the Maintenance Term (defined in <u>Exhibit A</u> or any Additions Schedule). In the event Licensee continues to access Content Sites and/or Fixlet Messages applicable to such perpetually-licensed Licensed Products after the end of the Maintenance Term (which Licensee acknowledges would be a material breach of this agreement), Licensee agrees to pay BigFix an amount equal to its then effective list price for such Support and Maintenance.

e. <u>Evaluation of Other BigFix Products</u>. If Licensee desires to evaluate other BigFix products during the Term, it may do so by submitting a completed, executed copy of the Evaluation Schedule attached hereto as <u>Exhibit C</u> ("**Evaluation Schedule**"). Subject to the terms of this Agreement and any restrictions set forth in the Evaluation Schedule, upon the release of a license key to Licensee in connection with this section 2.e., BigFix grants Licensee a non-exclusive, non-sublicensable, non-transferable license to use the BigFix products identified on the mutually executed Evaluation Schedule (including the right to access the associated Content Site and to access, copy, create, adapt and modify Fixlet Messages)(the "**Evaluation Products**") for the period of time specified in such Evaluation Schedule (the "**Evaluation Period**"), solely for Licensee's internal testing and evaluation purposes and solely in accordance with the relevant documentation provided in connection with the Evaluation Products. Notwithstanding anything to the contrary set forth herein, any license to Evaluation Products granted pursuant to this Section shall be subject to the terms of this Agreement, excluding Sections 2(a) (Licensed Software), 2(b)(Other Products; Content Site; Fixlet Messages), 2(f)(Use by Licensee Contractors), 2(g)(Use by Licensee Affiliates), 4 (Support and Maintenance), 7 (Fees and Payment), 10 (Indemnification), and 11(a)(Warranty). Either party may terminate an Evaluation Schedule (and the associated license to the Evaluation Products set forth in this Section) upon five (5) business days written notice to the other. ADDITIONALLY, NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, EVALUATION PRODUCTS ARE PROVIDED "AS IS", AND NO INDEMNITY, WARRANTY, OR SUPPORT OBLIGATIONS OF BIGFIX HEREUNDER ARE APPLICABLE THERETO, AND BIGFIX'S TOTAL LIABILITY IN CONNECTION WITH LICENSEE EVALUATION OF THE EVALUATION PRODUCT AS PERMITTED IN THIS SECTION UNDER ANY LEGAL OR EQUITABLE THEORY SHALL BE LIMITED TO ANY FEE RECEIVED BY BIGFIX FOR SUCH EVALUATION.

f. <u>Use by Licensee Contractors</u>. "**Licensee Contractor(s)**" shall mean any third party contractor of Licensee. Licensee may allow Licensee Contractor(s) to use the Licensed Product and/or Fixlet Messages solely as necessary on Licensee's behalf to support Licensee's use of the Licensed Product and Fixlet Messages as expressly authorized herein and subject to the terms and conditions of this Agreement. Notwithstanding anything else herein, Licensee agrees to be solely responsible and liable for all actions and/or inactions of Licensee Contractors which are not strictly in compliance with the restrictions and/or obligations of Licensee described in this Agreement and Licensee shall indemnify BigFix for any losses or damages BigFix incurs in association with such non-compliance.

g. <u>Use by Licensee Affiliates</u>. "**Licensee Affiliate**" shall mean any entity under the control of Licensee where "control" means ownership of, or the right to control, greater than 50% of the voting securities of such entity. Subject to the terms and conditions of this Agreement, Licensee Affiliates may use the licenses granted to Licensee, provided that (a) such use is only for Licensee's benefit, (b) Licensee agrees to remain responsible for each such Licensee Affiliate's compliance with the terms and conditions of this Agreement and (c) Licensee provides BigFix advance written notice of each such Licensee Affiliate. Use of the Licensed Product and Fixlet Messages by the Affiliates and Licensee in the aggregate must be within the restrictions set forth in <u>Exhibit A</u> or the applicable Additions Schedule. The Licensee Affiliate rights granted in this section shall not apply to any "enterprise wide" licenses unless Licensee Affiliate usage is designated in <u>Exhibit A</u> or the applicable Additions Schedule.

h. Restrictions. Licensee will not (and will not allow any third party to): (i) use the Licensed Product, Fixlet Messages or any portions thereof, except as expressly authorized in this Agreement; (ii) decompile, disassemble, reverse engineer or otherwise attempt to discover any source code or underlying ideas or algorithms of any Licensed Product or Fixlet Message (except to the extent that applicable law prohibits such reverse engineering restrictions); (iii) provide, lease, lend, use for timesharing or service bureau purposes, benchmark, or otherwise use or allow others to use Licensed Products or Fixlet Messages for the benefit of any third party; (iv) use any Licensed Product or Fixlet Message, or allow the transfer, transmission, export, or re-export of any Licensed Product or Fixlet Message or any portion thereof in violation of any export control laws or regulations administered by the U.S. Commerce Department, OFAC, or any other government agency; (v) provide, lend, lease, and/or distribute any Licensed Product (including the Documentation) or Fixlet Message to any third party; (vi) modify, translate, or prepare derivative works based upon the Licensed Product; and/or (vii) alter, remove, or obscure any copyright, trademark, or other proprietary notices or confidentiality legend on or in any copy of Licensed Product or Fixlet Messages. Notwithstanding anything else, as between the parties BigFix and its licensors shall own and retain all right, title, and (except as expressly licensed hereunder) interest (and all related intellectual property rights) in and to the Licensed Product, Content Site, and Fixlet Messages, and all copies or portions thereof, and any derivative works thereof (by whomever created); parties hereby do and shall make all assignments necessary to accomplish the same.

i. Open Source Software. Certain items of software provided along with the Licensed Software are subject to the Lesser GNU General Public License ("LGPL") or other "open source" or "free software" licenses ("Open Source Software"). Some of the Open Source Software is owned by third parties. The Open Source Software is not subject to the terms and conditions of this Agreement, except for this Section 2(i) and Sections 11(c)(Disclaimer) and 12 (Limitation of Liability). Instead, each item of Open Source Software is licensed under the terms of the license that accompanies such Open Source Software. Nothing in this document limits Licensee's rights under, or grants Licensee rights that supersede, the terms and conditions of any applicable license for the Open Source Software. In particular, nothing in this document restricts Licensee's rights to copy, modify, and distribute any Open Source Software that is subject to the terms of the LGPL.

3.   Professional Services. Subject to the terms and conditions of this Agreement, BigFix agrees to use reasonable commercial efforts to perform any Professional Services identified on Exhibit A or on any Additions Schedule upon mutually agreeable terms.

4.   Support and Maintenance. During the Maintenance Term (defined in Exhibit A or any Additions Schedule), subject to Licensee's timely payment of the applicable Support and Maintenance Fees (set forth in Exhibit A or any Additions Schedule) ("Support and Maintenance Fee"), BigFix shall use commercially reasonable efforts to provide the relevant support and maintenance services described in Exhibit B (herein after "Support and Maintenance Services").

5.   Reporting. During the Term and for one year thereafter, Licensee will promptly supply BigFix with information relating to the Licensed Products, Fixlet Messages, and Licensed Machines, or this Agreement or any applicable Additions Schedule that is reasonably requested from time to time by BigFix (including, without limitation, the Internet protocol addresses of all Licensee servers on which any Licensed Product is (or was) operating).

6.   Delivery. Unless otherwise agreed by the parties, all Licensed Products shall be delivered by BigFix to the Licensee contact listed on the cover page of this Agreement in electronic format and in accordance with BigFix's then-standard procedures.

7.   Fees and Payment.

a. Generally. Licensee agrees to pay BigFix all fees set forth on Exhibit A or in any Additions Schedule (collectively "Fees"). Unless otherwise specified on Exhibit A or any Additions Schedule, all Fees shall be paid in U.S. dollars and are due within thirty (30) days of the date the last party signs this Agreement or Additions Schedule as applicable. Unless otherwise specified on Exhibit A or in an Additions Schedule, all Fees shall be at BigFix's then-current list price at the time of execution of this Agreement or the applicable Additions Schedule. Except as otherwise expessly set forth herein, all Fees paid are non-refundable. Any payments more than thirty (30) days overdue will bear a late payment fee of 2.0% per month or, if lower, the

maximum rate allowed by law. In addition, Licensee will pay all travel-related expenses, freight, taxes, duties, withholding taxes and the like promptly upon invoice.

b. Increase in Licensed Machines. Licensee shall, during the Term, monitor the number of machines/devices on which a Licensed Product (or portion thereof) has been installed and the number of machines/devices to which Fixlet Messages are distributed. If Licensee desires to increase the number of Licensed Machines, it will notify BigFix in writing and pay BigFix's then standard rate for such increase (or any other rate mutually agreed to by the parties in writing). If Licensee's use of Licensed Products exceeds that which is authorized herein at anytime during the relevant License Term (as set forth in Exhibit A or an Additions Schedule), then Licensee will promptly notify BigFix in writing and pay all fees that would have been due (at BigFix's then-standard rates or other rate mutually agreed to by the parties in writing) as if such use and distribution had been authorized for such period. After payment of the relevant fee for any increase in Licensed Machines, the Licensed Machine count will be amended to reflect the then-current number of Licensed Machines paid for by Licensee. BigFix may invoice Licensee for the additional Licensed Machines (and any associated Support and Maintenance Fee) upon BigFix's discovery of the same.

8.   Audit. Licensee will maintain, and BigFix will be entitled to audit on reasonable notice during normal business hours, any records relevant to licensing of Licensed Products; if any audit reveals a 3% or greater underpayment, then Licensee will bear the cost of such audit and shall promptly pay the underpayment. Licensee agrees and acknowledges that BigFix may suspend or terminate Licensee's access to the applicable Content Sites and Fixlet Messages if Licensee fails to pay any fees when they are due or otherwise breaches any term of this Agreement and has not cured such breach within ten (10) days after written notice of such breach. Licensee further agrees and acknowledges that BigFix shall not be liable for any losses or damages incurred by Licensee as a result of such action by BigFix.

9.   Term; Termination; Effect of Termination.

a. Term. This Agreement is effective as of the earlier to occur of the Effective Date and the commencement of any License Term (as set forth on Exhibit A or an applicable Additions Schedule) and expires on the day that the term of license for all Licensed Products licensed hereunder has expired ("Term"). With respect to (i) License Terms (as set forth in Exhibit A or an Additions Schedule) that are not perpetual, and (ii) Maintenance Terms (as set forth in Exhibit A or an Additions Schedule), unless either Licensee or BigFix delivers a notice of non-renewal to the other party at least sixty (60) days prior to the end of the applicable License Term and/or Maintenance Term, such expiring licenses and/or support and maintenance will automatically renew for successive one year periods at fees no more than ten percent (10%) higher than the applicable fees from the preceding year (or in the case of Support and Maintenance Fees, at the then-existing list price in the event Support and Maintenance Fees are not specified in the existing order), with such renewal fees invoiced thirty (30) days prior to the end of the applicable License Term and/or Maintenance Term and payable net 30.

b. Termination. Notwithstanding the foregoing, either party may terminate this Agreement (including Exhibit A and all related Additions Schedules) if the other party: (a) fails to cure any material breach of this Agreement within thirty (30) days after written notice of such breach; (b) ceases operation without a successor; or (c) seeks protection under any bankruptcy, receivership, trust deed, creditors arrangement, composition or comparable proceeding, or if any such proceeding is instituted against such party (and not dismissed within sixty (60) days thereafter). Termination is not an exclusive remedy and the exercise by either party of any remedy under this Agreement will be without prejudice to any other remedies it may have under this Agreement, by law, or otherwise.

c. Effect of Termination. Upon any expiration or termination of this Agreement: (i) all licenses and rights granted by BigFix to Licensee hereunder shall terminate; and (ii) Licensee will cease all access to the Content Sites and all use of the Licensed Products and Fixlet Messages; and (iii) Licensee shall return or destroy all copies of the Licensed Products, and Fixlet Messages, and all duplicates, and any BigFix Confidential Information and have an officer of the company so certify to BigFix in writing; and (iv) BigFix shall promptly return to Licensee any Licensee Confidential Information; and (v) Licensee shall pay to BigFix within thirty (30) days after the date of termination all Fees payable hereunder (including, without limitation, any Fees resulting from an increase in the Licensed Machines).

d. Survival. The provisions of Sections 1 (Definition), the last sentence of 2(e)(Evaluation of Other BigFix Products),

2(h)(Restrictions), 5 (Reporting), 7 (Fees and Payment), 8 (Audit), 9(c)(Effect of Termination), 9(d)(Survival), 10 (Indemnification), 11(c)(Disclaimer), 12 (Limitation of Liability), 13 (Confidential Information) and 14 (Miscellaneous) shall survive and remain effective after the effective date of termination or expiration of this Agreement.

10.   Indemnification. BigFix shall defend, indemnify and hold harmless Licensee from and against any claim of infringement of a U.S. patent, U.S. copyright, or U.S. trademark asserted against Licensee by a third party based upon Licensee¿s use of the Licensed Product in accordance with the terms of this Agreement, provided that BigFix shall have received from Licensee: (i) prompt notice of such claim (but in any event notice in sufficient time for BigFix to respond without prejudice); (ii) the exclusive right to control and direct the investigation, defense, and settlement (if applicable) of such claim; and (iii) all reasonable necessary cooperation of Licensee. If Licensee's use of any of the Licensed Product is, or in BigFix's opinion is likely to be, enjoined due to the type of infringement specified above, or if required by settlement, BigFix may, in its sole discretion: (a) substitute for the Licensed Product substantially functionally similar programs and documentation; (b) procure for Licensee the right to continue using the Licensed Product; or if (a) and (b) are commercially impracticable, (c) terminate the Agreement and refund to Licensee (i) with respect to Licensed Products licensed perpetually, the license fee paid by Licensee as reduced to reflect a three year straight-line depreciation from the applicable license purchase date; and (ii) with respect to Licensed Products licensed on a subscription basis, any pre-paid, unused license fee paid by Licensee. The foregoing indemnification obligation of BigFix shall not apply: (1) if the Licensed Product is modified by any party other than BigFix, but solely to the extent the alleged infringement is caused by such modification; (2) the Licensed Product is combined with other non-BigFix products or process not authorized by BigFix, but solely to the extent the alleged infringement is caused by such combination; (3) to any unauthorized use of the Licensed Product; (4) to any unsupported release of the Licensed Product; or (5) to any third-party code contained within the Licensed Product. THIS SECTION 10 SETS FORTH BIGFIX'S AND ITS SUPPLIERS' SOLE LIABILITY AND LICENSEE'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO ANY CLAIM OF INTELLECTUAL PROPERTY INFRINGEMENT.

11.   Limited Warranty and Disclaimer.

a. Limited Warranty. BigFix warrants for a period of thirty (30) days from delivery of the licensed key for a Licensed Product (the "Warranty Period") that such Licensed Product will operate in substantial conformity to BigFix's applicable Documentation. BigFix shall have no obligation with respect to a warranty claim unless notified of such claim within the Warranty Period. BigFix's entire liability and Licensee's sole and exclusive remedy for any breach of the preceding warranty will be for BigFix, at its option to: (i) use commercially reasonable efforts to provide Licensee with an error-correction or work-around which corrects the reported non-conformity (ii) replace the non-conforming Licensed Product with conforming Licensed Product, or (iii) if, in BigFix's judgment, (i) and (ii) above are not practicable within a reasonable period of time, to terminate the Agreement and refund to Licensee the license fee paid for such non-conforming Licensed Products.

b. Exclusions. The above warranty shall not apply to: (a) any modification or reconfiguration of the Licensed Products performed by any party other than BigFix, (b) any use of the Licensed Products on a system that does not meet BigFix¿s requirements for such Licensed Products, (c) any software other than the Licensed Products, (d) any defect caused by hardware, (e) problems caused by Licensee¿s negligence, abuse or misapplication, use of Licensed Products other than as specified in the Documentation or other causes beyond the control of BigFix, or (f) items provided on a no charge or evaluation basis.

c. Disclaimer. THIS SECTION 11 IS A LIMITED WARRANTY AND EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 11, EVERYTHING PROVIDED UNDER THIS AGREEMENT (WHETHER LICENSED PRODUCTS, SOFTWARE, CONTENT SITES, FIXLET MESSAGES, SERVICE, OR OTHERWISE) IS PROVIDED "AS IS". NEITHER BIGFIX NOR ITS SUPPLIERS MAKES ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NONINFRINGEMENT. FURTHER, COMPANY DOES NOT WARRANT RESULTS OF USE OR FREEDOM FROM FLAWS OR UNINTERRUPTED USE OR ACCESS TO ANYTHING PROVIDED HEREIN. BigFix also disclaims all warranty, indemnity, support and other obligations arising out of the use of any Fixlet Message created by a party other than BigFix.

12.   Limitation of Liability.

a. NEITHER PARTY (NOR ITS SUPPLIERS) SHALL BE LIABLE FOR ANY LOSS OF USE, LOST DATA, FAILURE OF SECURITY MECHANISMS, INTERRUPTION OF BUSINESS, OR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING LOST PROFITS), REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE.

b. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, BIGFIX'S AND ITS SUPPLIERS' ENTIRE LIABILITY TO LICENSEE SHALL NOT EXCEED THE AMOUNT ACTUALLY PAID BY LICENSEE TO BIGFIX UNDER THIS AGREEMENT IN THE TWELVE (12) MONTH PERIOD PRIOR TO THE DATE THE CLAIM AROSE.

c. THIS SECTION 12 SHALL NOT APPLY TO LICENSEE WITH RESPECT TO ANY CLAIM ARISING UNDER SECTION 2 (LICENSES; RESTRICTIONS) OR 13 (CONFIDENTIAL INFORMATION).

d. The parties agree that the limitations specified in this Section 12 will survive and apply even if any limited remedy specified in this Agreement is found to have failed of its essential purpose.

13.   Confidential information. Each party agrees that all code, inventions, know-how, business, technical and financial information it obtains ("Receiving Party") from the disclosing party ("Disclosing Party") constitute the confidential property of the Disclosing Party ("Confidential Information"), provided that it is identified as confidential at the time of disclosure or should be reasonably known by the Receiving Party to be Confidential Information due to the nature of the information disclosed and the circumstances surrounding the disclosure. Any software, documentation, technical information, or training materials provided by BigFix (or its agents), performance information relating to the Licensed Products, Content Site or Fixlet Messages, BigFix pricing information and the terms of this Agreement shall be deemed Confidential Information of BigFix without any marking or further designation. Except as expressly authorized herein and to the extent permitted by law, the Receiving Party will hold in confidence and not use or disclose any Confidential Information. The Receiving Party's nondisclosure obligation shall not apply to information which the Receiving Party can document: (a) was rightfully in its possession or known to it prior to receipt of the Confidential Information; (b) is or has become public knowledge through no fault of the Receiving Party; (c) is rightfully obtained by the Receiving Party from a third party without breach of any confidentiality obligation; (d) is independently developed by employees of the Receiving Party who had no access to such information; or (e) is required to be disclosed pursuant to a regulation, law or court order (but only to the minimum extent required to comply with such regulation or order and with advance notice to the Disclosing Party). The Receiving Party acknowledges that disclosure of Confidential Information may cause substantial harm for which damages alone would not be a sufficient remedy, and therefore that upon any unauthorized disclosure by the Receiving Party the Disclosing Party shall be entitled to appropriate equitable relief in addition to whatever other remedies it might have at law.

14.   Miscellaneous.

a. Assignment. This Agreement will bind and inure to the benefit of each party¿s permitted successors and assigns. Neither party shall assign this Agreement (or any part thereof) without the advance written consent of the other party, except that either party may assign this Agreement in connection with a merger, reorganization, acquisition or other transfer of all or substantially all of such party's assets or voting securities. Any attempt to transfer or assign this Agreement except as expressly authorized under this Section 14(a) will be null and void.

b. Notice. Any notice, report, approval or consent required or permitted hereunder shall be in writing, and shall be deemed given when personally delivered, when sent by confirmed fax, or three days after being sent by prepaid certified or registered U.S. mail or by a nationally-recognized courier to the address of the party to be noticed as set forth herein or such other address as such party last provided to the other by written notice.

c. Invalid Provisions. If any provision of this Agreement shall be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable.

d. Law/Jurisdiction. This Agreement shall be deemed to have been made in, and shall be construed pursuant to the laws of the

State of Delaware and the federal law of the United States without regard to conflicts of laws provisions thereof, and without regard to the United Nations Convention on the International Sale of Goods.

e. Waivers/Amendments. This Agreement may be amended only upon the written consent of both parties, where the parties explicitly indicate their intention to amend and/or revise this Agreement. No delay, failure or waiver of either party's exercise or partial exercise of any right or remedy under this Agreement shall operate to limit, impair, preclude, cancel, waive or otherwise affect such right or remedy. No waiver of any provision of this Agreement shall constitute a waiver of any other provision(s) or of the same provision on another occasion.

f. Publicity. BigFix shall be able to indicate that Licensee is a customer of BigFix in the BigFix website and in BigFix presentations, and shall have the option to issue a press release with advance notice to Licensee. From time to time, if Licensee is satisfied with the Licensed Products, Licensee will act as a reference account for BigFix by participating in short reference phone call(s) with BigFix's existing or potential investors or customers or by providing quotes for press and marketing materials. For purposes of clarity, BigFix shall also be entitled to disclose the content of this Agreement to the extent required by law or government regulatory agency.

g. Complete Agreement. This Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements and communications relating to the subject matter of this Agreement, except that notices and disclaimers included in the installer guide apply to certain third-party software. Except with respect to the identification of the products, services and/or quantities ordered, any terms and conditions printed on or otherwise included in any purchase order, confirmation, or similar form (even if executed after the Effective Date) shall be considered null and void and the terms of this Agreement shall prevail over any different or additional term, notwithstanding any language contained therein indicating acceptance of the language or that BigFix's acceptance of payment under such form or the delivery of goods or services identified therein indicates acceptance of such terms and conditions.

h. Attorneys' Fees. The prevailing party in any action to enforce this Agreement will be entitled to recover its attorneys' fees and costs in connection with such action.

i. Federal Acquisition Regulations. As defined in FAR section 2.101, DFAR section 252.227-7014(a)(1) and DFAR section 252.227-7014(a)(5) or otherwise, all Licensed Products (including the Documentation) are "commercial items," "commercial computer software," and/or "commercial computer software documentation." Consistent with DFAR section 227.7202 and FAR section 12.212, any use, modification, reproduction, release, performance, display, disclosure, or distribution thereof by or for the U.S. Government, shall be governed solely by the terms of this Agreement and shall be prohibited except to the extent expressly permitted by the terms of this Agreement.

j. Compliance with Laws; Export Control. Licensee shall use the Licensed Product in compliance with all applicable laws, statutes, rules and regulations. Licensee acknowledges that the Licensed Product is subject to export restrictions by the United States government and import restrictions by certain foreign governments. Licensee shall not and shall not allow any third-party to remove or export from the United States or allow the export or re-export of any part of the Licensed Product or any direct product thereof: (a) into (or to a national or resident of) any embargoed or terrorist-supporting country; (b) to anyone on the U.S. Commerce Department's Table of Denial Orders or U.S. Treasury Department's list of Specially Designated Nationals; (c) to any country to which such export or re-export is restricted or prohibited, or as to which the United States government or any agency thereof requires an export license or other governmental approval at the time of export or re-export without first obtaining such license or approval; or (d) otherwise in violation of any export or import restrictions, laws or regulations of any United States or foreign agency or authority. Licensee agrees to the foregoing and warrants that it is not located in, under the control of, or a national or resident of any such prohibited country or on any such prohibited party list. The Licensed Product is further restricted from being used for the design or development of nuclear, chemical, or biological weapons or missile technology, or for terrorist activity, without the prior permission of the United States government.

REVENUE CERTIFICATE

I hereby certify that there is a balance otherwise unencumbered to the credit of the appropriation to which this contract is chargeable, and a cash balance otherwise unencumbered in the treasury from which payment is to be made, each sufficient to meet the obligation of $ _14,875.00_ which is hereby authorized.
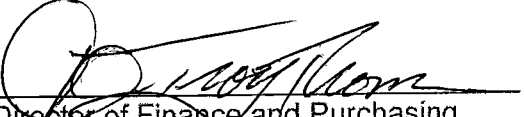
June 28, 2010
Date

Director of Finance and Purchasing
Account Number _010-1225-56790_

_12252010 002_

Product and Fee Schedule

Licensed Products: The products contained in the Product and Fee Schedule.

BigFix Platform

Order Category	Licensed Products	License Term	Licensed Machines	Fee per Licensed Machine	Total Fees
New	BigFix Platform - Workstation/Desktop/Laptop (Perpetual) BF-NA-P-PLAT-ENT-Z	Perpetual	850	$5.75	$4,887.50
Total Fees for Licensed Products above for the applicable License Term set forth above:					**$4,887.50**

BigFix Solutions

Order Category	Licensed Products	License Term	Licensed Machines	Fee per Licensed Machine	Total Fees
New	Power Management Module - Workstation/Desktop/Laptop (Perpetual) BF-NA-P-SM-PWRM-Z	Perpetual	850	$5.75	$4,887.50
Total Fees for Licensed Products above for the applicable License Term set forth above:					**$4,887.50**

Maintenance Term; Support and Maintenance Fees: The **Maintenance Term** shall be the term specified in the Support and Maintenance table below. Licensee is opting to receive the following Support and Maintenance below:

Support and Maintenance Fee Schedule

Order Category	Licensed Products	Maintenance Term	Licensed Machines	Fee per Licensed Machine	Total Fees
New	Maintenance for Power Management Module - Workstation/Desktop/Laptop (Perpetual) BFM-NA-P-SM-PWRM-Z	05/04/2010 to 05/03/2013	850	$3.00	$2,550.00
New	Maintenance for BigFix Platform - Workstation/Desktop/Laptop (Perpetual) BFM-NA-P-PLAT-ENT-Z	05/04/2010 to 05/03/2013	850	$3.00	$2,550.00
Total Support and Maintenance Fees for the Licensed Products above for the Term:					**$5,100.00**

Total Subscription, Support and Maintenance, Professional Service and Training Fees under this Agreement:	**$14,875.00**

Additional Terms specified here control over expressly contrary provisions of the Terms and Conditions in the Agreement:

BigFix Platform Restricted Use License. In connection with Licensee's license of the BigFix Power Management Solution Module ('Power Management Solution'), Licensee is hereby granted a BigFix Platform Restricted Use License (as defined below). Licensee's license to use the BigFix Platform is strictly limited to the extent necessary to use the Power Management Solution ('BigFix Platform Restricted Use License') and any use beyond this BigFix Platform Restricted Use License (including without limitation the use or creation of any custom Fixlet Messages or the use of the software distribution capability) will be deemed a material breach of the terms of the Agreement with BigFix and will require Licensee to purchase a license to the BigFix Platform for use with the applicable number of endpoints using the Power Management Solution at the then effective list price.

Exhibit B

SUPPORT AND MAINTENANCE
TERMS AND CONDITIONS ATTACHMENT

THESE SUPPORT AND MAINTENANCE TERMS AND CONDITIONS CONSTITUTE A SERVICE CONTRACT AND NOT A PRODUCT WARRANTY. ALL LICENSED PRODUCTS AND MATERIALS RELATED THERETO ARE SUBJECT EXCLUSIVELY TO THE WARRANTIES SET FORTH IN THE AGREEMENT. THIS ATTACHMENT IS AN ADDITIONAL PART OF THE AGREEMENT AND DOES NOT CHANGE OR SUPERSEDE ANY TERM OF THE AGREEMENT EXCEPT TO THE EXTENT UNAMBIGUOUSLY CONTRARY THERETO.

<u>Definitions</u>.

• **"E-mail Support"** means ability to make requests for technical support assistance by e-mail at any time (with reasonable efforts by BigFix to respond within one business day) concerning the installation and use of the then-current release of a Licensed Product and any Previous Sequential Release.

• **"Fix"** means the repair or replacement of object or executable code versions of a Licensed Product or documentation to remedy an Issue.

• **"Issue"** means an error in a Licensed Product that has been replicated by BigFix that prevents such Licensed Product from operating in substantial conformity to BigFix's applicable Documentation.

• **"Issue Correction"** means the use of reasonable commercial efforts to correct Issues.

• **"Previous Sequential Release"** means the release of a Licensed Product which has been replaced by a subsequent release of the same Licensed Product. Notwithstanding anything else, a Previous Sequential Release will be supported by BigFix only for a period of six (6) months after release of the subsequent release.

• **"Severity 1 Issue"** means an Issue which renders the core functionality of a Licensed Product inoperative causing business operational impact to Licensee.

• **"Severity 2 Issue"** means an Issue which substantially degrades the performance of a Licensed Product or materially restricts Licensee's use of such Licensed Product.

• **"Severity 3 Issue"** means an Issue which causes only a minor impact on the Licensee's use of a Licensed Product.

• **"Severity 4 Issue"** means an inquiry regarding capabilities of the Licensed Products; Licensee's use of the Licensed Products is not impeded.

• **"Telephone Support"** means technical support telephone assistance during BigFix's regular business hours concerning the installation and use of the then current release of a Licensed Product and the Previous Sequential Release.

• **"Web Support"** means information available at www.bigfix.com, including frequently asked questions, user forum, product documentation, and bug reporting.

• **"Workaround"** means a change in the procedures followed or data supplied by Licensee to avoid an Issue without substantially impairing Licensee's use of a Licensed Product.

1.   <u>Support And Maintenance</u>. Support and Maintenance consist of: (a) Issue Correction and Telephone Support provided to a single consistent technical support contact concerning the installation and use of the then-current release of a Licensed Product and the Previous Sequential Release; (b) E-mail Support; (c) Web Support; and (d) Licensed Product updates that BigFix in its discretion makes generally available to its support and maintenance customers without additional

charge. Basic Support and Maintenance for a Licensed Product that is licensed on a subscription basis is included in the price of the applicable subscription license for the applicable subscription term and does not require a separate Support and Maintenance line item on Exhibit A and/or the applicable Additions Schedule. Premium Support and Maintenance and any Support and Maintenance ordered in connection with Licensed Product that is licensed on a perpetual basis is not included in the price of the applicable license and requires an additional payment and line item on Exhibit A and/or the applicable Additions Schedule.

2.   Issue Severity Levels. BigFix shall exercise commercially reasonable efforts to correct any Issue reported by Licensee in accordance with the severity level reasonably assigned to such Issue by BigFix. BigFix will use commercially reasonable efforts to initially respond to Issues reported by Licensee during Telephone Support hours within the target response times indicated below; however, these are targets only and there is no guarantee that BigFix can or will resolve issue during such time.

•   Severity 1 Issues -- BigFix shall promptly commence the following procedures: (i) assign BigFix engineers to correct the Issue; (ii) notify BigFix management that such Issues have been reported and of steps being taken to correct such Issue(s); (iii) provide Licensee with periodic reports on the status of the corrections; (iv) initiate work to provide Licensee with a Workaround or Fix; and (v) continue such commercially reasonable efforts until a Workaround or Fix has been made available to Licensee. Target initial response time: same business day.

•   Severity 2 Issues -- BigFix shall exercise commercially reasonable efforts to provide Licensee with a Workaround or Fix. BigFix may include the Fix for the Issue in the next major release of the Licensed Product. Target initial response time: one (1) business day.

•   Severity 3 Issues -- BigFix may include the Fix for the Issue in the next major release of the Licensed Product. Target initial response time: two (2) business days.

•   Severity 4 Issues -- BigFix will provide relevant information to Licensee. Target initial response time: three (3) business days.

If BigFix believes that a problem reported by Licensee may not be due to an Issue with a Licensed Product, BigFix will so notify Licensee. At that time, Licensee may (1) instruct BigFix to proceed with problem determination at its possible expense as set forth below, or (2) instruct BigFix that Licensee does not wish the problem pursued at its possible expense. If Licensee requests that BigFix proceed with problem determination at its possible expense and BigFix determines that the error was not due to an Issue with the Licensed Product, Licensee shall pay BigFix, at BigFix's then-current and standard consulting rates, for all work performed in connection with such determination, plus reasonable related expenses incurred therewith. Licensee shall not be liable for: (i) problem determination or repair to the extent problems are due to Issues with a Licensed Product; or (ii) work performed under this paragraph in excess of its instructions; or (iii) work performed after Licensee has notified BigFix that it no longer wishes work on the problem determination to be continued at its possible expense (such notice shall be deemed given when actually received by BigFix). If Licensee instructs BigFix that it does not wish the problem pursued at Licensee's possible expense or if such determination requires effort in excess of Licensee's instructions, BigFix may, at its sole discretion, elect not to investigate the Issue with no liability therefore.

3.   Exclusions. BigFix shall have no obligation to support: (i) modified, altered or damaged Licensed Products or any portion of a Licensed Product incorporated with or into other software; (ii) any Licensed Product that is not the then-current release or immediately Previous Sequential Release; (iii) Licensed Product problems caused by Licensee's negligence, abuse or misapplication, use of Licensed Products other than as specified in the BigFix's user manual or other causes beyond the control of BigFix; or (iv) Licensed Products installed on any hardware that is not supported by BigFix. BigFix shall have no liability for any changes in Licensee's hardware which may be necessary to use Licensed Products due to a Workaround or maintenance release.

4.   Onsite Support. Any on-site support requested by Licensee (if any) will be billed separately at BigFix's then-current standard daily rates, plus reasonable travel and lodging expenses (if any).

5.   Premium Support. To the extent Licensee has paid for and is entitled to Premium Support, Licensee support issues will be automatically escalated to Level 3 support technicians without needing to first go through Level 1 or Level 2 support technicians. Licensee will also be given expanded BigFix contact information, including a technical support manager, a Level

3 support technician and additional BigFix technical support technicians. In addition, Licensee's reported Issues will be given priority over Issues of the same priority level reported by customers that have purchased Basic Support and Maintenance.

Exhibit C
EVALUATION SCHEDULE
#_____

BigFix, Inc., a Delaware corporation with its corporate headquarters located at 1480 64th Street, Suite 200, Emeryville, California 94608 (Phone: (510) 652-6700; Fax: (510) 652-6742; E-mail: legal@bigfix.com) ("**BigFix**") and _____, a _____ corporation having a place of business at _____(hereinafter "**Licensee**") have entered into the BigFix Master License Agreement effective on _____ ("**License Agreement**"). The software marked below with an "X" ("**Evaluation Software**") may be evaluated by Licensee in accordance with the terms and conditions specified in the License Agreement at the evaluation site specified below ("**Evaluation Site**"), such evaluation to take place only for the evaluation period specified below ("**Evaluation Period**").

Evaluation Period: _____ (not to exceed thirty (30) business days)

Number of Licensed Machines: _____ (if none specified, thirty (30)).

Evaluation Site: _____

Product Schedule
Product Name Version; Description

The parties agree that any such evaluation will be subject to the term and conditions specified in the License Agreement.

THE PARTIES HERETO have by their duly authorized representatives execute this Evaluation Schedule # _____ effective on _____ date.

By signing below, BigFix and Licensee agree to the terms and conditions of this Agreement. Any different or additional terms of any related purchase order, confirmation, or similar form even if signed by the parties after the date hereof shall have no force or effect.

Licensee: BigFix, Inc.:

Signature: Signature:

Name: Name:

Position: Position: