

Exhibit A: Continuent Standard Terms and Conditions

1. Term.

a. Term. Subject to early termination as provided in Section 2, the Agreement will remain in effect for so long as Continuent is performing Services pursuant to the Statement of Work, during the term of the Continuent Tungsten Clustering license pursuant to Exhibit B, or for so long as support services are being provided by Continuent pursuant to Exhibit C (whichever period is longest).

2. Termination.

a. Termination by Continuent. Continuent may terminate this Agreement: [a] without cause, upon not less than ninety (90) days written notice; [b] immediately, in the event that Customer fails to cure a material breach within thirty (30) days after receipt of notice of breach.

b. Termination by Customer. Customer may terminate the Agreement on written notice to Continuent, provided that if a commercial license or support agreement is then in effect, termination shall be effective upon the expiration of the then-current term for such license or support agreement.

c. Effect of Termination. Upon expiration or termination of the Agreement, all licenses granted hereunder shall terminate and Customer shall promptly (i) discontinue all use of the Licensed Software (as that term is defined in Exhibit B), (ii) erase all copies of the Licensed Software from Customer's computers, (iii) return to Continuent or destroy all copies of the Licensed Software, Continuent Property, and Continuent Materials on tangible media in Cus-

tomers possession or control, and certify in writing to Continuent that it has fully complied with these requirements, and (iv) pay to Continuent all amounts owed to Continuent through the date of expiration or termination.

d. Survival. Obligations and rights under the Agreement (including its exhibits and attachments), which by their nature would reasonably continue beyond the termination or expiration will survive such termination or expiration (including all accrued rights to payment and remedies for breach), and those Sections entitled "Billing and Payment," "Confidential Information", "Continuent Property," "Proprietary Rights" "Indemnification," "Disclaimers of Warranties," "Limitation of Liability," "Audits," "Governing Law & Dispute Resolution," and "Other Provisions."

3. Billing and Payment.

a. Consulting Fees: Unless otherwise agreed upon in writing, Continuent will invoice Customer immediately for the fixed consulting fees upon signing of the Agreement. The initial invoice will be payable immediately upon of Customer's receipt thereof.

b. Subscription Fees. Continuent will invoice Customer for subscription fees payable under Exhibit B. Unless otherwise provided in a Customer purchase order with payment terms expressly accepted by Continuent in writing, these invoices will be payable on net 30 days terms.

c. Expenses. Unless otherwise agreed in writing, Continuent will be entitled to reimbursement for all reasonable ordinary and necessary expenses, based

on Customer's standard policies, directly incurred in connection with the performance of consulting services provided hereunder, such as the costs of travel and lodging incurred in connection with "on-site" services or training ["Expenses"]. At Customer's request, Continuent will provide documentary evidence for Expenses.

d. All fees under this Agreement are nonrefundable. Continuent's fees are exclusive of all taxes, levies, or duties imposed by taxing authorities, and Customer shall be responsible for payment of all such taxes, levies or duties. Invoices are payable on receipt, and overdue 30 days thereafter. Overdue amounts will bear interest at 1 ½% per month. All payments made under this Agreement will be in United States Dollars. If Customer's account is 30 days or more overdue, in addition to any of its other remedies, Continuent reserves the right to suspend any Services provided to Customer, without liability to Continuent, until such amounts are paid in full.

e. Upon completion of professional services, Continuent may send Customer a service confirmation acknowledgement [the "Confirmation Notice"]. Unless Customer returns the Confirmation Notice specifying bona fide deficiencies in the services contracted for [e.g. the failure to provide required deliverables] within seven (7) days of receipt, all such services will be deemed to have been completed and performed in a satisfactory fashion, with all fixed fee consulting days fully utilized.

4. Confidential Information. Unless the parties have entered into a separate confidentiality or non-disclosure agreement with respect to information disclosed by the parties in the connection with this Agreement, the following provisions shall apply:

a. Definition. "Confidential Information" means information that is either a trade secret, non-public, confidential or proprietary, and materials that contain, are derived from, or otherwise reflect such

information, whether furnished orally, in writing or electronically by one party [the "Disclosing Party"] to the other party [the "Receiving Party"] either by or at the direction of the Disclosing Party. Without limiting the generality of the foregoing, Confidential Information includes drawings, designs, business plans and proposals, ideas and prototypes, the terms and conditions of this Agreement, and all confidential information provided by customers. All Confidential Information shall remain the property of the Disclosing Party or its customer.

b. General Obligations. Each Receiving Party shall: [a] maintain all Confidential Information in confidence; [b] exercise at least the same degree of care to safeguard the Confidential Information that it uses to safeguard its own confidential information [but no less than reasonable care]; [d] not, directly or indirectly, disclose the Confidential Information to any third party, except for contractors with a need to know or who have access to Continuent's internal web-based systems and tools, unless expressly authorized by the Disclosing Party in a prior signed writing; [e] use Confidential Information solely for the purpose of performing under this Agreement, and not for the benefit of Receiving Party or any third party; and [f] not copy, duplicate, replicate, decompile or reverse engineer in any manner whatsoever [whether physically, electronically, in writing or otherwise], in whole or in part, any part of the Confidential Information without the prior written consent of the Disclosing Party.

c. Notice. The Receiving Party will immediately notify the Disclosing Party in writing of any unauthorized disclosure of Confidential Information. Upon the Disclosing Party's request, the Receiving Party shall promptly redeliver to the Disclosing Party, or destroy at the Disclosing Party's direction, all material in any media or format that contains, reflects or is in any way derived from, the Confidential Information [including notes, summaries, copies or other reproductions, in whole or in part], except that data on backups

may wait until it is overwritten via normal backup rotations. The redelivery or destruction of Confidential Information shall be certified by the Receiving Party in writing to the Disclosing Party, and shall not in any way relieve the Disclosing Party of its obligations of confidentiality.

d. Exclusions. The Receiving Party shall have no obligation concerning information that the Receiving Party can demonstrate through documentary evidence: (a) is generally known to the public except as a result of acts by the Receiving Party; (b) is independently developed by the Receiving Party; (c) is disclosed to the Receiving Party by a third party with no duty of confidentiality to the Disclosing Party; or (d) is required to be disclosed by lawful process, provided that the Receiving Party provides the Disclosing Party with timely notice to enable the Disclosing Party to seek a protective order or otherwise object.

e. Responsibility for Breach. Each party shall be responsible for any action or omission by any employee or agent of such party, which would be a breach of any terms of this Section as if such person were a party hereto. Each of the parties represents and covenants to the other that its employees and agents have been and shall be advised of their obligations concerning confidentiality of information that has been provided hereunder.

f. Injunctive Relief. The parties agree that the terms of this Section headed “Confidential Information” are reasonable and necessary to protect the Confidential Information and the parties and their clients, that irreparable injury will result if a Receiving Party breaches this Section, and that in the event of a Receiving Party’s actual or threatened breach of this Section, Continuent will have no adequate remedy at law. The Receiving Party therefore agrees that the Disclosing Party may take any necessary action to compel specific performance, or enjoin any violation, of this Section.

5. Proprietary Rights.

a. Customer acknowledges that Continuent owns, may hold, or may develop (independently or in connection with the Agreement) proprietary documentation, software, techniques and processes (collectively, “Continuent Property”). Continuent may use Continuent Property in providing the Services under this Agreement, and may deliver Continuent Property to Customer for use in connection with this Agreement. Except as otherwise set forth in this Section, all Continuent Property is and shall remain at all times the sole property of Continuent, and may not be used, disclosed, reproduced or distributed by Customer in any manner without Continuent’s express prior written consent, or as expressly provided in the Agreement.

b. Subject to any rights to use expressly granted to Customer hereunder, any and all proprietary rights in Continuent Property utilized or made available by Continuent in the course of the performance under this Agreement shall remain vested exclusively in Continuent, and Continuent’s performance hereunder does not grant to Customer any rights in copyrights or other proprietary rights including patents, trademarks, trade and business secrets or know-how embodied in the Services or any Continuent Property.

c. Unless otherwise agreed by the parties in writing (e.g. in a Statement of Work), all Work Product which is related to Continuent Property (e.g. modifications to Continuent software, and related documentation) shall remain the sole property of Continuent. Work Product which is unrelated to Continuent Property (e.g. modifications to Customer’s existing database software) shall be the property of Customer upon delivery to Customer, and Continuent hereby assigns to Customer and its successors and assigns, without further consideration, the entire worldwide right, title and interest to all such Work Product.

d. “Work Product” means all inventions and works of authorship, including improvements, processes,

discoveries, ideas, technologies, know how, work product, concepts, material, disclosures, software programs, computer language, programming aids, compilations, documentation, or any other intellectual property, conceived, developed, originated, fixed or reduced to practice by Continuent (individually or jointly with Customer) in connection with any Services performed by it for Customer.

6. Continuent Software.

a. Software Licenses. Customer will be granted a license to use specified Continuent software pursuant to the terms of Exhibit B (Continuent Tungsten License). For purposes of this Agreement, any Work Product owned by Continuent and delivered to Customer under the Agreement shall be deemed a part of the Licensed Software (as defined in Exhibit B). Commercial use of such software shall be subject to the payment of applicable subscription fees.

b. Open Source Software. "Open Source" means any software code that contains or is derived in any manner (in whole or in part) from, any software that is distributed as free software, open source software, shareware, or similar licensing or distribution models. Open Source includes, but is not limited to, software licensed or distributed under any of the following licenses or distribution models, or licenses or distribution models similar to any of the following: (s) GNU's General Public License (GPL) or Lesser/Library GPL (LGPL), (t) the Artistic License (e.g. PERL), (u) the Mozilla Public License(s), (v) the Netscape Public License, (w) the Berkeley software design (BSD) license including Free BSD or BSD-style license, (x) the Sun Community Source License (SCSL), (y) an Open Source Foundation License (e.g., CDE and Motif Unix user interfaces), and (z) the Apache Server license). Notwithstanding anything in this Agreement to the contrary, all Open Source may be used by Customer pursuant to the terms of the applicable open source license agreement.

7. Indemnification.

a. Continuent Indemnity. Continuent shall defend, indemnify and hold Customer harmless against any loss or damage (including without limitation reasonable attorneys' fees) arising from claims, demands, suits, or proceedings ("Claims") brought against Customer by a third party alleging that the Services or any licensed Continuent Property (ii) infringe the intellectual property rights of a third party, or (ii) breach an Open Source or any other third party license agreement under which Continuent is bound. Continuent shall have no obligations to Customer under this Section 7(a) to the extent such Claims arise from Customer's breach of this Agreement, from the combination of the Services with any other products, services, hardware or business processes if the alleged infringement would not have occurred absent such combination, or from Services undertaken to specifications provided by Customer, which specifications are the basis for the alleged infringement. Following Continuent's receipt of notice of any such claim, action or proceeding requiring indemnification, Continuent shall have the right to procure for Customer at Continuent's expense the right or license to use the Services as furnished hereunder, or to replace or modify the Services to render same non-infringing or non-misappropriating. This Section 7(a) sets forth Customer's sole remedy and Continuent's sole liability for any infringement of third party intellectual property rights.

b. Customer Indemnity. Customer shall defend, indemnify and hold Continuent harmless against any loss or damage (including without limitation reasonable attorneys' fees) incurred in connection with Claims made or brought against Continuent by a third party based on Customer's misuse or illegal use of the Service or licensed Continuent Property. Customer shall have no obligations to Continuent under this Section 7(b) to the extent such Claims arise from Continuent's breach of this Agreement.

c. Conditions for Indemnification. Each person entitled to indemnification hereunder (an “Indemnified Person”) must give prompt written notice of the claim to the other party (the “Indemnifying Party”) and provide assistance in connection with the defense of the claim as reasonably requested by the Indemnifying Party. The Indemnifying Party has the sole right to conduct the defense of each claim hereunder and all negotiations for its settlement or compromise but may not, without the prior written consent of the Indemnifying Party, enter into any compromise or settlement of a claim that imposes any obligation on or fails to release that party. After the Indemnifying Party assumes the defense of any claim, the Indemnifying Party is not liable for any legal or other expenses subsequently incurred by the Indemnified Person other than for the Indemnified Person’s reasonable out-of-pocket expenses incurred in providing any assistance requested by the Indemnifying Party.

8. Warranties.

a. General Warranties. Continuent represents and warrants to Customer that: (i) it is an entity validly existing under applicable laws; (ii) it has all necessary right, title, license and authority to enter into this Agreement and to perform all its obligations hereunder; (iii) the person signing on behalf of Continuent has full authority to bind Continuent to this Agreement; (iv) entering into this Agreement and Continuent’s performance of all its obligations hereunder does not violate any applicable law, statute, regulation or ordinance; (v) the Services are free of all liens and encumbrances and there are no claims pending or threatened that could have a material adverse effect on Continuent’s ability to perform its obligations hereunder or on Customer’ enjoyment of the rights granted hereunder; and (vi) it has appropriate agreements with its employees and contractors to perform its obligations under this Agreement.

b. Warranty for Services. Continuent represents and warrants that: (i) the Services will materially conform to the agreed-upon specifications and other applicable documentation related to the engagement; (ii) the Services will not contain any Open Source (unless previously disclosed to Customer in writing; (iii) the Services, in the format provided by Continuent to Customer, will not contain a computer virus or other contaminant, including any codes, instructions or devices capable of impairing operations or erasing or altering data or programs; and (iv) Continuent will perform the Services in a professional and worker like manner, consistent with the highest industry standards. In the event any Services fail to satisfy the standards set forth in this Section, Continuent will, at Customer’ request and at no cost to Customer, promptly re-perform the Services; provided, however, that Customer may elect to receive a refund of all fees and expenses paid, if re-performance of the Services fails to cure the defect.

c. DISCLAIMERS OF WARRANTIES. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, THERE ARE NO OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES OR ANY CONTINUED PROPERTY PROVIDED HEREUNDER, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. NEITHER CONTINUED NOR ANY OF ITS SUBSIDIARIES WARRANTS THE RESULTS OF ANY SERVICE OR ANY CONTINUED PROPERTY PROVIDED HEREUDNER WILL MEET CUSTOMER’S REQUIREMENTS.

9. LIMITATION OF LIABILITY. IN NO EVENT SHALL CONTINUED’S TOTAL CUMULATIVE LIABILITY TO CUSTOMER UNDER THE AGREEMENT EXCEED THE TOTAL AMOUNT OF FEES PAID OR PAYABLE TO CONTINUED. IN NO EVENT SHALL A PARTY BE LIABLE FOR THE LOSS OF PROFITS, LOSS OR INACCURACY OF DATA, OR INDIRECT, SPECIAL, INCIDENTAL OR

CONSEQUENTIAL DAMAGES (INCLUDING WITHOUT LIMITATION THE COST OF ANY SUBSTITUTE PROCUREMENT), EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS SECTION SHALL SURVIVE TERMINATION OF THE AGREEMENT. THE FOREGOING LIMITATIONS SHALL NOT APPLY TO BREACHES OF SECTION 4 (CONFIDENTIALITY), TO A PARTY'S INDEMNITY OBLIGATIONS HEREUNDER, OR TO BREACHES PERTAINING TO, OR OTHER MISUSE OR MISSAPPROPRIATION OF, INTELLECTUAL PROPERTY.

10. Independent Contractor. The parties are independent contractors to one another. Nothing in this Agreement or otherwise shall create an employer-employee, agency, joint venture or partnership relationship. No employee, agent, consultant or assistant of either party shall be considered an agent of the other party.

11. Audit Rights. To ensure compliance with the terms of the Agreement (including the verification of the number of services on which the Continuent software is installed), Continuent may, on fourteen (14) days prior notice, conduct an audit of Customer's computer systems and records pertaining to the Agreement. Continuent agrees to comply with Customer's security protocols and procedures generally applicable to contractors provided such access.

12. Governing Law & Dispute Resolution

a. Governing Law. This Agreement shall be governed by the laws of the United States and the State of California, without regard to its conflict of laws provisions. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. The federal courts of the United States in the Northern District of California and the state courts of the State of California located in San Francisco, California will have exclusive jurisdiction over any dispute arising out of or relating to this Agreement.

Each party hereby consents to the jurisdiction of such courts.

b. Arbitration. Subject to each party's right to seek injunctive relief for breach of the other party's obligations related to confidential information or proprietary rights the parties agree that all disputes arising between them shall be submitted to and exclusively, resolved by arbitration. Any arbitration shall be conducted in San Jose, California, USA in accordance with the Commercial Arbitration Rules of the American Arbitration Association.

c. Attorney's Fees. If any action or proceeding is commenced to enforce this Agreement or any right arising in connection with this Agreement, the prevailing party in such action or proceeding will be entitled to recover from the other party the reasonable attorney's fees, costs and expenses incurred by such prevailing party in connection with such action or proceeding.

13. Other Provisions

a. Entire Agreement and Construction. This Agreement (comprised of the Agreement, these Terms and Conditions, and any attached exhibits or appendices thereto) constitutes the entire agreement between the parties as to its subject matter, and supersedes all previous and contemporaneous agreements, proposals or representations, written or oral, concerning the subject matter of this Agreement. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and signed by the party against whom the modification, amendment, or waiver is to be asserted. Notwithstanding any language to the contrary therein, no terms or conditions stated in a Customer purchase order or in any other Customer order documentation shall be incorporated into or form any part of this Agreement.

b. Waiver and Cumulative Remedies. No failure or delay by either party in exercising any right under this

Agreement constitutes a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.

c. Severability. If any provision of this Agreement is held by a court or arbitrator of competent jurisdiction to be contrary to law, the provision shall be changed by the court or by the arbitrator and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect, unless the modification or severance of any provision has a material adverse effect on a party, in which case such party may terminate this Agreement by notice to the other party.

d. Force Majeure Event. If either party is prevented from performing any of its obligations under this Agreement due to any cause beyond the party's reasonable control, including, without limitation, an act of God, fire, flood, explosion, war, strike, embargo, government regulation, civil or military authority, acts or omissions of carriers, transmitters, providers, vandals, or hackers (a "force majeure event") the time for that party's performance will be extended for the period of the delay or inability to perform due to such occurrence. If any force majeure event occurs, the affected party will give prompt written notice to the other party and will use commercially reasonable efforts to minimize the impact of the event.

e. Assignment. Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior express written consent of the other party except in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets. Any attempt by a party to assign its rights or obligations under this Agreement in breach of this Section will be void and of no effect. This Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns.

f. Export. The Licensed Software (as defined in Exhibit B) and related technology are subject to U.S. export control laws and may be subject to export or import regulations in other countries. Customer agrees to strictly comply with all such laws and regulations and acknowledges that it has the responsibility to obtain such licenses to export, re-export, or import as may be required. Customer will indemnify and hold Continuent harmless from any and all claims, losses, liabilities, damages, fines, penalties, costs and expenses (including attorney's fees) arising from or relating to any breach by Customer of its obligations under this section.

g. Notices and Other Communications. Every notice required by this Agreement shall be delivered either by (i) personal delivery, (ii) overnight courier requiring the signature of the recipient (e.g. Federal Express), (iii) postage prepaid return receipt requested certified mail, or (iv) by facsimile or email transmission with confirmed delivery, addressed to the party for whom intended at the addresses specified on the signature page of the Agreement, or at such other address as the intended recipient shall have designated by written notice.

h. Counterparts, Facsimile Signatures. The Agreement may be executed in counterparts, each of which is deemed to be an original and all of which together constitute one and the same agreement. Each executed counterpart may be delivered by facsimile, and copies bearing the facsimile signature of a party constitute a valid and binding execution and delivery of this Agreement.